

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 343 of 2008

Decision on: September 3, 2014

TAUSIF & ORS.

..... Appellants

Through: Mr. Ramashankar, Mr. Shivam

Garg and Ms. Kamlesh, Advocates.

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

03.09.2014

1. This appeal is directed against the impugned judgement dated 7th March 2008 passed by the learned Additional Sessions Judge ('ASJ') Karkardooma Courts, Delhi in Sessions Case No. 151 of 2006 convicting the three Appellants, Tausif, Accused No. 1 (A-1), Babloo, Accused No. 2 (A-2) and Arif Khan, Accused No. 3 (A-3) for the offence under Section 307 read with Section 34 IPC as well as the impugned order on sentence dated 17th March 2008 whereby each of them was sentenced to undergo rigorous imprisonment ('RI') for three years along with a fine of Rs. 20,000 each and in default to undergo RI for nine months each.

2. By an order dated 21st August 2008 this Court suspended the sentence awarded to each of the Appellants after noticing that they had

served seven months' imprisonment till then. The fine amounts had already been paid by the Appellants.

3. The case of the prosecution was that a 'Hakika' ceremony took place in the house of Ishrar (PW-1) on 13th June 2004. Hasim (co-accused, who was a juvenile at the time of the occurrence) had been invited to the ceremony. During ceremony, Hasim is stated to have misbehaved with the girls present. PW-1 objected to his indecent behaviour. While leaving, Hasim threatened PW-1 that he would teach him a lesson.

4. On 17th June 2004, at about 8 pm, PW-1 had gone Mohan Bagh, Chand Nagar, Delhi to purchase oil. When he reached near drain of Mohan Bagh, Chand Nagar, all the three Appellants along with Hasim reached there. The three Appellants over powered PW-1 and Hasim stabbed him in the abdomen which resulted in a grievous injury to PW-1. According to PW-1, A-1 pushed him in a ditch. Thereafter, the accused persons along with Hasim ran away from there. PW-1 managed to drag himself back on to the street. Someone called the police. Meanwhile, his brother Ikrar (PW-2) reached there and took him to the GTB Hospital, Shahdara. Thereafter, the police recorded the statement (PW-1/A) of PW-1. PW-1 remained admitted in the hospital for 13-14 days. The three Appellants were known to PW-1 and were residents of the same area. PW-1 was wearing pant and a T-shirt which

was taken into possession by the doctors of hospital. The T-shirt (Ex.P1) was identified by PW-1 in Court.

5. The medical evidence in the form of MLC (PW-8/A) showed that PW-1 had a stab wound (1-1/2 x 1/2 cm) over the epigastric soft abdomen. There is a noting on the MLC by Dr. Tarun Jain “as per surgical records, injury is dangerous.’

6. Dr. Parmeshwar Ram, GTB Hospital, Shahdara, Delhi (PW-8) identified the signature of Dr. Tarun Jain. Dr. Devender Kumar (PW-9) stated that “since in epigastric region, liver, intestines are there and any injuries to these organs may endanger life. Present of bowels sound indicate that intestines were not ruptured.” In response to the specific question by learned counsel for the Appellants, PW-9 further clarified that “injuries mentioned in MLC Ex.PW8/A are not possible by fall.”

7. PW-2 corroborated the evidence of PW-1. He found PW-1 lying in the street smeared with blood. He removed PW-1 in a rickshaw up to the Bhajanpura red light from where he boarded a auto rickshaw and took PW-1 to the GTB Hospital.

8. Mr. Ramashankar, learned counsel for the Appellants referred to the statement made by PW-1 before the police under Section 161 Cr PC (Ex.PW-1/A) in which he stated that some welding work was going on

near the drain at the time of incident. He submitted that despite workers being present at the time of the incident, no public witness was examined. Referring to the evidence of PW-2, he submitted that there were inconsistencies in the versions of PWs 1 and 2. While PW-1 stated that he had come back to the street and was lying on a cot, PW-2 stated that he had found PW-1 lying in the street. Further, no blood samples were lifted from the spot or from the cot on which PW-1 was lying. Learned counsel for the Appellant drew the Court's attention to the fact that the knife allegedly used was not recovered. Relying on the decision in *Kavinder v. State (NCT of Delhi) 115 (2004) DLT 541*, he submitted that non-recovery of the weapon would be fatal to the case of the prosecution. As regards non-association of public witnesses he referred to the decision in *Abdul Subhan v. State (NCT of Delhi) 2007 Crl LJ 1089*.

9. Mr. Rajat Katyal, learned APP for the State, on the other hand pointed out that in the pointing out memo, A-1 had informed the police that the knife used in the occurrence was thrown in the *nala*. Consequently, the knife could not be recovered. He pointed out that the evidence of the injured eye witness (PW-1) was clear and cogent. The medical evidence proved that the injury was a life threatening one. He accordingly submitted that no case had been made out for interference.

10. The Court has considered the above submissions.

11. The inconsistencies pointed out by learned counsel for the Appellant in the testimonies of PW-1 and PW-2 and in their previous statements to the police are not material enough to discredit their evidence. For instance about the injured victim (PW-1) lying on the cot, a careful examination shows that a cot was perhaps lying on the street and PW-1 managed to reach there. The mere absence of any blood sample at the spot would not dilute the evidence of PW-1 who spoke clearly and in a cogent manner. Even the non-removal of the blood from the cot was not significant considering that the MLC clearly mentioned the grievous stab injury suffered by PW-1 on the abdomen. The MLC read with the evidence of PW-9 corroborates the versions of PWs 1 and 2. The Court finds that PW-2 fully supported the evidence of PW-1. Their cross-examination did not yield anything that could help the Appellants.

12. The decision in *Kavinder v. State (NCT of Delhi)* (supra) turned on its own facts. The non-recovery of the weapons in that case was read in conjunction with the other circumstances which persuaded the Court to grant benefit of doubt to the accused. Likewise in *Abdul Subhan v. State (NCT of Delhi)* (supra) it was a motor accident and the failure to examine public witnesses rendered the prosecution version unreliable. As far as the present case is concerned, the injured eye witness has spoken clearly, and in a cogent manner and was not contradicted on the material aspects of the incident.

13. The Court is not persuaded to hold that there was any failure on the part of the prosecution to prove the case against the Appellants beyond reasonable doubt. Consequently, this Court upholds the judgment dated 7th March 2008 passed by the trial Court convicting the Appellants for the offence under Section 307/34 IPC in the manner indicated hereinabove.

14. On the question of sentence, it is seen that the Appellants have already served seven months' RI and also paid the fine amounts. Keeping in view these factors, the sentence awarded to each of them is reduced to 18 months' rigorous imprisonment with no alteration to the fine amount.

15. The appeal is disposed of in the above terms.

16. The bail bonds of the Appellants stand cancelled. They are directed to surrender forthwith and serve out the remainder of the sentence.

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

S. MURALIDHAR, J.

SEPTEMBER 03, 2014

rk