

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

RESERVED ON : 27th January, 2014

DECIDED ON : 29th January, 2014

+ CRL.A. 1095/2011

SEHZAD @ NADEEM

..... Appellant

**Through : Mr.A.J.Bhambhani with Ms.Lakshita
Sethi and Mr.Apurv Chandola,
Advocates.**

versus

STATE

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Sehzaad @ Nadeem questions the legality and correctness of a judgment dated 22.04.2010 of learned Additional Sessions Judge in Sessions Case No.58/2009 arising out of FIR No.88/2009 registered at Police Station Chandni Mahal by which he was convicted under Section 394/398 IPC. By an order dated 24.04.2010 he was awarded rigorous imprisonment for seven years with fine ₹10,000/- under Section 398 IPC.

2. Allegations against the appellant were that on 25.09.2009 at about 11.00 P.M. at shop No.18, DDA Market, Turkman Gate, Delhi, he

while armed with a deadly weapon attempted to rob complainant Ikramuddin of ₹20,000/- and injured him. The complainant declined to give ₹20,000/- to the appellant and raised alarm. The police officials on patrolling duty were able to apprehend and recover a country made pistol with a live cartridge from appellant's possession. First Information Report was lodged after recording Ikramuddin's statement (Ex.PW-1/A) by the Investigating Officer on the night intervening 25-26.09.2009 at 1.10 A.M. Statements of witnesses conversant with the facts were recorded. After completion of investigation a charge-sheet was filed against the appellant in the court. The prosecution examined 15 witnesses to substantiate the charges. In 313 statement, the appellant denied the allegations and pleaded false implication. He examined DW-1 (Naseem Akhtar) in defence. On appreciating the evidence and after considering the rival contention of the parties, the trial court by the impugned judgment convicted the appellant for the offences mentioned previously. Being aggrieved, the appeal has been preferred.

3. Appellant's counsel urged that the trial court did not appreciate the evidence in its proper and true perspective and fell in grave error in relying upon the testimony of interested witness with whom a quarrel had taken place and all including the appellant had sustained

injuries. The appellant was falsely implicated in connivance with the police by the complainant who lived in his neighbourhood. Counsel pointed out various discrepancies and inconsistencies in the statements of the prosecution witnesses. PW-1 (Ikramuddin), complainant, was unable to identify the pistol recovered by the police. PW-3 (Mohd.Imran) turned hostile and did not support the prosecution on vital facts. The weapon of offence was not produced before the learned Metropolitan Magistrate at the time of production of the accused in the court. The MLC does not record the assailant's name. Learned Additional Public Prosecutor urged that the trial court has observed demeanor of the witnesses and the accused who was the Bad Character (BC) of the area and was involved in many criminal cases. There are no sound reasons to discard the testimony of the complainant.

4. The occurrence took place at about 11.00 P.M. in the complainant's shop. First Information Report was lodged in promptitude at 01.10 A.M. on the same night after recording Ikramuddin's statement (Ex.PW-1/A). In the complaint Ikramuddin gave detailed account of the incident and narrated as to how and under what circumstances, the accused at the point of pistol in his hand attempted to extort ₹20,000/- from him on the pretext to get release his brother who was involved in a

criminal case and was confined in jail. When he refused to give money, he was hit with the 'butt' of the pistol. On his raising alarm, the appellant tried to flee the spot 'but' was caught hold by the police officials on patrolling duty. The country made pistol was recovered from his possession and on opening it, a live cartridge was found in it. While appearing as PW-1 the complainant proved the version given to the police at the earliest available opportunity without major variations. He deposed that on 25.09.2009 at about 11.00 P.M. he along with his friend Imran was present at his shop No.18, DDA Market, Turkman Gate, Delhi. Accused Nadeem came at his shop, took out a katta, pointed it at him and asked him to give ₹20,000/- for getting his younger brother released. He hit the katta on his face and caused injury below his right eye. Country made pistol was recovered vide seizure memo (Ex.PW-1/B). Learned Additional Public Prosecutor sought permission from the Court to cross-examine the witness as he could not give details of the incident. In the cross-examination, he admitted that the appellant's brother who was confined to jail was Naim. He admitted that when he refused to give money, the accused hit him with the 'butt' of the pistol. His friend Imran was also pushed on his intervention. The witness explained that he was under great tension and was not in a position to tell the measurement of

