

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

RESERVED ON : 18th JULY, 2016
DECIDED ON : 24th AUGUST, 2016

+ **CRL.A. 594/2013 & Crl.M.B.7873/2015**

VISHNU PAWAR

..... Appellant

Through : Mr.Viraj R.Datar, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through : Mr.Amit Gupta, APP.

Mr.Mandeep Walia, counsel for the
complainant along with complainant
present in person.

+ **CRL.A. 541/2013**

MANJU

..... Appellant

Through : Mr.Joginder Tuli with Mr.Ashu
Kr.Sharma, Ms.Joshini Tuli and
Ms.Pooja Arora, Advocates.

Versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

Mr.Mandeep Walia, counsel for the
complainant along with complainant
present in person.

AND

+ **CRL.A. 411/2013**

VINOD KARAYAT

..... Appellant

Through : Mr.Mohit Mathur, Sr.Advocate, with
Mr.Shiv Gupta, Mr.Ravinder Kumar
and Mr.Anoop Kandari, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through : Mr.Amit Gupta, APP.
Mr.Mandeep Walia, counsel for the
complainant along with complainant
present in person.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 24.01.2013 of learned Addl. Sessions Judge in Sessions Case No.107/2010 arising out of FIR No.122/2008 PS Sarojini Nagar, the appellants - Vishnu Pawar (A-1), Manju (A-2) and Vinod Karayat (A-3), have filed the instant appeals to challenge its legality and correctness. By the said judgment, the appellants were held guilty for committing offences punishable under Sections 307/120B IPC. A-1 and A-3 were further convicted for committing offence punishable under Sections 394/34 IPC. By an order dated 23.02.2013, the appellants were awarded various prison terms with fine. The substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on or before 20.03.2008, the appellants hatched a criminal conspiracy to make an attempt to murder R.K.Bhatia. On 20.03.2008 at about 04.00 p.m. at West Kidwai Nagar, Type-III, Safdarjung Hospital Staff Quarters, near I-Block, pursuant to the said conspiracy, they inflicted grievous injuries to R.K.Bhatia. A-1 and A-3 in furtherance of common intention also committed robbery upon R.K.Bhatia while armed with knife and baseball bat.

3. On 20.03.2008, DD No.41A (Mark PW-16/A) came into existence at 06.45 p.m. at PS Sarojini Nagar. The investigation was assigned to PW-16 (SI Sanjeev Mandal) who along with Const.Rantej went to Trauma Centre, AIIMS and found R.K.Bhatia admitted there. Since the victim was not fit to make statement, the Investigating Officer lodged First Information Report by making endorsement over DD No.41A (Mark PW-16/A). The Investigating Officer thereafter visited the place of incident and seized Tavera car at the spot. Other legal proceedings were conducted. On 25.03.2008, A-1 and A-2 were arrested from Quarter No.719, Sector-5, R.K.Puram, where they were living as 'husband' and 'wife'. They recovered crime weapons and these were seized vide seizure memos Ex.PW-9/C (Baseball Bat) and Ex.PW-9/D (Knife). On 27.03.2008, A-3 was produced by his brother-in-law in the Police Station where he was arrested. The robbed articles were recovered at his instance. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. The appellants declined to participate in the Test Identification Proceedings. Upon completion of investigation, a charge-sheet was filed against them in

the Court. In order to establish its case the prosecution examined eighteen witnesses. In 313 Cr.P.C. statement, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been preferred by the appellants.

4. I have heard the learned counsel for the parties including the counsel for the complainant and have examined the file. At the outset, it may be mentioned that injuries sustained by the victim are not under challenge. Appellants' defence is that they were not the authors of the injuries.

5. On scanning the testimonies of the prosecution witnesses, it stands established that on 20.03.2008 the victim – PW-1 (R.K.Bhatia) had sustained various injuries on his body near West Kidwai Nagar (Delhi Haat). Someone had made a call to victim's wife and driver from his mobile soon after the occurrence. PW-2 (Sunila Bhatia), victim's wife and PW-4 (Amit), victim's driver arrived at the spot and took R.K.Bhatia to Trauma Centre, AIIMS. PW-4 (Amit) made a call at 100 and it led to recording of DD No.41A (Mark PW-16/A) on 20.03.2008 at 06.45 p.m. at PS Sarojini Nagar. MLC (Ex.PW-13/A) records the arrival time of the injured R.K.Bhatia at 06.22 p.m. The name of the individual who had brought him at the Trauma Centre has been recorded as victim's wife – Sunila Bhatia. The patient was unfit for statement at 8.22 p.m. Injuries suffered by the victim find mention in the MLC (Ex.PW-13/A). These injuries were not self-inflicted. The victim had no oblique motive to fake the injuries suffered by him.

6. Exact nature of injuries sustained by the victim is under challenge. Admittedly, the victim left AIIMS on his own on 23.03.2008.

