
(2009) 07 DEL CK 0373

In the Delhi High Court

Case No : Criminal L.P. 253 of 2007 and Criminal Revision Petition 7 of 2008

State

APPELLANT

Vs

Mewa Singh and Others
 Pawan Kumar @ Satish Vs
The State and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 34, 394, 397

Citation : (2009) 07 DEL CK 0373

Hon'ble Judges : Pradeep Nandrajog, J;Indermeet Kaur, J

Bench : Division Bench

Advocate : Richa Kapoor, APP in Criminal L.P. 253/2007 and Rajesh Mahajan, in Criminal Rev. P. 7/200, for the Appellant; Rajesh Mahajan in CrL. L.P. 253/2007 and Richa Kapoor, APP in CrL. Rev. P. 7/2008, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—By this common order, we shall dispose of the petition preferred by the State seeking leave to appeal against the impugned judgment dated 20.8.2007 passed by learned Trial Judge whereby he had acquitted all the four accused. We are also deciding the revision petition filed by the complainant, Pawan Kumar @ Satish seeking the same relief.

2. Briefly stated, the facts of the case as emanating from the record are that Pawan Kumar @ Satish (hereinafter referred to as the complainant.) was a commission agent engaged in the sale and purchase of property. He was also engaged in placement services abroad i.e. was sending persons abroad on commission. On 10.3.2004, the complainant had gone to Nanak Pyau to meet a friend. He received telephone call from respondent No. 1 Mewa Singh (hereinafter referred to as R1.) to meet him at Bus Terminal Azadpur. The parties met there and spent two hours together over a cup of tea. On invitation of Mewa Singh the complaint joined him at his house at Rohini where respondent No. 2

Rajender (hereinafter referred to as R-2.), respondent No. 3 Manohar Lal (hereinafter referred to as R-3.) and respondent No. 4 Kripal Manik (hereinafter referred to as R-4.) also joined them. The complainant was accosted by the respondents as to why their work had not been done and the 96 persons whom the complainant had undertaken to send abroad had not been sent abroad in spite of the complaint having received the commission. In the course of this discussion hot words were exchanged between the parties. The respondents threatened the complainant that he would be taught a lesson and they caught hold of him and gave him leg and fist blows. They locked the complainant inside the room and bolted it from outside and went out to chalk out their further course of action. They also robbed him of his mobile phone, gold chain, gold ring and Rs. 2500/- in cash which he was carrying on his person. R-2 had been attributed the role of snatching the mobile from the complainant and R-1 had taken his gold ring and gold chain. The complainant was then pushed down from the first floor, pursuant to which he sustained injuries on his hands, jaw and left eye. He somehow managed to escape from the clutches of the respondents. He hired a TSR and reached the house of his brother Rajiv at Laxmi Nagar who removed him to Ram Lal Kundan Lal Hospital. The complainant was given medical aid but since he was unfit for statement till the following day, the D.D. which had recorded the first information about this incident at 11.55 PM on 10.3.2004 was kept pending and after the statement of the complainant was recorded on the following day the rukka was prepared at 2.30 PM on 11.3.2004, pursuant to which the FIR was registered on the same day at 4.45 PM.

3. Learned Trial Judge had initially framed charge against the accused persons u/s 394 read with Section 34 IPC. Thereafter the charge was amended to be read as one u/s 397/34 IPC.

4. On behalf of the State and the complainant, it has been argued that the learned Trial Judge has committed a fallacy in acquitting accused persons as the testimony of PW-1 is clear and categorical and does not suffer from any blemish; he has attributed a specific role to each of the accused persons and there is no reason as to why he would implicate them falsely. The rukka recorded on the statement of the complainant has explicitly explained the reason for the delay in the registration of the FIR and it was primarily for the reason that the complainant was initially in an unconscious state and was not fit to make a statement; he had been declared fit by the concerned doctor only on the following day at, 11.50 AM. FIR had been registered at 4.45 PM i.e. within less than two hours of the endorsement on the said statement which was made at 2.35 PM. Attention has been drawn to Ex.PW-11/A, the first information furnished by Police Control Room, about the incident. It is argued that the second information about the said incident was recorded on 00:30 hours wherein the name of R-2 has explicitly been mentioned as the person who had thrown the complainant from the roof. It is argued that this documentary evidence sufficiently establishes that the version of PW-1 which has been discredited by the Trial Judge is not in consonance with the record and his evidence has not

been appreciated in the correct perspective; it was as early as 00:30 hours on the intervening night of 10.3.2004 and 11.3.2004 itself that the information about R-2 have thrown the complainant from the roof top had been detailed. Attention has also been drawn to the MLC Ex.PW-8/A prepared by Ram Lal Kundan Lal Hospital recorded at 12.50 AM which has evidenced two fractures in the forearms of the complainant, thus the promptness of time when medical aid was given to the injured also substantiates the version of the complainant that there was no time for manipulation or interpolation. It is argued that the recovery of the mobile phone which has been disbelieved by the Trial Judge is also not based on the facts as have been elicited from the record.

