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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 14th August, 2014

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CRL.A. 1077/2011

RAHUL

..... Appellant

Through: Mr. Hari Kishan, Advocate

versus

STATE

..... Respondent

Through: Ms. Ritu Gauba, Additional Public
Prosecutor for the State.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 28.07.2011 and order on sentence dated 30.07.2011 arising out of Sessions Case No.91/10 in Case FIR No.132/10 P.S. Timarpur u/s 308 IPC vide which appellant was convicted u/s 308 IPC and was sentenced to undergo Simple Imprisonment for a period of three years and sentenced to pay fine of Rs.10,000/- in default to undergo Simple Imprisonment for 1 month.

2. Prosecution case, succinctly stated, is as follows:-

On the intervening night of 26.05.2010/27.05.2010, on receipt of DD No.67D regarding stabbing at Sanjay Basti, Teacher Colony, Timarpur, ASI Swadesh Kumar reached at Jhuggi No.1842, Sanjay Basti where he met Beat Constable Babar and came to know that injured has been removed to hospital by PCR. Accordingly, he along with Constable Babar went to Aruna Asaf Ali hospital where injured Ravi was found admitted. He was fit for statement, as such he recorded statement of Ravi Kumar, Ex. PW 1/A and made endorsement Ex.PW 7/B on the statement and sent *rukka* to police station through Constable Babar which culminated in registration of FIR. In the hospital, doctor handed over one sealed pulanda which was seized vide seizure memo Ex. PW7/C. Thereafter he came back to the spot. At the instance of mother of the injured, site plan Ex.PW 7/D was prepared. He searched for accused Rahul but he was not traceable.

3. It is further the case of prosecution that on 01.08.2010, on coming to know that accused Rahul was present in Sanjay Basti, PW-4 SI P.S. Bhardwaj, along with Constable Dharmender and Constable Baldev went to Sanjay Basti from where he was arrested. He made a disclosure statement Ex.PW4/A. He led the police party to Sai Baba Mandir, Sanjay Basti where he had stabbed Ravi Kumar. Pointing out memo of place of

incident was prepared vide Ex.PW4/B. After completing investigation, charge-sheet was submitted against him.

4. In order to substantiate its case, prosecution had examined 13 witnesses. Accused pleaded his innocence and alleged false implication in this case. According to him, he had given a sum of Rs.400/- to Ravi and when he demanded the said amount again and again, he falsely implicated him in this case. Three witnesses were examined by the accused in his defence. Vide impugned judgment, the appellant was convicted and sentenced as mentioned above. Aggrieved, the present appeal has been preferred.

5. Challenging the findings of the learned Trial Court, learned counsel for the appellant has submitted that there are major contradictions in the testimony of the complainant, his mother, uncle and neighbour. The injured had admitted in his cross examination that at the time of incident, he was under the influence of liquor. Moreover his uncle Sonu deposed that he had called the police at 100 No. while his mother deposed that she called the police at 100 No. Further, initially she stated that her signatures were taken at 2-3 places by the police and then stated that police did not obtain her signatures on any paper. Further, according to PW1 and PW2, the incident took place at about 10 p.m whereas according to Sonu, it took

place at about 7.30 p.m. PW-10 Lal Singh categorically denied the incident. Further according to ASI Swadesh Kumar, he recorded the statement of Parvati at the spot but Parvati deposed that her statement had been recorded in the hospital. These major contradictions are sufficient to prove the innocence of the appellant. Moreover, the injured was under the influence of liquor and to usurp the money of the appellant, he caused injuries to himself in order to implicate the appellant. Moreover, injured himself fled away from the hospital without being discharged. The appellant is not a previous convict nor is he involved in any criminal activities. He is a young person of twenty two years and is as such entitled to the benefit of probation.

6. Rebutting the submissions of learned counsel for the appellant, it was submitted by learned Additional Public Prosecutor for the State that there is the testimony of PW-1 Ravi who sustained injuries in the incident, as such his presence at the spot stands proved. Moreover, testimony of an injured witness stands on a higher pedestal than any other witness. The relation between the accused and the appellant were cordial. Therefore, there was no plausible reason as to why he would falsely implicate the accused in this case. Furthermore, his testimony finds corroboration not only from his mother and uncle but also from the medical evidence.

Injuries were opined to be grievous in nature. He also referred to the post incident conduct of the appellant for submitting that after committing the crime, the appellant fled away and could be arrested only after a period of three months. Even as regards the quantum of sentence, it was submitted that the learned Trial Court has already taken a lenient view by imposing sentence of three years only. The appellant does not deserve to be released on probation as he is a previous convict and it was submitted that he was convicted in case FIR No.116/11 u/s 392/411/34 IPC, P.S. Timarpur by the Court of Shri Atul Garg, Additional Sessions Judge, Delhi. It was submitted that there is no infirmity in the impugned judgment which calls for interference, as such the appeal be dismissed.

