

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

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Reserved on: 07.07.2017

Delivered on: 04.08.2017

+ CRL.A.1339/2015

ROOP KISHORE @ BOBBY

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr.K.Singhal.

For the Respondent : Mr.Arun Kr.Sharma, APP.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. Roop Kishore @ Bobby, the appellant has been convicted under Section 307/34 and 506 IPC and has been sentenced to undergo RI for five years, to pay a fine of Rs.20,000/- and in default of payment of fine to undergo SI for two months for the offence under Section 307/34 IPC and SI for a period of one year, fine of Rs.5000/- and in default of payment of fine to undergo SI for a period of 15 days for the offence under Section 506 IPC; the sentences having been ordered to run concurrently by judgment and order dated 15.10.2015/19.10.2015 respectively passed by the learned ASJ/Special Judge, NDPS, Rohini

Courts, Delhi in SC No.72/14 arising out of FIR No.64/2008 (P.S.Sultanpuri).

2. The appellant has been charged under Section 307/34 of the IPC for having caused gunshot injury to one Vipin (PW-2) by a country made pistol which hit him in his stomach and for assaulting Amit (PW-3) who had come to the rescue of Vipin (PW-2), for the offence under Section 323/34 IPC. For criminally intimidating PW-2, the appellant was also charged under Section 506 of the IPC.

3. On behalf of the prosecution, 14 witnesses have been examined to support the prosecution version.

4. Vipin @ Rinku (PW-2) who is the victim in this case has deposed that about 2/3 months prior to 31.01.2008 he had an argument with the appellant when the appellant had threatened to kill him. This incident was narrated by PW-2 to his cousin Amit (PW-3). Again on 31.01.2008, the appellant had threatened (PW-2) in the park falling in Sector 23, Rohini. This incident also was narrated to PW-3 who had assured that he would speak about the same to the appellant. On the next day i.e. on 01.02.2008, at about 10.30 AM while PW-2 and PW-3 were going to Budh Vihar market, the appellant along with his two associates came near them. The appellant is then said to have fired a shot from his country made weapon which hit him in his stomach. One of the associates of the appellant hit him by a knife which led to severe bleeding. When Amit (PW-3) came to his rescue, the miscreants including the appellant fled away. PW-3 took him to one Brahm Shakti hospital whereafter he was taken to Jaipur Golden hospital. He has specifically stated that the police had come to Brahm Shakti

hospital and Jaipur Golden hospital also. His statement was recorded in Jaipur Golden hospital.

5. PW-2 has identified the country made pistol and claimed the same to be similar to the one which was seen by him at the time of the occurrence. PW-2 also stated that it was during the game of cricket on 31.01.2008 that he was threatened by the appellant.

6. Amit (PW-3) has confirmed the statement of PW-2 on the manner of assault. He has testified to the fact that initially dispute between PW-2 and the appellant was settled but again on 31.01.2008 there was some verbal quarrel whereafter the occurrence took place on 01.02.2008 at about 10-11 AM. He also claims to have been assaulted at the hands of the accused persons.

7. Thus, from the deposition of the aforesaid two witnesses, the time and manner of occurrence stands established.

8. The prosecution case is further lent support by the statement of Dr.R.B.Singh (PW-8), the intensivist at the Brahm Shakti hospital, Budh Vihar. He has identified MLC No.2053 dated 01.02.2008 of PW-2 (Exh.PW-1/B) which was in the handwriting of Dr.Sandeep Mittal. It was stated by him that PW-2 was brought and examined in the casualty of the hospital at 11 AM by Dr.Sandeep Mittal, the then casualty medical officer, whose signature has been identified by him.

