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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: December 11, 2008

Judgment pronounced on: January 06, 2009

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Crl. A. No. 1023/2006

% Mohd. Chand ... Appellant

Through: Mr. S.N. Qureshi, Advocate.

versus

The State (NCT of Delhi) ... Respondent

Through: Mr. Amit Sharma, learned Additional
Public Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. In this appeal, appellant Mohd. Chand S/o Mohd Kaleem is assailing his conviction under Section 392/394/397 of the Indian Penal Code vide impugned judgment of 13th October, 2006 and order of 28th October, 2006 of the trial court, vide which he has been sentenced under Section 392 of IPC to Rigorous Imprisonment for three years and to pay a fine of rupees fifteen thousand and in default of payment of fine, to under rigorous imprisonment for nine months. Appellant was further sentenced for committing the offence under Section

394 of IPC, to undergo RI for a period of four years and a fine of rupees fifteen thousand and in default of payment of fine, to undergo RI for a period of nine months. Appellant has also been sentenced for committing the offence under Section 397 of IPC, to undergo RI for a period of seven years. All these substantive sentences were ordered to be run concurrently and it was ordered that out of fine amount, if recovered, rupees twenty five thousand would be paid to the victims as compensation.

2. The facts of this case which needs to be noticed, for disposal of this appeal, are as follows :-

“On 10th December, 2000, on receipt of DD No.24-A (copy Ex.PW18/A), SI Lekh Singh along with Constbale Shailender went to House No.250, Gali No.15, East Azad Nagar where Dinesh Kumar Goel, Suresh Chand Goel and Smt. Meena met him in injured condition and Dinesh Kumar Goel handed over custody of accused Anil Kumar along with blood stained ‘churri’. Dinesh Kumar Goel and Smt Meena were sent to S.D.N. Hospital through Constable Shailender for their medical examination. In the meantime, Constable Vijay Partap reached at the spot along with DD No.25-A (copy Ex.PW18/B) and handed over the same to SI Lekh Singh, Investigating Officer who prepared the sketch of

churri Ex.PW6/A which was recovered from accused Anil Kumar. The said churri was converted into a sealed parcel with the seal of LS and it was taken into possession vide memo Ex.PW3/A. Seal after use was given to public witness Suresh Chand Goel. Constable Vijay Partap was left at the spot to supervise the scene of occurrence and also the accused, while Investigating Officer alongwith Suresh Chand Goel went to SDN Hospital to get him medically examined where IO collected the MLC of Dinesh Kumar Goel and Smt Meena Goel Ex.PW1/B and Ex.PW1/A respectively. Investigating Officer recorded the statement of witnesses and prepared rukka Ex.PW18/D and sent the same to Police Station through Constable Shailender. From the hospital, Investigating Officer returned back to the spot with Suresh Chand Goel and interrogated accused Anil who made his disclosure statement Ex.PW9/A on 11th December, 2000. Accused Anil Kumar was arrested at the spot and accused was also got medically examined and produced before the court concerned. During the course of investigation, accused Anil Kumar led the police to the house of his co-accused Ballu @ Bharat Bhushan who was also arrested in this case and who had also made his disclosure statement Ex.PW17/C in this case. Accused Ballu also pointed out the place of occurrence. On the pointing out of accused Ballu, accused Gurmeet Singh was apprehended from his house and he had

also made a disclosure statement Ex.PW10/B. On 13.12.2000, all the above named three accused were produced before the court concerned and sent to judicial custody. Appellant/accused Mohd Chand surrendered before the court concerned and was formally arrested and was interrogated and he had also made his disclosure statement Ex.PW10/C. Appellant/accused was granted three days police custody remand for the purpose of recovery of weapon of offence as well as case property. On 23.12.2000, appellant Mohd Chand again made a disclosure statement Ex.PW10/D and told that the weapon of offence i.e. churri and the looted amount was kept by him in the jhuggi in Bikam Singh Colony and he got recovered one churri and cash of rupees one thousand and five hundred from his jhuggi in Bhikam Singh Colony. Churri and cash was taken into possession. After completion of investigation, charge-sheet under Section 394/397/411/120-B/34 of Indian Penal Code was filed against the accused persons.”

