

(2017) 05 DEL CK 0190

In the Delhi High Court

Case No : 71 of 2015

SATISH

APPELLANT

Vs

THE STATE (GOVT. OF NCT OF DELHI)

RESPONDENT

Date of Decision : 29-05-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 307](#) - Attempt to murder

Citation : (2017) 05 DEL CK 0190

Hon'ble Judges : Ashutosh Kumar

Bench : SINGLE BENCH

Advocate : Nikita Sharma, Neelam Sharma

Judgement

1. Satish, the appellant has been convicted under Section 307 IPC and has been sentenced to undergo RI for four years, to pay a fine of Rs.5000/- and in default of payment of fine to further undergo SI for three months by the judgment and order dated 16.12.2014/19.12.2014 passed by the learned Additional Sessions Judge-03, North-West, Rohini Courts, Delhi in Sessions Case No.45/2014 arising out of FIR No.52/2013 (P.S.Kanjhawala) instituted for the offence under Section 307 of the IPC.

2. The appellant caused injuries to one Smt.Poonam, his wife by sprinkling kerosene oil on her and attempting to burn her on 14.02.2013.

3. Aforesaid Smt.Poonam in her FIR has alleged that she was married to the appellant on 18.06.2005. The appellant is stated to be a drunkard. On the day of the occurrence i.e. 14.02.2013 at about 11 AM, while Poonam was at home, the appellant poured kerosene oil over her and tried to put her on fire over a minor fight which had taken place between them. It was further alleged that despite her repeated requests, the appellant did not take her to the hospital. Thereafter Poonam called her father and also informed the police. The appellant, out of fear, ran away from the house. On the basis of the aforesaid statement, the subject FIR was registered.

4. At the trial, 12 prosecution witnesses were examined, all of whom supported the prosecution case.

5. Smt.Poonam (PW-1), the informant as well as the victim supported the case. However, in her deposition, she has stated that she somehow managed to rescue herself but some parts of her body were burnt. She was taken to SGM Hospital, Mangolpuri by the police officials where she was medically treated. Her statement was recorded (Exh.PW-1/A). In her cross examination, PW-1 has admitted of having made complaint to the police twice, prior to the occurrence. She completely denied the suggestion that kerosene oil was sprinkled on her body by herself in order to teach a lesson to the appellant for his drinking so excessively.

6. Dr.Rajesh (PW-9), the Chief Medical Officer has testified to the fact that PW-1 was having superficial burn injuries on forearm, hand, left side abdomen, left thigh and neck. He has deposed that blisters were found on the person of PW-1. He has proved the MLC prepared by him (Exh.PW-9/A) and has also proved the clothes and garments which were worn by the injured and which were collected by the police.

7. Smt.Kavita Goel, Senior Scientific Officer, FSL (PW-5) has proved her report regarding partial burnt clothes (Exh.PW-5/A).

8. The prosecution version further finds support from the deposition of Zile Singh (PW-2) who is the father of PW-1, who had reached the place of occurrence on that day. In his deposition, PW-2 has categorically stated that the appellant is a habitual drunkard and often quarrelled with PW-1.

9. Head Constable Rajender Kumar and Constable Ashish Attri, PWs.3 & 4 respectively have also supported the prosecution version.

10. SI Vijay Singh (PW-10) is the investigating officer who has given the narration about the events and has completely denied the suggestion that he did not enquire about the incident in the neighbourhood. He has submitted that though there is no mention of the names of the persons who were interrogated in the neighbourhood but he had asked from many and got confirmation about the erratic behaviour of the appellant.

11. On behalf of the appellant, it was argued before the Trial Court that the investigating officer did not conduct the investigation fairly and no independent person or any neighbour was either made to join the investigation or put up as a witness in support of the prosecution version. Only the police witnesses, the victim (PW-1) and her father (PW-2) have been brought to the witness box to depose against the appellant. It was also argued that there were contradictions in the testimonies of the witnesses which went to the root of the matter and, therefore, the prosecution version was required to be thrown out.

12. The contention of the appellant that the investigation was not conducted fairly is not acceptable in as much as PW-10 stated before the Trial Court that he

had enquired from the neighbourhood about the occurrence and also named such persons from whom confirmation about the incident was taken. That apart, such bald statement that investigation was not conducted fairly would not be of any avail to the appellant unless it is specifically shown that for some lapse on the part of the investigating agency, the appellant has been put in any disadvantageous position.

13. No doubt the prosecution is required to bring forth independent/competent persons to support its version, nonetheless, it cannot be laid down as a general proposition that police witnesses are not to be believed and that in the absence of examination of any local person/neighbour, the prosecution version ought to be disbelieved.

14. Minor contradictions in the testimony of witnesses is of no avail as witnesses are bound to miss out on certain facts if the occurrence is of an old date. Some discount is required to be given to human memory. What is required to be seen is that there should not be any material contradiction so as to discredit the entire prosecution version. None of such contradictions have been pointed out on behalf of the appellant.

15. The intention of the appellant is clearly established. Pouring kerosene oil and attempting to put PW-1 on fire makes him liable for the offence under Section 307 of the IPC. It is not necessary that the bodily injury caused must be of such a nature that it would cause death. There is no evidence with respect to the fact that such an act of the appellant was done while the appellant was under the complete influence of alcohol. He may have been inebriated at the time of the occurrence but for the appellant to take any advantage of his lack of consciousness, he was required to prove beyond hilt that he was not in a position to understand the nature and quality of his act. Thus there is no way in which the judgment of the Trial Court could be faulted.

16. However, with respect to the sentence imposed upon the appellant, it has been argued that the appellant, at the time of occurrence was 35 years of age, was an agriculturist by profession and was having two children and old parents who were being looked after by him. It has also been submitted that he participated in the trial and prior to the present case, there was no other criminal case against the appellant. Even the marriage of the petitioner with PW-1 still subsists. There could be a possibility of restoration of matrimonial life of the appellant and PW-1.

17. The nominal roll of the appellant indicates that he has remained in jail for about 2 1/2 years and his conduct in jail has been satisfactory throughout.

18. The sentence imposed upon the accused is necessarily to be in proportion to the crime and the circumstances in which the crime is committed. While operating the sentencing system, the Courts of law have adopted the corrective machinery with a reformatory approach and the sentencing processes have been tempered with social/humane considerations and justifiably so.

19. The judicial precedents in this regard suggest that the relevant consideration for sentencing would be the facts and circumstances of the case, the nature of crime, the manner in which it was planned and committed, motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances. All the above factors individually and collectively need form part of the consideration of the Court while sentencing.

20. In the present case, though kerosene oil was poured on PW-1 but the appellant ran away only when the police was called. There was no supervening circumstance to stop the appellant from causing greater harm. There was no pre planned motive and the reason of assault was a minor squabble. The act complained of was committed while the appellant was intoxicated. The appellant has participated in the trial and has not done anything to disrupt the marital status of PW-1. As argued on behalf of the appellant, there still is a possibility of restoration of the matrimonial life of PW-1 with the appellant.

21. Considering the aforesaid facts and circumstances, this Court is of the opinion that interest of justice would be sub-served if the appellant is sentenced to the period which he has already undergone in custody and on his paying a sum of Rs.5000/-, to be deposited within a period of two months from the date of the passing of the judgment, before the Trial Court, to be payable to the victim (PW-1) on her application before the Trial Court. In case the appellant would default in paying the fine within the stipulated period, he would suffer SI for a period of one month.

22. Thus the appeal is partly allowed.

23. The appellant is directed to be released forthwith, if not wanted in any other case.

24. A copy of this order be sent to the Superintendent of the concerned jail for record and compliance.