5. The record has been perused. On a perusal of the same we note that the version of the prosecution is hinged largely on the version of PW-1 Pawan Kumar @ Satish the complainant and the injured. Admittedly, this is a case where the complainant and the respondents were known to one another. This has been admitted by the respondents in their statements u/s 313 Cr.P.C. It was on the invitation of R-1 that the complainant had joined him at his house at Rohini. R-2 who is the son of R-1 and R-3 and R-4 were all present at the house of R-1. It is also an admitted case that the parties had previous transactions whereby the complainant had undertaken to send certain persons abroad and on the fateful day discussion was on this issue.

6. PW-1 Pawan Kumar, on oath has stated that on 10.3.2004, he had gone to Nanak Pyau to visit his friend. R-1 on telephone invited him to join him at Azadpur bus terminal. The parties met there and spent two hours together. On the invitation of R-1, the complainant joined him at his house for food where 3-4 persons which included R-2 to R-4 were already sitting there and having liquor. In the course of the discussion, the parties started arguing with one another and R-2 snatched his mobile phone and R-4 threatened him with his fist. PW-1 has further deposed that he was given fist and leg blows by all the accused and whereas R-1 and R-2 caught hold of him, the others gave him repeated leg and fist blows. His mobile phone, gold chain, gold ring and Rs. 2500/- was snatched by R-1. They bolted him inside the room and went out for further talks. PW-1 suspect foul play and opened the door and started running but he was given a push from the first floor pursuant to which he received injury on his hands, jaw and left eye. He managed to hail a TSR and went to his brothers house at Laxmi Nagar. He was removed to the hospital by his brother. His blood stained shirt was also taken into possession by the police.

7. In cross-examination, he has stated that his statement was recorded by the police in the night of 10.3.2004 and he was conscious at that time but at the time when he was removed from Rohini to hospital he was unconscious. He further stated that he had gained consciousness on the next day i.e. 11.3.2004. He denied the suggestion that he had implicated the accused persons falsely or that the injuries had been sustained by him in an accident and not the result of the act of the accused.

8. Learned Trial Judge had disbelieved the version of PW-1 and has given no credence to his testimony.

9. Contradictions as noted by the Trial Judge is the version of PW-1 on oath in Court qua his first statement u/s 161 of the Cr.P.C. before the Investigating Officer Ex.PW-1/A are as follows:

i. On oath in Court PW-1 had stated that Rajender Singh and Mewa Singh caught hold of him while the others gave him kick and fist blows. In Ex.PW-1/A role of catching hold has been attributed to Mewa Singh and Manohar Lal, and Rajender and Kripal had given kick and fist blows.

ii. On oath in Court PW-1 had stated that the accused persons on query from him as to why he had been called there, had threatened him and told that he would be taught a lesson for the harassment meted out to them; no such threat finds mention in Ex.PW-1/A.

iii. On oath in Court PW-1 had stated that the accused persons bolted him inside the room and then they all went out to hold further talks; PW-1 suspected foul play and came out and started running. This entire version did not find mention in Ex.PW-1/A; Even otherwise how the complainant was able to escape from the clutches of the accused when as per his own case he had been bolted by the accused persons from outside had not been explained by the complainant in his testimony.

iv. On oath in Court PW-1 had stated that after he had started running the accused persons gave him a push from the first floor and he sustained injuries on his hands, jaw and left eye. In Ex.PW-1/A he had stated that he was on the balcony when he was pushed down; details of the injuries had also not been given.

10. Trial Judge had held these improvements to be material in the testimony of PW-1 and going to the core of the matter, this version was discredited and accordingly discarded.

11. On a cumulative reading of this testimony we concur with the view taken by the Trial Court; testimony of PW-1 is not free from blemish and suspicion; it being tarnished, does not inspire confidence. This is further fortified by the additional circumstances taken into account by the Court below.

12. Learned Trial Judge had noted that the incident in this case had occurred at about 8.30 PM on 10.3.2004. MLC Ex.PW-8/A has recorded the admission of the injured at 12.30 AM of 11.3.2004 at private hospital i.e. Ram Lal Kundan Lal Hospital. The Doctor who had prepared the MLC namely Dr. Sidhu Goel had not come into witness box. The MLC had noted two fractures of the forearms, but the X-Ray report of the injured had not been collected; no advice for X-ray had also been noted by the doctor in the MLC. In fact, there was nothing to suggest whether the X-Ray of the patient had been carried out or not. The patient was declared not fit for statement and thereafter at 11.50 AM on 11.3.2004 he had

been declared fit for statement but the interpolation in the first endorsement i.e. not having been added later on has also been noted by the Trial Judge. Trial Judge had held that this document i.e. the MLC is not free from doubt as the doctor who had declared the patient not fit and thereafter fit for statement had not come into the witness box and as such there was no opportunity to cross-examine the said doctor who was the only person to explain as to when and in what circumstances the word not had been added.