3. Trial court had put appellant Mohd Chand alongwith his co-accused Anil Kumar, Bharat Bhushan and Gurmeet Singh to trial for the offences under Section 392/394 read with Section 34 of the Indian Penal Code and Section 397 of the Indian Penal Code as they had pleaded not guilty to their respective charges.

4. It appears from the impugned judgment that during the trial, co-accused Anil Kumar had absconded and he was declared a proclaimed offender.

5. At trial, nineteen witnesses have deposed and out of them, material ones are Dinesh Kumar Goel (PW-3), on whose statement, First Information Report of this case was registered and his parents Suresh Chand (PW-6) and Smt. Meena (PW-5). Dr. Ranjit Chatterjee (PW-1), Dr. V.K. Yadav (PW-2) have proved the MLCs Ex.PW1/A and Ex.PW2/B of aforesaid Meena and Suresh Chand regarding their sustaining injury in this case. SI Lekh Singh (PW-18) is the Investigating Officer of this case.

6. Appellant and his co-accused had denied the prosecution case and had claimed themselves to be innocent. Appellant Mohd Chand had stated that he had learnt at his native place that the police was searching for him and he came to Delhi and had surrendered before the concerned Magistrate and he had stated that he is innocent. No evidence was led by the appellant in his defence before the trial court.

7. After the trial, appellant has been found guilty by the trial court for the offence under Section 392/394/397 of the Indian Penal Code and he has been sentenced to varying terms ranging from RI for three years for offence under Section 392 of the Indian Penal Code and to RI for seven years for the offence under Section 397 of the Indian Penal Code. A fine of rupees thirty

thousand has been imposed upon the appellant and it has been ordered by the trial court that out of the fine imposed, if realised, a sum of rupees twenty thousand be paid to the victim, as compensation. However, co-accused Bharat Bhushan and Gurmeet Singh have been given the benefit of doubt by the trial court and have been acquitted.

8. The aforesaid conviction and sentence has been impugned in this appeal.

9. Both sides have been heard and the evidence on record has been scrutinized with the assistance rendered by the learned counsel for the parties.

10. Learned counsel for the appellant has tried to justify the refusal of the appellant to participate in the test identification parade by drawing the attention of this court to the evidence of star witness Dinesh Kumar (PW-3) to show that after about eight to ten days of this incident, this witness had identified the appellant in the police station as the culprit. It has been pointed out by the defence that when appellant was produced before the concerned Magistrate, with un-muffled face and was duly identified by the Investigating Officer (PW-18). It is further pointed out by learned counsel for the appellant that the recovered dagger has not been identified and, therefore, it does not connect the appellant with the offence in question. Learned counsel for the appellant has drawn the attention of this Court to

the evidence of Suresh Chand (PW-6) to show that this witness has denied about the recovery of *Churra* and rupees one thousand and five hundred in cash by the appellant from his jhuggi and according to the learned counsel for the appellant, this renders the aforesaid recovery doubtful. According to learned counsel for the appellant, the identity of the appellant and the alleged recovery do not stand satisfactorily proved and, therefore, the conviction of the appellant, by the trial court, is bad and deserves to be set aside.

11. Learned Additional Public Prosecutor for the State has submitted that the evidence of Dinesh Kumar (PW-3) and of his parents fully proves the prosecution case against the appellant and the trial court has rightly relied upon the identification of the appellant by the aforesaid material witnesses before the court and there is no illegality or impropriety in the impugned judgment.

12. The first and foremost challenge raised in this appeal is regarding the identity of the appellant. It emerges from the evidence on record that appellant was carrying knife/churra in his hand and he alongwith his co-accused had entered the house of Dinesh Kumar (PW-3) and the Anil Kumar, co-accused of the appellant had opened the Almirah in the house of the complainant (PW-3) and appellant had taken out the cash of rupees thirty to thirty two thousand and some silver coins.

Appellant is said to have removed the gold ring from the finger of witness Suresh Chand (PW-6) while shutting the mouth of the said witness by his hand and by putting his knife/churra on him. It also emerges from the evidence on record that witness Suresh Chand (PW-6) had sustained injury on the left palm while he had tried to catch the knife/churra of the appellant. Appellant is said to have also given knife/churra blow to Dinesh Kumar (PW-3) on his left thigh during this incident. It is nobody's case that the culprits had muffled their faces. Therefore, the trial court is right in observing that the injured eye witnesses of this case had enough opportunity to observe the features of the culprits.

