

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

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Date of Decision: 07.03.2014

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Crl. Appeal No.621/2010

DEEPAK

....Appellant

Through: Ms. Inderjeet Sidhu and
Ms Shiba Batra, Advs.

Versus

STATE

...Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

On 02.11.2014, Police Control Room was informed at about 11.15 PM that a person had been injured with knife in Sector 20, Rohini and one person was being beaten by the members of the public. A copy of the aforesaid DD was given to SI Satbir Singh, who reached the aforesaid spot and came to know that both the injured as well as the person who had been caught by the public had already been taken to Sanjay Gandhi Hospital. The Investigating Officer, accordingly, reached the aforesaid hospital, where Mangal and Virender Singh were found admitted. He recorded the statement of Virender Singh who, inter alia,

stated that on the aforesaid date, at about 10.30 PM, he along with Mangal was going to his house through P-4 Sultanpuri Park. When they reached in the middle of the park, four boys surrounded them and asked them to take out whatever they had with them. Both of them got scared, but he (the complainant) refused to take out anything. Thereupon, he was caught by two boys and he had grappled with them. The other two boys caught hold of his companion Mangal and started beating him. He further stated that one of the boys, who had caught hold of him, held him firmly, whereas the other one took out a blade and gave a blow on the left side on his chest. He also took out the Nokia mobile phone model 3315 from his pocket, along with Rs. 150 in cash. On alarm being raised by them, the member of the public started gathering there, whereupon three boys managed to escape, but one of them was apprehended with the help of the members of the public. His name was later found to be Deepak, son of Babu Lal. He was given beating by the members of the public and Police Control Room was informed.

2. Since the other persons alleged to be involved in the incident could not be arrested, only Deepak was charge-sheeted by the prosecution. He was charged under Section 392/34, 394/34 and 397 of IPC. Since he pleaded not guilty to the charges, as many as seven

witnesses were examined by the prosecution. No witness, however, was examined in defence.

3. The complainant Virender Singh came in the witness-box as PW-1 and *inter alia* stated that when they (he and Mangal) reached in the middle of the park, at about 10.30 PM on 02.11.2004, they were surrounded by four persons and started beating him and his friend Mangal and asked them to take out whatever they had. Two persons then caught hold of him and put him down on the ground, whereas the other person caught hold of his friend Mangal and started beating to him. Out of the two persons, who had caught hold of him, one took out a blade and caused injuries on the left side of the chest. He forcibly took out his mobile phone Nokia 3315 from his pocket along with Rs 150 in cash. When he raised alarm, the members of the public gathered and three persons managed to escape from the spot, whereas the accused Deepak was apprehended. He was also beaten by the mob and was later handed over to the police.

4. PW-2 Mangal corroborated the deposition of PW-1 in all respects and deposed with respect to both of them being surrounded by four boys and two of them holding him, whereas the remaining two catching hold of the complainant. He also claimed that Virender sustained injuries on

the left side of his chest though he did not say that a blade was used for causing injury to Virender. He also claimed that accused Deepak was apprehended on the spot, was beaten by the public and later handed over to police.

5. PW-6 doctor Manoj Dhingra has proved the MLC of Mangal and Virender Singh Exs. PW-6/A and PW-6/B, both of which are of handwriting of one doctor Kailash Singh Rawat.

6. In his statement under Section 313 Cr. P.C, the appellant denied allegations against him and claimed to be innocent.

7. The learned counsel for the appellant has drawn my attention to the MLC of the complainant Ex.PW-6/B. A perusal of the said document would show that the complainant had no stab injury on his chest, when he was examined in the hospital. In fact, he has no stab injury at all. Only abrasions were found on his back below scapular region and the nature of the injury was opined to be simple. It may also be pointed out at this stage that no blade was seized from the appellant though the case of the prosecution is that he was apprehended on the spot. Neither PW-1 nor PW-2 says that the appellant, after causing injuries to him, had passed on the blade to one of his associates. The learned defence counsel also pointed out that PW-2 Mangal, when he

examined in the witness box, did not say that a blade was used for causing injuries to the complainant Virender Singh. In these circumstances, it would be difficult to accept the case of the prosecution that a blade was used during commission of the robbery. Therefore, Section 397 of IPC could not have been applied while convicting the appellant.