Discharge summary (Ex.PW-16/H) has been proved by PW-18 (Dr.Sumit Sinha). In the cross-examination, he disclosed that the patient had remained under his care for three days. PW-1 (R.K.Bhatia) did not give plausible explanation as to why he opted not to continue his treatment at AIIMS and got discharge on his own on 23.03.2008. He claimed that subsequent to his discharge, he went to Max Hospital, Saket and got treatment there. He also got treatment from Dr.Maheswari and Dr.Reddy. The prosecution examined PW-17 (Dr.Punit Sethi), MD / Radiologist, Mahajan Imaging Centre, Hauz Khas, Delhi who proved the report (Ex.PW-17/A) based on CT Scan film. This film was, however, not produced on record. In the cross-examination, he admitted that the investigation was not carried out by him personally. He volunteered to add that it was conducted by the technicians. He further admitted that report (Ex.PW-17/A) does not reflect as to which doctor had referred the patient to Mahajan Imaging Centre. Prosecution did not examine any examining doctor from Max Hospital from where the victim had allegedly taken treatment. Similarly, Dr.Maheshwari, from whom the victim claimed to have been treated was not produced for examination.

7. PW-13 (Dr.Asef Majid Shirazi) had prepared MLC (Ex.PW-13/A) on 20.03.2008 at the time of medical examination of the victim at 06.22 p.m. On examination, he found the patient to be conscious and semi oriented and noticed the following injuries:-

- “1. Multiple seven deep incised wounds over left buttock.*
- 2. Two contused lacerated wounds over left parital region of scalp.*

3. Tenderness over left back with bruises.”

He ascertained the nature of injuries as ‘grievous’ qua injury No.1. only. He could not give any opinion regarding other injuries reflected in the MLC (Ex.PW-13/A). In the cross-examination, he admitted that all the vital parameters of the patient were normal. There was no injury on kidney, liver, lungs, heart and pancreas.

8. PW-5 (Dr.Devasenathipathy), Senior Resident, Department of Radio Diagnosis, AIIMS proved X-Ray report (Ex.PW-5/A) prepared by Dr.Bhawana. As per this report, there was fracture proximal phalanx of left fifth digit with anterolisthesis of S1 over S2 vertebra. In the cross-examination, he disclosed that there was only one fracture on the left little finger and it was not a life threatening fracture. X-Ray was conducted on chest, pelvis, spine, hand and left leg with knee.

9. PW-18 (Dr.Sumit Sinha), Associate Professor, JPNA Trauma Centre, AIIMS on scanning the discharge summary (Ex.PW-16/H) informed that there was a fracture in the skull with blood clots in the brain. He was unable to disclose if R.K.Bhatia had come to hospital for follow up treatment after discharge.

10. On scrutinizing the testimonies of concerned doctors, it reveals that there is some inconsistency regarding the nature of injuries suffered by the victim. The fact, however, remains that R.K.Bhatia sustained injuries ‘grievous’ in nature by a sharp weapon.

11. Involvement of A-1 and A-3 in the incident is writ large. PW-1 (R.K.Bhatia), in his Court statement, identified both of them to be the

assailants and perpetrators of crime. Specific and definite role was attributed to each of them in inflicting injuries with different crime weapons. He deposed that when he was enticed by A-2 to reach at a secluded place, both A-1 and A-3 appeared at the spot. A-1 was armed with a baseball bat and A-3 had a knife in his hands. Before he could understand or perceive anything, A-1 attacked him and started beating him with the baseball bat. Simultaneously, A-3 started giving knife blows on his body. Even after his fall on the ground, he was beaten by them. On his raising alarm, they fled the spot. Despite lengthy and searching cross-examination, nothing material could be extracted to disbelieve the injured witness. No ulterior motive was assigned to the victim for falsely implicating them in the crime. In the absence of prior animosity or enmity, the victim who was not acquainted with them before the occurrence and had not named them in the FIR was not believed to make a false statement to rope in the innocent ones. Being an injured, he must be interested to bring the real offenders to book and is not expected to spare the real culprits. Material facts deposed by him remained unchallenged in the cross-examination. No specific suggestion was put to him if both the assailants were not present at the spot at the relevant time. They did not claim their presence at any other specific place at that time. It is pertinent to note that during investigation, the Investigating Officer had moved an application for conduct of Test Identification Proceedings. Both the assailants declined to participate in it. Adverse inference is to be drawn against them for declining to participate in the Test Identification Proceedings. The prosecution has further relied upon the circumstance of recovery of the crime weapons and the articles removed from victim's possession after the injuries were inflicted to him.

