
(2012) 03 DEL CK 0156

In the Delhi High Court

Case No : Criminal Rev. P. 688 of 2009

Kulwant Singh and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 313
Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (2012) 4 AD 59

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Mukesh Gupta, APP for the State with SI Rajendra, PS Krishna Nagar, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition, the Petitioners seek setting aside of the judgment dated 29th August, 2009 passed by the learned Additional Sessions Judge dismissing the appeal of the Petitioners filed against the Judgment and order on sentence dated 4th July, 2009 and 6th July, 2009 respectively passed by the learned Metropolitan Magistrate convicting the Petitioners for offences under Sections 323/325/34 IPC and directing them to pay a fine of Rs. 3,000/- each and in default of payment of fine to undergo Simple Imprisonment for a period of three months. Petitioner No. 1, who argued on behalf of all the Petitioners, stated that the doctor, who conducted the MLC, has not been examined. Thus, the medical evidence cannot be read against them. In fact, on 22nd August, 1996 the Complainant had beaten the Petitioners and their MLCs got done at Swamy Dayanand Hospital(in short "SDN Hospital") are already placed on record. The Complainant Mohit Gaur was not taken to the SDN hospital and police got fabricated MLC of Mohit Gaur prepared, on the basis of which, the Petitioners have been convicted. Instead of Dr. Rajender Gupta, one Dr. Rajiv Gupta was

examined as PW10, who was not on duty on the relevant date, that is, 22nd August, 1996 as per the RTI reply received by the Petitioners. Thus on the basis of fabricated documents, the Petitioners have been convicted and the impugned judgments be thus set aside.

2. Learned APP for the State on the other hand contends that PW3 Mohit Gaur is an injured witness, who has been examined in the Court and has proved his complaint on the basis of which this FIR was registered. PW4 Vijay Pal Singh, TSR driver and an eye witness, neighbour of the Complainant has also corroborated the version of PW3. No suggestion of fabricated documents being prepared has been put to the witnesses and thus the same cannot be considered at this stage. The statement of PW3, the injured Complainant, is further corroborated by the MLC and the X-ray, which shows a fracture in the nasal bone. Hence there is no infirmity in the impugned judgments and the petition be dismissed.

3. I have heard Petitioner No. 1, learned APP for the State and perused the record.

4. Briefly the case of the prosecution is that FIR No. 452/1996 under Sections 323/325/34 IPC was registered against the Petitioners on the complaint of PW3 Mohit Gaur. The Complainant alleged that on 22nd August, 1996 at about 5.30 p.m. a rickshaw loaded with flour bag was parked in front of his house. When the Complainant asked the Petitioners to remove the rickshaw, they started abusing him, took him inside the house and started beating him. At that time, his neighbour PW4 Vijay Pal Singh, a TSR driver tried to settle the matter but he was also given beatings by the Petitioners. The police arrived at the scene and got the injured medically examined. Initially a kalandara u/s 107/151Cr.P.C. was prepared against both the parties. Pursuant to the opinion of doctor being received that the injuries to the Complainant/PW3 Mohit Gaur were grievous in nature, the abovementioned FIR was registered.

5. The Complainant Mohit Gaur has been examined as PW3, who has reiterated his allegations made in the complaint on the basis of which FIR was registered. Though that witness has been cross-examined however, nothing material has been elicited from this witness. This witness has denied that he was not taken to SDN hospital. He stated that he was taken to the SDN hospital and remained there till he was produced before the Court. He denied that PW4 Vijay Pal Singh was his own driver. PW4 Vijay Pal Singh has corroborated the version of PW3 Mohit Gaur. Though this witness in his cross-examination stated that he had not seen Mohit Gaur receive injuries however, he categorically stated that he had witnessed the accused persons giving beatings to him. The Investigating Officer SI Laxman Singh has been examined as PW5, however, no suggestion has been given to this witness that the MLCs filed by him were fabricated. PW7 Dr. R.K. Rawat, has appeared in the witness box and has exhibited the MLCs of Vijay Pal Singh and Mohit Gaur as Ex. PW7/A and PW7/B which bear his signature at point "A". Though the suggestion of preparing false MLC was given to this witness

however, this witness denied the said suggestion. PW10 Dr. Rajiv Gupta, Radiologist, SDN Hospital has appeared who stated that he examined the X-ray plate of Mohit Gaur dated 26th August, 1996 and prepared the original report which shows fracture of nasal bone and thus he gave the opinion as grievous at point "B". Despite cross-examination, nothing has been elicited in from these witnesses.

6. In their statement u/s 313 Cr.P.C. the explanation given by the Petitioners is that forged MLCs in connivance of police officers and doctor have been prepared, on the basis of which the Petitioners have been implicated. It is further stated that the Petitioners were lifted from their shop and were pressurized by the Complainant and his father to withdraw as a witness against S.C. Joshi, who was the DDA engineer. However, no such suggestion of being lifted from the shop or being pressurized to withdraw as a witness has been made during the cross-examination of the witnesses.

8. I have gone through the entire record since Petitioner No. 1 insisted to argue on behalf of all the Petitioners and did not accept taking amicus curiae. On a perusal of the record I find no infirmity in the impugned judgments and order on sentence, convicting and sentencing the petitioners herein. Petition is dismissed.