

(2014) 07 DEL CK 0297

In the Delhi High Court

Case No : Crl. A. No. 832/2012, Crl. M.B. Nos. 407/2013 & 584/2014

Ranjeet Bihari

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 154, 6
Penal Code, 1860 (IPC) — Section 307, 380, 454

Citation : (2014) 07 DEL CK 0297

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

Bench : Single Bench

Advocate : R.S. Mahla, Advocate for the Appellant; Lovkesh Sawhney, APP, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.—Challenge in this appeal is to a judgment dated 07.03.2012 in Sessions Case No. 136/2011 arising out of FIR No. 40/2009 PS Maurya Enclave by which the appellant-Ranjeet Bihari was convicted u/s 307 IPC and Section 27 Arms Act. By an order dated 17.03.2012, he was awarded RI for seven years with fine Rs. 2,000/- u/s 307 IPC and RI for two years with fine Rs. 1,000/- u/s 27 Arms Act. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 24.01.2009 at about 06.30 P.M. at LD Block, Maurya Enclave, Pitampura, Delhi, the appellant in furtherance of common intention with his associate Nasiruddin @ Guddu (since acquitted) inflicted injuries to Akhilesh in an attempt to murder him. The police machinery swung into action on getting information about the incident at 09.30 P.M. and Daily Diary (DD) NO. 25A was recorded. The investigation was entrusted to HC Satveer who with Const. Satyender went to the spot. ASI Vinod Kumar after taking over the investigation lodged First Information Report after recording Ajay's statement (Ex. PW-1/A). In the

complaint, Ajay (victim's cousin) disclosed that on finding Akhilesh in an injured condition near Metro Station, LD Block, he took him to Muni Maya Ram Jain Hospital and admitted him there. He further informed that on his inquiry as to who was the perpetrator of crime, Akhilesh revealed name of his assailant as Ranjeet Bihari, one of the three culprits. In his statement on 26.01.2009, the victim implicated Ranjeet Bihari, Nasiruddin @ Guddu and their associate for inflicting injuries to him. During investigation, statements of the witnesses conversant with the facts were recorded. Both, Ranjeet Bihari and Nasiruddin @ Guddu were arrested. Pursuant to the appellant's disclosure statement, a knife was recovered at his instance. After completion of investigation, a charge-sheet was filed in the Court; they were duly charged and brought to trial. The prosecution examined twelve witnesses to substantiate the charges. In 313 statement, the appellant pleaded false implication and denied his complicity in the crime without examining any witness in defence. The trial resulted in his conviction as mentioned previously. It is relevant to note that Nasiruddin @ Guddu was acquitted of the charges and the State did not prefer to challenge his acquittal.

3. I have heard the learned counsel for the parties and have scrutinised the Trial Court record. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and without any valid reasons ignored the vital discrepancies and contradictions in the statements of the prosecution witnesses. The recovery of the crime weapon, after about nine months of the incident was highly suspect. Mere recovery of a weapon by itself is no proof of the appellant's complicity. No blood stains were found on it. He further urged to discard the victim's statement who resiled from his previous statement and opted to rope in the appellant alone exonerating Nasiruddin @ Guddu though named in police statement recorded on 26.01.2009. The alleged associate of the assailant could not be arrested during investigation. He highlighted that the appellant and the injured both have criminal antecedents. Learned Addl. Public Prosecutor urged that the appellant was specifically named for causing multiple injuries to the victim by a knife and in the absence of sound reasons, he cannot be disbelieved.

4. After the stabbing incident, Akhilesh was taken to Muni Maya Ram Jain Hospital. MLC (Ex. PW-9/A) records the arrival time of the patient at 08.30 P.M. PW-1 (Ajay)'s name finds mention therein whereby he admitted Akhilesh in the said hospital. Three stab wounds were found on the body. Since the victim was incapable to record statement, FIR was lodged on the Ajay's statement. When Akhilesh was declared fit to make statement on 26.01.2009 his statement u/s 161 Cr.P.C. was recorded in promptitude. PW-9 (Dr. Sandeep) who had medically examined Akhilesh, aged 17 years, on 24.01.2009 brought with the alleged history of "assault" by a group of persons proved MLC (Ex. PW-9/A) and was of the opinion that injuries were "grievous" in nature. Daily Diary (DD) No. 25A regarding the stabbing incident came into existence at 09.30 P.M. Since the First Information Report was lodged at 11.30 P.M. immediately, the complainant was

not expected to concoct a false story in such a short interval to implicate the appellant for the injuries caused to the victim.

