

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

+ CRL.A. 1576/2011

% Reserved on: 19th March, 2013
Decided on: 29th May, 2013

SOHAN LAL @ SONU Appellant
Through: Mr. S.B. Dandapani, Advocate.

versus

STATE Respondent
Through: Mr. Manoj Ohri, APP with SI Uma
Datt PS Mangol Puri.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Appellant challenges the judgment dated 21st April, 2011 convicting the Appellant for offences under Section 394/397 IPC and the order on sentence dated 21st April, 2011 directing him to undergo rigorous imprisonment for a period of seven years along with fine of Rs.3,000/- and in default of payment of fine to undergo simple imprisonment for two months. The charge for offence punishable under Section 411 IPC was also proved however no separate conviction was ordered as the same was a part of substantive offences under Sections 394/397 IPC.

2. Learned counsel for the Appellant contends that the Appellant was not arrested at the spot. There is no eye witness to the occurrence. The Appellant has been allegedly arrested on a secret information. It is not known how the secret informer came to know. The secret informer has not been examined. There is discrepancy in the statement of the witnesses as to the place of arrest. PW1 the Investigating Officer states that the Appellant was arrested from the jhuggi whereas PW4 and PW9 states that the

Appellant was arrested from the park. Though it is alleged that the blood stained shirt and knife have been recovered however, the CFSL report does connect the same with the crime. PW2 Narender uncle of Chander is not an eye witness as he stated that PW1 Chander had already crossed the red light when two persons showed him the knife. There are improvements with regard to the recovery of the mobile phone, medical insurance documents and identity card. Statements of PW1 and PW2 before the Court are full of improvements and contradictions. Hence the Appellant be acquitted of the charges.

3. Learned APP for the State on the other hand contends that PW2 is an injured witness who also identified the articles, mobile phone, medical claim papers and his testimony cannot be brushed aside. The Appellant refused to participate in the Test Identification Parade. The MLC of PW1 Chander was also immediately recorded at 12.25 a.m. on 16th March, and hence he is a natural injured witness who corroborated the version of PW2. As per the CFSL report there are corresponding cut marks on the shirt of the witness. The blood group of 'A' origin was found on the knife besides other articles. The Appellant has taken the plea of alibi in his statement under Section 313 Cr.P.C however, no suggestion has been given to the witnesses in this regard. Further the Appellant was required to prove his plea of alibi by preponderance of probability which onus he has failed to discharge. In view of the cogent and convincing testimonies of PW1 and PW2, no case for acquittal is made out.

4. I have heard learned counsel for the parties.

5. Briefly the case of the prosecution as per PW1 Chander is that PW1 Chander and PW2 Narender, nephew and uncle respectively were working in

Sara Engineering Works, B-24, Lawrence Road, Delhi. On 15th March, 2008 at about 11.45 p.m. they reached the red light crossing of F-Block near Jhuggi cluster. PW1 stopped his cycle and was waiting for the signal to turn green when two persons came from the side of jhuggi cluster and one of them stood in front of the cycle and the other behind it. The person in front asked him to hand over whatever he had. When PW1 rebuked him, he took out a knife from his pocket and stabbed on his right side chest. PW1 tried to run away by speeding his cycle but those persons chased him. While escaping his cycle hit a Maruti car. A number of people gathered at the spot. He disclosed the facts to those persons and someone made PCR call. When he reached Sanjay Gandhi Hospital, he found that PW2 Narender was also in injured condition. This witness has correctly identified the Appellant in the Court and he has stated that he is the person who stabbed him with the knife. He also stated that he could identify the second accused if show to him. In his cross-examination the only confrontation made is that he did not state in his statement to the police that his cycle hit the car and when the accused stabbed him, he raised alarm. He further stated that the accused was brought to the hospital and he identified him. He stated that he remained in the hospital for five days. He denied that due to darkness, he did not identify the assailant and had identified the Appellant at the instance of the police officer.

6. PW2 Narender, uncle of PW1 also stated that on 15th March, 2008 while he was going to the residence along with his nephew on their separate cycles, at about 11.45 p.m. they reached the crossing of F-Block jhuggi. His nephew Chander was ahead of him upon his cycle. He saw altercation going on between Chander and two other persons but Chander went away on his cycle. When he crossed the red light, two persons stopped his cycle and

directed him to hand over whatever he had. PW2 handed over a sum of Rs. 120/- and one mobile phone to them. One person took out knife from the back pocket of his pant and attacked PW2 on his stomach at two places. The companion of the Appellant caught hold of PW2. When PW2 tried to run away he was again attacked with the knife. The accused took away his identity card and his slip of mediclaim after stabbing him. The Appellant was identified as the person, who attacked PW2 with knife. He identified his mobile phone before the Court in the TIP proceedings. He also produced the mobile phone and mediclaim insurance card snatched by the accused. He was confronted with his statement under Section 161 Cr.P.C. where the physical description and the facial description of the Appellant was not described and the make of the mobile phone and the name of the company of the mediclaim were not noted. Besides these aspects, no material improvement has been pointed out in the statement of this witness before the Court.

7. The TIP proceedings conducted by the then Metropolitan Magistrate were proved. The Appellant refused TIP proceedings and he was duly warned that an adverse inference could be drawn against him. The MLC of PW1 has been exhibited by PW13 as Ex. PW13/A and he identified the signatures of Dr. Sanjay. As per the MLC, Chander received incised wound on right side chest. MLC of PW2 was exhibited as Ex. PW7/A and PW2 had two incised wounds, one over the abdomen (umbilical region) and other on the left flank. Further the mobile phone has been duly identified by PW2 in the TIP proceedings conducted by PW10. As per the FSL report Ex. PW11/D the cut marks on the two baniyan and two T-shirts corresponded with each other. Further the pair of clothes of each injured corresponded

with the crime cut marks on the injured. As per the FSL report, the possibility of use of the knife exhibited causing these cut marks could not be ruled out. Further as per the FSL report, the blood on the knife gave 'A' group and the T-shirt and baniyan also gave 'A' group. Thus the blood on the knife corresponded to that of the injured.

8. In view of the overwhelming evidence on record, the contentions raised that there was no other eye witness and that the Appellant was not arrested at the spot does not belie the prosecution case. The contention of the learned counsel for the Appellant that the testimony of PW2 is not consistent with PW1 is wholly unwarranted. There is no material improvement in the statements of the witnesses. Merely because the PW1 and PW2 are relative, their testimony cannot be discarded. In view of the fact that the prosecution has proved the case beyond reasonable doubt, there is no merit in the appeal.

9. Appeal is dismissed.

(MUKTA GUPTA)
JUDGE

May 29, 2013
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