

(2014) 02 DEL CK 0028

In the Delhi High Court

Case No : Criminal A. 104-105 of 2006

Vikash Bhardwaj @ Sonu and Another

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161 313
Penal Code, 1860 (IPC) — Section 307 324 34

Citation : (2014) 2 JCC 996

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mithlesh Kumar, in Criminal A. 104-105/2006, Mr. Rajeev Kumar Malik, in Criminal A. 143/2006, for the Appellant; Kusum Dhalla, APP along with J.K. Singh, SI in both Appeals, for the Respondent

Final Decision : Disposed Off

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and order of sentence dated 28.01.2006 & 30.01.2006 whereby the three appellant Vikas Bhardwaj @ Sonu, Dharmender Kumar @ Kallu and Pramod @ Banti had been convicted u/s 307/34 of the IPC and each of them had been sentenced to undergo RI for a period of 2 years and to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo SI for 3 months. Nominal roll of the appellants have been summoned. Nominal roll of appellant Vikas Bhardwaj shows that out of total sentence of two years which had been awarded to him, as on 25.08.2006 (date of his grant of bail) he had suffered incarceration of about 8 months including the remissions earned by him. Appellant Pramod has suffered a sentence of about 1 month & 20 days. Appellant Dharmender has suffered sentence of about 17 days.

2. On 25.02.2002, DD No. 5-A (marked "X") was received in PS Mayur Vihar reporting that a quarrel had taken place at the crossing of block No. 26-27 of PS Trilok Puri. SI Mahipal (PW-10) along with constable Rajender reached the spot.

The injured Sarfaraz (PW-1) had been removed to the LBS hospital. PW-10 reached the hospital where MLC of the victim (Ex. PW-3/A) was obtained. The following two injuries had been noted on his person:-

1. Incised wound 2.5 cm X 0.4 cms. in the epigastrium around 10 cms above. Umbilicus on the midline with fresh oozing vertically.

2. Incised wound 1.5 cm diameter in the right hypochondrium around 8 cms above and later to Umbilicus.

3. The patient was fit for statement and his statement Ex. PW-1/A was recorded. This was at 01:40 am. Version of PW-1 was that he along with his friends had gone to the residence of Hanif Khan (PW-8) at Trilok Puri for a party. Music was on and the disk jockey (DJ) was playing. The accused persons as also the complainant (PW-1) were dancing. Accused persons were known to the complainant. During the dance, the feet of PW-1 touched the feet of Vikas Bhardwaj as a result of which an altercation took place. PW-8 was informed; he got the matter settled. At about 01:00 am, when PW-1 was going to his house and had reached the crossing of block 26-27, the accused persons who were standing there of whom Dharmender Kumar and Pramod caught hold of PW-1 and accused Vikas Bhardwaj stabbed PW-1 twice with a knife. Cries were raised; his father Sultan Ahmad (PW-2) reached the spot.

4. It was on this complaint (Ex. PW-1/A) that the rukka was dispatched at 01:40 am pursuant to which the FIR u/s 307/34 of the IPC was registered. Site plan (Ex. PW-10/K) was prepared; the spot where the incident had taken place had been depicted at point "A" and point "B" was shown as the residence of PW-8. The spot was just after the gali from the entrance of the house of PW-8. The knife i.e. the weapon of offence was admittedly not seized.

5. In the statement of the accused recorded u/s 313 of the Cr.PC., their version was that they have been falsely implicated; they are students; they have not caused any injury upon the victim.

