

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.A. 766/2018

STATE & ORS Respondents

Through: Mr. Hirein Sharma, APP for the
State
Mr. Tabbasum Firdause,
Advocate for R2 and R3.

ORDER
10.10.2018

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2. This appeal is by the injured complainant who was examined as PW-2. It is his case that on 15th August, 2017 at around 9.30 pm while he was proceeding on the Agra road on his way back home to Hari Nagar-II on his motorcycle, a black colored vehicle came from behind, stopped in front of him and blocked his way. According to the Appellant, A-1 and his son A-2 and one another person got down from the vehicle. A fourth person kept sitting inside the vehicle. A-2 is supposed to have hit the Appellant on his nose and the other person with him caught hold of the Appellant and pressed his mouth.

3. A-1 is supposed to have said that the Appellant is the main cause of all the problem and that he should be blown up ('*uda do*'). In the meanwhile, two other boys came to the spot on a motorcycle. They also started beating the Appellant. According to the Appellant, on the instigation of A-1, who told the Appellant '*sale bade akhbar main nikalwata hai*' and on the instigation of his son A-2, the boys who came on the motorcycle stabbed the Appellant on the left side of his stomach and on his head. According to the Appellant, whilst he was being stabbed, A-2 had caught hold him and the other person who had alighted from the car with him had his mouth pressed. The Appellant felt giddy and fell down, upon which the accused persons all fled from the spot.

4. According to the Appellant, about 3-4 days prior to the incident, A-2 had come to his shop in C-2, Saurabh Vihar with 4-5 boys and threatened the Appellant that “he would break me with sticks and told me not to come to that shop.”. Nearly a month prior to the incident on 22nd July, 2007 according to the Appellant, his shop had been illegally taken over by A-1, A-2 and one Manu Dubey. According to the Appellant, those persons filed a complaint against him in the PS upon which an FIR No.574/2007 had been registered. The Appellant also disclosed that some civil litigation was pending between the accused on the one hand and himself on the other.

5. The MLC of the Appellant (Ex.PW7/A) (a clear copy of which is Ex.PW7/DB) reveals that he was brought to the Apollo Hospital at around 10.35 pm on 15th August, 2007 by one ‘Mr. Ved’. It is noted in the MLC that there was alleged history of assault and that ‘patient was found road side’ around half an hour prior to the MLC being recorded. It was further noted that there was a ‘sharp instrument cut injury over the scalp around 10 cm’ and that there was no active bleeding. It also noted ‘sharp instrument cut injury over left side of abdomen at around 3-4 cm with protrusion of omentum’. On the night of 16th August 2007, the Appellant was operated upon by Dr. Deepak Govil (PW-14). The Appellant remained admitted in the hospital till 22nd August, 2007. PW14 opined that the injuries to the Appellant were grievous.

6. It appears that there was no eye witness to the incident other than the Appellant himself. In his cross-examination, he denied knowing anyone by the name of 'Ved', the person who was supposed to have brought him to the Apollo Hospital after he was injured.

7. The second aspect of the matter as noted by the trial Court is the previous litigation between the Appellant on the one hand and the accused on the other concerning the shop, the ownership of which has been taken over by the Appellant. There is no other witness to fix the presence of the accused at the spot at the time of incident.

8. The evidence of Than Chand (PW-12), whose statement was recorded more than 5 to 6 months after the incident, reveals that he was present at his house on 15th August, 2007 and at around 10/10.30 pm, he made his way to the spot after hearing the cries of the Appellant and on seeing members of the public going that side. He is a person who was known to the Appellant, as he has stated in his cross examination that he had known the Appellant for 15 years as they used to reside in the same colony. When he found the Appellant lying in an injured condition, he supposedly asked the Appellant, whom he stated was conscious at the time, for his landline number and then informed the wife of the Appellant. PW-12 further stated that he had asked the Appellant what had happened to him. The Appellant does not appear to have disclosed to him about the identity or presence of either of the accused at the spot.

9. Among the factors considered by the trial Court in disbelieving the entirety of the evidence of the Appellant was the fact that the clothes of the Appellant which were purportedly seized at the Apollo Hospital when he was first brought there, were not shown to be blood soaked or torn. Given the description of the offence as narrated by the Appellant, it is strange that neither the *Kurta* that he was wearing nor the *banian* were torn or had any cut marks. With the case of the Appellant being that he sustained a stab injury caused by a knife on the left side of the stomach, the absence of any tears on his clothes is not consistent with his own testimony.

10. The failure by the prosecution to collect any blood soaked clothes of the Appellant is also strange. While the stab injury did not have any active bleeding, as mentioned in the MLC, it is difficult to believe that a stab injury to the extent of even 3-4 cm to the left side of the stomach would not result in active bleeding at some point. It would have definitely stained the clothes of the Appellant to a certain extent. Thus, even the medical evidence cannot be said to be fully corroborative of the testimony of the Appellant.

11. Even according to the Appellant, the role attributed to A-1 and A-2 is not that they themselves stabbed him but that they exhorted the two boys who arrived on the motorcycle to stab him. Those boys were not named and they could not even be described by the Appellant. It was

also stated by the Appellant that since it was dark in the area, he was not able to see the number of the black car or the motorcycle used by the assailants. Seeking to prove the guilt of A-1 and A-2, for the offences under Section 307 read with 34 IPC was therefore, was not bound to succeed, particularly since there was no indication of who the remaining assailants were.

12. The Court is not satisfied that the sole testimony of the Appellant, even though he was injured, was sufficient to find A-1 and A-2 guilty of the offences with which they were charged. The Court is unable to be persuaded that the trial Court has committed any legal error in its analysis of the evidence or in the conclusion reached that the prosecution has failed to prove the case against A-1 and A-2 beyond reasonable doubt. No grounds have been made out for interference with the impugned judgment of the trial Court.

13. The appeal is dismissed.

14. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 10, 2018

"sandeep"