

(2020) 11 DEL CK 0126

In the Delhi High Court

Case No : Criminal Appeal No. 562 Of 2016, Criminal Miscellaneous (Bail) No. 1445 Of 2018, 289, 290, 8067 Of 2020

Rakesh Tiwari & Anr

APPELLANT

Vs

State (Gnct Of Delhi)

RESPONDENT

Date of Decision : 19-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 394, 397, 411
Arms Act, 1959 — Section 25

Citation : (2020) 11 DEL CK 0126

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Salman Hashmi, Kusum Dhalla, Ajit Pratap Singh

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The appellants have filed the present appeal impugning a judgment dated 12.05.2016, whereby Rakesh Tiwari (appellant no.1) was convicted of an offence punishable under Sections 394/34 read with Section 397 of the Indian Penal Code, 1860 (hereinafter â??IPCâ??). Accused Pappu Jogi (appellant no.2) was convicted of an offence punishable under Sections 394/34 of the IPC but was acquitted of the offence punishable under Section 397 of the IPC, as the court found that there was no evidence to establish that he used a knife or any sharp edged weapon for committing the said offence. The appellants also impugn an order on sentence dated 19.05.2016, whereby they were each sentenced to rigorous imprisonment for a period of seven years along with a fine of Rs. 1,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of six months.

2. It is the case of the prosecution that on 18.10.2014, at about 11:30 p.m. to 12:00 a.m. (midnight), two young men, Sachin Kumar and Harender â?

who were aged about 24 years and 21 years respectively at the material time â?" were travelling on a motorcycle. When they reached Pyare Lal

Marg, near a napkin/tissue paper factory, Village Karawal Nagar, Rakesh Tiwari (appellant no.1) accosted them. He was accompanied by two of his

associates. He signaled Sachin Kumar to stop the motorcycle. However, he did not stop the motorcycle but sounded the horn indicating the appellant

and his accomplices to give way. However, the appellant and his associates did not do so. One of the associates of appellant no.1, Pappu Jogi

(appellant no.2 herein) caught hold of Sachinâ??s left hand and appellant no.1 stabbed Sachin in his right ear and his neck with a knife or a sharp

edged weapon. Sachin was beaten by the other accomplices of the appellants. Thereafter, the appellants and their accomplices snatched the gold

chain and the gold bracelet worn by Sachin and also took his wallet containing about Rs. 7,000/- to Rs. 8,000/-. Harender, who was travelling with

Sachin, was also beaten. Thereafter, the appellants and their accomplices fled from the spot. Harender took Sachin on the motorcycle to Guru Teg

Bahadur Hospital (GTB Hospital). Sachinâ??s wounds were stitched and dressed by the concerned doctors at the said hospital. He remained there

till about 03:00 a.m. In the meantime, SI Manoj, who was assigned the task of making inquiries in connection with the information of the incident,

reached the hospital. He recorded the statement of Sachin (Ex.PW1/A) and he prepared the tehrir and handed it over to Ct. Devendra Singh who had

accompanied him for registration of the FIR. Ct. Devendra Singh took the tehrir and went back to the police station (PS Karawal Nagar) and the

FIR in question (FIR bearing no. 943/2014, under Sections 394/34 of the IPC) was registered.

3. The accused were apprehended in another case. It is the prosecutionâ??s case that on 23.01.2015 at about 09:05 p.m., Ct. Manjit Kumar, HC

Vinay Kumar and SI Shahid Ali were present at a T-point, opposite Zama Masjid, Seema Puri, New Delhi. They had accosted and apprehended two

persons (the appellants herein) who were riding a motorcycle. On searching them, one loaded country made pistol was recovered from the possession

of the pillion rider, who was identified as Rakesh Tiwari (appellant no. 1). The person who was riding the motorcycle could not give a satisfactory

response regarding the ownership of the motorcycle. It was found that the same was stolen and was connected with a criminal case registered with

PS Gandhi Nagar.