6. No evidence was led in defence.

7. On behalf of appellants Vikas Bhardwaj and Pramod, arguments had been addressed by Mr. Mithilesh Kumar Singh in detail. On behalf of appellant Dharmender Kumar, arguments had been addressed by Mr. Rajeev Kumar Malik. It is pointed out that the ingredients of Section 307 are which necessarily involves an intention or knowledge on the part of the accused to have caused injury upon the victim and by their act they could have caused death of the victim is clearly missing. To support this submission reliance has been placed upon Hari Kishan Vs. Sukhbir Singh and Others, as also Parsuram Pandey and Others Vs. The State of Bihar, . Attention has been drawn to Ex. PW-3/A; submission being that the MLC had noted two injuries which are not on the vital parts of the body; the first injury is only an incised wound of 2.5 cm X 0.4 cms and the second injury is incised wound of 1.5 cm; victim remained in the hospital

for only 8 hours. Injuries were opined to be "simple"; he was discharged on the same day. No bony injury has been noted as is evident from the X-ray report Ex. PW-5/A. Further submission being that there was no enmity between the parties; they were in fact friends; intention or premeditation on the part of the appellants did not arise. Non-recovery of the knife shows that the intent cannot be gathered as the length and breadth of the knife is not known. Further submission being that if the appellants were arrested at the spot, why the knife was not recovered also throws doubt on the version of the prosecution. PW-8 has also not supported the version of the prosecution. It is a clear case of false implication for the reason that it has come in the evidence of PW-1 that a cross FIR u/s 324 of the IPC was also pending against the appellants. This is a case of false implication. Learned counsel for the appellants has placed reliance upon *Jai Narain Mishra and Others Vs. State of Bihar*, to support a submission that where simple injuries were suffered by the victim, conviction u/s 307 of the IPC was not justified. Impugned judgment is liable to be set aside.

8. Arguments have been refuted by the learned public prosecutor. It is pointed out that on no count, does the impugned judgment suffer from any infirmity. Attention has been drawn to the statement of the victim PW-1 which has been corroborated by PW-2. Submission being that the MLC (Ex. PW-3/A) also evidences that the injuries were caused by the appellants on vital parts of the body i.e. the abdominal area which is a vital area. The premeditation and motive on the part of the appellants to have caused injuries upon the victim is clear from the fact that after the incident was over which was in the house of PW-8, all the accused persons were waiting outside in the chowk ready to attack the victim. Learned APP for the State has placed reliance upon *Rafiq Ahmed @ Rafi Vs. State of U.P.*, to support her submissions; submission being that the impugned judgment does not call for any interference.

9. Arguments have been heard and record has been perused.

10. The injured eye-witness is PW-1. He has deposed that on 25.02.2002, a party was going on at the residence of PW-8. Accused persons were known to him. Accused persons as also the complainant were dancing; the feet of one of the accused Vikas Bhardwaj touched his feet pursuant to which an altercation took place. PW-8 settled the matter. At about 01:00 am when PW-1 was going toward his house and when he reached the crossing of block No. 26-27, accused persons were found standing there; Dharmender and Pramod caught hold of PW-1 and Vikas Bhardwaj stabbed him on his chest; PW-1 started bleeding. His statement Ex. PW-1/A was recorded.

11. In his cross-examination, PW-1 denied the fact that was under the influence of liquor; he denied that one Mool Chand was not present at the party; he raised alarm after he was stabbed with knife; he became conscious after 3-4 hours in the hospital; he denied the suggestion that accused has been falsely implicated. He admitted that there is a case pending against him u/s 324 of the IPC; he denied the suggestion that he is a bad character (BC) of the area.

12. PW-1 is the only eye-witness as Mool Chand who was alleged to be another eye-witness has not been produced into the witness box by the prosecution. PW-2 has also admitted that Mool Chand was present at the spot. The testimony of PW-2 is admittedly not an eye-witness account. He had reached the spot after the incident was over. This is the version of the prosecution itself. PW-2 has deposed that on 26.02.2002 at about 01:00 am while he was present at his residence and watching television, he heard a noise at the crossing of block No. 26-27 and when he reached there, he was informed by Mool Chand that his son Sarfaraz has been stabbed by Vikas Bhardwaj. Vikas Bhardwaj had also confessed to this crime. Police complaint was accordingly lodged.