9. The weapon of assault and the bullet were examined by Dr.Puneet Puri (PW-9), Senior Scientific Officer (Ballistics), FSL, Rohini, Delhi. The weapon of offence was recovered at the instance of the appellant and the bullet was recovered from his body. Upon examination, after the test firing from the weapon, it was opined by

PW-9 that the bullet recovered from the body of the injured corresponded to bullet of 8 MM/.315 inch cartridge. However, no further opinion was possible to be given as to whether the bullet recovered from the body of PW-2 was discharged through the country made pistol which was recovered at his instance. The reason assigned for the same was that the individual characteristics of striations on the bullet which was recovered from the body of PW-2 was not sufficient for comparison and opinion. However, it was confirmed that the bullet recovered was an ammunition and the weapon used was a fire arm. Thus, he has proved his report which is Exh.PW-9/A and has also identified the weapon and the bullet (Exh.P1 & P4 respectively).

10. Dr.Rajesh Sharma (PW-14), Senior Head, Department of Surgery, Jaipur Golden hospital, Rohini, Delhi has testified to the fact that the nature of injuries sustained by PW-2 was dangerous. He has stated that PW-2 underwent emergency surgery with exploratory laparotomy. During laparotomy, the injuries in the liver and the transverse colon were discerned which were mended/repared. The opinion of PW-14 is Exh.PW-14/A which contains his signature.

11. Thus, from the deposition of the aforesaid witnesses, it is clearly established that because of the assault by the fire arm by the appellant, PW-2 received grievous injuries. But for the fact that timely treatment was given to PW-2, he could not have survived.

12. SI Deepak Malik (PW-13) who is the IO of the case has stated that on 01.02.2008, while he was posted at Sultan Puri P.S, investigation of DD No.10/PP, Budh Vihar was assigned to him. He along with Ct.Joginder Singh (PW-12) reached Jaipur Golden hospital

where he found PW-2 injured and admitted. At that time, Inspector Mahinder Singh, SHO also reached the hospital along with MLC No.2053 of Brahm Shakti hospital of PW-2. On the MLC of Brahm Shakti hospital, it was stated that PW-2 was fit for statement but since he was in the ICU for his treatment at Jaipur Golden hospital, his statement was not recorded there. However, in the Jaipur Golden hospital, the statement of PW-3, an eye witness to the occurrence was recorded (Exh.PW-3/A). The aforesaid witness is said to have made his endorsement beneath the statement whereafter rukka (Exh.PW-13/A) was prepared. Rukka was given to PW-12 to be taken to police station for registration of the FIR. Thereafter he along with PW-3 came to the place of occurrence and on the pointing of PW-3, the site plan (Exh.PW-13/B) was prepared. A supplementary statement of PW-3 was also recorded. On 02.02.2008, a secret informer provided some information about the appellant. He has also stated that on the instruction of the SHO, he had gone to Jaipur Golden hospital but did not record the statement of PW-2 as he was in the ICU. The aforesaid witness had arrested the appellant vide arrest memo (Exh.PW-12/A). The appellant is said to have made his disclosure statement (Exh.PW-12/C) which was signed by him. The appellant was brought back to Delhi.

13. PW-13 was recalled for his cross examination. On recall, he has stated that he did not record the statement of PW-2 in Jaipur Golden hospital as he was unfit on both the occasions.

14. Similarly HC Vinod (PW-1), HC Ramesh (PW-4), Ct.Navas (PW-5) and ASI Vijender (PW-7) have supported the prosecution version.

15. In his statement under Section 313 of the Code of Criminal Procedure, the appellant has denied his participation in the occurrence and has submitted that he was picked up from his house at Mange Ram park where his cousin Manoj had come to see his mother. Both of them were arrested and were falsely implicated in this case.

