

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : May 12, 2017

+ CRL.A. 519/2001
MD. SALEEM @ SUKHA

..... Appellant

Through: Mr. M.L. Yadav, Advocate

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

P.S.TEJI, J.

1. By this appeal filed under Section 374 of Cr. P.C., the appellant seeks to challenge the impugned judgment dated 12.03.2001, passed in SC No.5/99 in a case registered as FIR No. 873/98 under Section 393/397/398/452 of IPC AND Section 27/54/59 of Arms Act, at Police Station Hari Nagar, New Delhi. The appellant also challenge the order on sentence dated 12.03.2001, whereby he has been ordered to undergo rigorous imprisonment for three years with fine of Rs.1,000/- and in default of payment of fine, to further undergo RI for a period of three months for the offence under Section 452 of IPC. The appellant was also awarded sentence of rigorous imprisonment for seven years for the offence under Section 398 of IPC. He was additionally sentenced to undergo rigorous imprisonment for three years for the offence under Section 25/27 of Arms Act, All the

sentences were ordered to run concurrently.

2. The facts as emerged from the impugned judgment are that on 10.11.1998 on receipt of information Sub-Inspector Hansraj (PW-7) alongwith Constable Hukmahender reached the residence at Hari Nagar, where he met Mrs. Asha Sehgal and her son Saurav Sehgal and accused Sayed Javed in an injured condition with a knife injury measuring 30 cm. Statement of Asha Sehgal was recorded. It was stated that at about 1 PM when she was present with her son Saurav in the house, on hearing the noise of door knocking she opened the door and saw three boys standing. Two boys came inside and one kept standing at the door. One of the boys gagged her mouth and asked her to take out whatever they had. The second boy had a pistol in his hand. On her crying Sourav came out and caught the hand of the boy with a pistol. When they raised a noise, the boy standing at the door tried to close the door, but she managed not to allow him to close the door. On their raising noise all the three boys ran away downstairs. One boy Bharat who was passing by, caught hold of accused Sayed Javed who had a knife. Javed informed that three other boys namely Shakeel, Salim and Yunus, all residents of Inderlook Jhuggies were also with him, who had run away. **On the disclosure statement of accused Javed, appellant – Mohd. Saleem @ Sukka was arrested. On his disclosure, revolver was recovered with four live cartridges** Remaining accused could not be arrested. After completion of rest of the investigation, the accused were sent to trial.

3. Investigation started, appellant was arrested and after

completion of the investigation, charge sheet under Section 452/398/34 of IPC were framed against the appellant. However, co-accused Javed was also charged with offence under Section 27 of Arms Act and the appellant was charged under Section 25/27 of Arms Act. All the incriminating material was put before the accused persons to which they pleaded not guilty and claimed trial.

4. In their statement recorded under Section 313 of Cr. P.C., the appellant denied the prosecution case and stated that he was an employee of husband of the complainant who owed them certain dues and when he demanded the same, he was falsely implicated by the complainant.

5. To prove the charges against the appellant, the prosecution examined 7 witnesses. They are; ASI Sarla, (PW-1); Asha Sehgal (PW-2); Parmod Sehgal (PW-3); Bharat (PW-4); Sourav Sehgal (PW-5); Constable Brij Pal (PW-6); and Sub-Inspector Hans Raj (PW-7).

6. Upon considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant guilty for an offence punishable under Sections 452/398/34 of IPC by impugned judgment dated 12.03.2001, and vide order on sentence dated 12.03.2001, the appellant was sentenced as indicated above. Hence, the appellant has filed the instant appeal against the judgment and order on sentence passed by learned Additional Sessions Judge. During pendency of the present appeal, the sentence imposed upon the appellant was suspended vide order dated 18.03.2003.

7. Learned counsel for the appellant contended that prosecution has not proved the recovery against the appellant and in fact neither incriminating evidence was recovered from the possession of the appellant, nor at his instance, but it was planted upon him. It is further contended that the complainant herself has not supported the prosecution version on various material points. Even the fact regarding dispute of money matter regarding payment of the wages/salary to the appellant by the complainant has not been verified to the satisfaction of the court. It is further contended on behalf of the appellant that the ingredients of section 452 and 398 of IPC have not been satisfied. Therefore, the impugned judgment and order on sentence passed against the appellant are liable to be set aside.

8. Per contra, learned Additional Public Prosecutor for the State has opposed the aforesaid contentions raised on behalf of the appellant and submitted that there is no illegality or infirmity in the impugned judgment and order on sentence as passed by learned Trial Court as the complainant remained consistent with her statements and the cases of this kind, the injured witness is sufficient to prove the guilt of the accused persons. Therefore, the appeal filed by the appellant is liable to be dismissed.

9. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as impugned judgment and order on sentence passed by the learned Trial Court. This court observes that the learned Trial Court has convicted the appellant solely on the testimony of the complainant – Asha Sehgal (PW-2), eye

witness- Sourav Sehgal (PW-5) and Sub-Inspector Hans Raj (PW-7).

