

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Hearing & Decision: 5th August, 2011

+ CRL.A. 721/2011

ANIL KUMAR SHARMA

..... Appellant

Through

Mr. K. B. Andley, Sr. Adv. with Mr. M. L. Yadav, Adv.

versus

STATE

..... Respondent

Through

Mr. M. N. Dudeja, APP for the State with SI Maha Singh, P.S. Gandhi Nagar.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

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| 1. Whether reporters of local papers may be allowed to see the Order? | No. |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the Order should be reported in the Digest? | No. |

J U D G M E N T

G.P. MITTAL, J. (ORAL)

1. This is an appeal against the judgment dated 10.02.2011 whereby instead of Sections 394/ 397/ 506/ 34 IPC Respondent Nos.2 to 4 were convicted for the offences punishable under Section 323/ 506(1) IPC read with Section 34 IPC. The Appellant's (complainant before the Trial Court) plea is that once the prosecution version was accepted by the Trial Court an offence under Section 397/ 394 IPC read with Section 34 IPC was made out against the Respondents. According to the Appellant, appropriately Respondents ought to have been convicted under Sections 397/ 394/ 34 IPC.

2. We would first come to the facts leading to the registration of this case.

According to the prosecution version on 22.05.2000 at about 4:55 P.M. the Appellant was proceeding to his house situated in Raghubar Pura-2, Gandhi Nagar on his two wheeler (Scooter). The Appellant took a turn from Gali No.4; he met Respondents Savan @ Sonu and Nafisul Haque (whom he knew earlier) with two of their associates. Respondent Savan @ Sonu threatened him “*Kya Tu Jeena Nahin Chahta, Bachcho Sahit Duniya Se Utha Denge*”. It is alleged that the boy standing on his right side took out a revolver. Respondent Savan @ Sonu obtained the revolver from the said boy and hit the same on his (Appellant’s) head. The boy standing to his left, gave three fist blows on the right side of his chest. Nafisul Haque attacked him with a glass bottle on his neck as a result of which blood started oozing out from his neck. The boy standing on his right side caught hold of him. Respondent Savan @ Sonu removed ₹ 1,500 consisting of 15 currency notes of denomination of 100 each and some documents from his pocket and threatened to kill him. Thereafter, all the four fled away in a red Maruti Car DBA 5384.

3. The Appellant made a telephone call to the PCR, which was attended to by a lady constable Asha who in turn got recorded DD No.68A in Police Station (PS) Gandhi Nagar. As per the DD, Savan @ Sonu (Respondent No.4) and his associates had beaten the Appellant, snatched ₹ 1,500 from him and escaped.
4. The DD entry was assigned to SI Chander Pal Singh, who immediately reached the spot. He recorded Appellant’s statement Ex. PW-1/A, made its endorsement Ex. PW-7/A and sent it to the Police Station for registration of an FIR.
5. Initially charges for the offences punishable under Section 394/ 506/ 34 IPC were framed by the Metropolitan Magistrate. During the course of trial the case was committed to the Court of Session as the Addl. Chief Metropolitan Magistrate by order dated 22.07.2000 opined that the evidence produced disclosed the commission of offence punishable under Section 398 IPC. A fresh charge for the offences punishable under Sections 394/ 397/ 506/ 34 IPC against Respondents Nos.2 to 4 was framed. A charge for the offence punishable under Section 411

IPC against Respondent Savan @ Sonu and another charge for the offence punishable under Section 25 of the Arms Act against Respondent Rahis were also framed. On Respondent's pleading not guilty to the charge the prosecution examined 23 witnesses. PW-1 Appellant Anil Sharma on whose statement the case was registered is the star witness of the prosecution. PW-5 Rohit Sharma (complainant's son), PW-7 SI Chander Pal (the first IO), PW-12 Constable Sanjeev, a witness to the recovery of the revolver, are other material witnesses examined by the prosecution. The Respondents examined 4 witnesses in their defence; their plea was that the Appellant (complainant) had a quarrel with the father of Respondent Savan @ Sonu in regard to carrying some building material in a bullock cart to the Appellant's house. The Appellant attempted to assault Savan @ Sonu's father. Respondent Nafisul Haque intervened in the quarrel to save Savan @ Sonu's father and he (Nafisul Haque) sustained injuries. He was taken to GTB Hospital and was medically examined. DW-1 Ramesh Kumar, DW-2 Satya Narain and DW-3 Ram Khurana supported the defence version whereas DW-4 Dr. R.K. Nagar proved Respondent Nafisul Haque's MLC as Ex.DW-4/A.