13. In his cross-examination, PW-2 admitted that when he reached at the spot, his son was lying in an injured condition; he was taken to the hospital; his son was discharged in the morning at 09:00 am. Police had recorded his statement.

14. The MLC of the victim has evidenced two injuries; an incised wound of 2.5 cm X 0.4 cms in the epigastrium and a second incised wound of 1.5 cms has also been noted. Dr. R.N. Dass (PW-3) has come into the witness box to prove this MLC. The final opinion on the injuries were simple, sharp and fresh; it was given two weeks later i.e. after the X-ray had been conducted upon the victim; the X-ray had been advised on the victim. Dr. M.N. Singh (PW-5) had noted no bony injury upon the victim as is evident from Ex. PW-5/A.

15. PW-8 was the person in whose house the party was organized which the complainant and accused persons had gone to attend. He has deposed that party in his house continued pm till after midnight i.e. 12:30 am. Mool Chand as also other persons attended the party. An altercation had taken place between accused Vikas Bhardwaj and the complainant; he did not know the reason. When PW-8 learnt about the altercation, he asked his friends to go to their respective houses. PW-1 had also left the house. Accused persons stayed for some time and thereafter they also left. In a further part of his evidence, since this witness was turned hostile, he was permitted to be cross-examined by the learned public prosecutor. He denied the suggestion that he was told that Vikas Bhardwaj had stabbed PW-1. Even as per his version u/s 161 of the Cr.PC., the prosecution has not projected PW-8 as an eye-witness. He admitted that apart from other persons, Mool Chand had also attended the party. This is also substantiated in the versions of PW-1, PW-2 and PW-8. However, Mool Chand for reasons best known to the prosecution was not examined.

16. The Investigating Officer has been examined as PW-10. He had recorded the statement of the victim (Ex. PW-1/A) in the hospital after the victim was declared fit for statement. The victim was discharged after eight hours i.e. 09:00 am and the opinion on his injuries were simple and sharp. The injuries have also been described and noted supra. In his cross-examination, PW-10 has admitted that the victim was conscious when he recorded his statement which was around 02:25 am.

17. PW-10 had arrested the accused persons. Arrest memos Ex. PW-10/F. Ex. PW-10/G and Ex. PW-10/H show that all the accused persons were arrested from their respective homes at around 10:00-10:30 am in the morning of 26.02.2002. None of the accused had absconded. These arrest memos have been countersigned by PW-1 and PW-2 but neither PW-1 and nor PW-2 has deposed a word about the arrest of the accused; they not stated that it was on their identification that the accused persons were arrested.

18. The knife which was the weapon of offence has admittedly not been recovered. PW-10 had deposed that police remand of accused Vikas Bhardwaj was taken but even after police remand, the knife was not recovered. Whether it was a pen knife or a kitchen knife could not be known. Its length and breadth remained a secret. However the nature of the injuries (as is evident from MLC Ex. PW-3/A) established that the length of the blade could not be long; the longest injury being a dimension of 2.5 cm X 0.4 cm; the second injury was incised wound of 1.5 cms in diameter. Injuries were simple; the victim remained in the hospital for 7-8 hours; he was conscious at the time of admission. Ex. PW-3/A shows that he was stable, conscious and his vital parameters were normal.

19. It is in this background that the conviction of the appellants u/s 307/34 of the IPC has to be viewed.

20. The essential ingredients required for a conviction u/s 307 of the IPC are:

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
- (iii) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act know to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

21. All the ingredients of the offence must be present before a conviction can be ordered. The injuries sustained, the manner of the assault and the weapons used are all relevant factors. The intention or knowledge which is foremost ingredient of Section 307 of the IPC must precede the act attributed to the accused. This intention/knowledge has to be gathered from the circumstances and not necessarily from the ensuing result.

