

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 28th January, 2015

+ **CRL.A. 305/2014**

SHYAM Appellant

Through: Ms Alpana Pandey, Adv.
(DHCLSC)

versus

STATE Respondent

Through: Mr O.P. Saxena, Additional Public
Prosecutor for the State along with
SI Lichhman, P.S. South Rohini.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Appellant Shyam impugns the judgment dated 27.02.2013 and order on sentence dated 28.02.2013 in case FIR No.61/2011, P.S. South Rohini vide which he was convicted for offence u/s 394 IPC and was sentenced to undergo RI for a period of 3 years and was also directed to pay fine of Rs.2000/-, in default to undergo SI for 3 months.

2. Prosecution case lies in a narrow compass. On 22.03.2011, complainant Yudhvair Singh (PW3) was roaming near CAW Cell, Sector 3 Rohini along with his two nephews aged about 1 year and 5 years old. At about 07.20 p.m, two boys aged about 20-25 years started walking very closely near to his nephew Pratyakash Rana and one of the boys cut down

the thread of the locket which his nephew was wearing. He apprehended one person who had cut the thread and his name was revealed as Shyam. However, Shyam showed him a blade and threatened “*Chup-Chap Hat Ja Nahi to Abhi Faad Dunga*” and thereafter he gave a fist blow in his stomach but he did not let him go and at that time Shyam had thrown the locket towards the other boy who ran away. He made a call to the police at 100 number on which DD No.28A was recorded and was assigned to SI Parveen Kumar (PW4) who reached the spot where Yudhvir Singh produced accused Shyam and one piece of blade. SI Parveen recorded statement of Yudhvir and got the case registered. Accused was arrested, site plan was prepared. Blade was seized. After completing investigation, charge sheet was submitted u/s 392/397 IPC against the accused before the learned Magistrate which was ultimately committed to the Court of Sessions. Charge for offence u/s 394/34 IPC and u/s 397 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. In order to substantiate its case, prosecution in all examined four witnesses. The case of accused was one of denial simplicitor. After considering the rival submissions made by learned counsel for the parties and the evidence adduced by the prosecution, vide impugned judgment and order on sentence, the appellant was convicted and sentenced as mentioned hereinabove. Dissatisfied, the present appeal has been preferred.

4. It was submitted by learned counsel for the appellant that the learned Trial Court had convicted the appellant on the solitary testimony of the complainant. The place of incident was densely populated but no public person was examined. It had come in the deposition of the complainant that he purchased balloons for his nephews. Even the balloonwala was not examined. Further the complainant was not medically examined in order to prove that any hurt was caused to him. No recovery was effected from the accused. Under the circumstances, prosecution could not prove the case beyond reasonable doubt. Accordingly the accused was liable to be acquitted. The impugned order be therefore, set aside.

5. Per contra, it was submitted by learned APP for the State that the accused was apprehended at the spot. There is no reason to discredit the testimony of the complainant as the accused is not alleging any enmity either with the complainant or with the police. There is absolutely no reason as to why the complainant or for that reason police will falsely implicate him in the case. The accused was acquitted of the charge u/s 397 because according to the learned Trial Court, surgical blade was not a deadly weapon. The mere fact that the complainant was not medically examined is not sufficient to lead to the conclusion that no hurt was caused to him. It was submitted that the impugned order does not suffer from any

infirmity which calls for interference, as such, the appeal is liable to be dismissed.

6. The star witness of prosecution is complainant PW3 Yudhvair Singh who testified that on 22.03.2011, he along with his two *bhanja*'s, aged about 1 year and 5 years had gone to market at Sector 3, Rohini. At about 07.20 p.m., when they were present near CAW Cell, two boys started walking along with his *bhanja*, Pratyaksh Rana, aged about 5 years who was walking ahead of him. His *bhanja* was wearing a gold locket of 2 gms. which was in a black thread. Accused Shyam cut down the said thread from the neck of his *bhanja* and took the locket. He caught hold of accused Shyam, who showed him a blade and threatened him saying "*Chup Chap Hat Jaa Nahi To Phaar Dunga*". He also gave fist blow on his stomach. Accused Shyam had thrown the locket to his associate who ran away from the spot with the locket. He, however, continued to hold Shyam and gave a call to police at 100 number from his mobile phone. Police came there along with Ct. Jitender at the spot. He had also taken out the blade from accused Shyam which was handed over to SI Praveen who took the same into possession vide seizure memo Ex.PW1/A. Accused made a disclosure statement Ex.PW 3/A wherein he gave the name of his other associate as Ishwar @ Chana. He duly identified the accused as well as the blade recovered from him. This witness was cross

examined by learned counsel for the accused. However, nothing material could be elicited to discredit his testimony. The initial complaint made by him to the police which swung the police machinery into action was reiterated by him in the Court. Absolutely no enmity, ill-will or grudge has been alleged by the accused against the complainant for which reason he would falsely implicate him in this case. There are catena of decisions to the effect that the Court can rely upon the testimony of a single witness.

