

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. No. 188 of 2010

NARESH & ORS.

..... Appellants

Through: Mr. Neeraj Pandey, Advocate.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Isha Khanna, APP.

CORAM: JUSTICE S. MURALIDHAR

ORDER
08.09.2014

1. This appeal is directed against the judgment dated 25th January, 2010 passed by the learned Additional Sessions Judge in the SC No.290/09 convicting the Appellants for the offence under section 307/34 IPC and the order of sentence of the same date sentencing each of them to undergo three years rigorous imprisonment with the fine of Rs.1,000/- and in default simple imprisonment for one month.

2. The case of the prosecution is that about 5 to 6 years prior to the date of incident on 11th January, 2005 Ram Rati W/o Jaggan Nath and mother of the three Appellants had asked the husband of Geeta (PW5), one Santosh Kumar, to sell her house at Sultanpuri. Ram Rati had requested Santosh Kumar that with the sale consideration received, he should arrange another house for her. In the meanwhile,

Santosh Kumar and PW5 gave Ram Rati their house at J-582, Mangolpuri on rent. According to PW5 despite many houses being shown to her, Ram Rati did not approve of even one. According to PW5, Santosh Kumar returned sale consideration to Ram Rati stating that she should purchase the house by herself and vacate J-555, Mangolpuri.

3. It has emerged in the evidence of PW5 that on 11th January, 2005 she requested Ram Rati to vacate the house. However, a quarrel ensued. Guru Prasad (PW4) who lives in J-550, Mangolpuri on hearing the quarrel which was taking place in front of his house tried to intervene. In the meanwhile, the three Appellants came there around 2.15 pm. The Appellant-Roop Kishore caught hold of the left hand of PW4, Appellant-Pramod caught his right hand and threatened him. Appellant-Naresh took out a knife from his pocket and injured Guru Prasad on his private parts. Naresh Kumar (PW6) (brother of PW5) residing at J-551, Mangol Puri was also present at that time. He and PW5 tried to apprehend the accused, who fled the spot. Meanwhile, somebody called the Police Control Room ('PCR'). PW4, who was bleeding, was taken to S.G.M. Hospital (SGMH) by a PCR van. PWs-5 and 6 who also were injured reached the hospital and were medically examined.

4. The medical certificates of PW4 (Ex.PW1/A and 2/A) recorded "alleged history of physical assault". A wound of size of 2.5 x 1 cm

stab at supra pubic (lower abdomen) has been noted by Dr. Satish Kumar Mittal (PW-2). The patient was referred to PW-2 for opinion by the surgeon. At that stage the nature of the injury had not been noted. PW-4 was endorsed “fit for statement”. On the same date the patient was also seen by Dr. Vivek Goel (PW1) who was posted at the department of surgery at the SGMH. He stated that “there was a mild tenderness in supra public (lower abdomen) and a stab wound of the size of 2.5 x 1 cm in that area. PW4 underwent exploratory laparotomy on the following day and was found to have perforation in the small intestine (terminal ileum) which was repaired. PW-1 gave opinion that the injury was dangerous. He has recorded his observations in the MLC itself. There is a clear statement “so injury was dangerous to life” which has been signed by PW-1. This has been confirmed by PW-2 who also put his endorsement at the bottom of MLC.

5. Uday Bhan (PW-10) received the DD entry No.38B and along with constable Rajender (PW-8) reached the spot and there they were told that the PW-4 had already shifted to SGM Hospital pursuant to which they reached there and collected the MLC. They also recorded statement (Ex.PW-4/A) and prepared *rukka* (Ex.PW-3/B). After PWs-5 and 6 were medically examined at the SGMH, PW10 accompanied them back to the spot and prepared site map (Ex.PW-10/A). PW-10, acting upon secret information also arrested the three Appellants from J-582, Mangolpuri.

6. Charges were framed against the three accused for the offence under sections 307/34 and 326/34 IPC for causing injuries on PW4 with a sharp weapon. The prosecution examined 10 witnesses. When the evidence was put to the three Appellants under section 313 Cr PC, they claimed that they had been falsely implicated. They confirmed that Santosh Kumar, husband of PW-5, had sold the house of Ram Rati in Sultanpuri. He had agreed to arrange another house and in the meanwhile made arrangement for Ram Rati and her family members to stay in J-582, Mangolpuri at the rent of Rs.800/- per month. According to the Appellants, despite repeated requests Santosh Kumar failed to make arrangement for a house. He also did not return the money for which the house of Ram Rati had been sold. According to the Appellant, Santosh Kumar and his family members were pressurising Ram Rati and her family to vacate J-582, Mangolpuri on the date of incident. Santosh Kumar and his family members along with PWs-4, 5 and 6 sought to forcibly vacate Ram Rati and the three Appellants from J-582. Each of the Appellants claimed that in the ensuing scuffle they did not know how injuries were caused to PW4.

7. The trial Court on analysis of the evidence concluded that the prosecution had been able to prove beyond reasonable doubts the case against them under Section 307/34 IPC. It was noted that initially the case had been registered under Section 324/34 IPC and thereafter upon obtaining the medical opinion, Section 307 was added. The Appellants were rearrested on 3rd July, 2005. The non-recovery of knife was explained by the fact that Section 307 was added 6 months

CRL.A. No. 188 of 2010 *Page 4 of 9*

after the initial FIR was registered. Since Section 324 was a bailable offence, the Investigating Officer ('IO') did not have the opportunity to obtain police remand of the three Appellants. Accordingly it was held that non-recovery of knife did not weaken the prosecution case.

