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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20th May, 2019

Decided on: 30th May, 2019

+ CRL.A. 726/2002

RAJESH & ANR.

..... Appellants

Through: Mr. Mukesh K. Verma, Advocate

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP with SI
Ranbir Singh, PS Nangloi

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Both appellants were brought to trial in the court of Sessions (Sessions case no.176/2001) on the charge for the offence of attempt to murder under Section 307 read with Section 34 of Indian Penal Code, 1860 (IPC), the gravamen thereof being that on 10.02.1999, at about 9.15 p.m. in front of dispensary of 'C' Block, Camp no.2, Nangloi within the jurisdiction of police station Nangloi ("the police station"). In furtherance of their common intention, they had committed certain acts wherein a dangerous injury was inflicted with a knife on the person of Rajesh, son of Hari Ram (PW-3), by the first appellant Rajesh (A1), aided and assisted by the second appellant Ashok Kumar Patel (A2), with such intention or knowledge and under

such circumstances that if such injury had resulted in the death of the said person (victim), they would be guilty of the offence of murder. The trial court, by its judgment dated 24.08.2002, found the appellants guilty, as charged, and convicted them accordingly. By order dated 27.08.2002, sentence of rigorous imprisonment for three years with fine of Rs.5,000/- each was awarded as punishment to the appellants with direction that in the event of default in payment of fine, they would undergo further rigorous imprisonment for six months each, the benefit of set off under Section 428 Cr. PC having been accorded.

2. Feeling aggrieved by the aforementioned judgment, and order on sentence, the present appeal was filed, the plea of the appellants being that they are innocent and have been falsely implicated in the case, the injuries having been suffered by the victim on account of fall, certain glass pieces having caused the incised wound in his abdominal region.

3. The sentence of imprisonment was suspended, by order dated 24.10.2002, and the appellants were enlarged on bail. The appeal had been admitted, by an earlier order dated 19.09.2002, and was directed to be taken up from the list of 'regulars'. It came up in 2014, but the appellants would not appear. This led to bailable warrants being issued to secure their presence. The turn of the appeal to be taken up for hearing from the regulars subsequently came up in January 2019 when once again they were not present. Their presence was secured by duress process.

4. The learned counsel for the appellants and the Additional Public Prosecutor have been heard at length and the record perused.

5. The facts of the case lie in a narrow compass and may be taken note of at this stage.

6. Both the appellants, and the victim (PW-3), lived during the relevant period in the same *jhuggi* cluster, the latter (the victim) then being a young boy aged 15 years' old. It appears from the evidence that the local residents had gathered at the public place at about 9.15 p.m. on 10.02.1999 in front of the local dispensary. The victim, out of curiosity, also came and stopped at the scene. The appellants allegedly were in drunken state and were holding knives in their respective hands, this apparently creating ruckus. When the victim (PW-3) also stopped there so as to be an on-looker, A1 is stated to have put the knife at his face and asked him to run away, being abusive in the process, and extending threats by telling him that he would otherwise make him a "hero". When PW-3 retorted by questioning as to why he was being singled out, A2 caught hold of his sweater from behind and A1 inflicted a knife injury in his abdomen. Before A1 could inflict another knife blow to the victim, he claims to have got himself free from the clutches of the duo and run away, he being statedly pursued by A1, extending threats to kill him.

7. As per the prosecution case, the victim was brought to Deen Dayal Upadhyay Hospital (hospital) by his father Hari Ram whereupon he was medically examined by Dr. Gaurav Agarwal, the medical officer in the casualty who prepared medico-legal certificate (MLC) (Ex. PW1/A) noting down the injuries they including a clean incised wound over left iliac fossa region with protusion of omentum besides incised wounds on the left thumb and index finger. The

information about the admission in injured state was conveyed to the police station by the duty constable whereupon it was recorded vide DD no.55-B (Ex.PW5/A) in the police station. The matter was entrusted to SI Anil Kumar Gandhi (PW-9) who accompanied by Constable Bhupender went to the hospital. On his request, Dr. M.P. Singh (PW-1) who was then attending on the victim, gave a certificate (Ex.PW1/C) confirming that he (the victim) was fit for giving statement. PW-8, the investigating officer (IO), then recorded the statement (Ex.PW3/A) of the victim and on the basis of his endorsement (Ex.PW9/A), first information report (FIR) no.109/1999 (Ex. PW6/A) was recorded in the police station.

8. As per the prosecution case, A1 had surrendered himself before the Station House Officer (SHO) on 13.02.1999 and was arrested after interrogation, vide personal search (Ex. PW4/A). A2, on the other hand, was arrested on 21.02.1999 from his residence – jhuggi C-533, Camp no.2, Nangloi – after his personal search (vide Ex. PW7/A). During the course of investigation, the IO prepared site plan (Ex. PW9/B). The injury suffered by PW-3 was opined to be sharp and dangerous, as per the opinion (vide Ex. PW1/B) endorsed on the MLC by PW-1.

