

(2015) 07 DEL CK 0264
In the Delhi High Court
Case No : Criminal Appeal 996 of 2014

Vishnu Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 354
Penal Code, 1860 (IPC) — Section 302, 307, 324, 354

Citation : (2015) 4 JCC 2354 : (2015) 3 JCC 1778

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

Bench : Single Bench

Advocate : Pramod K. Dueby, Shiv Chopra and Neha, for the Appellant; Kusum Dhalla, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.P. Garg, J—The appellant-Vishnu Sharma @ Sonu impugns a judgment dated 06.12.2013 in Sessions Case No. 117/13 arising out of FIR No. 19/2013 registered at Police Station Bharat Nagar by which he was convicted under Section 307/324 IPC. By an order 14.12.2013 he was awarded RI for four years with fine Rs. 2,000.

2. Briefly stated the prosecution case as reflected in the charge- sheet was that on 18.01.2013 at about 07:30 p.m. at Jhuggi No.N-31/1, Back Side Shakti Apartment, Ashok Vihar, Phase-II, Delhi, the appellant and his associate Nitin (since expired) outraged modesty of "X" (assumed name) aged 17 years. She reported the incident to her aunt Kamal Yadav who took her to husband's shop where the appellant and Nitin in furtherance of their common intention inflicted injuries to both Kamal and Sandeep. Daily Diary (DD) No. 54 B (Ex.PW-5/A) was recorded at Police Station Bharat Nagar at 07:30 p.m. that day on getting information about the occurrence. The investigation was assigned to SI Dilbag Singh. The victims were medically examined at Babu Jagjivan Ram Memorial hospital. The Investigating Officer lodged First Information Report after recording

Kamal Yadav's statement (Ex.PW-7/A) and seized various articles at the spot. Statements of the witnesses conversant with the facts were recorded. The accused was arrested. After completion of investigation, a charge-sheet was filed against him in the court. To establish its case, the prosecution examined fifteen witnesses. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication without examining any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the testimonies of interested witnesses without independent corroboration. Some of the witnesses were unable to identify the crime weapon. The prosecution was unable to establish appellant's motive to pick up quarrel with the victims. On the same set of evidence, the appellant was acquitted of the charge under Section 354 IPC. The prosecution witnesses have given divergent and conflicting statements about the occurrence. The doctors who medically examined and treated the victims were not produced. The appellant had no intention to commit murder. Counsel further pointed out that the Trial Court showed undue haste to record statements of the prosecution witnesses on a single day on 04.10.2013 depriving the appellant of fair and reasonable opportunity to cross-examine them. Learned Additional Public Prosecutor urged that the trial court based its findings on fair and proper appreciation of the evidence and it needs no intervention.

3. After the occurrence at around 07:30 p.m. on 18.01.2013, DD No. 54B (Ex.PW-5/A) came into existence promptly without any delay. The victims were taken to Babu Jagjivan Ram Memorial hospital. MLC (Ex.PW6/A) reveals that Sandeep was brought there at 08:30 p.m. with the alleged history of physical assault; Kamal Yadav arrived there at 08:40 p.m. The Investigating Officer after recording Kamal Yadav's statement (Ex.PW-7/A) lodged FIR promptly without any delay by sending rukka (Ex.PW-15/A) at 10:40 p.m. There was, thus, no delay in reporting the incident to the police. In the complaint (Ex.PW-7/A), Kamal Yadav gave detailed account of the occurrence and specifically named the appellant and his associate Nitin to be the perpetrators of the crime. She also disclosed that both Nitin and the appellant under the influence of liquor had outraged "X"s modesty when she was preparing tea in the kitchen. When she took "X" to her husband's shop, both the accused arrived there and inflicted injuries to her husband. When she intervened to save him, she was also caused injuries on her body. Since the FIR was lodged without any delay, there was least possibility of the injured witness to concoct a false story in such a short period to falsely implicate the appellant by name.

4. Both Kamal Yadav and Sandeep Yadav were injured in the incident. MLC (Ex.PW-6/A) reveals that Sandeep had sustained two incise wounds over his middle finger and left side of the chest. Kamal sustained "grievous" injuries on

her body. Being injured, both the victims must be interested to bring the real culprit to book and were not expected to spare the real offenders and falsely implicate the innocent ones. Very cogent and convincing reasons required to discard their evidence are lacking. It has come on record that Nitin, Sandeep Yadav (PW-10) 's real brother died in a road accident after the incident. The appellant used to visit him (Nitin) who lived in a nearby jhuggi and the parties were acquainted with each other. The appellant has not denied the incident as such in which Sandeep Yadav and his wife Kamal Yadav sustained injuries. His plea is that he was not responsible for the injuries and it was Nitin with whom a quarrel had taken place and the blame was diverted upon him to save him.

5. Crucial testimony to infer the appellant's guilty is that of PW-10 (Sandeep Yadav) who deposed that on 18.01.2013 at about 7/7:30 p.m. when he was sitting at his shop, his wife and "X" came and informed him that the appellant and Nitin who were in drunken condition had done "batamiji" with "X". Attributing specific role, he continued to depose that at that moment of time, Nitin and Sonu arrived there and started abusing him. Nitin caught hold of him from back and Sonu inflicted two knife blows on his stomach and finger. When Kamal Yadav intervened to save him, both Nitin and Sonu caught hold of her and started beating her. Nitin hit her on her head with the "butt" of the "katta" in his possession and Sonu gave knife blow on her back when she was in the process to escape from the spot. After hurting them, Nitin and Sonu fled the spot on a bike. PCR officials shifted them to BJRM hospital. Knife (Ex.P1) used in the crime was identified by him. In the cross-examination, he disclosed that his brother Nitin was previously involved in a case under Section 302 IPC but was acquitted. He admitted that his wife and brother Nitin did not have cordial relations and Nitin used to live in an adjoining "jhuggi". He further admitted that "X" did not sustain any injury on her body. He denied that the appellant was falsely implicated along with Nitin as he wanted to grab Nitin's jhuggi. He denied that there was a personal dispute with Nitin and in order to save him, he diverted the blame upon the appellant alone to get the jhuggi vacated.

