

(2013) 02 DEL CK 0101

In the Delhi High Court

Case No : Criminal Appeal No. 129 of 2000

Kuldip Singh, Surinder Pal, Charanjit Singh @ Chanche @
Chinna and Gurmukh Singh @ Laddu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 4 AD 909

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : K.K. Manan, for the Appellant; Mukesh Kumar, APP along with SI Mahabir Singh, P.S. R.K. Puram, for the Respondent

Judgement

Indermeet Kaur, J.—On 18.02.2000, the three appellants had been convicted for the offence u/s 326 read with Section 34 of the Indian Penal Code (IPC). They had been sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 5,000/- each and in default of payment of fine, simple imprisonment for five months. Out of the fine so realized, a sum of Rs. 10,000/- was directed to be paid to the injured Anand Prakash as compensation. Benefit of Section 428 Cr. PC had been granted. The version as set up by the prosecution is that on 30.04.1989, an information was received that certain persons have been injured in front of house NO. 467-469, Sector 6, R.K. Puram, Delhi. Inspector Kishan Mohan (PW-7) reached the spot where it was learnt that injured have been removed to the Safdarjung Hospital. Leaving Constable Ram Dutt at the spot, the Investigating Officer reached the hospital. The injured Anand Prakash (PW-2) was unfit for statement. The statement of the complainant Ram Gopal Mishra (PW-1) was recorded. It was to the effect that he along with his relative Ram Sahai Shukla (PW-3) had gone to the market to eat "pan" where accused Surender Pal and Chinna came to them and caught hold of the neck of PW-3 and started beating him as he had teased a girl. PW-1 tried to save PW-3 but he was pushed aside. The friend of his son Sanju saved them. This was at about 07:30 PM. Thereafter at around 08:10 PM while he was sitting in his house, accused

Surender Pal and Chinna along with accused Kuldeep and Gurmukh Singh @ Laddu came to his house; (PW-2) who was their neighbour asked them the reason. Ved Prakash (PW-4) brother of PW-2 also came out. Thereupon accused Laddu gave a slap to PW-4 and when PW-2 tried to intervene a sword blow was inflicted upon his head. Iron blows were given to Ranbir Singh who had also come to the scene by accused Chinna. Accused persons thereafter fled away. The injured PW-2 and Ranbir Singh were removed to the hospital. Their MLCs were proved through Dr. Shalabh Kumar (PW-6). Ex. PW-6/B which is the MLC of PW-2 and has recorded that there was a 4 inch X half inch bone deep CLW on the right side of the scalp and there were three abrasions 1" X 1"; the injury was opined to be grievous. X-ray reported a fracture of the right parietal bone. The MLC of Ranbir Singh Ex. PW-6/C had noted a CLW on the parietal-occipital region; it was a simple injury. Ex. PW-6/A, the MLC of accused Kuldeep Singh had recorded a simple injury.

2. It was this evidence which had led to the filing of the chargesheet. Accused persons were charged for the offence u/s 307/34 IPC. The prosecution had examined seven witnesses of whom their star witness was Anand Prakash examined as PW-2. He has reiterated his version on oath and given a separate role to the accused. All the accused had come to the house of PW-1 and on hearing their noise PW-2, neighbour of PW-1 came out. Accused Kuldeep had inquired about Bunty the son of his neighbor; accused Gurmukh Singh had given a slap to his brother PW-4 Ved Prakash; accused Surender Pal had inflicted a sword blow on PW-2 and an iron blow had been inflicted upon him by accused Charanjit Singh and when Ranbir Singh tried to intervene, he was beaten with an iron rod by accused Charanjit Singh; he thereafter became unconscious. In his cross-examination, he was confronted with his earlier version which he had given to police Ex. PW-2/DA.

