

(2003) 02 DEL CK 0007

In the Delhi High Court

Case No : Criminal M. 1655 of 2001 and Criminal Appeal 524 of 2001

State (Govt. of Delhi)

APPELLANT

Vs

Lal Singh

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Citation : (2003) 2 AD 441 : (2003) 103 DLT 428 : (2003) 67 DRJ 502 : (2003) 1 JCC 482

Hon'ble Judges : R.S. Sodhi, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mukta Gupta, for the Appellant; Laxman Mehta, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.

Crl.M. 1655/2001:

1. Leave to appeal is sought from the judgment and order of the learned Additional Sessions Judge dated 21.11.1998 in Sessions Case No. 13/93 whereby respondent-accused, Lal Singh, has been acquitted. The learned Judge, after going through testimonies of the witnesses and the documentary evidence, has returned a finding of acquittal, dis-believing the presence of the main witnesses PW-1, Vijay, PW-5, Mukesh and PW-9, Sonu.

2. The learned Judge in his judgment has noted that on 21.8.1990 at about 3.10 p.m. one Shri Bhagwan Sahai came to Police Station Dakshinpuri and gave an information that somebody had stabbed a boy at the corner of Block No. 1 Dakshinpuri. This information was recorded in D.D. No. 7 and matter assigned to ASI Ram Chander to make inquiry. Subsequently, SI K.S. Yadav along with Constable Om Prakash also joined the inquiry. On reaching the place of incident, the police party was told that the injured had been removed to hospital. No eye witness of the incident met the police at the site of the incident or at the Safdarjung hospital where the injured had been taken and declared as brought

dead. Consequently, a case was registered.

3. Later, on the same day, Vijay, Mukesh and Sonu are stated to have met SI K.S. Yadav at the site of incident where he was preparing the site plan. The three claimed to be witnesses of the incident. At that point of time they did not name any person as culprits but stated that they would be in a position to identify the assailants. The accused herein was arrested on suspicion, shown to the witnesses in the Police Station and thereafter a Test Identification Parade arranged, which on 4.9.1990 the accused refused to join, on the ground that he had already been shown to the witnesses. While Lal Singh was charged u/s 302 IPC, his co-accused being minors were tried by the Juvenile Court.

4. PW-1, Vijay Kumar, on 4.10.1996, while deposing to the incident, has stated that around 3.00 p.m. on the fateful day, one companion of Lal Singh came to Vijay and told him that Lal Singh was calling him. However, Vijay did not go there. Lal Singh and 3-4 of his companions came to Block No. 1, Dakshinpuri where Lal Singh abused deceased-Vincy. Vincy slapped Lal Singh whereupon Lal Singh struck a knife blow on the left side chest of Vincy, as a result Vincy began bleeding profusely and ran towards his house. The accused made good their escape. This witness has further stated that he thereafter went to his house and there he came to know that Vincy had received injuries and also came to know that Vincy had told his mother that he had received injuries as a result of the stab. This witness has stated that he did not know Lal Singh prior to the incident and came to know his name only after Lal Singh had been arrested by the police. He has further stated in his cross-examination that the police had called him, Mukesh and Sonu at the house of Vincy at about 4.00 p.m. on the date of the incident itself. Vincy was present in the house and was in somewhat unconscious state. The police did not record statement of Vincy. However, the police recorded statements of this witness and that of the other two. He has also stated that the incident took place in front of a beetle shop which was doing business at that time.

5. The next witness, PW-5, Mukesh, does not support PW-1, Vijay, but goes on to say that on 26.9.1990 the police prepared the site plan on his pointing out of the place where the prior scuffle had taken place between Lal Singh and Vincy. PW-9, Sonu, gives an altogether different version. He states that PW-1, Vijay, began dancing in front of Virat cinema while some girls were passing. At that, some boys began beating Vijay. Vincy joined the fray to protect Vijay. Lal Singh returned to the spot 5-10 minutes after the first incident and inflicted knife blow on Vincy @ Goldy. Vincy began bleeding profusely and ran towards his house. Sonu and Vijay accompanied Vincy to his house and father of Vincy took him to Safdarjung Hospital where he died. This witness states that before the occurrence Lal Singh was known to him.

6. Analysing the evidence of this witness, inter alia, it appears that PW-1, is blowing hot and cold inasmuch as he received information of the incident at his house, is a material contradiction. This witness does not intervene to help Vincy

although the entire incident is at his instance. There is no recovery of blood stains on the clothes or person of PW-1 to show that he helped Vincy after being injured as is stated by PW-1. This witness did not go to the hospital and/or did not inform the police. PW-1 and PW-5 state that they did not know Lal Singh prior to the incident but came to know of his name only after his arrest. On the other hand, PW-9, Sonu, has claimed that they knew Lal Singh from before and also that before this incident the messenger of Lal Singh had called them at the behest of Lal Singh. PW-9's version suffers from some infirmities and strangely enough none of the witnesses name the accused in their statement u/s 161 of Criminal Procedure Code. The father of the deceased or the mother of the deceased, to whom the deceased is supposed to have narrated the incident as stated by PW-1, were not examined. The DD No. 7 records that some unknown person had struck knife blow to a boy at the corner of Block No. 1, Dakshinpuri.

7. Weighing the evidence on record, the trial court returned a finding of acquittal. We, having carefully gone through the material on record, find no infirmity in the reasoning of the learned Judge. In this view of the matter, we see no reason to grant leave to appeal. Accordingly, Crl.M. 1655/2001 is dismissed.

Crl.A. 524/2001:

8. Since the application for leave to appeal has been dismissed, in view thereof, Crl.A. 524/2001 also stands dismissed.