the weapon recovered. In the cross-examination, he elaborated that the conversation with Nadeem continued for about 5-10 minutes. He fairly admitted that Nadeem had not told him as to where the money was to be delivered. He admitted that he was residing at a short distance from the appellant's house. The police seized the country made pistol from outside his shop. Apparently, the appellant was unable to extract any material discrepancy in the statement of the complainant to disbelieve him. His testimony on relevant and material facts remained unchallenged and uncontroverted in the cross-examination. The accused did not deny his presence at the spot. No ulterior motive was assigned to the complainant to falsely implicate him as he had no prior animosity with him. In the absence of ill-will or enmity, the complainant who was running his shop in the area was not expected to suddenly rope in an innocent in the crime. The complainant assigned specific motive of the appellant to extort money from him.

5. PW-3 (Mohd Imran) though did not support the prosecution in its entirety, nevertheless, corroborated the complainant's version about the presence of the appellant inside the shop at the relevant time. He also deposed that the complainant and the appellant had conversation inside the shop and he had seen them quarrelling. He also deposed about

sustaining of injuries by him and the complainant. In the cross-examination by Additional Public Prosecutor, he admitted that when Ikramuddin and he shouted 'Pakro Pakro', the police reached the shop and apprehended Nadeem. He admitted his signatures on various memos i.e. Ex.PW1/B and Ex.PW-1/C. The appellant did not put any question in the cross-examination as to why he had visited the shop of the complainant without any specific purpose at odd hours. It is settled law that the evidence of a hostile witness can be relied upon at least to the extent it supported the case of the prosecution.

6. PW-4 (Const.Ajay Rawat) who was on patrolling duty with ASI Surender and HC Narender in the area deposed about the apprehension of the accused with 'desi katta' in his right hand at about 11.00 P.M. He further deposed that when he and HC Narender tried to apprehend him, he fell down and was apprehended with great difficulty with the assistance of the complainant- Ikramuddin and his friend Imran. In the cross-examination, he revealed that they had started patrolling the area at about 06.00 P.M. No material infirmities could be elicited in his cross-examination. PW-5 (ASI Surender Singh) corroborated his testimony on all relevant facts. These police officials had no ulterior

motive to falsely implicate the accused who was involved in number of other cases.

7. The ocular testimony of the complainant is in consonance with medical evidence. Soon after the occurrence, they all were taken to Lok Nayak hospital. MLC (Ex.PW-14/A) records the arrival time of the patient Ikramuddin as 02.02 A.M. (brought by HC Narender Kumar). Alleged history records 'assault on 25.09.2009 at 11.00 P.M. as told by the patient'. The injuries were simple in nature. PW-3 (Imran) was also examined vide MLC (Ex.PW-14/B) and was taken to Lok Nayak hospital along with complainant at the same time. It shows his presence with the complainant at the spot. The accused who had sustained injuries due to fall was taken to the said hospital at 04.58 A.M. and found to have suffered simple injuries. The accused did not explain as to how and under what circumstances, he sustained injuries.

8. Minor discrepancies, contradictions or improvements highlighted by the appellant's counsel are not very material to affect the core of the prosecution case. The complainant's testimony inspires confidence and implicates the appellant without any doubt. The accused did not give plausible explanation to the incriminating circumstances proved against him. DW-1 did not lodge any complaint against any police

officials for falsely implicating him in the case. The judgment is based upon fair appraisal of the evidence and all the relevant contentions have been dealt with. The findings of the trial court on conviction warrants no interference. The appellant has been granted minimum sentence of seven years prescribed under Section 398 IPC which cannot be reduced or altered. The sentence order records that the appellant was involved in as many as 21 criminal cases. DD No.32/A furnished by the prosecutor revealed that even his conduct during trial was violent and he fought with one Const.Ajay on 20.04.2010. Sentence order requires no modification except that the default sentence for non-payment of fine of ₹10,000/- will be one month instead of six months. Other terms and conditions of the sentence are left undisturbed.

9. The appeal stands disposed of in the above terms. Trial Court record be sent back immediately. Copy of the order be sent to Superintendent Jail for information.

(S.P.GARG)
JUDGE

JANUARY 29, 2014
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