5. While appearing as PW-1 (Ajay), proved the version given to the police at the first instance without major variations and deposed that when he found Akhilesh lying in injured condition at Service Road, he admitted him in Muni Maya Ram Jain Hospital. When he enquired from Akhilesh as to who had caused injuries to him, he disclosed that 3-4 boys had stabbed him and one of them was Ranjeet Bihari who lived at GP Block in the jhuggi. In the cross-examination, the witness stated that the appellant was not known to him prior to the incident. The evidence of this witness is relevant u/s 6 of the Evidence Act as part of *res-gestae* being spontaneously connected with the transaction as soon after the incident, appellant's name as one of the assailants was given out to him by the victim at the earliest opportunity before there was time for being tutored. PW-10 (Akhilesh) in his Court statement also attributed specific and definite role to the appellant in causing injuries to him. He deposed that on 24.01.2009 when he and his brother Ajay were going to Shakarpur, on the way near ND Block, Metro Station, the appellant and his associates attempted to snatch money from him. On his resistance, the appellant's associates caught hold of him and the appellant dealt three knife blows to him at three places below chest on the right side. He became unconscious and subsequently found himself admitted in Muni Maya Ram Jain Hospital. The material facts regarding the role assigned to the appellant in the incident remained unchallenged except to put certain suggestions denying his involvement. It was suggested that the victim was BC of the area and was involved in two criminal cases. The suggestion had no relevance as mere victim's involvement in criminal cases was not enough to discredit the statement on oath in the absence of any other infirmity or discrepancy. Both, the appellant and the victim were involved in number of criminal cases. No ulterior motive was assigned to the victim to falsely implicate the appellant for the serious injuries sustained by him. The victim is not expected to let the real offenders go scot free and to substitute innocent one for the injuries suffered by him. True, in the statement recorded on 26.01.2009, the victim had also implicated Nasiruddin @ Guddu but for the reasons known to him, he did not utter a word showing his involvement in the crime and completely exonerated him before the Court. It appears that the victim has not presented complete true facts regarding the involvement of Nasiruddin @ Guddu but that itself is no reason or ground to record appellant's acquittal. The maxim "*falsus in uno falsus in omnibus*" is not generally applicable. A witness cannot be branded as untrustworthy and his evidence cannot be rejected outright even if part of his testimony is found to be doubtful or incorrect.

6. Dealing with the testimony of a hostile witness in *Bhajju @ Karan Singh Vs. State of M.P.*, the Supreme Court held :

Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant/accused. Normally, when a

witness deposes contrary to the stand of the prosecution and his own statement recorded u/s 161 of the Code of Criminal Procedure, the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witness, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief, as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution....

7. Moreover acquittal of some of the accused does not necessarily result in acquittal of the rest. There is no rule of law that if the Court acquits certain accused on the evidence of a witness finding is to be open to some doubt, others against whom there is positive evidence must be acquitted.

8. The Supreme Court in the case of Ram Udgar Singh Vs. State of Bihar, , held as under :

That even if a major portion of evidence of a witness is found to be deficient, in case the residual is sufficient to prove the guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, conviction can be maintained. It is a duty of the Court to separate grain from chaff and appreciate in each case, as to what extent, the evidence is worthy of acceptance.

9. Victim's testimony is in consonance with medical evidence and there is no variance between the two.

10. The prosecution, however, could not establish recovery of crime weapon beyond reasonable doubt. Recovery of the knife from the roof of the appellant's jhuggi accessible to others after nine months is not believable in the absence of independent corroboration. It is difficult to accept with certainty that knife (Ex.

P2) was the one which was used by the appellant in inflicting injuries as it had no bloodstains and was not produced before PW-9 Dr. Sandeep to find out if injuries on the victim's body were possible with that weapon. Non-recovery of crime weapon is not fatal as the appellant was arrested after a long gap.

11. The appellant did not furnish plausible explanation to the incriminating circumstances. He did not examine any family member to establish his presence in his house on the relevant date and time. The findings of the Trial Court where the appellant was held to be the author of injuries to the victim based upon fair appraisal of the evidence need no interference. Since three stab wounds with sharp and deadly weapon i.e. knife were inflicted in quick succession on the vital organ of the victim, conviction u/s 307 IPC cannot be faulted.

12. Turning to the sentence order, the appellant has been awarded RI for seven years with fine Rs. 2,000/- u/s 307 IPC and RI for two years with fine Rs. 1,000/- u/s 27 Arms Act. Nominal roll dated 03.05.2014 reveals that he has suffered custody in this case for two years, four months and eleven days besides remission for eight months and twenty one days as on 02.05.2014. He is a previous convict in FIR No. 8/2012 u/s 25 Arms Act PS South Rohini and FIR No. 36/2010 under Sections 454/380 IPC PS Dera Basi, Punjab. His overall jail conduct is unsatisfactory. Sentence order reveals that the appellant aged 19 years on the day of incident worked in a kirana shop and had a family consisting of his aged parents, two elder married brothers and one elder married sister to take care. Considering the facts and circumstances of the case, sentence order is modified to the extent that substantive sentence of RI for seven years would be RI for six years. Other terms and conditions of the sentence order are left undisturbed.

13. In the light of above discussion while maintaining conviction of the appellant u/s 307 IPC, he is sentenced to undergo RI for six years with fine Rs. 2,000/- and failing to pay the fine, default sentence would be SI for fifteen days. Conviction and sentence u/s 27 Arms Act is set aside.

14. The appeal stands disposed of in the above terms. Pending applications also stand disposed of. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent jail for information.