3. Submission of the learned counsel for the appellant is five-fold. First submission is that there are material contradictions in the testimony of PW2 and the so called other eye witnesses; the version as set up by PW2 and PW1 is different from the versions given by PW3 and PW4. There is an inordinate delay in the registration of the FIR; the FIR had been registered on the day following the incident i.e. 01.05.1989 for which there is no explanation. Third submission being that the weapons of the offence i.e. so called sword/rod has not been produced. The MLC of PW2 shows that there are cuttings over the words "bone fracture" and it also does not appear to be in the same hand-writing. Lastly it has been submitted that the statement of PW2 was recorded after an unexplained delay i.e. only on 03.05.1989 when admittedly he was conscious at the time when the incident took place and he was taken to the hospital in a bus for which he had to walk for 100 paces; the version set up by the prosecution suffers from infirmities and accused persons are thus entitled to a benefit of doubt and a consequential acquittal. The additional submission being that the accused Kuldeep and Chinna have not been attributed with any specific role and as such the provisions of Section 34 of the IPC also do not get attracted.

4. These submissions have been countered.

5. Record shows that the star witness of the prosecution was PW2 Anand Prakash. His statement was recorded on 03.05.1989 as he remained in the hospital up to 02.05.1989 and in fact in this intervening period an application had been filed by the investigating officer to get his statement recorded (Ex.PW7/B) but he being unfit for statement, his statement could not be recorded till 03.05.1989. PW2 has attributed a specific role to each of the accused persons; accused Kuldip had enquired about Bantoo; accused Surender Pal had inflicted the sword injury upon his head; accused Charanjit had returned a iron rod on his head and when he tried to shield himself the blow landed on his hands; accused Gurmukh had slapped his brother. Ranbir Singh had also received injuries at the hands of accused Charanjit; all the other accused persons also grappled with Ranbir; PW-2 thereafter became unconscious. Admittedly statement of PW2 could not be recorded up to 03.05.1989 as in this intervening period, he was unfit for statement and this is evident from the fact that the investigating officer on the first day itself i.e. 30.04.1989 had moved an application seeking permission of the doctor to get his statement recorded but it was declined. Nothing could be elicited in the cross-examination of PW2 which could dislodge his version. In fact PW2 has categorically stated that he had no enmity with the accused persons.

6. The incident had occurred at 8.10 PM on 30.04.1989. The rukka was taken at the mid-night of 12.10 AM on 01.05.1989 and the FIR was registered shortly thereafter at 12.30 AM. The delay in taking rukka was obviously for the reason that the urgency of removing the injured to the hospital was first to be complied with; the rukka was then taken from the hospital.

7. The case had been registered on the complaint of the PW1. As per his version, he along with PW3 had gone to eat pan in their market and when they were returning, they were accosted by the accused persons of whom the accused Surender Pal, Chinna and Laddu @ Gurmukh Singh had caught hold of PW3 on the pretext that he had teased a girl; Sanju a friend of his son intervened. About almost one hour later when PW1 was sitting in his house, a noise was heard and he came out; he noticed that PW2 his neighbour had also come out as all the four accused persons had come there; it was at this time that accused Laduu @ Gurmukh Singh gave a slap to PW4 (brother of PW2) and when PW2 tried to save his brother accused Surender Pal gave him a blow with his sword; Ranbir Singh who tried to save them was also beaten by accused Chinna.

8. This version of PW1 and PW2 is not different from the versions given by PW3 and PW4 both of whom are also eye witnesses. PW-2 and PW-3 were also the witnesses to the first point of the incident which had occurred at 7.00 pm when they had gone to the market to eat pan. Learned counsel for the appellant has vehemently pointed that in this version of PW3 he has stated that 15 to 20 persons armed had come to the spot which is different from the version of PW1 and PW2. This discrepancy even as noted and pointed out by the learned counsel

for the appellant is not a material reason to otherwise reject the well proven case of the prosecution which stands further corroborated and affirmed by PW4 who was the brother of PW2 and who had been slapped by accused Laduu @ Gurmukh Singh which version of PW 4 also stands corroborated by the stand of PW1 and PW2 as well.

9. Learned counsel for the appellant's endeavour to show that the first versions of PW2 (Ex. PW2/DA) and PW4 (Ex. PW4/DA) are in contrast with their deposition on oath in court also does not merit any consideration. A perusal of the version of PW2 and PW4 when accosted with their version recorded before investigating officer (Ex. PW2/DA and Ex. PW4/DA respectively) shows that these are not material discrepancies which have been pointed out; merely because in the first statement u/s 161 of the Cr.P.C. PW2 had not got recorded that he was watching TV at the time when the incident had occurred or that he had come out of his house for relaxation, cannot be a material contrasts qua his deposition on oath. So also the confrontations noted in Ex. PW4/DA and testimony of PW4 on oath in court; merely because in Ex. PW4/DA it had not been recorded that Ranbir Singh and Gopal Mishra had come to the spot later on would not materially affect the version otherwise proved by the prosecution.

