

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

CRL.REV.P. 966/2019

Reserved on : 21.10.2019

Date of Decision : 12.12.2019

IN THE MATTER OF:

CRL.REV.P. 966/2019, CrI.M.(Bail) 1614/2019 & CrI.M.A.35748/2019

DEEPAK AGGARWAL & ANR. Petitioners

Through: Mr.D.S.Kohli, Mr.Sudhanshu
Singh, Mr.Raghav Mehdiratta and Mr.Deepak
Gola, Advocates.

Versus

STATE

..... Respondent

Through: Ms.Manjeet Arya, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The petitioners seek setting aside of the impugned judgment dated 04.09.2019 passed by Addl. Sessions Judge, Karkardooma Courts (East), Delhi, whereby the judgment on conviction dated 16.07.2019 passed by the Metropolitan Magistrate in FIR No. 212/2006 registered under Sections 323/325/341/34 IPC, P.S. Krishna Nagar, was upheld however, the order on sentence dated 20.07.2019 was modified to the following effect:-

“.....both accused persons namely Deepak Aggarwal and Dainy @ Vicky are sentenced with fine of Rs. 500/- each in default simple imprisonment for one week for the offence u/s 341/34 IPC; simple imprisonment of one month and fine of Rs. 1000/- each in default simple imprisonment for fifteen days for the offence u/s 323/34 IPC and simple imprisonment of one year and fine of Rs. 1000/- each in default simple imprisonment for fifteen days for the offence u/s. 325/34 IPC.”

The sentences were directed to run concurrently and benefit of Sec. 428 Cr.P.C was awarded.

2. For the sake of the felicity, the brief facts as noted by the Trial Court are reproduced below.

"1.....The case of the prosecution is that on 29/5/2006 at about 8:50pm, in front of House no. B-6 Gali no. 2, East Azad Nagar Delhi, the accused persons in furtherance of their common intention voluntarily restrained the complainant herein namely Vinod. Further, on the aforesaid date, time and place, the accused persons caused simple hurt to the complainant and one Hem Singh and also caused grievous hurt to one Sukhbir Singh in furtherance of their common intention. Qua the said incident, the present FIR bearing no. 212/06 dated 30/5/06 was registered and after completion of investigation, chargesheet was filed against the abovesaid accused persons u/s 341/325/323/34 IPC. Both the accused were summoned and charged with the commission of the abovementioned offences to which they pleaded not guilty and claimed trial.

2. To prove its case, the prosecution examined ten witnesses. The complainant was examined as PW1 and he proved his complaint Ex. PW1/A. PW2 is the injured Sukhbir Singh. PW3 is the injured Hem Singh. PW7 is Dr. R. Singhal who proved the MLC of the complainant and proved the same Ex. PW7/A by identifying the handwriting and signatures of the examining doctor thereon. PW9 is Dr. P. Suresh who proved the MLC of the injured Hem Singh and proved the same Ex. PW9/A by identifying the handwriting and signatures of the examining doctor thereon. He also proved the MLC of injured Sukhbir Singh and proved the same Ex. PW9/B by identifying the handwriting and signatures of the examining doctor thereon. The rest of the witnesses are police witnesses. PW5 proved the registration of the present FIR Ex. PW4/A (OSR) and the endorsement made by him on the rukka Ex. PW4/B. PW6 is the first IO SI Bhagwat Singh who recorded the complaint Ex. PW1/A and prepared the rukka Ex. PW6/A. PW8 is the second IO SI Chander Pal Singh and he proved the site plan prepared

by him at the instance of the complainant Ex. PW8/A. He also proved arrest and personal search memo of the accused persons Ex. PW3/A to D. PW4 is the police official who assisted PW6 during investigation on 30/5/2006 while PW9 is the police official who assisted PW8 during investigation on 2/6/2006 and is arrest witness.

3. Thereafter prosecution evidence was closed. Statement of the accused persons was recorded u/s 313 CrPC. Accused Deepak Aggarwal pleaded that on the date of the alleged incident, he was attacked by the complainant party and accused Deny came to save him but they attacked the accused persons with danda and lathi and the accused persons sustained injuries. Further, on his statement, FIR no. 211/06 was registered u/s 308/34 IPG and the accused persons therein (i.e. PW1, PW2, PW3 and another person) were convicted by the Ld. Sessions Court. Accused Deny reiterated the plea of accused Deepak Aggarwal. In defence evidence, accused Deepak brought on record the aforesaid judgment of the Ld. Sessions court as Ex.DW1/A. Thereafter final arguments were heard.”

