
(2014) 03 DEL CK 0263
In the Delhi High Court
Case No : Criminal A. 684 of 2012

Ranjeet

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161 313

Evidence Act, 1872 — Section 24 9

Penal Code, 1860 (IPC) — Section 307 34 379

Citation : (2014) 2 ILR 1511

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : S.D. Dixit, for the Appellant; O.P. Saxena, APP for State, Khalid Akhtar, SI, for the Respondent

Judgement

Deepa Sharma, J.—In this case the investigative agency of police was set into motion on 20th December, 2010. On that day, Constable Babu Lal of PS Bara Hindu Rao along with Constable Vinod, Members of Quick Reaction Team (QRT) were on duty at Azad Market red light. At about 7 p.m. HC Ved Prakash came to them in injured condition and told that he had been stabbed at Railway track. This information was supplied to Duty Officer, PS Bara Hindu Rao on mobile phone and a DD No. 20A was recorded. Both of them thereafter shifted the injured to Hindu Rao hospital in QRT vehicle and the injured was admitted in the hospital. SI Ganga Dhar and SI Rohit reached at the hospital. Injured was declared unfit for statement. SI Ganga Dhar collected MLC of the injured. SHO/Inspector Satish Bhardwaj also reached at the hospital. They thereafter reached at the railway track. No eye witness was found there. It was dark. An endorsement was made on DD no. 22A and the rukka was prepared and the FIR was registered in this case. The injured HC Ved Prakash was in a bad condition and needed operation immediately. Consent to the operation was given by PW1 Constable Babu Lal. Certain parcels/pulandas were seized from the hospital. On 23.12.2011, statement of injured was recorded. He had not named the appellant

in his statement. Thereafter on 25th December, 2010 the appellant was arrested by ASI S.K. Srivastava along with Constable Sajjan and HC Narender who were posted at AATS Central District u/s 411 (A) Cr.P.C. Appellant made a disclosure statement. In his disclosure statement he disclosed about this incident. He had also disclosed that one of his friend was also involved who took up the article which the injured had kept on the railway line and ran away and he also followed his friend. On the disclosure statement of the appellant he was found involved in this case. He was arrested on 26th December, 2010 in this case and was remanded to the judicial custody. He was in judicial custody when an application for holding Test Identification Parade (TIP) was moved on 3.1.2011. Appellant refused to participate in the TIP on the plea that he had been shown to the injured in the hospital. He had been given the statutory warning that his statement of refusal to TIP shall be used as a piece of evidence against him. Even despite the statutory warning, the appellant refused to participate in the TIP. Thereafter police custody remand of the appellant was sought on that day and he was taken to Hindu Rao hospital where the injured was admitted. At about 5.30 p.m. the injured was shifted from Intensive Care Unit to the Ward. The appellant was shown to the injured. The injured identified the appellant as his assailant and an identification memo was prepared. The accomplice of the appellant who had stolen the inverter of the injured, could not be arrested. After completion of the investigation, the challan was filed u/s 307/379/34 IPC against the appellant.

2. Charges for these offences were framed against the appellant. He pleaded not guilty to the charges. Prosecution had examined 15 witnesses. All the prosecution witnesses had supported the prosecution case. Statement of the appellant u/s 313 Cr.P.C. was also recorded. He had denied all the evidence against him as incorrect and had taken the plea that he had been falsely implicated and that he was innocent. He had taken the plea that he had not gone to the railway track and that he did not make any disclosure statement and that his signatures were obtained on blank papers under coercion; that he was shown to the injured before being produced in the court and that HC Ved Prakash injured had falsely implicated him as he failed to satisfy his illegal demand. The appellant has examined Shri Pushpender Kumar Sharma as defence witness. This witness has stated that at Kishan Ganj railway station, where he had gone to see off his friend Sunny, he witnessed a quarrel between an old man aged about 40-42 years and a boy aged about 27-28 years who was holding a knife in his hand. He reached near them and he saw the boy stabbing the old man. After considering all the evidence on record and taking into consideration the defence produced by the appellant, the learned trial court had reached to the conclusion that the charges u/s 307/379 IPC stands proved against the appellant and returned the guilt of the appellant under these two sections.

3. The main contention of the appellant before the court is that he has been falsely implicated, and that conviction is solely based on identification of the appellant by PW7 in court. That no adverse inference can be drawn against him

on account of his refusal to participate in TIP as he had been shown to injured in hospital on 28.12.2010. It is further argued that there is no recovery of knife and that of stolen article from him. Hence, his conviction is bad in law.