9. During the course of trial that followed, after charge had been framed on 29.07.1999, the prosecution examined nine witnesses, they including Dr. M.P. Singh (PW-1), who proved the MLC and the endorsements thereupon; J.C. Vashisht (PW-2), the record clerk who also proved the MLC to be in the hand of Dr. Gaurav Agarwal; the victim, Rajesh (PW-3); Constable Gurdayal Singh (PW-4), who was

present at the time of arrest of A1 on 13.02.1999; Constable Sajjan Kumar (PW-5), who had recorded DD no.55-B; HC Jai Singh (PW-6) who was the duty officer and had registered the FIR; Constable Susheel Kumar (PW-7) in whose presence A2 was arrested on 21.02.1999; SI Ashok Kumar (PW-8), who had completed the investigation, having taken it over from PW-9; and SI Anil Kumar Gandhi (PW-9), the initial investigating officer.

10. During their statements under Section 313 Cr. PC, both the appellants denied the evidence about intentional assault on the person of the victim or they being responsible for the injuries suffered by him. They claimed that they had asked the complainant to run away and as he was running away, he had fallen down on a piece of broken glass to receive the injuries. The appellant sought opportunity for leading defence evidence but inspite of the same being afforded, no evidence in defence was produced. The trial judge held that the evidence of prosecution, particularly the testimony of PW-3 is credible the same finding sufficient corroboration from the medical opinion and, thus, returned the finding of guilty.

11. It is conceded by the learned counsel for the appellants that PW-3 has testified confirming the prosecution story on the same lines as was set out in the FIR based on his statement (Ex. PW3/A). He, however, submitted that the evidence of PW-3 cannot be believed since there is no independent corroboration, he referring to the admission of PW-3 that there was darkness at the time and place where the incident took place. This argument does not cut any ice for the simple reason that it was not suggested to PW-3 that on account of

darkness he was unable to see who the assailants were. Even otherwise, it is an admitted case that both the appellants are local residents and they and the victim have been well acquainted with each other, each knowing the others by first names. In these circumstances, there is no reason why the ability of PW-3 to identify the assailants should be doubted.

12. The appellants have argued that Dr. Gaurav Aggarwal who had examined the victim on his arrival in the casualty department of the hospital has not been examined and, therefore, the MLC cannot be held to be proved. This argument cannot be accepted. As explained by PW-2, the MLC doctor has left the services of the hospital. His immediate presence could not be secured. The MLC was duly proved by PW-2, as also by his colleague (PW-1), who are acquainted with his writing and signatures. Even otherwise, PW-1 had also attended on the victim in the hospital and had not only given certificate about his fitness for statement but also as to the nature of injuries. Therefore, non-examination of Dr. Gaurav Aggarwal is of no consequence. [see *Vijay and Anr. Vs. State*, 2015 SCC OnLine Del 11984; and *Shailender Singh & Anr. Vs. State of Delhi Administration*, 2018 SCC Online Del 11873].

13. The appellants are unable to refute the medical evidence that PW-3 had suffered the incised wounds, two in the left hand and one in the abdominal region. It is their plea that such injury was suffered on account of fall on broken glass piece. This was suggested as a defence but suitably denied by PW-3. In this regard, however, they have not adduced any evidence. Mere fact that PW-1 admits the possibility of

such injury being suffered on account of fall on a sharp object does not mean that must be accepted as the correct state of facts.

14. It is correct that PW-3 is the solitary witness examined by the prosecution. But then, his father Hari Ram was cited as a witness. He, however, died before his evidence could be taken. The investigating officer in his testimony has spoken about he having made certain local inquiries, but finding no eye witness coming forward. The hesitation on the part of the local *jhuggi* dwellers in offering their evidence respecting the sequence of events does not mean the word of PW-3 ought to be doubted. He is the victim of the crime. There is no reason why he would allow real culprits to be let off so as to falsely implicate the appellants. There is no theory of any past enmity. PW-3 consequently had no scores to settle. Noticeably, the knife blow suffered in the abdominal region had damaged the intestines. PW-1 has clarified that such injury was caused by a double edged weapon, the depth of the stab wound being of the size of 1 to 3 inches. It is not a case where the injuries suffered may be explained away as self-inflicted. In fact, given the nature of injuries, they cannot be self-inflicted not the least for a boy of such young age as PW-3 at the relevant point of time.

15. It is the argument of the appellants that the weapon of offence has not been recovered. This plea is of no consequence. It is well settled that in a crime of such nature, non-recovery of weapon cannot be fatal to the prosecution case. [see *Sushil Arora vs. State*, 2017 SCC Online Del 6952].

16. In the overall facts and circumstances, this court finds the testimony of PW-3 to be wholly reliable. It finds due corroboration from the medical evidence adduced through PW-1. There is no error or infirmity in the view taken by the trial court.

17. The stab injury inflicted with double edged knife in the abdominal region of PW-3 was so deep as to cut his intestines. This court endorses the medical opinion that the said injury was dangerous and life threatening. But for the medical aid and assistance that came to be made timely available to PW-3, the abdominal wound could have resulted in his death. Having regard to the knowledge that must be attributed to the effect that the injury being inflicted had the propensity to cause death, coupled with the threats which were extended at the relevant point of time, the guilt of both the appellants, having acted in concert, for the offence of attempt to commit murder of PW-3 has been properly brought home. The appeal against the judgment of conviction, thus, is found to be devoid of merit and substance.

18. Given the nature of offence which was committed, in the considered view of this court, the trial court was very lenient in the matter of punishment. This court finds no just or sufficient reasons to reduce the rigor of the punishment that has been awarded.

19. Thus, the appeal fails and is dismissed. The appellants shall surrender to custody forthwith to serve the remainder of the sentences awarded against each of them.

R.K.GAUBA, J.

MAY 30, 2019/yg