22. Record shows that the parties were friends; they had gone to attend a party of a common friend; music was being played by the disk jockey. Accused as also the appellants were dancing. Obviously they were in the mood of revelry and enjoyment. At the time, when the feet of complainant touched the feet of Vikas

Bhardwaj, an altercation took place between the parties; details of this version has not been elicited in the version of PW-1 but the reason for altercation was based on this trivial incident. This altercation took place in the house of PW-8. This was around 12:30 midnight. After this incident, PW-8 had disbursed the party and asked the respective guests to return to their home which included PW-1 and the accused. However, the accused stayed there for some more time. Site plan (Ex. PW-10/K) shows that the place of incident as just outside the entrance of the house of PW-8 i.e. at the crossing of block No. 26-27. As per PW-1 accused persons were found standing there when PW-1 was going towards his house. It is also not the case of PW-1 that any altercation had taken place between him and the other co-accused i.e. Dharmender and Pramod; altercation was with Vikas Bhardwaj alone. In this background, whether the accused persons were standing at the crossing with premeditated intention to attack PW-1 or they were also on their way home from the party cannot really be known. PW-1 had not spoken of any argument with any of the other co-accused i.e. either Pramod or Dharmender.

23. As per PW-1, Pramod and Dharmender had caught hold of him and Vikas had inflicted two knife blows which as noted supra were in the epigastriun region; injuries were opined to be "simple"; PW-1 had been discharged from the hospital after 7-8 hours; he was conscious and well-oriented at the time of his admission; his statement was recorded by the Investigating Officer (PW-10) within the next two hours of the incident pursuant to which the rukka was dispatched and the FIR was registered. No bony injury was also noted.

24. In this background, it cannot by any stretch of imagination be said that the accused persons have any premeditated design or intent or knowledge that by their act i.e. Dharmender and Parmod catching hold of the victim and Vikas Bhardwaj stabbing him, they could have caused his death. As noted supra knife was not recovered inspite of police remand taken of accused Vikas Bhardwaj. What was the length and breadth of the knife was not known. Clearly, the knife did not have a long blade as the length of the more serious injury was only 2.5 cm long. The victim as noted supra was discharged within less than 7-8 hours; at the cost of repetition, injuries were simple. Parties were also known to each other. They were in fact friends. No case of earlier rivalry has been noted; what has however come on record is that PW-1 had one case registered against him u/s 324 of the IPC. This fact may not be relevant to answer as to whether the conviction of the appellants u/s 307 of the IPC can be sustained or not.

25. The entire incident has taken place within a span of less than 40-45 minutes. The arguments in the party were between Vikas Bhardwaj and PW-1. Dharmender and Parmod had no role in that argument. The possibility that they were also returning home after the party where in the heat of passion when PW-1 had come out of the house of PW-8, they attacked him cannot be ruled out. The incident was on the spur of the moment. This Court is thus of the view that keeping in view all the aforementioned background, the accused did not have the

intention or knowledge that by their act they could have caused the death of the victim.

26. Keeping in view the overall circumstances, nature of injuries, knife not having been recovered and there being no previous enmity between the parties, the conviction u/s 307 of the IPC is not sustainable. The conviction is accordingly modified to one u/s 324 of the IPC.

27. Section 324 of the IPC pre-supposes an act of voluntarily causing hurt by and instrument for shooting, stabbing or cutting; the imprisonment for this offence is the maximum sentence of three years or a fine or both.

28. The intent of the Legislature can be gathered from the fact that this offence prescribes an imprisonment which may extend to three years or with fine. Keeping in view the fact that the offence relates to the year 2002 i.e. more than 12 years old and much time and water having flown since that period; accused have settled in life; they being first time offenders and young in years at the time of the offence, there would be no useful purpose served in sending them back to the jail. Accordingly, the sentence already undergone by each of the accused is the sentence awarded to them; each of the accused person shall however pay additional fine of Rs. 25,000/-; in default of payment of fine, they would undergo SI for 4 months. This fine shall be paid within 10 days and the amount be remitted back to the complainant. Investigating Officer shall ensure compliance. Appeal disposed off in the above terms.