12. Regarding A-2's complicity in the crime, allegations against her were that she conspired with A-1 and A-3 and pursuant to that conspiracy, she called the victim at a secluded place to afford an opportunity to the other assailants to rob him. The evidence led by the prosecution is, however, scanty and is not sufficient to prove these allegations. Admitted fact is that A-2 had worked as a 'temporary' employee for around two months in Star Infrastructure Developers where PW-1 (R.K.Bhatia) and PW-11 (Suresh Kumar Singla) were partners in 2005. She was a temporary employee and had left the job voluntarily on her own. No document has been produced on record to show as to in what manner she was employed and what was her salary. There were other twenty employees in the said concern at that time. In normal circumstances, PW-1 (R.K.Bhatia), partner of the said concern, was not expected to have any interaction / contact with a 'temporary' employee who had merely worked for around two months way back in 2005. It is a mystery as to how PW-1 (R.K.Bhatia) remained in contact with A-2 even after expiry of three years when she had abandoned the temporary job. PW-1 (R.K.Bhatia) was aware that she was a divorcee and used to live at Subhrato Park. In her statement under Section 161 Cr.P.C. (Ex.PW-1/DA), he informed the police about the financial assistance rendered to A-2 from time to time. This fact was denied by him in his Court statement. It appears that the victim has not presented true facts regarding his relationship with A-2. He being the employer is not expected to remain in contact even after three years with a divorcee without any specific purpose. It is unbelievable that PW-1 (R.K.Bhatia) would obey A-2's commands on 20.03.2008 and shall follow her instructions without demur with the sole purpose to meet her at a secluded place. Possibility of the victim and A-2 to have some intimate

relationship cannot be ruled out. It has come on record that on the day of incident A-1 and A-2 lived together at Quarter No.719, Sector-5 R.K.Puram. It appears that A-2's objectionable relationship with the victim was the oblique motive for A-1 to inflict injuries.

13. From the evidence on record, it cannot be inferred with certainty that assailants' real motive was to commit robbery as A-2 was aware of the fact that the victim used to carry around ₹2 lacs with him all the times and had provided an opportunity to her associates to rob by calling him at a secluded place. It has come on record that mobile phones in the victim's possession were not taken away. ₹10,000/- lying in victim's pocket remained intact. Had the assailants intended to rob the victim, they must have removed the said articles too. Even at the time of first encounter, no such demand to handover the articles in his possession was made. Only after infliction of injuries, certain articles are stated to have been removed by the assailants. This fact has not been established by cogent evidence. PW-1 (R.K.Bhatia) has made vital improvements in his Court statement. Certain facts mentioned by him in examination-in-chief do not find mention in his 161 Cr.P.C. statement and for this, no explanation has been offered by him. No independent witness was associated during investigation. The occurrence had taken place during day time at around 04.00 p.m. near a retail shop. The said shopkeeper was not examined to infer as to how and in what manner the incident took place.

14. Whether the assailants intended to commit murder is doubtful. A-2 was not armed with any weapon. A-1 allegedly had a baseball bat. The victim did not state in 161 Cr.P.C. statement if A-3 was armed with a knife. The injuries inflicted were not on vital organs. As per testimony of PW-5

(Dr.Devasenathipathy), there was only one fracture on the left little finger and it was not a life threatening one. PW-18 (Sumit Sinha) after going through the discharge summary (Ex.PW-16/H) which was not prepared by him merely stated that the victim had sustained 'fracture' in the skull. Nature of injuries sustained by the victim has not been opined. The patient was conscious and semi orient when he was taken for medical examination at the Trauma Centre. He remained admitted there till 23.03.2008 and got discharge on his own. He did not lodge any complaint with the police and statement under Section 161 Cr.P.C. was admittedly recorded at his residence after discharge. Seemingly, it was a case where 'grievous' hurt by sharp object was caused voluntarily by A-1 and A-3 in furtherance of their common intention. The prosecution was able to establish commission of offence punishable under Section 326/34 IPC qua A-1 and A-3.

15. In the light of above discussion, I am of the considered view that the prosecution was able to prove commission of offence punishable under Sections 326/34 IPC only against A-1 and A-3. In the absence of any cogent and convincing evidence A-2 deserves benefit of doubt and her conviction cannot be sustained. A-2 is given benefit of doubt and she is acquitted. Conviction and sentence qua her are set aside. The appeal (Crl.A.541/2013) is allowed.

16. As per A-1's Nominal Roll dated 29.03.2016, he was awarded RI for ten years with total fine ₹30,000/- for commission of offence punishable under Sections 307/394/120B/34 IPC. Nominal Roll further reflects that he has undergone four years, two months and five days incarceration besides remission for one year, one month and fifteen days as

on 29.03.2016. He is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory.

17. A-3's Nominal Roll dated 31.03.2016 shows that he was awarded RI for ten years with total fine ₹30,000/- for commission of offence punishable under Sections 307/394/120B/34 IPC. Nominal Roll further reflects that he has undergone four years, one month and seventeen days incarceration besides remission for one year as on 28.03.2016. He too is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory.

18. Considering the entire facts and circumstances of the case and alteration of conviction from 307 to 326 IPC, the Sentence Order qua A-1 and A-3 is modified. They are sentenced to undergo RI for seven years each with fine ₹5,000/- each for commission of offence under Sections 326/34 IPC; default sentence for non-payment of fine shall be SI for one month.

19. The appeals (Crl.A.594/2013 & Crl.A.411/2013) stand disposed of in the above terms. Pending application also stands disposed of.

20. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

AUGUST 24, 2016 / tr