4. It is argued on behalf of learned APP for the State that the appellant was never shown to the injured before 3.1.2011. His refusal to participate in TIP an adverse inference can be drawn against him and he has been identified by the injured PW7 in court and there is nothing to suggest false implication of accused in this case.

5. I have heard the arguments and perused the relevant record.

6. The facts which stand proved on record are that HC Ved Prakash was stabbed on 20.12.2010 at 6.30 p.m. at railway track between Kishan Ganj and Old Delhi Railway Station. The injured PW7 has clearly stated this fact and there is nothing on record to doubt the veracity of his statement. His MLC Ex. PW4/A corroborates his testimony regarding the injuries received by him. PW7 has also deposed that at the time when he was attacked, he was coming on the railway track, carrying the inverter which he had bought from the market. He was in uniform as he was returning after completing his duty. He saw a person standing with a knife in his hand. In order to prevent that person from committing any offence, he went towards that person and tried to snatch the knife from his hand. That person started stabbing him. Even the defence witness DW1 has deposed about an incident of stabbing on 20.12.2010 at railway track. The sole question is who is assailant of PW7.

7. The sole contention of the appellant is that he has been falsely implicated and no adverse inference can be drawn on his refusal to participate in TIP as he had been shown to injured.

8. In the case Hari Nath and Another Vs. State of U.P., the apex court has observed that evidence of test identification is admissible u/s 9 of the Indian Evidence Act. The apex court has further observed in the case Sheikh Hasib alias Tabarak Vs. The State of Bihar, that the evidence of identification merely corroborates and strengthen the oral testimony in court which alone is the primary and substantive evidence as to identity. Te court has observed as under:

... the purpose of test identification is to test that evidence, the safe rule being that the sworn testimony of the witness in court as to the identity of the accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceeding.

9. The Apex court has further discussed in its pronouncements the purpose of holding the test identification. In the case Rameshwar Singh Vs. State of Jammu and Kashmir, has observed as under:

... it may be remembered that the substantive evidence of a witness is his evidence in court, but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after

the former's arrest is of vital importance because it furnishes to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial.

10. The apex court has further laid down the purpose of identification parade and in the case State of Maharashtra Vs. Suresh, has observed as under:

We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence.

11. It is an admitted fact that the injured did not know the appellant before the date of incident. It is also a proven fact that on 20.12.2010 and subsequent dates the injured was found unfit for the statement. Investigating officer of this case has clearly stated that he could record the statement of the injured Ved Prakash only on 23.12.2010 u/s 161 Cr.P.C. in the hospital. In the cross-examination, Inspector Satish Bhardwaj who had recorded the statement of the injured on 23.12.2010, has made it clear that he recorded the said statement in the Intensive Care Unit ward of the hospital. He has also clearly stated that only on that day, after recording the statement of the injured police had come to know the sequence of the incident. In his statement u/s 161 Cr.P.C. the injured has not disclosed the name of his assailant and has referred him only as a boy. It is thus clear that the investigative agency was unaware of the identity of the assailant of PW7 till 25.12.2010 when ASI S.K. Srivastava (PW11) of AATS had arrested the appellant u/s 41.1. (A) Cr.P.C. and recorded his statement. It was the appellant who had disclosed in his disclosure statement Ex. PW11/A about the incident of 20.12.2010 in detail. This information was passed on to PS Bara Hindu Rao. It was only then, that the investigative officer of this case had come to know that the assailant of PW7 is appellant. Thereafter the appellant was formally arrested in this case on 26.12.2010 and his remand paper shows that on the same day he was remanded to judicial custody and he remained in judicial custody till 3.1.2011. On the application for holding TIP the appellant refused to participate in the TIP before learned Metropolitan Magistrate (MM). The record of TIP (Ex. PW13/A) clearly shows that the appellant had been produced in judicial custody on that day. After the refusal of the TIP by the appellant, his police custody remand was sought and he was taken to Hindu Rao hospital to be identified by the injured. Injured duly identified the appellant as his assailant and a memo Ex. PW3/C to this effect was recorded. The injured PW7 has also duly identified the appellant as his assailant. There was no delay in holding the TIP. The appellant was arrested on 26.12.2010. An application for holding TIP was made on 3.1.2011. The appellant had however refused to participate in the TIP.

He has argued that he had refused to participate in the TIP because he had been shown to PW7 on 28.12.2010. A suggestion to this effect was given by him to the injured, in his cross-examination, although in his refusal to participate in TIP Ex. PW13/A he has not disclosed the date on which PW7 had seen him in hospital. Plea of the appellant is that since he was shown to the injured on 28.12.2010 so he refused to participate in TIP and thus his refusal does not lead to an adverse inference against him.