7. Star witness of prosecution is PW1 Ravi. He has unfolded that on 26.05.2010, his mother PW2 Parvati had gone to Sanjay Basti, Timarpur to meet her mother-in-law. In the evening he went to Sanjay Basti to bring back his mother. At about 10/10.30 p.m when he reached Sanjay Basti, near Sai Baba Mandir, accused Rahul met him. An altercation took place between them on account of some money matter. Accused Rahul demanded money from him and also exhorted "*Mai tujhe jaan se maar doonga*". Thereafter accused Rahul stabbed him with a knife on his stomach, buttock and face. Blood oozed out from his body due to injuries.

On hearing the noise of quarrel, his mother and uncle reached the spot. PCR was called. PCR van reached the spot and took him to the hospital where he was treated. Local police reached the hospital and recorded his statement Ex. PW1/A. In the hospital his *banian* Ex. P1 was seized by the police. In cross examination, he deposed that accused was known to him from childhood and there was no enmity with him. He admitted that he was under the influence of liquor on the date of incident. According to him, his uncle made a call at 100 No. He denied the suggestion that no quarrel took place between him and the accused or that since he was under the influence of liquor he sustained injuries due to fall. He denied that he had falsely implicated the accused in this case.

8. It is a settled law that testimony of an injured witness stands on a higher pedestal than any other witness, inasmuch as, he sustain injuries in the incident. As such, there is an inbuilt assurance regarding his presence at the scene of the crime and it is unlikely that he will allow the real culprit to go scot free and would falsely implicate any other persons. In ***Abdul Sayeed v. State of Madhya Pradesh [(2010) 10 SCC 259]***, the Supreme Court held as under:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has

been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide **Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P., Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.**]"

9. To the same effect is the judgment reported in **Akhtar & Ors. vs. State of Uttarakhal** (2009) 13 SCC 722 and **Mano Dutt & Ors vs. State of U.P.**, (2012) 2 SCC (Cri) 226.

10. PW1 Ravi has given a graphic description of the entire incident. His presence at the spot cannot be doubted as he was injured in the incident. Despite cross-examination, nothing material could be elicited to discredit his testimony. Both the parties were well known to each other from before. The relation between them were cordial. Although there was also some dispute regarding money, however, on that account itself, it cannot be said that injured will falsely implicate the accused in this case. The incident took place at about 10 p.m. Immediately information was given to PCR which reached the spot and the injured was taken to hospital at about

11.50 p.m. His MLC Ex.PW8/A was prepared by Dr. Ravinder Kumar who deposed that the history of “quarrel and assault by knife which was used about 10 minutes back” was given by the patient himself. On receipt of information by the police regarding stabbing of a person, DD No.67B Ex.PW7/A was recorded. PW7 ASI Swadesh Kumar reached the spot, where he came to know that injured has been removed to Aruna Asaf Ali hospital. Thereupon he reached the hospital. Injured was found fit for statement, as such his statement Ex.PW1/A was recorded at 00.45 a.m. At the first available opportunity, he has given the minute details regarding the quarrel which ensued between him and Rahul whereupon Rahul inflicted injuries on his face, stomach and back. The suggestion given to the witness that he was under the influence of liquor and sustained injuries due to fall was denied by him. Injured had absolutely no axe to grind to falsely implicate accused in this case. His testimony is consistent throughout and inspires confidence.

11. Although the testimony of injured himself is sufficient to sustain conviction, however, in the instant case, his testimony finds ample corroboration from other material available on record.

12. PW2 Parvati, who is mother of the injured has deposed on the same lines as that of PW1 that she had gone to meet her mother-in-law at Sanjay

Basti. In the evening, her son Ravi came to take her back. At about 10 p.m, she heard noise from outside. On coming out she saw accused catching hold of the neck of her son and her son had put his hand on his stomach. She noticed injuries on the face and stomach of her son. On seeing her, accused fled away from the spot. She informed police at 100 no. Her brother-in-law(*devar*) also reached the spot. PCR van came and took her son to the hospital. In cross examination, she admitted that relation between the two families were cordial. She also denied the suggestion that her son Ravi sustained injuries due to a fall.

13. PW11 Sonu, is the uncle of injured Ravi and has deposed that on the date of incident Ravi took his meal with him. At about 7.30 p.m, he went out of the house. After 10 minutes Ravi came back and he saw that Ravi was stabbed on his face, stomach and back side. After taking mobile phone from his neighbour Lal Singh he informed PCR at 100 no. Thereafter Ravi was taken to hospital.