3. I have heard learned counsel for the parties and have gone through the case records.

4. Learned counsel for the petitioner submitted that the trial in the present case commenced after the complainant's deposition was recorded in the cross case i.e., FIR No. 211/2006. After trial in the cross FIR, the complainant and the injured witness in the present case were convicted. Further, the decision in the cross FIR was pronounced while the trial was still pending in the present case. He thus urged that the same operated as an estoppel in the present case, as the finding on fact was already recorded in the trial of cross FIR.

5. In support of his submission, learned counsel for the petitioner has relied on the judgment of Lalta v. State of U.P. reported as **1970 AIR SC**

1381. In the captioned case, the accused Swami Nath filed a complaint against Lalta & others alleging that they had forcibly taken his thumb impressions on a number of blank forms of pronotes and receipts. After trial, Lalta was acquitted. Thereafter, Lalta filed a civil suit against Swami Nath on the basis of same pronote and receipt. Swami Nath raised a doubt on the said pronote and receipt and requested the court to seek a report from Superintendent, Security Press, Nasik regarding the year of the revenue stamps affixed on the said pronote and the receipt. A report was received that the stamps were subsequent to the agreement. When Lalta did not appear, an application was moved for filing a complaint against Lalta for committing forgery. A complaint was filed against Lalta by the Civil Judge. The complaint was enquired into and later, Lalta was convicted under sections 193/467/471 IPC. In the appeal, Supreme Court held that the charge of forgery must fail as Swami Nath's case was solely based on the allegation that his thumb impressions were taken on blank forms of promissory notes and receipts by use of force. It was held that the rule of issue-estoppel was applicable as the earlier finding of the Sessions Court on the above issue in favour of Lalta was final and the same could not be re-opened in a subsequent case.

6. Learned counsel for the petitioner sought to draw parallel with the aforesaid case and contended that the finding of fact recorded in the judgment passed in the cross FIR acted as an estoppel in the present case.

7. The 'issue estoppel rule' is a facet of doctrine of '*autrefois acquit*'. The principle of issue estoppel is inapplicable where at the instance of two different complainants, separate FIRs are registered leading to separate trials. The accused persons in both the trials being

different and tried for separate offences, it cannot be said that the evidence led on a fact in issue before a Court of Competent Jurisdiction in the earlier trial (FIR No.211/2006) precludes the evidence led in the present trial (FIR No.212/2006). In case of Lalta (Supra), the accused was tried second time on the basis of same facts and therefore, the second trial was held to be covered by rule of issue of estoppel.

8. In Manipur Administration, Manipur v. Thokchom Bira Singh reported as **AIR 1965 SC 87**, the Supreme Court, while noting its earlier decision in State of Bombay v. S.L.Apte reported as **(1961) 3 SCR 107**, Pritam Singh reported as **AIR 1956 SC 415** as well as decision of Lord Macdermott in Sambasivam v. Public Prosecutor, Federal of Malaya, **1950 A.C. 458** held as under :-

“11 ... As we have pointed out earlier, issue-estoppel does not prevent the trial of any offence as does autre fois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction...”

9. In State of Andhra Pradesh v. Kokkiliagada Meerayya & Anr. reported as **(1969)1 SCC 161**, the Supreme Court while analyzing the law in Thokchom Bira Singh (supra) and Sambasivam (supra) observed the applicability of the principle of issue of estoppel and further held as follows:

“15 ...The rule of issue estoppel prevents re-litigation of the issue which has been determined in a criminal trial between the State and the accused. If in respect of an offence arising out of a transaction a trial has taken place and the accused has been acquitted, another trial in respect of the offence alleged to arise out of that transaction or of a related transaction which requires the court to arrive at a conclusion inconsistent with the conclusion

reached at the earlier trial is prohibited by the rule of issue estoppel. In the present case, there was no trial and no acquittal...”

10. In Sangeetaben Mahendrabhai Patel v. State of Gujarat & Anr. reported as (2012) 7 SCC 621, the Supreme Court referred to its earlier decisions in Maqbool Hussain v. State of Bombay reported as 1953 (4) SCR 730, Pritam Singh (supra), Thokchom Bira Singh (supra) and Kokkiliagada Meerayya (supra) and held as under:

“23. This Court has time and again explained the principle of issue estoppel in a criminal trial observing that where an issue of fact has been tried by a competent court on an earlier occasion and a finding has been recorded in favour of the accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence. This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial. Thus, the rule relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court in a previous trial on a factual issue.”

XXX

“33. In view of the above, the law is well settled that in order to attract the provisions of [Article 20\(2\)](#) of the Constitution i.e. doctrine of autrefois acquit or [Section 300](#) Cr.P.C. or [Section 71](#) IPC or [Section 26](#) of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is

shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.”