8. There is no good reason to disbelieve PW-1 Virender Singh and PW-2 Mangal with respect to the incident of robbery. Though the Investigating Officer did not collect documentary evidence with respect to ownership of the mobile phone claimed by the complainant, that would be a defect in the investigation, benefit of which would not accrue to the appellant.

As held by the Hon'ble Supreme Court in Karnel Singh vs. State of M.P. JT 1995 (6) SC 437, it is not proper to acquit the person due to defective investigation, if the case otherwise stands established, since doing so would be falling in to the hands of the erring Investigating Officer. As noted by the Supreme Court in Ram Bihari Yadav vs. State of Bihar and others, JT 1998 (3) SC 290, the story of the prosecution is to be examined *de hors* the contaminated conduct of the Investigating Officer lest the mischief which may also be deliberate one is

perpetuated. The criminal justice should not be made casualty because of the wrong doing of a police officer.

The Apex Court in Dhanaj Singh @ Shera & Ors. v. State of Punjab (2004) 3 SCC 654, held, “in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

The Apex Court in the case of Paras Yadav v. State of Bihar AIR 1999 SC 644, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

The Court, therefore, has to evaluate the evidence led by the prosecution, irrespective of the aforesaid defect in the investigation and then decide whether the evidence produced before the Court justifies

conviction of the accused or not. Such evaluation has to be undertaken de hors the defect in the investigation. I find that in the FIR lodged by him, the complainant gave the number of his mobile phone. This is not the case of the appellant that the aforesaid mobile phone does not belong to the complainant. There could be no reason for the complainant to make a false accusation of theft of the mobile phone. He had nothing to gain by making a false allegation of this nature.

9. The learned counsel for the appellant submits that in fact this was a case of quarrel between the appellant on the one hand and the complainant and his accomplice on the other hand and that explains the injuries to the appellant as well as to the complainant and his accomplice Mangal. She has also pointed out that both the complainant as well as his companion Mangal were smelling of alcohol. However, no such plea was taken by the appellant in his statement under Section 313 of Cr.P.C. He did not claim that there was a quarrel between him and the complainant and his companion. His case during the aforesaid statement was of a total denial. Moreover, even during cross-examination of the witnesses, no cause of the alleged quarrel between the appellant on the one hand and the complainant and his companion on the other hand was suggested. In these circumstances, it would be difficult to accept the

plea that there was a quarrel which resulted in the appellant as well as the complainant and his companion getting injured.

10. The deposition of PW-1 Virender Singh and PW-2 Mangal, corroborated their respective medical examination, would show that the complainant was robbed of his mobile phone and Rs 150/- in cash and both the complainant as well as his companions were also given injuries during the course of incident. He has, therefore, rightly been convicted under Section 394 of IPC read with Section 34 thereof. However, there could be no separate conviction under Section 392/34 of IPC when the appellant has already been convicted under Section 394/34 of the Indian Penal Code. As far as Section 397 IPC is concerned, it only prescribes an enhanced punishment in case a deadly weapon is used during the commission of robbery or grievous hurt is caused to a person or attempt to cause death or grievous hurt is made. Therefore, no separate conviction under Section 397 of IPC is made out.

11. For the reasons stated hereinabove, the conviction of the appellant under Section 394/34 of IPC is maintained. Rest of his conviction is set aside. The appellant is sentenced to undergo RI for three years and to pay a fine of Rs 1,000/- or to undergo SI for 15 days in default.

The appeal stands disposed of accordingly.

One copy of this order be sent to the concerned Jail
Superintendent for information and necessary action.

The LCR be sent back along with copy of the judgment.

MARCH 07, 2014
BG

V.K. JAIN, J