

(2014) 07 DEL CK 0015

In the Delhi High Court

Case No : Crl. A. No. 520/2012, Crl. M.B. Nos. 103 and 258/2014

Tinku

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2014) 07 DEL CK 0015

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

Bench : Single Bench

Advocate : R.K. Giri, Javed Ahmad and Zishan Khan, Advocate for the Appellant; Lovkesh Sawhney, APP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.—Challenge in this appeal is to a judgment dated 17.04.2012 of learned Addl. Sessions Judge in Sessions Case No. 404/09 arising out of FIR No. 160/2009 PS Narela by which the appellants-Tinku @ Sandeep (A-1), Bintoo (A-2) and Sumit @ Dhoni (A-3) were convicted under Sections 307/34 IPC. By an order dated 20.04.2012, A-1 and A-2 were awarded RI for three and a half years with fine Rs. 10,000/- each and A-3 was sentenced to undergo RI for five and a half years with fine Rs.10,000/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on the night intervening 03/04.06.2009 at about 12.30 (night) in Gali No. 17B, Swatantra Nagar, Narela, the appellants sharing common intention inflicted injuries to Surrender Singh @ Kaku in an attempt to murder him. The information about the incident was conveyed and Daily Diary (DD) No. 6A (Ex. PW-4/A) came into existence at 12.57 (night) at PS Narela. SI Suresh Chand to whom the investigation was entrusted lodged First Information Report after recording complainant-Sonu's statement (Ex. PW-1/A). During investigation, statements of the witnesses conversant with the facts were recorded. The accused persons

were arrested and after completion of investigation, a charge-sheet was submitted against them; they were duly charged and brought to trial. The prosecution examined ten witnesses to prove their guilt. In 313 statements, the accused persons pleaded false implication and denied their complicity in the crime. They examined nine witnesses in defence. The trial resulted in their conviction as aforesaid. Being aggrieved, they have preferred the appeal.

3. The incident in which Surender Singh @ Kaku sustained injuries on his body occurred at around 12.30 (night). Immediately, he was taken to Satyavadi Raja Harish Chander Hospital, Narela and was medically examined by MLC (Ex. PW-3/A). It records the arrival time of the patient at 12.45 A.M. Captan and Tinku (friends) were described to be the individuals who had admitted the victim. Since the patient was physically unfit to make statement, Investigating Officer lodged First Information Report after recording complainant-Sonu's statement vide rukka (Ex. PW-10/B) at 03.20 A.M. Apparently the First Information Report was lodged in promptitude and there was no delay.

4. The complainant in his statement (Ex. PW-1/A) given to the police, soon after the occurrence, gave detailed account of the incident in which injuries were caused to Surender Singh @ Kaku. He attributed specific role to each of the appellants and also disclosed the nature of weapons in their possession. While appearing as PW-1 (Sonu), in Court statement recorded on 19.04.2010, supported the prosecution in its entirety and proved the version given to the police in his statement (Ex. PW-1/A) without any deviations or variation. He implicated the appellants for inflicting injuries to Surender Singh @ Kaku. He deposed that A-1 and A-2 gave beatings to Surender Singh @ Kaku with iron pipe and danda in their hands and A-3 stabbed him on his chest as a result of which, Surender Singh @ Kaku fell down on the ground. The knife remained embedded in the chest and the assailants fled the spot. Surender Singh @ Kaku was taken to Satyavadi Raja Harish Chander Hospital, Narela, by them, where his statement (Ex. PW-1/A) was recorded. Witness could not be cross-examined that day as appellants' counsel requested for an adjournment as he was engaged on that day only. PW-1 (Sonu) appeared for cross-examination on 22.09.2010 after a gap of about five months. This time, he was in judicial custody as an accused in a case u/s 302 IPC. It appears that A-3 who was also in jail prevailed upon him to resile from the statement given before the Court on the previous date of hearing. On 22.09.2010, PW-1 (Sonu) took somersault and claimed that due to darkness, he was unable to see the assailants. He further stated that he had not witnessed anything except blood of the injured on the spot. Apparently, PW-1 (Sonu) was won over and he opted to resile from the statement given on oath before the Court on the previous date of hearing. The complainant was known to the appellants since long. PW-1 (Sonu) had no reasons to wrongly identify him at the time of recording of statement on 19.04.2010 in which he gave vivid description of the entire incident and spoke about the presence of Rajeev @ Raju Rawat and Kaptan. Undoubtedly, he has not presented true facts in the cross-examination to favour the appellants. PW-1 (Sonu) cannot be permitted to

sabotage the case of the prosecution and his testimony given before the Court on 19.04.2010 cannot be ignored or excluded.

5. 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....

6. 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.

7. 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.