13. No doubt, appellant was shown to Dinesh Kumar (PW-3) after about eight to ten days of this incident in the police station. This incident is of 10th December, 2000 and refusal of the appellant to participate in the test identification parade is of 22nd December, 2000. It is a normal practice that after the refusal by an accused to participate in the test identification parade, he is shown to the witnesses, after the refusal, either outside the court complex or at the police station. There cannot be any mathematical calculation of days and the duration given by the complainant (PW-3) of 8-10 days is by approximation. There has to be an effective cross examination, to derive any benefit to the advantage of the accused. It was crucial that the appellant to have shown that he was identified by the witnesses in the police station prior to his refusal to participate in the test identification

parade. For doing so, on behalf of the appellant, the Investigating Officer (PW-18) ought to have been cross examined. But he has not been cross examined on this aspect. Therefore, no advantage accrues to the appellant. The identification of the appellant by the witnesses, at trial, is substantive evidence and no infirmity in the said identification has been pointed out on behalf of the appellant.

14. The description of the appellant finds mentioned in the First Information Report and the appellant has been duly identified by the First Informant Dinesh Kumar (PW-3) and his parents PW-5 and PW-6 in the court and no infirmity in the said identification has been pointed out by the defence. Appellant claims that he has been falsely implicated in this case. However, appellant has not given any reason for his false implication in his statement recorded by the trial court under Section 313 of the Cr.PC. In all fairness to the appellant, the suggestion given by him to injured witness Suresh (PW-6) needs to be dealt with. It speaks volumes of presence of appellant at the spot. It reads as under :-

"It is incorrect to suggest that the third culprit was one Kalu @ Vikram and that my son Dinesh had sold rickshaw to him about 20 days before the occurrence with the guarantee that he would service the rickshaw free for three months and that Kalu had come to the garage of my son in the morning with the rickshaw for service and that my son refused to service the rickshaw free of charge and that my son asked Kalu to come to our house in my presence to sort out the matter. It is further incorrect to suggest that Kalu alongwith accused Anil and Mohd Chand came to our house and that my son Dinesh had

altercation with him and that kalu pushed my son Dinesh and that Dinesh fell down after striking against a chair and sustained injuries on his thigh and that I intervened and asked Kalu and Anil and Mohd Chand to leave for the time being telling them that we would talk again."

15. To say the least, aforesaid suggestion is quite far-fetched and is hardly plausible. It is beyond comprehension that a person would be falsely implicated in a heinous offence like the present one, on refusal to service the Rikshaw free of costs. To my mind, aforesaid suggestion lacks plausibility and thus cannot be accepted in the face of the clinching evidence of the injured witnesses i.e. PWs-3, 5 and 6.

16. The weapon of offence i.e. the knife/churra and Rs.1500/- in cash were recovered from the Jhuggi of the appellant and the said recovery was at the instance of the appellant. Although Suresh Chand (PW-6) witness to the aforesaid recovery denies the factum of recovery but he admits his signature on the recovery memo Ex.PW6/G and it is not his case that his signatures were obtained by the police on blank papers. It is not the case of the witness (PW-6) that he had signed the recovery memo Ex.PW6/G under the pressure of police or that the aforesaid document is false. Aforesaid recovery stands established from the evidence of Investigating Officer (PW-18), whose evidence remains unchallenged on behalf of the appellant. Otherwise also, no reason is forth coming as to why the police

would falsely implicate the appellant in this case and would plant the aforesaid recovery upon him.

17. In the ultimate analysis, it is found from the evidence on record that the conviction of the appellant by the trial court is well merited. Even on the aspect of quantum of sentence, no interference by this Court is called for, as minimum sentence of seven years, as provided for the offence under Section 397 of the Indian Penal Code has been imposed by the trial court. Thus, this appeal lacks merit and is dismissed as such.

18. This appeal stands disposed of accordingly.

SUNIL GAUR, J

January 06, 2009
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