10. This is a case where the gamut of the evidence brought on record shows that eye witnesses PW1 to PW4 are all corroborative of one and another; trivial discrepancies here and there do not disturb their otherwise well explained versions. While appreciating the evidence of a witness ground realities and fact situations have to be kept in mind; the testimony of a witness has to be read as whole and wherever there is a ring of truth found in it, the court must evaluate it in that background; the general tenor of the testimony has to be borne in mind. Non-examination of Ranbir Singh, the other injured, would also not disturb the case of the prosecution as in one part of the record of the trial court it has been noted that Ranbir Singh had come to get his testimony recorded but thereafter was not available to the prosecution as a witness; it is not as if the prosecution has deliberately withheld him. The other eye witnesses have sufficiently proved the case of the prosecution.

11. The MLC of PW2 has been proved as Ex. PW6/B. There was a 4 inch X half inch bone deep CLW on the right side on scalp in addition to three abrasions 1" X1" on the scalp; injuries were opined to be grievous. X-ray report had noted a fracture of the parietal bone on the right side. This medical evidence shows that the injuries were of a serious nature being on the right side of the head of the injured, a vital part of the body. Even presuming that the weapon of offence has not been recovered, it would not diminish the case of the prosecution as it is not the case of the accused that they were not at the spot or that they were not carrying the sword; no such suggestion has even been given to any of the witnesses of the prosecution. Even in their statements recorded u/s 313 of the Cr.P.C. the only defence sought to be set up by the accused is that they were innocent and have been falsely implicated with no further particulars.

12. This ocular testimony of the witnesses corroborated by the MLC Ex. PW6/B endorsing the injury of the PW2 as grievous i.e. a fracture of the right parietal bone proves the version of the prosecution.

13. The only submission of the appellant which merits consideration is that the accused Kuldeep had also been injured and no explanation seems to be forthcoming as to how he had sustained injuries and in the absence of which the investigation appears to be tainted for which benefit of doubt has to be given to the accused. For this submission reliance has been placed upon Lakshmi Singh and Others Vs. State of Bihar, .

14. This submission of the appellant has to be noted in the context of the facts of the present case. There is no doubt that accused Kuldeep had been injured but he had been taken to the hospital and his MLC has been proved through PW6 as Ex. PW6/A noting that he had suffered a simple injury. Even in his statement u/s 313 of the Cr.P.C. accused Kuldeep has not given a counter version which would be in contrast to the version of the prosecution; only submission being that he is innocent and falsely implicated. In this background, in view of the judgment of Amar Malla and Others Vs. State of Tripura, where it was held by the Supreme Court that merely because the prosecution has not been able to explain the simple injury suffered by the accused the otherwise well proven case of prosecution for this lapse on the part of the investigating officer cannot be thrown out. The relevant extract reads as under:-

It is well-settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto, the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eye-witnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the Investigating Officer.

15. The accused persons have been convicted for the offence u/s 326 read with 34 of the IPC which is based on the concept of common intention. The testimony of the eye witnesses clearly show that the all the accused had come to the scene with the intent to accost the injured and PW2 having explained the role of each and every accused persons and in these circumstances whether an actual active role has been attributed to one or the other may not be relevant for the purpose of examining the "common intention" as contended in Section 34 of the IPC. All accused persons had a joint purpose.

16. The conviction calls for no interference.

17. However, keeping in mind the fact that the incident had occurred in April 1989 i.e. 24 years ago and the accused persons having grown over the years with their families having extended and they not having been embroiled in any other incident and the present case also as set up by the prosecution being a case of a sudden quarrel; this court is inclined to reduce the sentence

18. Accordingly the sentence of RI 3 years is reduced to RI 18 months with a fine of Rs. 5,000/- for each accused; in default of payment of fine SI two months. The entire fine so realized shall be paid to the injured Anand Prakash. The Court has been informed that as per the nominal roll, each of the accused have suffered incarceration for about 10-11 days. Benefit of Section 428 of the Cr.P.C. be also granted. With this modification, this appeal stands disposed of.