

(2009) 04 DEL CK 0404
In the Delhi High Court
Case No : Criminal A. No. 426 of 2006

Raj Kumar Linder

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 392, 394, 397

Citation : (2009) 04 DEL CK 0404

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Poornima Sethi, for the Appellant; Amit Sharma, Additional Public Prosecutor, for the Respondent

Judgement

Sunil Gaur, J.—In the morning of mid December of the year 2000, a railway official, who was proceeding towards his office for duty via

Circular Road, Janta Colony, was purportedly assaulted with a punch by a bad character of the area under Police Station Vivek Vihar, Delhi, and

was robbed of Rs. 7,500/- and a mobile phone.

2. Vishal Chopra (PW-1) is the injured/Complainant of this case and appellant/accused is said to be the bad character of the area, and is said to have committed the offence in question.

3. The factual matrix of this case emerging from the record is as under:

Vishal Chopra, complainant, resided in House No. 273, Jain Mandir, Farsh Bazar, Delhi. He was posted as ACF in Railways. On 15.12.2000, at

about 9.00 am, he was going to his job. When he arrived at Circular Road, Janta Colony, near Railway Station, one young boy came from behind,

put his muffler around his neck, jolted him and threw him on the earth. He was armed with one iron punch. He started beating Vishal Chopra with

that punch on his head and mouth. Few people present there came to his rescue. He robbed Vishal Chopra of Rs. 7500/- and a mobile phone having sim card No. 9810034887, which were lying in the upper side pocket of his shirt. On seeing the crowd the culprit fled away. People, who had collected there, informed him that that culprit is Raj Kumar @ linder and he is a Bad Character of the area. Vishal Chopra explained to the police that he could identify him, whenever he would be produced before him. Report was lodged with the police. PCR van took Vishal Chopra, injured, to GTB Hospital. The investigation of this case was entrusted to S.I. Girjesh Singh, who went to the spot alongwith Constable Giriraj, where it transpired that that injured was already removed to the hospital. Then they went to the hospital. Statement of the injured was recorded and present case was registered. S.I. Girjesh Singh, brought the injured back to the spot, prepared site plan and recorded statement of two other witnesses namely Shahi Ram and Ashwani Yadav. They started searching for the accused. At about 4 PM, accused Raj Kumar @ linder was arrested from Jwala Nagar Chowk on the pointing out of Vishal Chopra. Accused disclosed that he could get recovered the I-card, Punch and muffler from near the railway line and got these articles recovered. However, robbed money and mobile could not be recovered. Accused was booked for the offences under Sections 392/394/397 IPC. The trial for the aforesaid offences commenced as appellant/accused did not plead guilty to the charges framed against him for the offences as afore mentioned.

4. During the course of the trial, eight witnesses had deposed and the material deposition is of the complainant/first informant-Vishal Chopra (PW-1), Dr. Ranjit Chatterjee (PW-4), who had proved the MLC Ex. PW-4/A of the injured/complainant and of Sub Inspector Girjesh Singh (PW-8), who is the Investigating Officer of this case. Trial court has not relied upon the evidence of alleged eye witnesses, i.e., Ashwani (PW-3) and Shahi Ram (PW-7) as they have not deposed against the appellant/ accused. The plea of the appellant/accused before the trial court was of denial the prosecution case and he had got his mother Anari Devi (DW-1) examined in his defence to say that appellant/accused was lifted from the house of his sister from Gokulpuri by the police. Trial ended in the conviction of the appellant/accused which is impugned in this appeal.

5. Appellant/accused has been found guilty for commission of the offence u/s 392/394 and 397 of Indian Penal Code and has been sentenced to

rigorous imprisonment for a period of seven years and to pay a fine of Rs. 3,000/- and in default thereof, to undergo Simple Imprisonment for one year for committing the aforesaid offences.

6. Counsels for the parties were heard at length and they had assisted this Court in evaluating the evidence on record.

7. Appellant/accused alleges false implication in this case because of scuffle with the complainant (PW-1) of this case, a day prior to this incident,

on account of parking of a vehicle. The discrepancies pointed out in the prosecution case by learned Counsel for the Appellant are that in the FIR,

there is no mention of the theft of the identity card of the complainant (PW-1) and the same has been later on introduced. It has been strenuously

argued by learned Counsel for the Appellant that since the recovered muffler is not blood stained and therefore the same has been planted. It is

pointed out that there was no mud on the allegedly seized robbed articles, which rules out their recovery from an open space near a railway track.