4. In view of the above, another FIR (FIR bearing no. 127/2015, under Section 25 of the Arms Act, 1959 and Section 411 read with Section 34 of the

IPC) was registered with PS Seema Puri on 23.01.2015. The investigation of that case was assigned to HC Krishan Pal Singh. He arrested both the

appellants and prepared the arrest memos (Ex.PW8/B, Ex.PW8/C, Ex.PW8/D and Ex.PW8/E). During the course of their investigation, both the

accused (the appellants herein) made their disclosure statements (Ex.PW8/F and Ex.PW8/G) regarding their involvement in the other cases including

the present one. The information regarding the arrest of the appellants and the disclosure made by them during the investigation were communicated

to PS Karawal Nagar on 24.01.2015. The same was entered as DD No. 16B (Ex.PW7/A). On the basis of the said information, SI Prateek Saxena

visited PS Seema Puri and collected the relevant papers: copy of the FIR bearing no. 127/2015; disclosure statement made by appellant no.1

(Ex.PW8/F); disclosure statement made by appellant no.2 (Ex.PW8/G); and their arrest papers (Ex.PW8/B, Ex.PW8/C, Ex.PW8/D and Ex.PW8/E).

5. SI Prateek Saxena went to Tihar Jail on 30.01.2015 and interrogated Rakesh Tiwari (appellant no.1). He formally arrested him in the present case

(Ex.PW13/A). He also requested the jail authorities to produce appellant no.1 before the concerned court on the date fixed. Thereafter, on the same

date, he went to Rohini Jail and interrogated Pappu Jogi (appellant no.2) and arrested him (Ex.PW13/C). He requested the jail authorities to produce

appellant no. 2 before the concerned court on the date fixed.

6. The judicial TIP of Pappu Jogi (appellant no.2) was conducted on 23.02.2015 and Sachin Kumar (the complainant) identified appellant no.2. Efforts

were made to search the other two accomplices of the appellants, namely, Suraj and his cousin. However, they could not be apprehended. The IO

filed the chargesheet and charges were framed on 08.07.2015. The appellants pleaded not guilty and the matter was set down for trial. During the

course of the trial, the prosecution had examined seventeen witnesses to establish the case.

7. One of the principal witnesses was the injured, Sachin Kumar, who was

examined as PW1. He deposed that in the year 2014, he was employed as a driver with DMRC. He stated that on 18.10.2014, at about 11:00 p.m., he was going to the house of his uncle from his house on a motorcycle.

However, he subsequently, clarified in his cross-examination that he was returning from the house of his uncle Vinod and was proceeding towards his

house. He stated that while he was on his way, he met Harender at the corner of Chinti Marg near Neeraj Telecom, at about 11:30 pm - midnight. He

was well acquainted with Harender. He testified that thereafter, he proceeded towards Harender's house to drop him on his motorcycle. When

they reached Pyare Lal Marg near napkin/tissue paper factory in Village Karawal Nagar, the accused Rakesh Tiwari (appellant no.1) was present

there along with his three-four associates. He testified that he knew Rakesh Tiwari (appellant no.1). He stated that Rakesh Tiwari (appellant no.1)

signaled him to stop but he did not do so. He sounded the horn but Rakesh Tiwari (appellant no.1) and his accomplices did not give way. He testified

that one of the accomplices of Rakesh Tiwari (identified as Pappu Jogi - appellant no.2) caught hold of his left hand. He testified that Rakesh

Tiwari (appellant no.1) had stabbed him with a knife (chaku) in his right ear and his neck. He stated that he was beaten by the other accomplices of

the appellants. He stated that the appellants and their accomplices fled from the spot after snatching his gold chain, gold bracelet and his wallet

containing a sum of Rs. 7,000/- to Rs. 8,000/-. He also stated that Harender, who had accompanied him, was also beaten by the said assailants. He

further testified that Harender took him to GTB Hospital on his motorcycle and got him admitted. His MLC was prepared. His wounds were stitched

by the doctors at GTB Hospital. He remained there till 03:00 a.m.

