

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

+ **CRL.A. 141/2003**

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Reserved on: 8th May, 2013

Decided on: 10th July, 2013

UMESH KUMAR

..... Appellant

Through: Mr. Sanjeet Singh, Advocate

versus

THE STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant lays a challenge to the judgment dated 21st February, 2003 whereby he has been convicted for offences punishable under Sections 451 and 393 IPC read with Section 34 IPC and the order on sentence dated 21st February, 2003 whereby he has been directed to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/- under Section 393 IPC and Rigorous Imprisonment for a period of one year under Section 451 IPC. The Appellant was also directed to pay Rs. 5,000/- each as compensation to PW3 and PW5 by way of pay order or bank draft in their name and in default of the same the Appellant was directed to undergo Simple Imprisonment for a period of three months.

2. Learned counsel for the Appellant contends that on the same set of evidence, the co-accused Shanti Ranjan, who was also charged with offences under Section 398 IPC and 27 Arms Act has been acquitted, however the Appellant has been convicted. Learned Trial Court failed to appreciate that the prosecution story was not supported by the witnesses. The prosecution witnesses contradicted each other. The identification in Court for the first time was discarded in the case of Shanti Ranjan. However, the same was accepted in the case of the Appellant. PW5 failed to identify the Appellant and PW3 though identified stated that he did not know that the Appellant was apprehended at the spot. The knowledge of PW3 qua identification is based on hearsay evidence and thus not admissible in evidence. The version of the Investigating Officer is not supported by PW3 inasmuch as he refutes the recovery of knife from the possession of the co-accused in his presence. Though the case of the prosecution is that the Appellant went to take documents, which were kept by PW3 Sohan Lal in his house, however, PW8 SI Virender Singh clearly stated that no such diary or documents were recovered. Thus the motive behind the robbery has not been proved. Admittedly, PW6 Constable Om Prakash deposed that both legs of the Appellant were broken and thus the injuries on the Appellant were grievous

in nature however, the prosecution has failed to explain the injuries on the Appellant. Merely because a person is found injured at the spot does not mean that he was the assailant. The present was a case of mistaken identity which fact is further proved by the fact that the identification by PW3 is at the behest of the police. The learned Trial Court wrongly drew adverse inference. It is the duty of the prosecution to prove the case beyond reasonable doubt. However, the learned Trial Court held that the Appellant has not been able to prove his defence beyond reasonable doubt. Even on the facts of the case Section 393 IPC is not attracted as no extortion has been committed nor is there any allegation of extortion. Hence the Appellant be acquitted of the charges framed.

3. Learned APP for the State on the other hand contends that PW3, the injured witness categorically identified the Appellant and the co-accused. PW6 Om Prakash and PW8 SI Virender Singh stopped and apprehended the Appellant on the spot. The co-accused Shanti Ranjan was acquitted because he was neither apprehended at the spot nor at the instance of the Complainant or an eye-witness and thus his dock identification for the first time was held to be insufficient to prove the identity. The moment the Appellant with the co-accused entered the premises and demanded the

documents, offence under Section 393 IPC stands committed. There is no error in the impugned judgment and the appeal be dismissed.

4. I have heard learned counsel for the parties.

5. Briefly the case of the prosecution is that on 15th January, 1996 at about 9.00-9.30 P.M. a PCR information was received at PS Sainik Farm that a woman had been stabbed in Sainik Farm. When SI Virender Singh reached Farm No. 112, Sainik Farm, the Appellant was found in an injured condition near the gate and was sent to AIIMS in PCR van. The articles in the room build on the plot were found scattered and asbestos sheet on the roof was damaged. The injured had been taken to the hospital by that time. The statement of PW1 Ram Sudhir was recorded who stated that at about 9.15 p.m. his nephew Dharamveer s/o Sohan Lal came to him and informed that three-four persons had forcibly entered their house and were demanding some papers from his father at the point of knife. Thereupon the Complainant along with others reached farm No. 112 and found that three-four persons were beating his brother Sohan Lal and his sister-in-law PW5 Sitilya after closing the room. Since the complainant and others surrounded the room those persons started running away after breaking the asbestos sheet on the roof of the room. They also attacked them with knife. The

witnesses also pelted bricks and stones in their defence as a result one of them got injured and was apprehended on the spot. However, the others managed to run away. PW1 when examined before the learned Trial Court did not support the prosecution case and thus he was cross-examined by the learned APP. In the cross-examination he admitted the prosecution case. However, he denied that he had apprehended the Appellant at the spot. He also denied that the co-accused was arrested in his presence. Similarly PW2 Baijnath also turned hostile.