11. The facts in the present case show that out of the incident dated 29.05.2006, two cross FIRs were registered. The first FIR bearing no. 211/2006 was registered under Sections 308/34 IPC Police Station Krishna Nagar at the instance of the present petitioners against Vinod (PW1), Sukhbir Singh (PW2), Hem Singh (PW3) and one Lalit Kumar. On the same day, another FIR bearing No.212/2006 was registered under Sections 341/323/325/34 IPC Police Station Krishna Nagar at the instance of Vinod (PW1). The trial in FIR No.211/2006, being Session trial case, resulted in conviction of the accused persons namely, Vinod @ Ganja, Sukhbir Singh, Hem Singh and Lalit vide judgment dated 21.11.2009. The trial in the present case, being a Magisterial trial, culminated in conviction of the present petitioners vide judgment dated 16.07.2019.

12. The contention raised by the learned counsel for the petitioner about applicability of rule of issue estoppels, is entirely misplaced. The present case involves trial in cross cases, being FIRs No. 211/2006 and FIR no. 212/2006, both registered at the instance of two different complainants against different set of accused persons. The trial in cross cases, irrespective of nature of offences, ought to be conducted together.

13. In State of M.P. v. Mishrilal (Dead) & Ors., reported as **(2003) 9 SCC 426**, while reiterating the law on the trial of cross cases stated in Nathilal & Ors. v. State of U.P. & Ors. reported as **1990 (Supp) SCC 145**, Supreme Court held as under:-

“7. Undisputedly, accused Mishrilal lodged the report to the police vide Ex.D-8 over the same incident happened on 5.3.1987, in which he had clearly stated the injuries were sustained by him and his son Madhusudan at the hands of prosecution party. It is also not disputed that on the strength of the complaint lodged by Mishrilal, investigation was also carried out and challan was filed namely crime case No.52 of 1987 under Sections 147, 148, 149 and 324 IPC against the prosecution party which is pending for disposal before the learned Judicial Magistrate First Class. In the said challan, the prosecution party is stated to be an aggressor. This Court in Nathilal vs. State of U.P., pointed out the procedure to be followed by the Trial Court in the event of cross cases. It was observed thus :

“2. We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned Judge one after the other.”

8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathi Lal case. The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two

courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.”

14. Learned counsel for the petitioner next contented that the concerned Doctor who treated the injured was not examined. It was further contented that the X-Ray report of the injured was not brought on record. He placed reliance on the decision in P. Johnson & Others v. State of Kerala reported as **1998 SCC OnLine Ker 477** to submit that non-production of x-ray report and non-examination of doctor who took the x-ray were sufficient to deduce that the criminal liability is not established.

15. Dr. R. Singhal (PW-7) proved the MLC of Vinod Singh. Dr. P. Suresh proved the MLCs of Sukhbir Singh & Hem Singh and also proved the opinion on the nature of injuries suffered by them. While Vinod Singh and Hem Singh suffered Simple injuries, Sukhbir suffered Grievous injuries. In the cross examination, Dr P. Suresh admitted that injuries suffered by Sukhbir were possible by fall or hitting against a hard object. However, no X-Ray film/report of the injuries suffered by the witnesses was produced on record.

16. It was further contended that corroboration of the injuries in the form of an FSL opinion was absent as inspite of the fact that witnesses had stated that their clothes were blood stained yet neither their blood

stained clothes nor the alleged weapons of offence i.e., the lathi/danda, were seized. It has also come in the testimony of PW-1 that huge crowd had gathered but no public witness was examined.

17. Lastly, it was contended that the prosecution has failed to explain the injuries of the accused persons. Reliance was placed on the decision in Kumar v. State reported as (2018) 7SCC 536 to submit that the failure of prosecution to give any explanation regarding injuries suffered by accused, shows that the evidence of prosecution witnesses relating to the incident is not true.

18. The injuries suffered by the petitioners were duly proved in the trial of the cross case. The petitioner Deepak during his defence evidence had exhibited the judgment of conviction passed in FIR No.211/2006 as Ex.DW1/A. While the petitioner no.1 had suffered grievous injuries petitioner no.2 suffered injuries on his head apart from his right shoulder. The doctor had deposed that injuries were neither self inflicted nor occurred as a result of a fall.

19. In the present case, a perusal of the testimony of the injured witness Vinod (PW1) would show that same is silent about the injuries suffered by the accused persons i.e., the petitioners. During his cross-examination, on a suggestion given, the witness answered in the following manner:

“I do not know if accused Vicky had sustained a fracture on his head in this incident. It was wrong to suggest that both the accused received injury which were caused by us.”

