

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

+ CRL.A. 1276/2012

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Reserved on: 26th February, 2013
Decided on: 5th April, 2013

RAVINDER @ GUDDI

..... Appellant

Through Mr. Sandeep Kapoor with Ms. Y.
Kapoor, Advs.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through Mr. Manoj Ohri, APP with SI A.K.
Sharma, PS Mundka, Delhi.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant challenges the judgment of conviction and order on sentence each dated 12th October, 2012 whereby the Appellant has been convicted for offence under Section 307 IPC and directed to undergo rigorous imprisonment for a period of three years and a fine of Rs. 5000/- and in default of payment of fine to undergo rigorous imprisonment for five months.

2. Learned counsel for the Appellant contends that the public witnesses PW1 and PW2 have not supported the prosecution case. The complainant Praveen Kumar was an interested witness and his testimony is full of infirmities. Further in absence of corroboration of his testimony the same cannot be relied upon. In the MLC history was given by the complainant/

injured PW7 Praveen Kumar himself and it is stated “stab wounds by unknown persons”. It is thus clear that the Appellant has been falsely implicated. The MLC itself shows that the PW7 was conscious oriented and thus the finding of the Trial Court that the injured was in a serious condition and thus did not give the name of the Appellant is based on presumptions. The alleged weapon of offence knife has not been recovered, thus there is no opinion of doctor on the said point. The Appellant also suffered injuries on the occipital region and there is no explanation in the case of the prosecution as to how injuries were suffered by the Appellant. The Appellant is a handicapped person and thus the version that he ran away is beyond imagination. The Appellant be thus acquitted of the charge framed. In the alternative the Appellant be released on the period already undergone which is around six months imprisonment.

3. Learned APP on the other hand contends that PW7, the injured suffered grievous injury and fracture on the third rib. Explanation of the Appellant in his statement under Section 313 Cr.P.C. and the suggestion to PW7 is that the injuries were caused by Rajesh, however Rajesh has not been examined as a defence witness. Version of PW7 is fully corroborated by his MLC. Further the injuries on the Appellant being Ex.PW8/B are simple in nature and thus no explanation of the injuries on the Appellant would not render the prosecution case false and improbable.

4. I have heard learned counsel for the parties and perused the record. FIR No. 146/2011 was registered under Section 307 IPC at PS Mundka on the complaint of PW7 on 17th August, 2011. PW7 Praveen Kumar in his testimony before the Court stated that he had taken a shop on rent in the

house of the Appellant and was running a CD shop. Since PW7 could not pay the rent and dues of Rs. 1400/- accumulated against him, the Appellant asked him to vacate the shop and stated that he would run the same. The complainant gave his CD shop to the Appellant to run on contract basis for Rs. 700/- per month. After about one and a half month, the complainant came to know that there were no articles in the shop and all the 650 CDs, 3 DVDs and 1 TV has been sold away without his permission. When the complainant asked the Appellant as to why he sold the articles he started abusing and beating him. The neighbours came to his rescue. Thereafter the Appellant went to his house and came back with a knife and stated “ *Aaj teri sari pareshani khatam kar dunga, aaj tera kaam tamam kar dunga, na hi koi CD ka hisab mangega*”. With this the Appellant attacked PW7 with a knife on his chest. PW7 went to the dispensary from where he was taken to Sanjay Gandhi Hospital by his brother. OPD Slip of the dispensary was exhibited as Ex.PW7/A and at Sanjay Gandhi Hospital his statement was recorded vide Ex.PW7/B whereupon the FIR was registered. From Sanjay Gandhi Hospital he was referred to RML hospital and from RML hospital he was discharged on 29th August, 2011.

5. The explanation of the Appellant under Section 313 Cr.P.C. is that knife blows were inflicted on PW7 by Rajesh who has been a co-accused with the complainant in a case under Section 392/397 IPC. The complainant in his cross-examination has admitted that he had 3-4 criminal cases under Sections 392/397 IPC, however no case was pending against him. He also admitted that Rajesh was a co-accused in a criminal case against him.

However, he specifically denied that the injuries were inflicted on him by Rajesh and the Appellant has been falsely implicated.

6. As regards the public witnesses, PW7 has stated that after he was stabbed people came out of their houses and thus naturally there was no other eye-witness except PW1 and PW3. No doubt PW1 and PW3 the alleged eye-witness have not supported the prosecution version, however the same would not belie the testimony of the injured witness. There is no reason why PW7 would falsely implicate the Appellant in this case. As per the MLC Ex. PW8/A, PW7 has suffered a sharp injury in the left side lower part of the chest directing inward. Further as per the discharge summary of RML hospital Ex.PW7/C PW3 suffered a left Diaphragmatic tear with haenioperitoneum and thus surgery was performed on PW7. He remained admitted in RML hospital from 17th August, 2011 to 29th August, 2011.

7. Merely because PW7 though conscious and oriented did not name the Appellant would not go to show that there is an improvement and the Appellant has been falsely implicated on afterthought. A perusal of Ex.PW7/A the OPD slip at dispensary though noted patient conscious oriented and responding to command also noted that the condition of the patient was deteriorating and he was having difficulty in breathing. It is thus apparent that the injury inflicted to him was serious in nature and thus the finding of the learned Trial Court that the injured was serious and thus did not give the name cannot be said to be based on presumptions.

8. As regards the non-explanation of the injuries on the Appellant are concerned, Appellant has received lacerated wound in the occipital region, an abrasion on the left finger and bruise on the left shoulder. The injuries are

simple in nature. The alleged incident took place at around 10.00 AM in the morning and the Appellant was not apprehended at the spot. He was only apprehended after the FIR was registered on the statement of the complainant at 1.15 PM on the same date and his MLC was got conducted later on. Further there is no suggestion to PW7 regarding the injuries caused to the Appellant having been caused by PW7. The Hon'ble Supreme Court in *Ram Pyare Mishra v. Prem Shankar and Ors.*, AIR 2009 SC 552 held that non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. Prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused.

9. Learned counsel for the Appellant has also relied upon the permanent disability certificate issued, however the same is not a material placed on record. Even considering it to be a mitigating circumstance it only states that there is a malunited fracture supracondylar of the left femur and 40% handicap. PW7 has admitted in his cross-examination that the Appellant is handicapped and is not able to run and move faster. It may be noted that in his testimony PW7 has nowhere stated that Appellant ran to his house. He stated that the Appellant started abusing and beating him, then went inside

his house, came out with knife and attacked him on his chest. A single blow has been given and there is no allegation of running around at the time of incident.

10. As regards the non-recovery of weapon of offence, it is well settled that from the non-recovery of the weapon alone, the case against the accused concerned cannot be held to be not substantiated when there is otherwise positive, convincing and credible ocular evidence to prove the presence of the accused and his participation in the crime. (See *Gurjant Singh v. State of Punjab*, JT 2002 (8) SC 238).

11. I find no infirmity in the judgment of conviction. As regards the order on sentence it may be noted that the injuries were caused by single blow by knife on a vital portion of the body i.e. chest and PW7 remained in hospital for 18 days and had to undergo surgery. The injury being serious in nature, the sentence of imprisonment for a period of three years is not unwarranted.

Appeal is accordingly dismissed.

(MUKTA GUPTA)

APRIL 05, 2013

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