

(2015) 01 DEL CK 0201
In the Delhi High Court
Case No : Criminal Appeal No. 675/1999

Puran	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313
Evidence Act, 1872 — Section 157
Penal Code, 1860 (IPC) — Section 302, 307, 34, 341, 392

Citation : (2015) 2 JCC 966

Hon'ble Judges : Sangita Dhingra Sehgal, J.;G.S. Sistani, J.

Bench : Division Bench

Advocate : Daviender Hora and Sikandar Khan, for the Appellant; Sunil Sharma, APP and Inspector Sanjeev Arora, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Above referred appeal is directed against the impugned judgement dated 04.10.1999 convicting the appellant Puran under Section 307/392/397/34 Indian Penal Code and order on sentence dated 16.10.1999 awarding the appellant to undergo rigorous imprisonment for a period of 5 years each for the offences under Section 307/392/34 Indian Penal Code and to further undergo rigorous imprisonment for 7 years for offence under Section 397 Indian Penal Code.

2. The prosecution case as it emerges from the record is that on 05.07.1984, Surinder Kumar made a complaint to the police that his brother Khushi Ram ply (sic) a three wheeler scooter; that on 04.07.1984 at about 11:30 P.M. his brother Khushi Ram came back to the house and informed him and his uncle Ravi Dutt that his H.M.T. Kohinoor watch and Rs.25/- have been robbed by four persons, as a result of which he (Surinder Kumar), his brother Khushi Ram, uncle Ravi Dutt and neighbour Hari Prakash left for searching the said four boys; that on reaching Tapkana Pul, Delhi, they found appellant; that on pointing towards him, appellant started running; that while chasing appellant other 3/4 boys came in

front of them and out of them one co-accused Sanjay caught hold of Khushi Ram and other co-accused Raju gave a knife blow toward the left abdomen of Khushi Ram and Sanjay gave lathi blow on the leg of Hari Prakash but Surender Kumar and others did not give up chasing them and when they reached near them his uncle apprehended one of the boys and the boy stabbed on the neck and body of his uncle Ravi Dutt, who fell on the ground; that Surinder and Hari Prakash took Khushi Ram in a three wheeler scooter to Hindu Rao Hospital, got him admitted there and returned to the spot and found that the dead body of his uncle Ravi Dutt was lying there near the Jhuggi and that those four boys have murdered his uncle.

3. On the basis of above statement of Surinder Kumar, a case under section 302/307/392/341/34 Indian Penal Code was got registered against the accused persons. Charges were framed against six accused persons, i.e. Mohinder, Lekhraj, Lakhan, Priya Swami, Raju, Panna, Puran and Sanjay. Accused Mohinder and Lekhraj were not committed to the court of Session. Accused Raju and Panna died during the trial. Accused Sanjay died during the appeal and his appeal stands abated.

4. To bring home guilt of the accused, the prosecution examined 20 witnesses and after the prosecution closed its evidence, statement of the appellant was recorded under section 313 Code of Criminal Procedure wherein he denied the prosecution story in toto and claimed to be tried.

5. Learned counsel for appellant submitted that the prosecution has miserably failed to prove its case and that the recovery against the appellant is highly suspicious for the reasons that the police failed to join any public witness at the time of his disclosure statement and also when the alleged knife was recovered.

6. It is further submitted by the learned counsel for the appellant that the appellant was produced for Test Identification Parade in the court without muffled face and as such the identification is not legal and that the prosecution has failed to produce the material witness against the appellant.

7. Learned counsel for the appellant also contended that learned Trial Court has convicted and held the appellant guilty merely on the basis of statement of Surinder, the complainant recorded under Section 161 Code of Criminal Procedure and that the learned Trial Court relied upon the statement made by Maheshwar Prasad Singh before learned Metropolitan Magistrate under Section 164 Code of Criminal Procedure.