6. PW3 Sohan Lal, the injured deposed before the Court that in January, 1996 he was working with Shri S.K. Goel as a Gardener at 127-A, Sanik Farm, New Delhi. Mr. Goel used to give him documents to keep in polythene bag and he used to keep them in his room. On 15th January, 1996 at about 9.00-9.15 p.m. when he was present in his room along with his wife and son, three persons came there and asked for Vishambar. PW3 stated to them that Vishambar had gone to the village. Thereafter they asked him to open the door and when he opened the door those people asked him to hand over the documents of Mr. Goel to them. PW3 told that that he had no documents whereupon those persons tied a cloth on his face and gave knife blows on his hand, chest and other parts of body. He further stated that his

wife was also given knife blows however, the child was spared. Later on his son called the neighbours. He identified the Appellant and his co-accused as the two persons who had come to his house, demanded the papers and injured him and his wife. Further this witness was cross-examined on the point as he failed to identify which of the accused was apprehended on the spot. In cross-examination by the learned APP he identified the Appellant as the person who was apprehended at the spot. He also identified his signatures on the memos. In cross-examination by the defence this witness stated that he become unconscious however, he was conscious when he was taken to the hospital. He stated that one of the assailants was apprehended when he was trying to run away through the door whereas the remaining managed to run away by breaking the asbestos sheet of the roof of his room as the height of his room was 6-7 feet. This witness clarified that he could not identify as to who had escaped after breaking the asbestos sheet and who had escaped from the door as his face was covered with a cloth before that. PW3 in cross-examination further stated that he did not tell as to who had stabbed him as his face was covered at that time. He reiterated that the Appellant Umesh was the person who apprehended at the spot. It is thus apparent that the identification of the Appellant by PW3 as the person who

came to his room is cogent and convincing however the identification as to the apprehension at the spot is shaky as he has made contradictory statement.

7. PW4 Dharamveer, son of PW3 also deposed about the incident however he could not identify the assailants who had come to the room as there was darkness. Even on cross-examination by the learned APP he stated that he could not identify the Appellant as the person who was apprehended at the spot.

8. PW5 Smt. Sitilya W/o of Sohan Lal also deposed on the same lines as that of PW3. However, she did not identify the assailants as she stated that she could not see the face of the assailants and thus permission was granted to the learned APP to cross-examine this witness. PW5 also stated that one of the assailants was apprehended at the spot however, she cannot identify him.

9. The injuries on the witnesses have been proved by PW15 Hurum Singh, Record Clerk, G.M. Modi Hospital, Saket vide Ex. PW15/2 and Ex. PW15/1. Thus their presence at the spot cannot be doubted. No doubt PW1, PW2, PW4 and PW5 have not supported the prosecution case with regard to the identity of the Appellant however, PW3 Sohan Lal the injured witness who suffered multiple injuries on the scalp, one stab wound over the 5th inter

coastal space and incised wound in chest of left side clearly identified the Appellant as one of the accused who entered the room and asked PW3 to hand over the documents of Mr. Goel to them. It may be noted that the other witnesses who had not supported the prosecution case had not stated that the Appellant was not one of the persons who entered the room. They only stated that they did not remember as to who were the assailants. Merely because PW3 does not say that the Appellant was apprehended in his presence would not bely the otherwise acceptable version of PW3. The apprehension of the Appellant at the spot has been deposed to by Constable Om Prakash as the injured who was found at the farmhouse.

10. Learned counsel for the Appellant has stressed that the prosecution was required to prove the case beyond reasonable doubt against the Appellant and not vice-versa. There can be no dispute on this proposition. However in the present case the prosecution has proved the identification of the Appellant by PW3 at the spot and the apprehension at the spot has been proved by PW6 and PW8, that is, Constable Om Prakash and SI Virender Singh. Not only he was apprehended from the spot, scattered things like broken bangles, leather shoes, pair of action shoes etc. were also recovered. PW6 on cross-examination admitted that the legs of the Appellant were

broken when he was found lying in the farmhouse. It may be noted that by broken legs, Constable Om Prakash PW6 could not have opined that the same was a case of grievous injury in the absence of MLC being exhibited to this extent. Thus all that can be stated even as per the statement of Constable Om Prakash is that the Appellant received simple injuries. Non-explanation of simple injuries by the prosecution witness is not fatal. Further, in the present case the police witnesses have spoken about the apprehension of the Appellant at the spot which fact has gone un rebutted.

11. Learned counsel for the Appellant has contended that from the incriminating facts ingredients of Section 393 IPC are not proved. Section 393 IPC provides as under:

“393. Attempt to commit robbery.--Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

12. From the evidence on record it is proved that the Appellant entered the house of PW3 and demanded the documents and in furtherance of the same injuries were inflicted on PW3. It is only for the reason that the Appellant could not rob any article that the conviction has been converted to one under

Section 393 IPC instead of 397 IPC and the Appellant has been convicted for attempt to commit robbery.

13. In view of the aforesaid discussion I find no infirmity in the impugned judgment of conviction and order on sentence. The appeal is dismissed. Bail bond and the surety bond are cancelled.

(MUKTA GUPTA)
JUDGE

JULY 10, 2013
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