
(2013) 02 DEL CK 0060
In the Delhi High Court
Case No : Crl. A. 1020/2011

Pappan Kasana

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Citation : (2013) 4 AD 425

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Garg, J.—The present appeal is directed against the impugned judgment dated 02.04.2011 in Sessions Case No. 38/2009 arising out of FIR No. 876/2004 PS Sangam Vihar by which the appellant- Pappan Kasana was convicted for committing offences punishable under Sections 392/ 394/ 34 IPC and sentenced to undergo RI for five years with fine Rs. 2,000/- u/s 392/ 34 IPC and in default of payment of fine to further undergo SI for six months. He was also sentenced to undergo RI for five years with fine Rs. 2,000/- u/s 394/ 34 IPC and in default of payment of fine to further undergo SI for six months. Both the sentences were to operate concurrently. Allegations against the accused were that on 25.11.2004 at about 11.30 P.M. near Karnni Singh shooting range gate towards Sangam Vihar he with co-accused Nasruddin @ Bhura, Sanjay @ Naresh and Mahipal Singh (PO) committed robbery and deprived complainant Ranvir Singh of Rs. 8,000/-, wrist watch make Titan, mobile phone (Nokia). They also caused injuries with sharp object to Ranvir Singh while committing robbery. The prosecution examined sixteen witnesses. In his 313 Cr.P.C. statement, the accused pleaded innocence. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment held the accused and his associates guilty and sentenced them. Being aggrieved, the accused has preferred the appeal.

2. Contention of the learned counsel for the appellant is that the Trial Court did

not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the sole testimony of the complainant-Ranvir Singh. He categorically admitted that it was dark at the spot. The Test Identification Parade was conducted on 09.02.2005 after a gap of six weeks from the date of incident. Nothing was recovered at the instance of the accused. He was arrested in case FIR No. 78/2005 and was falsely implicated in this case on the basis of disclosure statement recorded therein. There are major contradictions and improvements in the testimonies of the prosecution witnesses. The prosecution failed to explain about fourth suspect Mahipal Singh. Learned APP urged that the testimony of the complainant who is an injured witness inspires implicit confidence and there are no good reasons to disbelieve him. The accused was identified in Test Identification Proceedings as well as in the Court.

3. I have considered the submissions of the parties and have examined the record. Daily Diary (DD) No. 27 (Ex.PW-14/A) was recorded at 11.15 P.M. at Police Post H-block, Police Station Sangam Vihar on getting information that a boy has been stabbed. The investigation was assigned to HC Rameshwar. ASI Prem Prakash also reached the spot. Statement of Ranvir Singh was recorded on 26.11.2004 at his residence in Faridabad. In his statement (Ex.PW-1/A), Ranvir Singh gave detailed account as to how and under what circumstances, he was robbed at the point of knife and country-made pistol and deprived of Rs. 8,000/-, watch and mobile phone. When he raised alarm, he was injured. He gave description of the assailants and claimed to identify them. He further explained the delay in lodging report with the police as due to injury and pain, he was unable to lodge the report that day.

4. While appearing as PW-1 he proved the version given to the police at the first instance without any variation. He deposed that when he was going to his house on his motorcycle No. DL 7S 7549 on 25.11.2004 at about 10.30 P.M. and reached near Karnni Singh shooting range gate, one Maruti Zen No. DL 6C 0454 white colour struck his motorcycle from behind and he fell down on the ground. In the meantime, three boys got down from the car; one of them was having a country-made pistol and other was having a knife. He identified the three assailants and stated that accused Nasruddin had put a knife at him and inflicted injury with the knife. He pointed towards accused Pappan who had put a country-made pistol at him and caused injury with its 'butt'. He attributed specific role to co-convict Sanjay who robbed the articles. He further stated that he identified the accused Pappan and Nasruddin in judicial TIP in Tihar Jail. In the cross-examination, he stated that police recorded his statement at his residence in Faridabad. He was unconscious in Batra Hospital. He did not go to the police station to lodge report as he had a deep wound in his leg. He denied that police had shown photographs of the accused to him. He fairly admitted that he did not remember the number of the Zen car. He explained that though it was dark but he could see face of the accused persons from close quarters and could identify them. He was discharged from the hospital the next day at 01.00 or 01.30 A.M. He sustained knife blow on his thigh and 'butt' blow on his nose.

5. On scrutinizing the testimony of the complainant/victim, it reveals that despite lengthy cross-examination, no material discrepancy or contradiction emerged to disbelieve his cogent version. No ulterior motive was assigned to the complainant for implicating the accused falsely. The complainant had no prior acquaintance with the assailants and had no motive to falsely implicate them. His ocular testimony is consistent with the medical evidence. PW-5 (Dr. Mohit Kapila) from Batra Hospital proved the MLC (Ex.PW-5/A) and stated that the nature of injuries sustained by the victim was simple caused by sharp edged weapon. The victim was medically examined at 11.45 P.M. The MLC records that he was hit by a car and injuries were caused with knife and pistol over his body. The injured witness is not expected to let the real culprit go scot free for the injuries caused to him.

6. Maruti Zen bearing No. L6C 0454 used in the incident was found abandoned and seized vide DD No. 43 dated 21.12.2004 u/s 66 Delhi Police Act, PS Badarpur & seized in this case on 16.02.2005. It further lends credence to the version given by the complainant.

7. I find no merit in the submission of the counsel for the appellant that the identification of the accused by the complainant is suspect as due to darkness at the spot, he was unable to see the faces of the assailants. The complainant specifically elaborated that though there was darkness but he had seen the faces of the assailants from close quarters and was able to identify them. He denied the suggestion of the accused that due to complete darkness, he was unable to see the face of any of the accused. He volunteered to add that it was not complete darkness and he was able to see their faces at the time of incident. I have no reasons to disbelieve the complainant as he had direct confrontation with the assailants for sufficient long time and was injured in the process. The Test Identification Proceedings was conducted after the arrest of the accused in which he identified the accused Pappan and Nasruddin in judicial TIP proceedings. Accused Sanjay did not participate in the TIP proceedings. In the absence of any material discrepancy, the identification by the complainant of the accused in judicial TIP and in the Court cannot be doubted.

8. Non-recovery of the robbed articles is not fatal to the case of the prosecution as the accused persons were arrested in some other case and they did not recover the robbed articles.

9. Law regarding the weightage to be given to the statement of injured is very crucial. In State of U.P. Vs. Naresh and Others, , the Supreme Court held:

The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is

accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

10. In Abdul Sayeed Vs. State of Madhya Pradesh, , the Supreme Court held:

The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".

11. The conviction of the appellant is based upon fair appraisal of the evidence and no interference is called for. The appeal lacks merits and is dismissed. The conviction and sentence of the appellant are maintained.

12. It is relevant to note that as per nominal roll dated 21.09.2011 the appellant had already undergone four years, six months and eight days as on 16.09.2011. He earned remission for one month and ten days. Apparently, the appellant has undergone the sentence period awarded to him. Trial Court record be sent back forthwith.