14. PW10 Lal Singh is a resident of the same area where the incident had taken place and has deposed that at about 8/9 p.m, on hearing the noise from outside he came out and met Sonu who is the uncle of Ravi. Sonu requested him to give his mobile as he wanted to make a call at 100 no., so he gave his mobile phone to him. He saw Ravi in an injured condition.

However, he could not say as to how Ravi sustained injuries. Accused Rahul was also known to him as he resided in the same locality where he resided. In cross examination by learned APP for the State, he denied having stated to the police that when he came out of the house, he saw PW1 Ravi and accused Rahul indulging in a scuffle and Ravi bleeding profusely.

15. Although it is true that PW10 Lal Singh has not fully supported the case of the prosecution but it is settled law that merely because a witness is declared as hostile, there is no need to reject his/her evidence in *toto*. The evidence of hostile witness can be relied upon, at least to the extent, it supports the case of prosecution. In ***Sathya Narayanan v. State rep. by Inspector of Police***, (2012) 12 SCC 627, Hon'ble Supreme Court referred to its earlier decision rendered in ***Mrinal Das & Others. v. State of Tripura***, (2011) 9 SCC 479 where while reiterating that corroborated part of evidence of hostile witness regarding commission of offence is admissible, it was held as under:-

"67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness.

However, the Court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The Court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.”

16. The law is now well settled that even if a witness does not wholly support the case of the prosecution his testimony is not to be discarded altogether, and that part of the testimony of the witness can be considered and relied upon as supports the case of prosecution. It is the consistent view taken by Apex Court and this Court that the fact that the witness has been declared hostile at the instance of public prosecutor and was allowed to be cross-examined furnishes no justification for rejecting en block the evidence of the witness. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof, as held in *State of Gujarat vs. Anirudh Singh and Anr.*, (1997) 6 SCC 514; *Radha Mohan Singh @ Lal Sahib and Ors. Vs. State of U.P.*,

(2006) 2 SCC 450; *Mahesh vs. State of Maharashtra*, (2008) 13 SCC 271; *Rajender and Anr. Vs. State of U.P.*, (2009) 13 SCC 480; *Govindapa and Anr. Vs. State of Karnataka*, (2010) 6 SCC 533; *Paramjit Singh @ Pamma vs. State of Uttarakhand*, AIR 2011 SC 200; *Rameshbhai Moahanbhai Koli and Ors. Vs. State of Gujarat*, (2011) 3 SCC (Cri) 102; *Koli Lakhmanbhai Chanabhai Vs. State of Gujarat*, (1999) 8 SCC 624; *Prithi vs. State of Haryana*, (2010) 8 SCC 536 and *Ramesh Harijan Vs. State of Uttar Pradesh*, (2012) 5 SCC 777.

17. In view of this legal position, testimony of this witness is not be discarded altogether. He may have chosen not to support the prosecution case in all perspective because accused is resident of same colony where the witness resides. The fact remains that he corroborates other witnesses to the extent that he noticed injuries on the person of Ravi and PW11 Sonu had taken his mobile phone to inform PCR.

18. As regards, the contradictions and inconsistencies in the evidence of the prosecution witnesses, as pointed out by the counsel for the appellant, is concerned, a perusal of entire evidence goes to show that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy. Not only that, the witnesses have

consistently deposed with regard to the offence committed by the appellant and their evidence remain unshaken during their cross-examination. Mere marginal variation and contradiction in the statements of the witnesses cannot be a ground to discard the testimony of the witness who is none else but the injured himself and his mother and uncle. Further, relationship cannot be a factor to affect credibility of a witness.

19. In the case of *State of Uttar Pradesh v. Naresh and Ors.*: (2011) 4 SCC 324, it was observed:-

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

‘9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.’

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of

the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide **State v. Saravanan**, (2008) 17 SCC 587, **Arumugam v. State**, (2008) 15 SCC 590; **Mahendra Pratap Singh v. State of U.P.**, (2009) 11 SCC 334, and **Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra**, (2010) 13 SCC 657.]”

20. Further, the ocular testimony of the prosecution witnesses find corroboration from the medical evidence. PW8 Dr. Pankaj had proved the MLC Ex.PW8/A prepared by PW13 Dr. Ravinder Kumar. According to him *as per the MLC, the patient was brought with alleged history of quarrel and assault outside his house about ten minutes back. On local examination, there was abrasion present on left forearm and right arm extending into forearm; one penetrating wound of size 3.5x0.5 cm present on the back and left side; one penetrating wound of size 3 cm x 0.5 cm present on pelvic region and multiple in size like wounds present on left side of face and neck measuring about 6-10 cm in length and maximum width of about 0.3 cm.* He further deposed that after going through the contents of the MLC Ex.PW8/A, he had opined the nature of injuries as “grievous”.