6. The Trial Court disbelieved the recovery of the currency notes and the documents from Appellant Savan @ Sonu. The Court also disbelieved the recovery of the country made pistol at the instance of Respondent Rahis. Yet, the Trial Court believed the incident and held that injury was inflicted on Appellant and threat to kill too was extended. Thus, the Respondents were acquitted for the offences punishable under Section 394/ 34 IPC. Respondents Nafisul Haque and Savan @ Sonu were also acquitted of the offences punishable under Section 397/ 34 IPC. Respondent Savan @ Sonu was further acquitted of the offence punishable under Section 411 IPC. The Respondents as stated earlier were convicted under Section 323/ 506(1) read with Section 34 IPC and were sentenced to undergo imprisonment for various periods, which had already been undergone by them.
7. We have heard Mr. K. B. Andley, learned counsel for the Appellant and have

perused the record.

8. Apart from the ocular testimony of the Appellant, who was the solitary witness of the occurrence the prosecution relied on recovery of ₹ 1,500/- along with various documents robbed by the Respondents from the Respondent Savan @ Sonu on 07.06.2000 in pursuance of his disclosure statement Ex.PW-10/A and recovery of a country made pistol at the instance of Respondent Rahis in pursuance of his disclosure statement Ex.PW-3/B.
9. The Trial Court disbelieved the recovery of ₹ 1,500/- as well as the documents from Respondent Savan @ Sonu as also the recovery of country made pistol at the instance of Respondent Rahis. The reasoning of the Trial Court on these aspects is extracted hereunder: -

“20. To give the strength to the statement of complainant, prosecution has relied upon on recovery memo Ex.PW1/D vide which documents alleged to be robbed by accused persons with cash of ₹ 1500/- were recovered from the house of accused Savan. As per IO PW7, accused Savan @ Sonu led the police party to his house in Gali No.4, Raghubar Pura-2, his father was in the house there and got recovered documents of the complainant. From which particular place, accused got recovered these documents from his house has not been explained by IO. Complainant is also one of the witnesses of this recovery, as per him, accused got recovered these documents from the left room of his house. These documents were not sealed by IO in a pulanda at the spot. These papers are worthless from the point of view of accused Savan but why accused might have kept it concealed in his house even after 15 days of the incident, creates some doubts on the genuineness of recovery, statement of complainant is silent and as per IO PW7, he might have made efforts to join some public witnesses. Moreover, in his complaint Ex.PW1/A, complainant has not given details of these documents which further creates doubt about the genuineness of recovery alleged to have been made from the house of accused Savan.

21. Prosecution has further relied upon recovery memo Ex.PW7/F vide which recovery of country made pistol with a live cartridge on 07.06.00 is shown from the possession of accused Rahis. As per IO PW7 on 06.06.00 accused Rahis was arrested

from MCD Parking Turkman Gate, while in custody he made disclosure statement and got recovered this country made pistol and a live cartridge from his room. During cross, IO PW7 stated that documents were prepared inside the house of accused Rahis and no public person was present there; he does not remember if Ct. Sanjeev (PW12) was with him at that time or not. As per PW12 Ct. Sanjeev, accused Rahis led the police party to Sitapur, UP to get recovered country made pistol used by him in the crime but no recovery of Katta was affected from that place; while returning back, accused was further interrogated and he further made disclosure statement and on that basis, he led the police party to his house in Gautam Vihar but there was no one in the house, accused Rahis took a key from his tenant, opened the room and from the said room, he got recovered a country made pistol loaded with a live cartridge. Statement of IO is silent if accused firstly led the police party to Sitapur, UP and then made disclosure statement and led them to his house in Gautam Vihar and opened the gate after taking a key from his tenant. Moreover, as already discussed, IO PW7 even does not remember if Ct. Sanjeev (PW12) was with him at that time or not. It is a major contradiction in the statements of PW7 and PW12 which put the factum of the recovery of the country made pistol with a live cartridge under shadow of doubt.”

