
(2013) 11 DEL CK 0104
In the Delhi High Court
Case No : Criminal A. 706 of 2000

Zarar Khan @ Mulla

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Arms Act, 1959 — Section 25, 27

Penal Code, 1860 (IPC) — Section 120B, 307, 34, 392, 394

Citation : (2013) 11 DEL CK 0104

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

Bench : Single Bench

Advocate : Ajay Malviya, for the Appellant; M.N. Dudeja, APP., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.—Shankar, Sahid Khan, Atiq Ahmed, Zarar Khan @ Mulla (A-1) and Mohd. Nazir (A-2) were arrested in case FIR No. 246/94 by the police of PS Roop Nagar and sent for trial for committing offences punishable under Sections 394/397/307/34 IPC/120B IPC and 25/27 Arms Act. Allegations against them were that on 15.11.1994 at about 05.30 P.M. at shop No. 12/21, Shakti Nagar, they committed dacoity using revolvers and daggers and injured complainant-Chander Kant while depriving him of cash 17,000/-, cheques and other documents contained in a leather bag. After the occurrence, the complainant-Chander Kant gave a chase to the assailants. Shankar fired with the revolver in his hand and the police officials present at Nagia Park were able to overpower and apprehend him. During the course of investigation, statements of the witnesses conversant with the facts were recorded. Pursuant to Shankar's disclosure statement, the other assailants were apprehended on different dates and weapons were recovered from their possession. The robbed articles were also recovered. After completion of investigation, a charge-sheet was submitted against all of them in the Court. They were duly charged and brought to trial. The prosecution examined seventeen witnesses to establish their guilt. In their

313 statements, the assailants denied their complicity in the offence and pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment dated 26.09.2000 in Sessions Case No. 144/96 convicted Shankar, A-1 and A-2 for committing offence punishable u/s 392/34 IPC. Shankar and A-1 were further held guilty for committing offence u/s 397 IPC. Shankar was also held guilty u/s 307 IPC. By an order dated 27.09.2000 various imprisonment terms detailed therein with fine were imposed. Sahid Khan and Atiq Ahmed were acquitted of all the charges. The State did not challenge their acquittal. Being aggrieved, A-1 and A-2 have preferred the appeals. I have heard the learned counsel for the parties and have examined the record. Appellants' counsel strenuously urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The appellants were shown to the witnesses in the police station after their arrest and were compelled to decline to participate in the Test Identification Proceedings. The cash and cheques recovered from the appellants were not in their exclusive possession and these articles were not sealed. The prosecution did not collect any evidence to ascertain as to when and how the cheques in question came in the custody of the complainant. PW-6 Raj Pal Singh was a stock witness of the police and no reliance can be placed on his testimony. Learned Addl. Public Prosecutor urged that the Trial Court findings are based upon the fair appraisal of the evidence of the complainant who identified the appellants in the Court. Recovery of the robbed articles from their possession is an additional circumstance to connect them with the crime.

2. The main assailant Shankar who fired with the revolver in his hand and injured the complainant did not prefer to challenge the conviction and purportedly, has already served the sentence awarded to him. Shankar was apprehended soon after chase by the complainant with the assistance of police officials present nearby. A-1 was arrested on 16.11.1994 and pursuant to his disclosure statement cash Rs. 12,000/- was recovered from his house on 19.11.1994. A-2 was arrested on 29.11.1994 and two cheques with cash were recovered from his possession. Crucial testimony is that of the complainant - Chander Kant who had no extraneous consideration to fake the incident of robbery/dacoity. He was not acquainted with the assailants and did not nurture any grievance against them. The assailants were not named in the FIR. On the day of incident i.e. 15.11.1994, Chander Kant, Sales Assistant with Vinod Enterprises, 12/21, Shakti Nagar, since 1986 as usual was present at his office. At 05.30 P.M., Shankar and A-1 came in the office pretending to be customers and conversed with him to purchase "joining sheets". Soon thereafter, their companions also entered inside the shop. Shankar armed with a revolver and A-1 who had a knife pointed their arms towards Chander Kant and demanded whatsoever he had. When he expressed his ignorance about cash in his custody, he was hit by Shankar on his head with the butt of the revolver. Chander Kant assigned specific role to A-2 who after entering inside the shop cut the telephone wires. A-1 snatched the hand bag containing Rs. 17,000/-, ration card, some cheques and papers. In the

cross-examination, his testimony could not be shattered and no infirmity emerged to disbelieve him. After the apprehension of the assailants, the Investigating Officer moved applications for Test Identification Proceedings. However, the assailants declined to participate in the TIP proceedings alleging that they were shown to the witnesses in the police station. They however, did not elaborate as to when and to whom the police had shown them in the police station. Nevertheless, complainant - Chander Kant who had given description of the assailants in his statement (Ex. PW-1/A) to the police at the first instance identified A-1 and A-2 in the Court without any hesitation. The complainant who had direct confrontation with the assailants for sufficient duration had ample opportunity to observe and grasp the broad features of the culprits. No ulterior motive was assigned to the complainant for falsely identifying A-1 and A-2 in the Court. It is well settled that substantive evidence of the witness is his evidence of identification in the Court. Complainant who was injured in the incident and was taken to Hindu Rao Hospital was medically examined by PW-3 (Arun Jain) on 15.11.1994 at 09.00 P.M. Clear Lacerated Wound (CLW) 1 cm over left parietal region, abrasion over left thumb, abrasion over right thumb were found on the body vide MLC (Ex. PW-3/A). There is no conflict between the ocular and medical evidence and testimony of PW-1 stands corroborated. The recovery of the robbed articles from the possession of the assailants is a vital incriminating circumstance to connect them with the crime. The police was not expected to plant substantial amount Rs. 12,000/- upon the appellants to falsely implicate them. The cheques which had distinct features were also recovered from their possession.

3. Minor contradictions and discrepancies highlighted by the appellants' counsel are not material to discredit the cogent and reliable version of the complainant who was the victim/injured in the incident. His presence at the spot was natural and probable. Shankar's apprehension soon after the incident after chase lends credence to the version narrated by him. The Trial Court has dealt with all the relevant contentions of the appellants minutely and has discarded them with valid reasons. The findings are based upon proper and fair appreciation of the evidence and require no interference. Acquittal of co-accused-Sahid Khan and Atiq Ahmed has no bearing on the conviction of the appellants for which the prosecution was able to produce clinching evidence. Sentence awarded u/s 397 IPC to A-1 is the minimum sentence prescribed and cannot be modified. A-2's Nominal Roll dated 27.10.2010 reveals that he was awarded RI for four years with fine Rs. 5,000/-. He remained in custody for six months and fifteen days besides earning remission for two months as on 11.04.2001. The under-trial period in custody was not traceable. It further reveals that A-2 had no previous criminal background/antecedents and was not involved in any other criminal case. His overall jail conduct was satisfactory. His age has been recorded as twenty years in the Nominal Roll. Considering the fact that he was a first offender and did not use any arm in the incident, his sentence requires modification. Taking into consideration the mitigating circumstances, the substantive sentence is reduced to two years. Other terms and conditions of the

sentence order are left undisturbed.

4. Appeal preferred by A-1 is unmerited and is dismissed. A-2's appeal is disposed of in the above terms whereby maintaining conviction u/s 392 IPC the substantive sentence is reduced from RI four years to RI two years. Appellants (A-1 & A-2) are directed to surrender and serve the remainder of their sentence. For this purpose, they shall appear before the Trial Court on 15.11.2013.

The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.