13. Rajiv PW-2 is the brother of the complainant who had removed him to hospital. He had on oath stated that at the time when his brother came to his house he was in a serious condition; his clothes were torn and blood was coming out from the wounds of his body. His brothers told him that Mewa Singh, Rajender, Manohar Lal and Kripal i.e. the respondents herein had beaten him and snatched his gold chain, gold ring and mobile phone as also Rs. 2500/- in cash.

14. PW-2 as per this version was fully aware of the incident at the time when he had taken his brother for medical aid. There is no explanation as to why the statement of the brother had not been recorded by the investigating officer at that time at the hospital itself; the investigating officer PW-10 SI Ram Phal has admitted that he had met PW-2 in the hospital. PW-2 in his cross-examination has stated that his statement was recorded on 09.6.2004 i.e. almost three months after the date of the incident. Why the investigating officer did not record the statement of PW-2 in the hospital itself as PW-2 as per his own version was fully aware of the incident, as also the names of the assailants, has not been answered. The details of the injuries as deposed by PW-2 also did not find mention in the MLC Ex.PW-8/A. No history of the patient had also been recorded.

15. Ex.PW-11/A shows that first information of the incident was recorded at 11.55 PM on 10.3.2004 that the brother of Rajiv Kumar had suffered injuries. The second entry is at 00:13 Hours and records that Pawan had received injuries at the hands of Rajender and his other associates and the injured had been removed to the hospital. The third entry on Ex.PW-11/A is at 3.00 AM is that the injured had received fractures. All these entries show that the informant is Rajiv Kumar. In these circumstances, it was all the more incumbent on the investigating officer to have recorded the statement of Rajiv forthwith in the hospital itself and not wait for three months i.e. the till June 2004 when his statement was finally recorded.

16. All these circumstances had weighed in the mind of the Trial Court to hold that there was a deliberate and intentional delay in getting the FIR registered i.e. after a time gap of almost 20 hours; this time period was clearly suggestive of manipulation and interpolation in the evidence adduced; investigation thus not being fair.

17. The circumstance of the seizure of the blood stained T- Shirt of the complainant as an incriminating circumstance against the respondents has also been rejected by the Trial Judge. It has been noted that MLC Ex.PW-8/A had

nowhere recorded that shirt of the complainant had been removed or handed over to any person by the doctor and the doctor not having come into witness box to depose on this count, this seizure i.e. Ex.PW-10/C is also suspicious; it is also silent on the sealing of the seizure of the said T-Shirt.

18. Ex.PW-10/B the memo of the seizure of the blood and sample soil lifted from the spot had also not been sent for any CFSL examination; whether the said sample, soil contained blood, human or of any other origin had not been answered.

19. The recovery of the mobile phone from Rajender on 12.3.2004 has been documented in Ex.PW-6/A. Const. Sandeep Singh PW-7 and Const. Budhiraja were the attesting witness to the said document and of whom only PW-7 had been examined. PW-7 had made a general statement that the accused Mewa Singh and Rajender were arrested in this case and they made disclosure statement and got recovered one mobile phone and one hutch card which had been taken into possession vide the said memo. No specifics had been mentioned by PW-7 in his version on oath in Court as to from which part of the house, Rajender had got this recovery effected; as per the prosecution this recovery was from underneath the almirah of the house of R-2 but PW-7 was silent on this score; trial Judge had also noted that on oath in Court PW-1 had stated that he was carrying a charger as also a mobile phone but in his first statement Ex.PW-1/A recorded before the police no reference had been made to the charger. The discrepancies in the versions of PW-7 and PW-10 the Investigation Officer i.e. the persons who were present in the house of Rajender at the time of this recovery had also been noted; all these cumulative factors had led Trial Judge to disbelieve the recovery.

20. No recovery of the gold chain or the gold ring had been made.

21. Admittedly, parties had met at the house of R-1 and the conversation was steered on the breach of promise by the complainant; he not having sent 96 persons abroad for which he being a commission agent had received the commission. Complainant was pressurized by the respondents to give an explanation; the discussion had reached a sore point; in these circumstances the motive on the part of the complainant to falsely implicate the respondents can also not be ruled out.

22. The powers of an Appellate Court while dealing with appeals against an order of acquittal are well established. In *Kalu @ Masih and Ors. v. State of M.P.* I (2006) CCR 28(SC) while dealing with this proposition the Supreme Court had inter alia held:

While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an Appellate Court, where the judgment of the trial Court is based on evidence

and the view taken is reasonable and plausible. It will not reverse the decision of the trial Court merely because a different view is possible. The Appellate Court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial Court.

23. It is well settled that wherefrom two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court would normally not disturb the finding of acquittal recorded by the Trial Court. It has also to be borne in mind that in case of an acquittal there is a double presumption in favour of the accused; firstly the presumption of innocence available to him under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law; secondly the presumption of innocence is further reinforced, reaffirmed and strengthened by the Trial Court.

24. In our view the reasoning of the Trial Court suffers from no infirmity. The petition seeking leave to appeal as also the Revision Petition are accordingly dismissed.