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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 20th August, 2019

+ Crl. Appeal no. 911/2002

VIJAY @ BALKHAN

..... Appellant

Through: Mr. Maninder Singh, Ms. Ekta
Vats, Mr. Anuj Singh, Mr.
Dinhar Takiar, Mr. Sankalp
Kohli Mr. Sarthak Garg, Advts.

versus

STATE OF DELH

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Vainay, PS
Anand Parbat.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGEMENT (ORAL)

1. The appellant herein was put on trial, along with one Bishan Kumar, on charge for offence under Section 307 read with Section 34 of Indian Penal Code, 1860 (IPC) in sessions case no. 39/1999 registered on the basis of report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) which was submitted upon conclusion of investigation into first information report (FIR) no. 345/1997 of police station Anand Parbat. The gravamen of the charge essentially was of attempt to commit murder of Krishna Devi (PW-6) in the early morning hours at 4.30 a.m., on 09.11.1997, in the area of Than Singh Nagar, Anand Parbat. It appears that PW-6 had alighted

from a bus after outstation journey and was accosted by the appellant and co-convict Bishan Kumar, the latter having a fire arm (revolver) in his hand, the appellant herein statedly wielding a dagger. It is stated that Bishan Kumar had put the fire arm on the temple of PW-6 and had fired with it, but somehow PW-6 escaped from being injured the projectile discharged by the said fire getting entangled in her wearing apparel (shawl), it eventually being handed over to the police during investigation. It was alleged that the appellant had also attempted to use the knife/dagger in his hand to cause injuries but upon PW-6 raising alarm, both the assailants including the appellant had fled away from the scene.

2. The case was registered on the statement (Ex.PW-6/A) of the victim; the appellant and co-convict Bishan Kumar being arrested in the course of investigation.

3. During the trial, the prosecution examined seventeen witnesses including Dr. A. Bhasin (PW-1), who had examined the x-ray plates of complainant and proved his report (Ex.PW-1/A) in this regard; Constable Virender Singh (PW-2), who had accompanied ASI Prabhat Singh on receipt of DD No. 23-A and got the FIR registered; Smt. Kaushlaya (PW-3), an eye witness, who did not support the case of prosecution; Sant Ram (PW-4), record clerk of DDU Hospital who proved the MLC of complainant; Constable Balwan Singh (PW-5), who had intimated PS Anand Parbat about the complainant being taken to hospital in an ambulance; Smt. Krishna (PW-6), the complainant/injured; Constable Bhim Singh (PW-7), Constable

Mahabir Singh (PW-9) and SI Rajbir Singh (PW-10), who were the witnesses to the recovery of the dagger at the instance of the appellant; Head Constable Gyan Singh (PW-8), who had recorded the formal FIR and proved the FIR of the case; J.C. Vashisht (PW-11), record clerk from DDU hospital, who proved the MLC of the appellant; Head Constable Jai Narain (PW-12), who had handed over the cartridge to ASI Prabhat Singh; Constable Surender (PW-13), who had taken one sealed parcel and one sample seal and deposited the same at CFSL; SI Mohinder Singh (PW-14), who had obtained final result on the MLC of the complainant; ASI Parbhat Singh (PW-15), IO of the case; Head Constable Ram Niwas (PW-16), who was working as MHC (M), and had deposited the sealed parcel containing the dagger in malkhana; and SI Vasudev (PW-17), to whom the investigation was temporarily entrusted.

4. As has been noted above, Kaushalya (PW-3) was presented as a witness, but she failed to support the prosecution case, she being declared hostile and having been cross-examined by the public prosecutor though nothing useful or supportive to its case could be brought out through the said exercise.

5. The trial Judge found the evidence of PW-6 credible and by judgment dated 15.02.2002, convicted both the appellant and Bishan Kumar under Section 307/34 IPC. It is noted that a separate charge under Section 27 of the Arms Act against the appellant had been framed but it failed, he having been acquitted on the said charge by the impugned judgment.

6. The learned counsel appointed as amicus curiae for the appellant Vijay @ Balkhan submitted that he does not press the appeal on merits conceding that the evidence of PW-6 about the assault by the appellant armed with a cutting instrument on her person has been consistent. He, however, pleaded that given the long time that has lapsed, there being no other criminal antecedents of the appellant, a lenient view on the question of sentence may be taken.

7. There is no clarity in the evidence on record as to the motive attributable to the appellant. The only material adduced on this subject concerned the co-convict Bishan Kumar who had some litigation in which he, on one hand and the complainant or members of her family, on the other, were involved. It does appear that the appellant was with Bishan Kumar at the time of the assault. Though he was armed with a cutting instrument, no injury was actually caused by such weapon to PW-6. There is nothing in the evidence showing he to have aided or assisted Bishan Kumar in the use of the fire arm by the latter.

8. In the above factual matrix, as indeed in view of the fact that a long time (22 years) has lapsed after commission of the offence, there being no other criminal record of the appellant, a case for reduction of sentence is made out. In these circumstances, while maintaining the conviction of the appellant, the sentence is modified and reduced to rigorous imprisonment for two years with fine of Rs. 1,000/-.

9. Needless to add, the appellant shall continue to be entitled to the benefit of set off under Section 428 Cr.P.C. for the period of detention already undergone during investigation, trial and appeal.

10. The appeal is disposed of in above terms.

11. A copy of this judgment shall be sent to Superintendent Jail for necessary compliance.

R.K.GAUBA, J.

AUGUST 20, 2019

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