It is also pointed out that the alleged blood stained clothes of the complainant (PW-1) had not being seized and blood stained earth has not been

lifted from the spot. It has been urged on behalf of the appellant/accused that the time of the recording of the FIR is 9.50 A.M. whereas, Duty

Officer, (PW-5), has stated in the evidence that the rukka was received at 11.40 A.M.

8. According to the learned Counsel for appellant, aforesaid discrepancy of timing creates a reasonable doubt about the veracity of the prosecution

case and the medical evidence contradicts the ocular version. It has been pointed out that as per the narration of the complainant (PW-1) he had

received injuries on his head and mouth, but Dr. Ranjeet (PW-4), who has proved the MLC (Ex.PW-4/A) of the complainant (PW-1) has stated

that the injuries sustained by the complainant (PW-1) can be accidental, i.e., by a fall. Lastly, it is urged on behalf of the appellant/accused that in

the absence of independent corroboration, the sole testimony of complainant (PW-1) has been illegally relied upon by the trial court, who has

ignored the aforesaid shortcomings in the prosecution case and therefore the impugned judgment deserves to be set aside and benefit of doubt

accrues to the appellant/accused, meriting his acquittal in this case. Nothing else has been urged on behalf of the appellant/accused.

9. On behalf of the Respondent - State, it has been asserted by learned Additional Public Prosecutor for the State that the complainant (PW-1)

was not the resident of the area in question where this incident took place and appellant/accused is the "bad character" of this area and there was

no occasion for a quarrel taking place a day prior to the incident between the complainant (PW-1) and appellant/accused regarding parking of the

vehicle. It is pointed out that the complainant (PW-1) was not known to appellant/accused and there is no plausible reason as to why he would

falsely implicate the appellant/accused in this case.

10. Learned Additional Public Prosecutor for the State has ably assisted this Court in scrutinising the evidence of the injured/complainant (PW-1)

to highlight that the deposition of this witness is consistent and reliable and is sufficient to sustain the conviction and the sentence imposed upon the

appellant/accused. Thus, it is asserted that there is no merit in this appeal.

11. Upon meticulous examination of the evidence available on record, I find that the fate of this case rests upon the testimony of the

injured/complainant (PW-1) and his deposition reveals that he has categorically denied about any scuffle taking place with the appellant/accused a

day prior to this incident. No doubt, appellant/accused is named in the FIR, but injured/complainant (PW-1) explains it by clarifying that he had

come to know the name of the appellant/accused from the public persons who had gathered at the spot as Appellant was the "bad character" of

the area, where this incident took place.

12. In the evening of the day of this incident, the police launched a search for the assailant and complainant (PW-1) had accompanied the police

party and at Jwala Nagar Chowk, appellant/accused was spotted by the complainant (PW-1) and was promptly apprehended by the police party

and he had led the police party to Peer Wali Mazar, Near Railway Line, which was nearby the spot and had got recovered the muffler Ex.P-1,

which Appellant had used in the commission of this offence and the identity card of the complainant (PW-1) from near the railway track. It is

pertinent to note that the muffler Ex.P-1 in question was of a black colour and so the question of it being blood stained is of no consequence.

13. Dr. Ranjit Chatterjee, Medical Officer, SDN Hospital, (PW-4), medically examined PW-1 on 15.12.2000 vide MLC Ex.PW-4/A. He found

the following injuries on the person of the victim:

1. Abrasion approximately 3 c.m. long on the anterior aspect of the left leg middle 1/3rd.
2. Swelling and tenderness on the right foot at the region of 1st metatarsal (r).
3. Swelling on the left parietal region of scalp.
4. Swelling of the nasal bridge present.
5. Sub conjunctival haemorrhage of the left eye in the temporal region present.
6. A liner abrasion on the left of forehead umbilical approximate 1"" in size.

