

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.11.2019

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CRL.A. 140/2016 & CRL.M.(BAIL) 1604/2019

RAMESH

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr Dinesh Malik, Advocate (DHCLSC).

For the Respondent: Ms. Kusum Dhalla, APP for State.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 15.12.2015 passed by ASJ, FTC, Shahdara, Karkardooma Courts, whereby the appellant was convicted for the offence under Section 326A of the Indian Penal Code, 1860 (IPC) for throwing acid and causing burn injuries to two persons. The appellant also impugns the order on sentence dated 16.12.2015, whereby the appellant was sentenced to ten years of rigorous imprisonment and was imposed a fine of ₹35,000/-. In default of payment of fine, he was sentenced to undergo rigorous imprisonment for a further period of six months.

2. The appellant contends that the Trial Court failed to appreciate that there are contradictions in the testimonies of PW2 and PW4, which raise doubts as to the case put forward by the prosecution and the benefit of doubt ought to have been given to the appellant.

3. The case of the prosecution is that on 09.04.2015, at about 09:12 PM, information was received at PS Nand Nagari, vide DD No. 84B that *tejab* (acid) was thrown on a person at E-2, Block, H No. 31 Nand Nagri, near Bharat Ghar. DD no. 84B was assigned to ASI Fateh Singh, who came at the spot with Ct Amit. On reaching the spot, they came to know that the injured Ravi Shankar and Mool Chand were taken to GTB Hospital in the PCR van. After deputing Ct Amit at the spot, ASI Fateh Singh went to GTB Hospital where he collected the MLCs of Mool Chand and Ravi Shankar. The statements of Mool Chand and Ravi Shankar were recorded.

4. The statement of Ravi Shankar was recorded under Section 161 of the CrPC, 1973, wherein he stated that he was a priest in Shiv Mandir. He stated that the appellant used to come to the temple in a drunken condition, due to which he used to throw the appellant out of the temple. This caused enmity between the two and the appellant used to threaten him over the phone. On 09.04.2013, at about 9 PM, while he and his neighbor were sitting and talking, appellant came with a container and threw *tejab* on them, thereby causing burn injuries to him and Mool Chand.

5. Thereafter, on the basis of the statement of Ravi Shankar, the FIR was recorded. The spot was inspected by the Crime team. Exhibits were lifted and sent to FSL Rohini for chemical examination. On 20.04.2013, the appellant was arrested on the basis of a secret information and he made a disclosure statement regarding the alleged incident. The doctors opined that the injuries caused to Mool Chand and Ravi Shankar were grievous in nature. FSL report was collected and a chargesheet was filed against the appellant. Charges were framed against the appellant under Sections 307 and 326A of the IPC, to which he pleaded not guilty.

6. In order to prove its case, the prosecution examined seventeen witnesses and the defense did not lead any evidence.

Evidence

7. Sh. Ravi Shankar was examined as witness PW2 and he deposed that he was a priest in Shiv Mandir, E-2 Block, Nand Nagar. During his examination-in-chief, he identified the appellant as the person who had committed the offence of throwing acid on him and Sh Moolchand. PW2 stated that the appellant used to come to the temple in a drunken condition and he used to stop him from doing the same. This led to enmity between them and the appellant used to threaten him. On 09.04.2013, at about 9 PM, while he was sitting and talking to Moolchand (r/o E-2/31 Nand Nagari), the appellant came there. He had a container with him. He threw *tejab* (acid) on them from the said container and ran away from the spot. PW2 and Moolchand suffered burn injuries from the acid thrown by the appellant. One of their

neighbor, Suresh (son of Mool Chand) informed the police at 100 number. A PCR van came to the spot and took them to GTB Hospital, where his statement was recorded (Ex.PW2/A). In his cross examination, he stated that he had a mobile phone.

8. Suresh Kumar was the person who had made the phone call to the police and was examined as PW3. He deposed that on 09.04.2013, at about 9 PM, he heard a noise and came down from the first floor of his house and saw PW2 and his father (Mool Chand) writhing in pain due to burning sensations and people were putting water on them. Thereafter, he had informed the police.

9. Sh. Mool Chand was examined as PW4 and he deposed that on 09.04.2013, at about 9 PM, he and Ravi Shankar (PW2) were sitting at the milk shop, when the appellant came and threw a water like liquid on him and PW2. Due to the said liquid, they felt acute burning sensations and called for help. The neighbors threw water on them but they were in pain. His son Suresh came down and called the police. The appellant ran away after throwing the liquid. He deposed that PW2 told him that the name of the accused was Ramesh. Police inspected the place and prepared the site plan at his instance (Ex PW4/A). He stated that the clothes (*pyjamas*) that he was wearing were seized by the police and he could identify the same. Thereafter, his clothes and other articles from the shop (Ex. P-4 collectively) were shown to PW4 (the said items were in torn condition). He identified his clothes and the articles as those belonging to the shop where they were sitting in, at the date of the incident. In his cross examination, he verified that PW2 had a mobile

phone and he did not. He also denied the suggestion that he had identified the appellant at the instance of PW2 and the IO.

10. Several medical witnesses were examined and they confirmed the injuries suffered by PW2 and PW4. Dr. Intikhab, who was the junior resident at GTB Hospital on 09.04.2013, was examined as PW5. He deposed that he had prepared the MLC report of PW2 (Ex. PW5/A) and stated that PW2 had burns on his face, neck, shoulder sternal area, right flank, left hand and wrist, left ear, right ear lobule. He stated he had referred PW2 to Burns and Plastic Department as well as Ophthalmology.