10. What this court finds from the deposition of Asha Sehgal (PW-2) is that an **accused alongwith a knife, which was in his socks was arrested and recovered from the accused – Javed** Sketch of knife was prepared and she had signed the sketch of knife (Ex.PW-2/B). Regarding pistol, she had deposed that she could not identify as it was thrown and she did not see as to who had it, however voluntarily she stated that it must be in the hand of second accused who entered the house. She further deposed that she was in the kitchen when someone knocked on the door. She opened the door and saw two boys standing outside, both of whom entered her house. Her mouth was muffled first of all at the gate by accused Javed, who also pressed her eyes and mouth. Her son (12/13 years) was at home due to chicken pox. She was made to lie on centre table and other accused caught her from her hair. Accused gave her beating by fist and showed her the pistol. Her son came after 2/3 seconds and she tried to utter word 'bachao' but the accused gagged her mouth. Somebody closed the door from outside, therefore there must have been a third person in the crime. Her son tried to drag away both the accused and she escaped from the clutches of accused after using some force and when she pushed the door with force it opened. Third boy jumped from first floor and escaped. She saw him while jumping. She came outside, and saw that accused were also running away. Other accused also escaped from the clutches of her son. **had a** She also denied the suggestion that neither knife was recovered from Javed nor pistol was recovered from

Saleem.

11. The deposition of Parmod Sehgal (PW-3) is also relevant to mention here to link the appellant to the present case. PW-3 stated in his testimony recorded before the court, that on 11.11.1998 remand of accused Javed was obtained, at his instance the appellant – Mohd. Saleem was arrested. After interrogating, appellant – Saleem had disclosed that he could get the pistol recovered as he had kept the revolver at Nala of Subhash Nagar Mod. The accused Saleem took the police at the spot and after removing bricks, revolver was found under the grass. It was in a polythene bag. Sketch of Pistol (Ex.PW-3/C) was prepared and signed by him. The witness further deposed that there were four live cartridges in the pistol. In his cross-examination, he had deposed that when he reached the house of Asha, accused was tied with grill as he was encircled by public near house of Asha. Accused was not beaten by police, writing work was done at the house of Asha.

12. The other relevant eye-witness to the incident is Sourav Sehgal (PW-5), i.e., son of the complainant, who was present at home at the time of incident. He had deposed that on 10.11.1998 at about 1 PM, he was at his residence with his mother. He heard cries his mother and he saw both accused. Accused Javed pointed out by the witness was had a revolver in his hand and other accused had caught hold of his mother. He tried to apprehend the accused with a revolver but both managed to escape. One person namely Bharat apprehended the accused having pistol at short distance from house. Nothing was found from his possession. He did not know as to what was recovered from

the accused Javed. Knife was taken by police in his presence, which was in pant of accused who was apprehended by Bharat. Knife was tied with rassi. Preparation of sketch of knife was prepared on paper sheet in his presence and wrapped in handkerchief. He did not identify the revolver which was in hand of accused. He had also deposed that upon hearing the cries of his mother he reached there and saw accused catching hold of his mother and she was in standing position. He tried to snatch revolver from hand of accused to make the revolver fall on ground.

13. It is an admitted fact that the appellant has been convicted for the offence under Section 452/398 of IPC and Section 25/27 of the Arms Act. For better appreciation of intent of these sections, the same is reproduced hereunder:-

452. House-trespass after preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

398. Attempt to commit robbery or dacoity when armed with deadly weapon.—If, at the time of attempting to

commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

14. Here, it would be relevant to mention that in ***Abdul Sayeed vs State Of M.P, (2010) 10 SCC 259***, wherein the Hon'ble Apex Court, while dealing with the reliability of testimony of injured witness, has held as under:

“The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

15. From the deposition of the complainant the fact of trespassing is proved by the prosecution by establishing the presence of the appellant on the date and place of incident. Apart from this, there is recovery of pistol from the appellant at his instance. The other accused has not preferred appeal in this case. It is quite possible that he might have

completed his incarceration in jail. The sentence of the appellant was suspended vide order of this court on 18.03.2003.

16. After careful scrutiny of the statement of the victim/complainant, deposition of other relevant witnesses and the facts of the case, this court observes that two persons entered in the house of the complainant, one of them was carrying pistol and second gagged her mouth. One other person was standing outside who bolted the door from the outside. Knife was recovered from the co-accused and the pistol was recovered from the appellants herein and that too at his instance.

17. In view of the aforesaid discussion, scrutiny of testimonies of prosecution, it is clear that the guilt of the appellant has been successfully proved by the prosecution beyond all reasonable doubts. Therefore, giving a cumulative consideration to the overall evidence in the facts of the present case, this court finds no irregularity or infirmity in the order passed by the learned trial court. Accordingly, the appeal filed by the appellant is dismissed and the impugned judgment and order on sentence dated 12.03.2001 are upheld.

18. Appellant is on bail. His bail bond is forfeited and surety bonds are discharged. Appellant is directed to surrender before the trial court within fifteen days, to serve out the remainder of his sentence.

19. A copy of this order be sent to the Trial Court for information and necessary steps.

20. With aforesaid directions, the present appeal filed on behalf of the appellants are disposed of.

(P.S.TEJI)
JUDGE

MAY 12, 2017
pkb