16. It was contended on behalf of the appellant that admittedly PW-2 was taken to Brahm Shakti hospital and his MLC at Brahm Shakti hospital revealed that he was in a fit condition for making statement, yet his statement was not recorded and the FIR was registered on the statement of PW-3 only. It has further been pointed out that the statement of PW-2 was not recorded till 06.02.2008 whereas PW-2 has stated that his statement was recorded in Jaipur Golden hospital. It has been argued that on receipt of the information about the incident, HC Vinod (PW-1) reached Brahm Shakti hospital. He was accompanied by Ct.Joginder Singh (PW-12). According to the statement of PW-1, PW-2 was under treatment in the hospital. However, Ct.Joginder Singh (PW-12) has claimed that by the time, they reached Brahm Shakti hospital, PW-2 had already been taken to Jaipur Golden hospital by his relatives.

17. Neither HC Vinod Kumar (PW-1) nor Ct.Joginder Singh (PW-12) were required to record the statement of PW-2. SI Deepak Malik (PW-13) is stated to have reached Jaipur Golden hospital on receiving the information about the admission of PW-2 at the hospital.

Therefore, neither he nor the SHO had any opportunity to record the statement of PW-2 at Brahm Shakti hospital.

18. The case of the prosecution is that on the statement of PW-3, rukka (Exh.PW-3/A) was prepared and FIR was registered. Rukka was dispatched at 1.20 pm and the FIR was registered at 1.40 pm. Thus there is no delay in lodging of the FIR. The occurrence is said to have taken place between 10.30 to 11 AM. PW-2 was straightaway taken to Brahm Shakti hospital where his MLC was prepared and thereafter he was shifted to Jaipur Golden hospital. There would have been some time lapse in such change of hospital and, therefore, there is no reason to disbelieve the statement of either PW-3 or PW-2. The statements of PWs.2 & 3 cannot be lightly discarded.

19. Where a witness to the occurrence is himself an injured, the testimony of such a witness is generally considered to be very reliable. There is an in-built guarantee of his presence at the scene of crime and it is highly unlikely for him to spare his assailants in order to falsely implicate someone else. Very convincing evidence is required to discredit such injured witnesses (Refer to Mano Dutt vs. State of U.P., (2012) 4 SCC 79; Abdul Sayeed vs. State of M.P., (2010) 10 SCC 259; Ramlagan Singh vs State of Bihar, (1973) 3 SCC 881; Malkhan Singh vs. State of U.P., (1975) 3 SCC 311 and Jarnail Singh vs. State of Punjab, (2009) 9 SCC 719).

20. It is almost well settled that a special evidentiary status is accorded to the testimony of an injured accused and his deposition has to be relied upon in the absence of any special ground for rejecting the

same. His testimony would lend finality to the supposition that he was present at the time of the occurrence.

21. The MLC of PW-2 which was prepared at Brahm Shakti hospital (Exh.PW-1/B) reveals that the condition of PW-2 was not good and he was semi conscious. Apart from the gun shot injury in his stomach, there were lacerated wounds on his scalp and near the ears. In that view of the matter, it cannot be expected that PW-2 was fit for making statement.

22. The statement regarding the manner, time and nature of assault is consistent so far as the deposition of PWs.2 & 3 are concerned.

23. The claim of PW-2 that his statement was recorded at Jaipur Golden hospital, when in fact his statement was recorded on 06.02.2008 at home, would be of no avail to the appellant as there is no reason to disbelieve the statement of PW-3 or of PW-2 during the trial. The inconsistencies which have crept in the statements of some of the witnesses are too insignificant to take notice of. Merely because blood stained earth was not taken from the spot would not render the other clinching evidence nugatory.

24. There is no necessity of examination of any other independent witness when two witnesses to the occurrence have clearly deposed against the appellant. The argument on behalf of the appellant that PW-3 was highly interested is only being noted to be rejected. PW-3 also was assaulted in the occurrence.

25. Thus the conviction of the appellant under Section 307/34 and 506 IPC is justified.

26. There is no reason for this Court to interfere with the judgment and order of conviction and sentence. The sentence imposed upon the appellant also appears to be reasonable and does not call for any interference.

27. The appeal is dismissed.

ASHUTOSH KUMAR, J

AUGUST 04, 2017

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