8. Sachin Kumar's uncle (Vinod Kumar) had reported the incident by calling at 100. He was examined as PW4 and he testified to the aforesaid

effect. He also testified that on 18.10.2014, in between 11:00 p.m. to 12 mid night, his nephew (Sachin) had come to his house on his motorcycle and

had met him. He stated that after few minutes he left his home and went back to his house. About 20 minutes later he came out of his house as he

heard a noise (halla). Someone told him that a quarrel had taken place near Pyare Lal Marg in which Sachin was involved. He stated that he reached

there and someone told him that Sachin had sustained a stab injury in the

incident. The father of Sachin also came to the spot. PW4 stated that he reached GTB Hospital and made a call at 100 reporting the said incident including that Sachin's bracelet, cash etc. had been snatched by the assailants. He testified that he became aware of these facts from the public who had gathered at the spot. The said information was entered as DD No. 5B (Ex.PW2/D).

9. The said DD entry (Ex PW2/D) records that a call was received at about 01:19 a.m. informing that Rakesh Tiwari (appellant no.1) and four other boys accompanying him had snatched the gold chain, bracelet and purse of the caller's nephew and had fled from the spot on foot. They had also caused injury from a blade. The said DD was then assigned to SI Manoj who was examined as PW17. He testified to the aforesaid effect. He further testified that he and Ct. Devendra reached the spot - PNB Bank, Mukund Vihar, Karawal Nagar, Delhi. However, neither the injured nor the assailants were present there. He thereafter, called the caller (who had reported the incident) and he was informed that the injured had already reached GTB Hospital. He testified that he and Ct. Devendra Singh reached the hospital, collected the MLC with the help of the duty constable and recorded the statement of the injured (Ex.PW1/A). There is no material inconsistency between the testimony of PW1 (Sachin) and his statement recorded on the date of the incident (Ex.PW1/A). In his statement (Ex.PW1/A), the injured Sachin had described the instrument, which was used for causing the said injury, as a sharp object and not a knife. However, the MLC records that he had reported that the injury was inflicted from a knife.

10. Harender, who was accompanying the injured Sachin, was examined as PW15. His testimony as to why he was accompanying the victim Sachin, is not consistent with Sachin's (PW1's) testimony. He stated that on the date of the incident, he was coming back on a motorcycle to his house at Karawal Nagar and on the way, he had met his uncle (Sachin). Sachin had asked him to accompany him for a smoke and while they were on their way, they were accosted by the assailants. Harender (PW15) identified Rakesh Tiwari (appellant no.1) as one of the assailants. However, he could not identify Pappu Jogi (appellant no.2) in court. He stated that Rakesh Tiwari (appellant no.1) and his accomplices started scuffling with Sachin. He stated that he tried to intervene but they asked him to keep away. He

stated that they met Sachin for about 30 seconds and thereafter, two of the accomplices of Rakesh Tiwari (appellant no. 1) took out surgical blades and attacked Sachin. Resultantly, Sachin received injuries on his ear and neck. He testified that Sachin started bleeding and he fell down. At that stage, Rakesh Tiwari (appellant no. 1) snatched Sachin's gold chain from his neck and his companions robbed Sachin's bracelet and his purse and fled from the spot. He stated that he took Sachin to GTB Hospital on a bike and got him admitted there. Thereafter, he called 100 number and also informed the relatives of Sachin. They reached the hospital and so did the police. He stated that his statement was also recorded by the police.

11. Harender (PW15) was cross-examined by the learned APP. He stated that it was probable that Pappu Jogi (appellant no.2) was one of the accomplices but he could not be sure. He was also confronted with his statement recorded on 19.10.2014. He identified his signatures on the said statement. His statement (Ex.PW15/A) was consistent with PW1's testimony regarding the incident. In his statement, Harender (PW15) had stated that Rakesh Tiwari (appellant no.1) had stopped Sachin's motorcycle and had started scuffling with him (maar peet shuru kar di). He stated that Rakesh Tiwari (appellant no.1) had attacked Sachin resulting in bleeding near Sachin's ear.

12. The MLC (Ex PW12/A) of the injured Sachin indicates that he had suffered the following wounds:

1. Incised wound (deep) from lower part of right ear upto the zygomatic with bleed of size 7 X 2 c.m. (lower lobules separately).