20. Similarly, PW2 (Sukhbir Singh) in his cross-examination stated as follows:

“Though we had not assaulted them but a complaint case was field against us..... It is incorrect when Deepak asked them not to do this on which both of them went to their house and came out with you and Lalit having Dada and Lathi in their hands. It is also incorrect that we all started beating to Deepak. It is incorrect to suggest on hearing his crist, Vicky came out to his house to save him but you all inflicted Lathi as a result Vicky sustained head injuries. I do not know in the said incident Deepak had also sustained injuries on his person.”

21. To the similar effect is the cross-examination of Hem Singh (PW3) which reads as:

“It is wrong to suggest that Sukhbir and Lalit caught hold Deepak and Vinod @ Ganja and myself attacked Deepak and Vicky with lathies and dandas and inflicted injuries on their persons.”

22. At the time of recording of his statement under Section 313 Cr.P.C, the petitioner no.1, while answering question no.8, stated as follows:

“On that day I was attached by the complainant party and my brother-in-law Deny came to save me but all the accused members of complainant attached us with lathies and dandas and we both sustained injuries. On my statement, case FIR No.211/06, U/s 308/34 IPC was registered at PS Krishna Nagar, Delhi and all the four accused persons have been convicted by the Sessions Court and their appeal is pending before the Hon’ble High Court.”

23. As noted above, the evidence on record shows that the injury suffered by one of the accused was grievous in nature. The witnesses are inimical and have shown complete ignorance of the injuries suffered by the accused. The prosecution case is also completely silent on this aspect. The injuries suffered by the accused persons were caused in the same

transaction and thus ought to have been explained. It is settled law that in case of non-explanation of injuries of the accused, the Court can draw following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

(Ref: State of Madhya Pradesh v. Sardar reported as (2001) 6 SCC 433).

24. The aspect of non explanation of injuries suffered by the accused persons has come up before Supreme Court in a catena of cases. In Lakshmi Singh & Ors. v. State of Bihar reported as (1976) 4 SCC 394, the Court referred to its decision in Mohar Rai v. State of Bihar reported as (1968) 3 SCR 525 reiterated as under:

“This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above....”

The above observation was reaffirmed by Supreme Court in Kumar (supra).

25. Recently, in State of Rajasthan v. Shiv Charan and Ors. reported as (2013) 12 SCC 76, Supreme Court referred to its decision in Mano Dutt and Anr. v. State of Uttar Pradesh: (2012) 4 SCC 79 and reiterated as under:

38. The question, raised before this Court for its consideration, is with respect to the effect of non-explanation of injuries sustained by the accused persons. In this regard, this Court has taken a consistent view that the normal rule is that whenever the accused sustains injury in the same occurrence in which the complainant suffered the injury, the prosecution should explain the injury upon the accused. But, it is not a rule without exception that if the prosecution fails to give explanation, the prosecution case must fail.

39. Before the non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case, the Court has to be satisfied of the existence of two conditions:

(i) that the injuries on the person of the Accused were also of a serious nature; and

(ii) that such injuries must have been caused at the time of the occurrence in question.

40. Where the evidence is clear, cogent and creditworthy; and where the court can distinguish the truth from falsehood, the mere fact that the injuries on the person of the accused are not explained by the prosecution cannot, by itself, be the sole basis to reject the testimony of the prosecution witnesses and consequently, the whole case of the prosecution. Reference in this regard can be made to Rajender Singh v. State of Bihar: (2000) 4 SCC 298, Ram Sunder Yadav v. State of Bihar: (1998) 7 SCC 365 and Vijayee Singh v. State of U.P.: (1990) 3 SCC 190.”

26. In view of the above enunciation of law, the prosecution was bound to explain the injuries suffered by the petitioners especially when one of them had suffered “grievous injury”. There is not an iota of explanation for the same. The injuries were inflicted in the course of same transaction where the complainant and other witnesses were also injured. In the opinion of this court, the circumstance of non-explanation of the “grievous injuries” suffered by the accused coupled with the fact that there is no seizure of either the blood stained clothes of the injured witnesses or the weapon of offence i.e, the danda/lathi as well as non examination of any independent public witness, I deem it fit to set aside the conviction of the petitioners.

27. Accordingly, the revision petition is allowed and disposed of along with the pending applications. The petitioners shall be released unless required in any other case.

28. A copy of this order be sent to the trial court as well as the concerned Jail superintendent for information and necessary compliance.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 12, 2019

p'ma