7. In *Sunil Kumar vs. State of Govt. of NCT of Delhi*, (2003) 11 SCC 367 Hon'ble Supreme Court repelled a similar submission observing that as a general rule, the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.

8. In *Namdeo v. State of Maharashtra*, (2007) 14 SCC 150, Hon'ble Apex Court re-iterated the view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact.

The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

9. In *Kunju @ Balachandran vs. State of Tamil Nadu* AIR 2008 SC 138, a similar view has been taken placing reliance on various earlier judgments including *Jagdish Prasad vs. State of M.P.*, AIR 1994 SC 1251 and *Vadivelu Thevar vs. State of Madras*, AIR 1957 SC 614.

10. In the instant case, despite cross examination, nothing material could be elicited to disbelieve the testimony of the complainant. He had no axe to grind to falsely implicate the accused. His testimony remained unimpeached on which implicit reliance can be placed.

11. Although it is true that there is no independent witness but it has come in the statement of SI Praveen that he asked 4-5 public persons to join proceedings but none agreed. It is common experience that public persons are generally reluctant to join police proceedings. There is general apathy and indifference on the part of public to join such proceedings. This position of law was reiterated in *Aslam & Ors. Vs. State*, 2010 III AD (Delhi) 133 where it was observed by this Court that reluctance of the

citizens to join police proceedings in well known and needs to be recognized. It cannot be disregarded that public does not want to get dragged in police and criminal cases and wants to avoid them because of long drawn trials and unnecessary harassment. In *Manish vs. State*, 2000 VIII AD SC 29 and in *A. Bhai vs. State*, AIR 1989 SC 696 also it was held that we cannot be oblivious to the reluctance of the common man to join such raiding parties organized by the police, lest they are compelled to attend police station and Court umpteen times at the cost of considerable inconvenience to them, without any commensurate benefit.

12. Substantially, similar plea was taken in *Appabhai and Anr. vs. State of Gujarat*, AIR 1998 SC 696, where it was held as under:-

“11.It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused.”

13. In view of the above, non-production of any independent witness is not sufficient to throw the case of prosecution.

14. The submission of learned counsel for the appellant that the *balloonwala* had not been examined by the Investigating Officer of the case deserves outright rejection as there is no evidence that the *balloonwala* was an eye witness to the incident.

15. Moreover the accused was apprehended at the spot. He has not offered any explanation regarding his presence at the spot and his apprehension by the complainant. In his disclosure statement, he had given the name of his co-accused as Ishwar @ Chana. It has come in the statement of PW4 SI Praveen that Ishwar @Chana was arrested. However he was a juvenile, as such his challan was filed separately in Juvenile Court. The locket was recovered from his possession. Under the circumstances, it also stands proved that pursuant to the disclosure statement made by the appellant, his co-accused Ishwar @Chana was arrested from whom the recovery of locket was effected.

16. As regards the last limb of arguments of learned counsel for the appellant that the complainant was not medically examined and, therefore, Section 394 IPC is not made out is also devoid of merit inasmuch as, as per Section 394, if any person while committing or attempting to commit robbery, voluntarily causes hurt then he is liable to be punished under this Section. Section 319 of the Indian Penal Code defines 'hurt' as under:-

"319. Hurt- Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."

17. Sesion321 defines voluntarily causing hurt:-

“321. Voluntarily causing hurt- Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

18. It has come in the statement of the complainant that while threatening the complainant to remain silent, the accused also gave a fist blow on his stomach which tantamounts to causing hurt to him. However, it was not such hurt which required his medical examination and therefore, even if he was not medically examined that does not mean that he had not caused any hurt. Even otherwise the question whether the allegations levelled against the accused falls within the four corners of Section 392 or Section 394 becomes academic in view of the fact that the punishment prescribed for offence u/s 394 IPC is imprisonment for life or for a term which may extend to 10 years and fine; u/s 392, punishment prescribed is also the punishment which can be upto 10 years and fine. However, in the instant case, the appellant has been sentenced to undergo rigorous imprisonment only for a period of 3 years and fine. Therefore, even if it is taken that in the absence of any medical evidence it is not proved that while committing robbery, the appellant voluntarily caused hurt to the complainant yet the offence of robbery which is punishable u/s 392 IPC is established. The impugned judgment and the order on sentence does not

suffer from any infirmity which calls for interference, as such the appeal being devoid of merit is dismissed.

19. The sentence of the appellant was suspended vide order dated 07.03.2014. Under the circumstances, the appellant is directed to surrender forthwith in order to serve the remainder period of sentence, failing which learned Trial Court is directed to take appropriate steps for getting him arrested for serving the remainder period of sentence.

Copy of the judgment along with Trial Court record be sent back.

(SUNITAGUPTA)
JUDGE

JANUARY 28, 2014
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