2. Incised wound from right angle of mandible upto 4 cm away from right angle of mouth.

3. Incised wound 4 X 1 c.m. at right side of neck.

4. Incised wound 3 X .5 c.m. at right cheek.

After giving first aid, patient was referred to Surgery Emergency and ENT Emergency for further management. The patient was fit for

making statement at the time of medical examination. Injuries were caused by sharp object.

13. The MLC (Ex.PW12/A) also records the history of a physical assault by a knife at Karawal Nagar, as reported by the patient. Dr. Sharad, CMO,

GTB Hospital, Delhi was examined as PW12 and testified as to the MLC and the

injuries suffered by Sachin. Dr. Shilpi Budhiraja, Sr. Resident,

AIIMS, New Delhi was examined as PW6 and she testified that in her opinion, the injuries suffered by Sachin were "grievous". She testified that

she had made an endorsement to the aforesaid effect on the MLC (Ex.PW6/A).

14. In view of the above, there is no doubt that the offence was committed. The prosecution had clearly established that the injured Sachin was

travelling on a motorcycle along with Harender (PW15) on the date of the incident. He had been accosted by appellant no.1 and his accomplices.

They had attacked him and also injured him with a knife/sharp object/ surgical blades. Sachin had suffered injuries as a result thereof, and the injuries were grievous in nature.

15. The only question that needs to be examined is whether the injuries were inflicted by appellant no.1 or by any of his other accomplices. According

to Sachin (PW1), the said injury was inflicted by appellant no.1. However, according to the testimony of Harender (PW15), the injuries were a result

of an attack by the two accomplices of appellant no.1 using surgical blades. The Trial Court had not accepted the testimony of Harender (PW15) in

this regard and in view of this Court, rightly so.

16. It is well settled that the testimony of an injured witness is to be given a high weightage and need not be doubted unless there are reasons to do so.

The testimony of PW1 and his statement recorded on the date of the incident (Ex. PW1/A) are consistent. He had stated in unequivocal terms that

the injury suffered by him was caused by a knife/sharp edged instrument inflicted by appellant no.1. It is also relevant to note that in his statement

recorded earlier (Ex.PW15/A), Harender (PW15) had also stated that appellant no.1 had attacked him, resulting in PW1 bleeding from his injuries

near his ear.

17. It was contended on behalf of the appellant no.2 (Pappu Jogi) that he was not involved in the said incident as Harender (PW15) had not identified

him as one of the accomplices. This contention is also unpersuasive as PW1 had identified appellant no.2, as one of the assailants. The judicial TIP

was conducted on 23.02.2015 by the learned MM (Ex.PW1/C). Sh. Sunil Gupta, who was the Metropolitan Magistrate and had conducted the TIP

proceedings, was examined as PW16. He had testified that on 23.02.2015, he had gone to Rohini Jail. Appellant no.2 was present and was identified

by the Assistant Superintendent, Rohini Jail. His statement regarding identification of appellant no.2 was recorded. Thereafter, he had asked the Assistant Superintendent to leave the room. He had explained the meaning of TIP to appellant no.2 and had asked him whether he wanted to join the TIP. Appellant no.2 had agreed to the same and thereafter, he was asked to select nine or ten undertrials of his choice, who were similar to him in height, complexion and weight. Appellant no.2 had selected nine such under trials and thereafter, his judicial TIP was conducted. PW1 was called inside the room and had correctly identified appellant no.2 as one of the assailants.

18. It is also material to note that Harender (PW15) was not able to identify appellant no.2. However, in his cross-examination, Harender (PW15) had stated that probably appellant no.2 was one of the assailants but he was not sure. His statement was recorded on 27.02.2016, which was more than a year after the date of the incident. Thus, the fact that Harender (PW15) could not definitely identify appellant no.2 as one of the assailants is not determinative of whether he was involved in committing the said offence.

19. As noticed above, the testimony of PW1 is unambiguous and there is no dispute that PW1 had identified the appellants. There is no plausible reason for the PW1 to implicate the appellants. The appellants had not led any evidence in their defence.

20. In view of the above, this Court finds no reason to interfere with the impugned judgment convicting the appellants or the sentence awarded to them. The appeal is, accordingly, dismissed. All pending applications are also disposed of.