21. PW13 Dr. Ravinder Kumar has proved the MLC Ex.PW8/A of injured Ravi, who was brought by PCR. He denied the suggestion that injuries mentioned in the MLC can be self inflicted.

22. As regards the non-recovery of weapon of offence, it is a matter of record that although the incident took place on 26.05.2010, accused could be arrested only on 01.08.2010. He made a disclosure statement Ex.PW4/A that he had thrown the knife in a drain. That being so, it was quite improbable that after such a lapse of time, knife could have been recovered. But that itself is not sufficient to cast any dent on the prosecution version because as held in *Mohinder Vs. State*, 2010 VII AD(Delhi)645, non-recovery of weapon of offence is not fatal to the case of prosecution.

23. Coming to the plea taken by the accused that he had given a sum of Rs. 400/- to Ravi and when he demanded the said amount again and again, he always refused and falsely implicated him in this case, the same does not inspire confidence because even if accused owed a sum of Rs.400/- from injured Ravi, it cannot be presumed that for such a paltry sum, he or his mother would falsely implicate him in this case, more particularly, when the accused was known to the injured from his childhood and relations between the two families were quite cordial. Moreover, no explanation has been given by accused as to how Ravi sustained injuries. Contradictory suggestions were given to the prosecution witnesses in as much as it was suggested to PW1 and PW2 that Ravi was under the

influence of liquor, he fell down and sustained injuries while it was suggested to PW13 Dr. Ravinder Kumar that injuries were self inflicted which were denied by them.

24. Lastly, the conduct of accused in absconding immediately after the incident is also a strong factor to prove his guilt. In ***Virender Kumar Gara vs. State***, 2001 II AD (Delhi) 319, a division bench of this Court was of the view that the fact that the accused absconded immediately after the incident was a strong factor to prove his guilt. In ***Amrit Lal Someshwara Joshi vs. State of Maharashtra***, AIR 1994 SC 2516, the appellant, who had also threatened the accused, was found absconding after her death. It was held that his having threatened the deceased and his absconding immediately after the death of the deceased by violence, lent very strong support to the case of the prosecution.

25. Reference may also be made to ***Ram @ Ram Dass vs. State of Delhi***, 2010 VII AD (Delhi) 83, where also the accused was absconding from his house after murder of his wife and he was not able to give any plausible explanation for his not being found in the house before he was arrested by the police. This was one of the circumstance which went against the accused. Again, in ***Mangat Rai vs. State of Punjab***, (1997) 7 SCC 507 also it was observed that the conduct of the accused in

absconding from the scene of offence for a couple of days till he was ultimately arrested, which conduct though by itself, might not be conclusive, becomes a clinching circumstance and point an accusing finger at the appellant.

26. The net result is that the entire evidence was correctly appreciated by the learned Additional Sessions Judge in convicting the appellant for offence u/s 308 IPC. The findings does not suffer from any infirmity which calls for interference.

27. Coming to the quantum of sentence, the Section prescribes punishment for a period of seven years. However, keeping in view the fact that accused was a young man of twenty years of age, his father had already died; mother was suffering from serious illness, he had a minor daughter of 5 years of age and at that time his wife was in advanced stage of pregnancy, the learned Additional Sessions Judge took a liberal view by awarding Simple Imprisonment for a period of 3 years and fine of Rs.10,000/-.

28. Regarding the submission of learned counsel for the appellant that since the appellant is a young boy, he should have been released on probation, learned Additional Public Prosecutor submitted that the accused has been convicted in case FIR 116/11 u/s 392/411/34 IPC, P.S. Timarpur

on 22.01.2013. That being so, the appellant cannot be said to be a first offender so as to grant him the benefit of probation. Keeping in view the fact that grievous injuries were caused on the person of Ravi, no further leniency is warranted. The impugned judgment and order on sentence does not suffer from any infirmity which calls for interference. That being so, the appeal is dismissed.

29. The sentence of the appellant was suspended vide order dated 30.08.2011. He is directed to surrender within three days for serving the remainder period of his sentence, failing which, the learned Trial Court to get him arrested to serve the remaining part of his sentence.

Copy of the judgment along with Trial Court record be sent back.
Information be also sent to Superintendent Jail.

SUNITA GUPTA
(JUDGE)

AUGUST 14, 2014
as