11. The MLC report of PW2 (Ex. PW5/A) also states that the burn injuries of PW2 were to the extent of 20%-25%.

12. Dr. Dhananjay Kumar, Assistant Professor Burn and Plastic Surgery Department, was examined as PW6 and he deposed that he had given his opinion on the MLC reports of Mool Chand and Ravi Shankar (Ex. PW6/A and Ex. Pw 6/B). In his opinion, the injuries of both persons were grievous in nature.

13. Parmeshwar Ram, CCMO, GTB Hospital was examined as PW15. He deposed that the MLC of Mool Chand was prepared by Dr. Gaurav Yadav and the patient had 50%-55% acid burns and was referred to burn and plastic department.

14. Smt Kavita Goyal was examined as PW17 and she had examined the clothes of PW2 and PW4, which had been seized on the date of the

incident. She stated that on chemical examination, she had found that the said clothes contained mineral acid (sulphuric acid). She deposed that she had made a report to the said effect (Ex. PW16/A).

15. Several formal witnesses were examined, who deposed with reference to the investigation conducted. Vinod Kumar deposed as PW13 and he stated that on 20.04.2013, he joined the investigation with the IO and they had arrested the appellant on secret information being received. PW13 stated that the appellant had pointed out to them the place of occurrence of the alleged incident. The appellant made a disclosure statement (Ex. PW13/C) and pointed out the place of the occurrence at E-2 Block Nand Nagri (Ex. PW13/D).

16. ASI Fateh Singh was examined as PW14 and he deposed that on 09.04.2013, after receiving DD No. 84 B (Ex. PW 1/B), he along with other police officials had gone to Shiv Mandir, Nand Nagari and had taken PW2 and PW4 to GTB Hospital. He had recorded the statement of PW2 and had collected the MLCs of PW2 and PW4. He prepared the *rukka*, which was sent through Ct. Amit. He stated that he had seized his clothes from the spot (Ex. P-4) and had handed it over to the IO.

17. SI Rajinder Singh was the Investigating Officer and was examined as PW16. He deposed that on 09.04.2013, Ct. Amit had handed over one *rukka* and a computerized FIR to him. Thereafter, he went to the spot of the alleged incident and recorded the statements of Suresh, ASI Fateh Singh, Mool Chand, Ct Amit and PCR incharge ASI Bijender. He stated that ASI Fateh Singh had handed over some

pullandas. He stated that on the next day, he prepared a rough site plan at the instance of Mool Chand (PW4). On 20.04.2013, when the appellant was arrested, he pointed out the place of the alleged incident and made a disclosure statement.

18. The appellant pleaded innocence in his statement recorded under Section 313 of the CrPC and did not lead any evidence in his defence.

19. The learned counsel appearing for the appellant contended that the evidence obtaining in the said case was insufficient to convict the appellant. He submitted that the appellant had been framed on account of past enmity between the appellant and Shri Ravi Shankar Pandit. He submitted that Shri Ravi Shankar Pandit (PW2) must have been attacked by persons from the *mohalla*, since he used to allegedly perform *jadu tona* and *tantra mantra*. He submitted that the persons in the locality (*mohalla*) were unhappy with PW2 and there were incidences of confrontation between the residents of *mohalla* and PW2.

20. He contended that the other victim, Shri Mool Chand (PW-4) had identified the appellant at the instance of PW2. He also deposed in his cross-examination that he had shouted that “Ramesh had thrown *tejab* on him”. However, the initial report DD No.84-B, registered at the instance of Suresh Kumar (son of Shri Mool Chand), who deposed as PW-3, did not mention the appellant’s name. He contended that the appellant was implicated as an afterthought.

21. This Court has examined the evidence obtaining in this case and finds no infirmity with the decision of the learned trial court. PW2, Shri

Ravi Shankar Pandit, who is a victim of the attack, had identified the appellant as the person who had thrown acid on him and on Mool Chand. He had also deposed that the appellant had held out threats that he would kill him and his children in the past. He had explained that the disputes with the appellant had arisen since he had stopped him from visiting the temple in a drunken condition, which had annoyed the appellant. There is no ambiguity in the testimony of Shri Ravi Shankar Pandit insofar as identifying the appellant and his description of the incident is concerned. The testimony of Ravi Shankar Pandit (PW2) is consistent with the testimony of Shri Mool Chand (PW4). Both the victims had deposed that the appellant had thrown acid on them from a container at about 9:00 PM, while both the victims were sitting together. Both the victims had also described the size of the container to be the size of their hands. Shri Mool Chand had also identified the appellant in court.

22. There is no doubt as to the injuries suffered by both the victims. The deposition of the concerned doctors PW5, PW6 and PW15 and the reports leave no room to doubt regarding the extent of injuries suffered by both the victims: Shri Ravi Shankar Pandit had sustained burn injuries to the extent of 20%-25% and Shri Mool Chand had sustained burn injuries to the extent of 50%-55%. The burn injuries suffered by Ravi Shankar were over his face, neck, shoulder, left hand, wrist, right ear lobule. Shri Mool Chand had suffered burn injuries involving head, neck, right arm, forearm, left arm, chest, upper back right side and lower back right side.

23. Shri Ravi Shankar Pandit was examined and he had denied any suggestion that he was involved in any *jadu tona* or *tantra mantra*. He has also denied the suggestion that persons from the *mohalla* had quarreled with him or he had threatened the appellant.

24. There is no material to establish that the appellant has been falsely implicated.

25. This Court also does not find any ground to interfere with the sentence awarded to the appellant. The appeal is, accordingly, dismissed. The pending application is also disposed of.

NOVEMBER 25, 2019
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VIBHU BAKHRU, J