12. It is settled law that refusal on the part of the appellant without any just reason, leads to an adverse inference against the appellant unless it is shown by the appellant that holding of a TIP was a futile exercise because he had been shown to the witness. Applying the said principle, it is required to be seen whether the refusal on the part of the appellant to participate in TIP on the ground that he had been shown to the witness on 28.12.2010 is justified. Whether he had actually been shown to the witness PW7 (injured) on 26.12.2010. This plea of the appellant is contrary to the facts proved on record. It stands proved from the first judicial remand paper of the appellant that he was arrested on 26.12.2010 in this case and on the same day he was remanded to judicial custody. He remained in judicial custody till 3.1.2011 when his police custody remand was sought after his refusal to participate in TIP. These facts show that on 28.12.2010 appellant was in judicial custody and thus there was no occasion for the police to take the appellant to the hospital to show him to the injured. The uncontradictory evidence of PW7 that he was shifted from ICU to ward only at 5.30 p.m. on 3.1.2011 and so also there was no occasion for injured to see appellant before that day.

13. Another ground given by the appellant for refusal to participate in TIP is that his photographs were taken by the police before his arrest and were shown to the injured. This plea was not taken by the appellant at the time of his refusal to participate in TIP. The appellant has nowhere stated to the learned MM that his photographs had been taken and had been shown to the appellant. His statement to learned MM was "I do not want to participate in TIP because I have been seen by the witnesses at hospital". This plea of the appellant therefore is an after-thought. His plea also stands falsified by the fact that no suggestion to this effect had been put to the injured. The appellant has failed to justify his refusal to participate in TIP.

14. In such circumstances, adverse inference can be drawn on his refusal. It can be presumed that the injured PW7 would have identified the appellant in case he had agreed to join the identification parade. The refusal can be used as corroborative evidence to the identification of the appellant by the injured in the dock. Further no motive has been assigned to the injured to wrongly identify his assailant. The appellant has failed to bring to my notice any piece of evidence which can suggest even remotely his false implication in this case.

15. Following injuries had been received by PW7 as per his MLC:

1. Incised wound 2 inch long on left knee.
2. Incised wound 8 inch long on left thigh.
3. Incised wound 2 inch long on left palm below thumb
4. Incised wound 3 inch long below mandible (lower jaw) right side.
5. Incised wound 1 inch long on neck.
6. Two wounds on abdomen with exposed intestine.

16. It is in evidence that there was urgency to operate PW7 and without any delay on the consent of PW1 Babu Lal the operation was performed. Doctor, it seems did not want to wait for arrival of family members of PW7 and waste precious time. The nature of injuries has been opined as dangerous and stated to have been caused with sharp object. The use of knife, the severity of injuries, the stab on vital parts of body, all point out to one conclusion that the appellant had the intention to kill. The findings of learned MM, convicting the appellant u/s 307 IPC therefore suffers with no infirmity and based on cogent evidence.

17. The next argument of the appellant is that he has been falsely implicated for the offence u/s 379 IPC. I have carefully perused the statement of the injured and from his statement it is clear that it was not the appellant who had taken away the inverter. He himself had stated that some other boy had taken away inverter. The inverter had not been recovered at the instance of the appellant. There is nothing on record except the disclosure statement of the appellant to the effect that the boy who had removed the stolen article was his accomplice. The disclosure statement is hit by Section 24 of the Indian Evidence Act. From the testimony of PW7 it is also apparent that the boy who had stolen the inverter, had not assisted the appellant in stabbing. There is thus no evidence that the appellant and that boy were acting as accomplices, or in furtherance of common intention. There is thus no evidence on record to connect the appellant with the commission of offence of theft. The conviction of the appellant is not sustainable for the offence punishable u/s 379 IPC and set aside.

18. As regards amount of punishment awarded to the appellant by the trial court is concerned, it is clear from the order on sentence that the learned trial court had taken into consideration the age, social background, responsibilities of the appellant while awarding sentence. From the status report, PS Bara Hindu Rao, it is apparent that the appellant is a drug addict and habitual criminal and previously involved in 11 cases. He has been declared Bad Character in P.S. Deshbandhu Gupta Road, New Delhi.

19. In view these, I find no reason to interfere with the amount of sentence awarded to the appellant for the offence punishable u/s 307 IPC.

20. While the appellant stands convicted for offence u/s 307 IPC and order of sentence is maintained, he is acquitted for offence u/s 379 IPC.

21. The copy of the order be sent to learned trial court. Registry is directed to send copy of the order to the Superintendent, Central Jail, Tihar to supply the same to the appellant.