8. The trial Court discussed the medical evidence of PWs 1 and 2. The injury caused to PW-4 was on his private parts and was dangerous. There was a perforation in the small intestine which was repaired after a detailed procedure. PW-4 was admitted to hospital for 11 days and discharged on 22nd January 2005. The cross-examination of PWs 1 and 2 did not reveal anything that would help the case of the Appellants.

9. The trial Court observed that the Appellants had failed to lead evidence to prove the plea taken by them in their statements under Section 313 Cr PC although they pertained to matters within their knowledge, in terms of Section 103 of the Evidence Act.

10. It was repeatedly urged by the counsel for the Appellants that the failure to recover the knife in the present case was fatal to the case of the prosecution. It was submitted that in the statements to the police, the prosecution witness and in particular PWs-4, 5 and 6 only referred to a sharp object being used and not a knife. Even charge framed by the trial Court referred only to a sharp object and not a knife. It was submitted that a knife was introduced only to convert the offence into

one under Section 307 IPC. The evidence of PW-4 was referred to urge that he had made considerable improvement in his testimony in Court which made him unreliable. It was submitted that the non-examination of Santosh Kumar (husband of PW-5), who was a central character, considerably weakened the prosecution's case and an adverse inference had to be drawn against the prosecution under Section 114 of the EA. It was submitted that each of the witnesses examined were related witnesses and therefore, interested witnesses. Their testimonies required corroboration by other independent evidence. It was submitted that medical opinion was not categorical that the injury was a grievous one. It was doubtful how, if indeed the injury was dangerous, PW-4 could be declared fit for statement on the date of his admission to the hospital. It was pointed out that admittedly, three statements of PW-4 were recorded, and this itself was unusual. The evidence was unreliable since a concerted effect was made to improve the case of the prosecution at every stage in order to falsely implicate the Appellants. Lastly it was submitted, without prejudice to the earlier submissions, that the sentence awarded to the Appellants was harsh.

11. The above submissions have been considered. The prosecution case rests on the testimonies of the witnesses PWs-4, 5 and 6. The incident involves an attack on PW4. The fact that PW-4 was injured in the attack, and his small intestine was perforated stands proved beyond reasonable doubt. During the cross-examination of PWs-1 and 2, no question was put to the effect that the endorsement on the

CRLA. No. 188 of 2010 *Page 6 of 9*

MLC that PW-4 was fit for statement was wrongly recorded. Secondly, their cross-examination has not created any doubt on the opinion rendered that the injury was dangerous and in particular that it was “dangerous to life”. Indeed, but for the detailed surgical procedure, the injury may not have been rectified. It has also come through the evidence of PW-4 that he remained hospitalized for 11 days.

12. In the considered view of the Court the nature of the injury stands proved beyond reasonable doubt. It justifies the invoking of Section 307/34 IPC. It was based on subsequent medical opinion and not done deliberately to change the nature of the offence which initially was registered as one under Section 324 IPC.

13. In the circumstances it matters little whether the injury was caused by a sharp object which was not initially described to be a knife. Also the non-recovery of the knife does not impinge in the least on the credibility of the submissions of the eye-witnesses PWs 4, 5 and 6.

14. The Court has carefully perused the depositions of PW4, 5 and 6. No doubt they are related witnesses and could be stated to be interested witnesses but they have fully corroborated each other. The medical report also fully corroborates, what they have deposed. They

were each subjected to extensive cross-examination. There is no inconsistency or ambiguity in their depositions.

15. The learned counsel for the Appellants repeatedly urged that each of these witnesses had named their neighbors who were present on the spot and the police did not deliberately record their statements. It is not necessary to keep adding to the number of eye-witnesses to speak about an incident. It is the quality of evidence and not the quantity that matters. If an IO is satisfied that the evidence recorded sufficiently establishes the case, then the investigation need not be doubted only because the statements were by witnesses who happened to be related to the victim. Clearly, the incident was preceded by a certain history which was within the knowledge of these witnesses and therefore they were natural witnesses. The Court therefore rejects the submission that PWs 4, 5 and 6 only are unreliable witnesses because they happen to be related to each other. The alternative theory of the Appellant that PW-4 fell on some sharp object on his own and got injured in the scuffle has not been proved by them. There is no occasion to doubt the veracity of the testimonies of PWs 4, 5 and 6 who were present on the spot.

16. This Court is therefore unable to agree with the submissions of the learned counsel for the Appellants and agrees with the view expressed by the trial Court that the prosecution has been able to prove beyond reasonable doubt the guilt of the Appellants for the offence under Sections 307 and 34 IPC.

17. The sentence awarded to each of the Appellants are justified considering the nature of the injury caused to PW4 and the fact that he remained hospitalised with a life threatening injury for 11 days. The appeal is accordingly dismissed. The Appellants are directed to surrender forthwith and serve out the remainder of their sentences. Their bail bonds are cancelled.

18. The trial Court record along with a certified copy of this order be sent to the trial Court forthwith for further steps.

19. Order *dasti* to counsel for parties.

SEPTEMBER 8, 2014
vld

S. MURALIDHAR, J.