8. Crucial testimony is that of PW-2 (Surender Singh @ Kaku), the victim/injured in the incident. He deposed that on 03.06.2009 at about 12.00-12.30 (night), he was stabbed on chest by a knife by A-3 whereas A-1 and A-2 inflicted injuries to him with iron pipe and danda. He became unconscious and was taken to Trauma Centre where he came to senses. He disclosed that he sustained injuries on chest, head and other parts of the body and remained admitted in the hospital for 9/10 days. The knife was removed from the body in the hospital. In the cross-examination, he admitted his acquaintance with the appellants since childhood. Regarding his presence at the spot at odd hours, he clarified that after attending marriage at Uttam Nagar and dropping his friend's jija in street No. 19A, Swatantra Nagar, he was going to his house when the appellants met him. He recalled that quarrel started when A-1 abused him. The incident was witnessed by Sonu, Rajeev @ Raju Rawat and Kaptan present in their office nearby. He attributed specific role to each of the appellants. Despite lengthy and searching cross-examination, no material discrepancies could be elicited to disbelieve the version given by him. The injuries on his body were not challenged. It was pleaded that the appellants were not the author of the injuries and somebody else had attacked and beaten the victim and the appellants were falsely implicated due to previous enmity. In the cross-examination, the witness claimed that he had no quarrel with A-3 prior to the incident in question. The accused persons also did not give any specific instance to infer that there was previous enmity between the parties and it prompted or forced the victim to falsely name them as perpetrators of the crime to spare the real offenders. Statement of the victim is in consonance with medical evidence and there is no variance. PW-3 (Dr. Manish Kamra) medically examined Surender Singh @ Kaku brought to the hospital with the alleged history of physical assault. On examination, the following injuries were found on his body :

1. Stab wound over the left lower side of chest with knife inside the stab wound. Knife was taken out of stab wound. Size of the stab wound 3 x 5 cm. Approximate depth 5-6 cm. Direction of the knife is obliquely upward towards the clavicle of left side.
2. Lacerated wound over the vertex of the head of size 6 x 1.5 cm.
3. Lacerated wound over the right ear of size 3 cm.
4. Lacerated wound over the right parietal region of size 3 x 1 cm.

PW-7 (Dr. Vikas Kumar) was of the opinion that the nature of injuries sustained by the victim was "dangerous" and he proved the report (Ex. PW-7/A) given on the basis of NCCT (CT Scan) by Dr. Manas Bora.

9. PW-8 (Rajeev @ Raju Rawat) whose presence at the spot has been spoken to by PW-1 (Sonu) and PW-2 (Surender Singh @ Kaku) fully supported the prosecution and corroborated the version given by the victim in toto. He also assigned a definite and positive role to each of the appellants in causing injuries to the victim. The appellants were unable to extract any discrepancy in the cross-

examination. No ulterior consideration was assigned to the witness to make false statement against the appellants who were acquainted with him prior to the incident.

PW-5 (Kaptan Singh) whose name finds mention in the MLC (Ex. PW-3/A) apparently opted not to depose to avoid annoyance of the appellants. He pretended that he was unable to give statement due to boils in his ears. The Trial Court observed and noted his conduct and was of the opinion that due to some understanding with the accused, Sumit (A-3) with whom he was seen having conversation opted deliberately not to make statement to favour him. Under these circumstances, exclusion of his statement would not discredit the otherwise cogent testimony of the victim.

10. The victim had sustained "dangerous" injuries on his body and all the appellants were named in the First Information Report which was lodged without any delay. Since, the names of the appellants were disclosed at the first instance, there was least possibility of the complainant or the victim to falsely concoct a story in such a short interval. There are no sound reasons to disbelieve the victim who had sustained injuries on the vital organ by a knife which remained embedded in his chest and was taken out in the hospital where he remained admitted for treatment for 9/10 days.

11. The testimony of a stamped witness has its own relevance and efficacy. The testimony of the injured witness is accorded a special status in law. This is a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of crime and because the witness will not want to let the actual assailant to go unpunished merely to falsely involve a third party for the commission of the offence. In the case of State of U.P. Vs. Naresh and Others, , the Supreme Court held:

The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

12. In the case of Abdul Sayeed Vs. State of Madhya Pradesh, , the Supreme Court held :

The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by

this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness.

13. There is no conflict between the ocular and medical evidence.

14. Minor contradictions, discrepancies and improvements highlighted by the appellants' counsel are not enough to shake the basic structure of the prosecution case. These do not go to the root of the case to affect the core of the prosecution case. Merely because, the victim or the witnesses examined by him were involved in some criminal cases, it does not discredit their otherwise cogent and reliable evidence. It appears that the victim, the appellants and some of the witnesses examined by them were having criminal antecedents and a number of cases have been lodged against them. It seems to be a case of gang war among the criminals. For the injuries caused to the victim, the appellants cannot escape merely pleading that the victim was involved in a criminal case. The Trial Court has dealt with all the relevant contentions of the appellants minutely in the impugned judgment and has given cogent reasons to out-rightly rejected the defence version. The findings need no intervention. Since the injuries were inflicted by a deadly weapon on the vital organ, findings on conviction under Sections 307/34 IPC cannot be faulted.

15. In the light of above discussion, the appeal is unmerited and dismissed. Conviction and sentence are maintained. Pending applications also stand disposed of. A-1 is on bail. He is directed to surrender and serve the remainder of his sentence. For this purpose, he shall surrender before the Trial Court on 24.07.2014. 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.