On scrutinizing the testimony of the injured witness, it reveals that no material discrepancies/infirmities could be extracted in his cross-examination. The accused did not deny his presence at the spot at the time of occurrence. The material facts proved against him in the examination-in-chief remained uncontroverted. No ulterior motive was assigned to the witness to falsely implicate him in the case.

6. PW-7 (Kamal Yadav) other victim has fully supported PW- 10 (Sandeep Yadav) and has corroborated his version in its entirety. She also deposed that her niece "X", aged 17 years, used to stay with them for the last about one year. On 18.01.2013, the appellant and Nitin teased her ("X") when she was making tea in the kitchen. After coming to know of it from "X", she took her to her husband. Both Nitin and Sonu followed them. When she apprised her husband of the occurrence, Nitin and Sonu started quarreling with him. Nitin told Sonu to stab

her husband "Mere bhai ko chako mar de". On that, Sonu who had already brought a knife, stabbed her husband on the chest and right hand. She immediately called police at 100. Thereafter, they picked upon an altercation with her; Nitin hit on her head with an object looking like a pistol as a result of which she fell down. They continued to give her leg and fist blows. She managed to get up and tried to run away from the spot on which Sonu inflicted knife blow on her back. PCR officials took them to the hospital where her statement (Ex.PW-7/A) was recorded. She remained admitted in the hospital for a week and her husband was there for 4/5 days. She was, however, unable to identify the knife recovered by the police used in the incident. In the cross-examination, she admitted that "X" did not sustain any injury. The jhuggi in which Nitin lived was in their possession at present. She denied that no such incident had occurred and Sonu was falsely implicated. Again, nothing material could be brought out to suspect the testimony of the victim. She has proved the version given to the police at first instance without any variation. She had no extraneous consideration to falsely implicate Sonu with whom she had no prior animosity.

7. PW-9 (Ramu) and PW-13 (Rinku), Sandeep Yadav's employees present at the shop have also supported the prosecution and corroborated the testimonies of the victims without any deviation. Both of them too implicated the appellant and Nitin for inflicting injuries to Kamal Yadav and Sandeep Yadav. PW-8 ("X") also deposed that when she was teased by Nitin and Sonu, she informed her "Bua" who took her to the shop of her "phufa". There Kamal and Sandeep Yadav caused injuries to them. Her testimony on material facts remained unchallenged.

8. All the ocular witnesses have implicated both Nitin and Sonu for causing injuries to Kamal Yadav and Sandeep Yadav. The ocular testimony is in consonance with the medical evidence where injuries revealed by them were found on the bodies of the victims. The exhibits collected during investigation were sent to Forensic Science Laboratory. FSL report (Ex.PW15/H) shows that blood of human origin was detected on the victim's clothes confirming injuries sustained by them.

9. Certain minor contradictions, inconsistencies and discrepancies on trivial matters highlighted by the appellant's counsel are not relevant and vital to discredit the otherwise cogent and natural testimonies of the injured witnesses. Acquittal of the accused under Section 354 Cr.P.C. ipso facto is not fatal to the prosecution case. In case of conviction based upon direct evidence, the question whether there is any motive or not becomes wholly irrelevant. In the instance case, the appellant had acted on the instigation of his close companion. In 313 statement, he did not give any plausible explanation to the incriminating circumstances proved against him. No valid or sound reasons exist to disbelieve the testimonies of the victims.

10. It is true that undue haste was shown by the trial court when statements of prosecution witnesses numbering 15 were recorded on the same day. However, at no stage the accused or his counsel moved any application before the trial

court to recall any of the prosecution witnesses for further cross-examination. Nothing has come on record to show if any prejudice was caused to the appellant because of examination of all these witnesses on a single day. Conviction under Section 307/324 IPC can't be faulted as injuries were administered repeatedly on vital organs intentionally by a sharp weapon upon the unarmed victims.

11. Regarding sentence, nominal roll dated 07.10.2014 reveals that the appellant has already suffered incarceration for one year, seven months and twenty four days besides remission for two months and thirteen days as on 07.10.2014. He is a first time offender and is not involved in any other criminal case. His overall conduct in jail is satisfactory. He was aged around 20 years and his family comprised of his aged widow mother, one elder brother, two sisters, wife and a daughter. He suffered conviction due to his association with Nitin, Sandeep's brother and was not direct beneficiary. The injuries suffered by Sandeep Yadav were "simple" in nature. Kamal also sustained "simple" hurt from surgical side and "grievous" one from ortho side.

12. Considering the mitigating circumstances, the substantive sentence of the appellant i.e. RI for four years is reduced to RI for three years. The appellant shall, however, pay Rs. 25,000/- as compensation which shall be equally shared by both the victims. It shall be deposited in the trial court within two weeks to be released to the victims after due notice.

13. The appeal stands disposed of in the above terms. Trial Court record (if any) along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.