8. It is also submitted by learned counsel for the appellant that no case under Section 397 Indian Penal Code is made out as the appellant has not been named by PW14 Khushi Ram nor there is record to that he used the knife.

9. Since, the entire case of the prosecution rests on the witness PW14 Khushi Ram, we deem it appropriate to reproduce few lines of the evidence of PW14 Khushi Ram who was robbed and stabbed, which reads as under:

"In July, 1984 I used to ply scooter taxi.

x x x x x x x

While I was coming back home from the side of Tri Nagar three persons gave signal to me to stop near the Tapkana bridge. Thinking that they were passengers, I stopped my scooter. Priya Swami accused who is present in court today (correctly identified) asked me for a match box. He also asked me as to what the time was. I told him the time. Thereupon Priya Swami, the accused took out a knife and robbed me off Rs.25/- in currency notes and a challan chit relating to my scooter taxi. I was also robbed of my wrist watch.

x x x x x x x

From in front of us 3 or 4 more persons came and one of them whose name is Sanjay and is present in court (Sanjay accused correctly identified) caught hold of me. Another person whose name is Raju and who is also present in court (Raju accused correctly identified) gave me a knife blow towards the left of my abdomen. While we were running after Priya Swami, Ravi Dutt was ahead of us. Behind him was my brother Surinder. I was behind Surinder and Hari Prakash was just behind me. While we were chasing Priya Swami, Sanjay accused had given a lathi blow to Hari Prakash. It was thereafter, the Sanjay accused had caught hold of me and Raju accused had given me knife blow. On receiving the knife blow, I had fallen down. My brother Surinder and Hari Prakash took me in the scooter of Hari Prakash to my house from where my brother Surinder and my brother in law Mange Ram took me to Hindu Rao Hospital, where I was admitted. Later I came to know that Ravi Dutt had been murdered."

10. On careful analysis of the evidence of PW14 Khushi Ram, it transpires that he has not named appellant in the entire story.

11. PW15 HC Shahbuddin, in whose presence disclosure statement of the appellant was recorded failed to identify him when examined in court.

12. Learned Trial Court relied upon the statement of Surinder, the complainant recorded under Section 161 Code of Criminal Procedure and that of Maheshwar Prasad Singh recorded under Section 164 Code of Criminal Procedure before the learned Metropolitan Magistrate. It is a matter of record that Surinder, the complainant died during the trial and was not produced in court. Also, the prosecution failed to produce Maheshwar Prasad Singh in the witness box.

13. Law is well settled that a statement recorded under Section 161 and 164 Code of Criminal Procedure can be used either for corroboration or contradiction. Section 157 of the Evidence Act makes it clear that a statement under Section 164 Code of Criminal Procedure can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. Since the defence would have no opportunity to cross examine the witness whose statements were recorded under Section 161 or Section 164 Code of Criminal Procedure, such statements can not be treated as

substantial evidence.

14. In the case of R. Shaji Vs. State of Kerala, , it has been held as under:

"14. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Code of Criminal Procedure can be used only for the purpose of contradiction and statements under Section 164 Code of Criminal Procedure can be used for both corroboration and contradiction.....

16. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Code of Criminal Procedure, can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Code of Criminal Procedure, such statements cannot be treated as substantive evidence."

15. In view of the above discussion, it is evident that as per the statement recorded under Section 161 Code of Criminal Procedure and Section 164 Code of Criminal Procedure, cannot be used as substantive evidence. The material witness examined by the prosecution PW14 Khushi Ram failed to ascribe any role of the appellant. Therefore, no incriminating evidence has come forward against the appellant. Moreso, learned counsel for the State also concedes that there is no evidence on record to suggest that the appellant was a member of the alleged incident.

16. As a result, of the above, we are in view that learned Trial Court has erred while convicting the appellant for committing the offences under Section 307/392/397/34 Indian Penal Code as there is no evidence against him. The appeal is allowed. The impugned order dated 04.10.1999 and order on sentence dated 16.10.1999 against the appellant are set aside.