14. Complainant (PW-1) certainly owed an explanation for not mentioning in FIR about his I-Card being robbed, but no such was sought from

him by the defence. Anyway, it is not a material omission. No-mentioning of inconsequential injury on non-vital part would not amount to

contradiction of ocular version by medical evidence.

15. The reason given by the Investigating Officer (PW-8) for not seizing the blood stained clothes of the injured/complainant (PW-1) is that due to

winter season, it was not done. Such a reasoning cannot be accepted but not much depends upon it as it would have provided a corroboration

only to the version of the injured/complainant (PW-1). Since injured/complainant (PW-1) was not inimical to the appellant/accused, therefore,

there is no need of corroboration to the version given by him as his version is worthy of utmost reliance. For this very reason, hostility of the public

witnesses (PW-3) and (PW-7) is of no avail. There is no reason as to why injured/complainant (PW-1) would spare the real assailant and would

falsely implicate the appellant/accused in this case. It is not the case of the appellant/accused that the Investigating Officer (PW-8) of this case had

any animosity with the appellant/accused, to coerce injured/complainant (PW-1) to falsely implicate appellant/accused in this case.

16. So far as, the recovery of the weapon of offence, i.e., punch (Ex.P-3) and muffler (Ex.P-2), is concerned, it cannot be said that the same have

been planted as it has come in the evidence of the Investigating Officer (PW-8) that some dust was visible upon these recovered articles. Absence

of blood on the recovered punch (Ex.P-3) is of no consequence as the MLC

(Ex.PW-4/A) of injured/complainant (PW-1) does not indicate that any of the injuries sustained by the injured/complainant (PW-1) were profusely bleeding. When Dr. Ranjeet (PW-4) states in cross-examination by defence that the injuries sustained by complainant (PW-1) can be accidental, it does not negate the prosecution case of these injuries being sustained due to an assault and as per deposition of injured/complainant (PW-1), the assault on him was by the appellant/accused. In any case, the medical evidence cannot override the ocular version which has been found to be inspiring the confidence of the court and the same has been rightly relied upon by the trial court.

17. Simply because Duty Officer, (PW-5), has given the time of recording of D.D. No. 10A (Ex.PW-5/B) as 9.15 A.M., it would not mean that the FIR of this case was recorded at the above said time. It is a matter of record that rukka (Ex.PW-1/A) was received at 11.40 A.M. by the Duty Officer (PW-5), and on its basis, FIR (Ex.PW-5/A) was recorded by him. This witness does not give the time of recording of the FIR but has given the time of recording of the aforesaid D.D. So it cannot be said that the FIR of this case has been ante-timed. The defence put forth of appellant/accused being lifted from the house of his sister by Investigating Officer (PW-8), is an afterthought as it has not been put to the Investigating Officer in cross-examination by the defence.

18. The conclusion reached by the trial court, on the basis of the evidence on record, is that the prosecution has succeeded in proving its case and upon appreciating the evidence on record, this Court has no reason to take a different view than the one taken by the trial court as the evidence of the injured/ complainant (PW-1) clearly proves the complicity of the appellant/ accused in commission of the offence in question. By way of passing a reference, it would be worthwhile to point out that the suggestions given by the defence to the injured/complainant (PW-1) are that injured/complainant (PW-1) has sustained injuries by a fall and this suggestion has been repelled by the injured/complainant (PW-1) by asserting that no stones were lying at the place of occurrence as it was a thoroughfare. Another suggestion given to injured/complainant (PW-1) by the defence was that his money, purse and mobile phone had fallen at the railway track and he had also fallen there. It is pertinent to mention here that

the arrest of the appellant/accused is at the instance of the injured/ complainant (PW-1) and the evidence in this regard is beyond challenge as it

has not been suggested to injured/complainant (PW-1) by the defence, that appellant/accused was not arrested from Jwala Nagar Chowk, but

was lifted from his sister's house.

19. As a sequel to the above narration, it is held that the impugned conviction and sentence imposed upon the Appellant by the trial court, does not

suffer from any illegality or infirmity, warranting any interference by this Court. Thus, the conviction and the sentence imposed upon the Appellant is

upheld and this appeal is dismissed, being meritless.

20. Appellant is in custody. He be apprised of this order through the Jail Superintendent.

21. With aforesaid directions, this appeal is disposed of.