10. Thus, the Trial Court observed that it was highly improbable that Respondent Savan @ Sonu would prefer to keep useless documents belonging to the Appellant even after 15 days of the occurrence. It was also observed that the documents were not converted into a packet and sealed at the spot. The recovery was also considered doubtful as no independent witness was joined by the IO. In our view no fault can be found with the reasoning of the Trial Court, particularly since the Appellant and Respondent Savan @ Sonu were neighbours and the latter as well as Nafisul Haque had come forward suggesting the manner in which the incident took place.
11. Similarly, the recovery of the country made pistol was held to be doubtful by the Trial Court. In our view the manner in which the recovery of the country made pistol is shown at the instance of Respondent Rahis the same is not only doubtful but appears to be planted. According to the prosecution Respondent Rahis made a disclosure statement that he had concealed the country made pistol at his house in

Sitapur, U.P. and could get the same recovered. SI Chander Pal Singh IO of the case is silent if Rahis initially led the police party to Sitapur, U.P. and then made another disclosure statement and took them to his house in Gautam Vihar. PW-7 took the shelter of his fading memory and could not say if PW-12 Constable Sanjeev had accompanied him at the time of recovery of the pistol. This was rightly considered to be a major contradiction by the Trial Court. Since, no public witness was joined at the time of recovery, the contradiction stated earlier persuades us that the pistol was planted.

12. As per the prosecution version the complainant was hit with the revolver butt on the head. He was inflicted an injury with a glass bottle on the neck and blood started oozing out from it then some fist blows were given on his chest. A perusal of the MLC Ex.PW-3/A reveals that there was no injury on the neck by any sharp object like a glass bottle nor was the blood oozing out from the neck injury. The version given by the Appellant becomes suspicious and doubtful. As against this DW-4 Dr. R.K. Nagar proved MLC Ex.DW-4/A of Nafisul Haque, who was found to have sustained a stab injury on the right side of his wrist (1 c.m. x 1 c.m.) and there was active bleeding. The depth of the wound was to be assessed by the Surgeon. The Respondent's version was that on 25.02.2000 at about 3:00/ 3:30 P.M. a bullock cart (loaded with building material) reached Appellant's house (which was under construction); there was an exchange of hot words as the bullock cart hit the Respondent Savan's father. This led to a scuffle between the Appellant and Savan's father and the Appellant took out some sharp object and attempted to inflict injury on Savan's father. The Respondent Nafisul Haque intervened in order to save him (Savan's father) from the Appellant and sustained injuries in the process. The police reached the spot. The Appellant, who had influence with the local police, falsely implicated the Respondents in the case. The Respondent's version that the Appellant had influence with the local police was testified to by DW-1 & DW-3. Their testimonies in our view are far more reliable than the Appellant's version. It appears that the incident did not take place in the manner as alleged by the prosecution. The injuries on Nafisul Haque

and absence of any bleeding from the alleged injury on the Appellant's neck indicate that there was some quarrel between two sides and a coloured version to suit the Appellant was invented.

13. We shall not go into the question of the Respondents conviction under Section 323/ 506(1) IPC read with Section 34 IPC as the same is not the subject matter of this appeal. It is sufficient to say that the finding of the Trial Court regarding Respondents acquittal under Section 394/ 397 IPC read with Section 34 IPC cannot be faulted.
14. The law while hearing the appeal against acquittal is well settled. The High Court normally interferes with an order of acquittal when there are substantial and compelling reasons to do the same i.e. either the finding of the Trial Court is perverse or the decision of the Trial Court is based on erroneous view of law or there is miscarriage of justice [*Chandrappa & Others v. State of Karnataka*, (2007) 4 SCC 415].
15. In view of the above discussion, we do not find any error or infirmity so as to interfere with the order of acquittal passed by the learned Addl. Sessions Judge. The appeal has, therefore, to fail. The same is hereby dismissed.

G. P. MITTAL, J.

S. RAVINDRA BHAT, J.

AUGUST 5, 2011

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