

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.01.2020

+ **CRL.A. 464/2017 & CRL.M.BAIL 1316/2018**

SHASHI @ SACHIN

..... Appellant

Versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant	: Mr Kumar Vaibhaw and Mr Mansimran : Singh Syal, Advocates.
For the Respondent	: Ms Meenakshi Chauhan, APP for State. : SI Sachin, P.S. Subhash Place.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning the judgment dated 24.09.2016, whereby the Learned ASJ, Rohini Courts had convicted the appellant for offences under Sections 394/398/307 of the Indian Penal Code, 1860 (IPC) and Sections 25/ 27 of the Arms Act, 1959 (hereafter the 'Arms Act'). The appellant was charged with the offence of attempting to commit robbery with a deadly weapon and inflicting injuries on two persons (PW11 and PW15). The appellant also impugns the order on sentence dated 27.09.2016, whereby he was sentenced to (i) undergo rigorous imprisonment for a period of five years along with a fine of ₹10,000/- (and in default of payment of fine,

to undergo simple imprisonment for a further period of two months) for committing the offence under Section 394 of the IPC; (ii) undergo rigorous imprisonment for a period of seven years for committing the offence under Section 398 of the IPC; (iii) undergo rigorous imprisonment for a period of six years, along with a fine of ₹10,000/- (and in default of payment of fine, to undergo imprisonment for a further period of two months) for the committing offence under Section 307 of the IPC; and (iv) undergo rigorous imprisonment for a period of four years and a fine of ₹5,000/- (and in default of payment of fine, to undergo simple imprisonment for a period of one month) for the offence under Section 27 of the Arms Act.

2. The case of the prosecution is that on 08.12.2014, a reception party of the marriage of a person namely, Sudhanshu Bhasin, was being held at the Red Carpet Banquet Hall, NSA, Pitampura, Delhi. The said party was attended by two persons, namely Jayant Chatterjee (complainant) and Rajeev Bhasin. At about 11:45 pm, the complainant stepped outside for a smoke and was also accompanied by his brother-in-law, Sudhanshu Bhasin and his wife. The complainant was clicking pictures of them with his mobile phone, when the appellant came from behind and tried to snatch the complainant's phone. When the complainant started to protest, the appellant took out a big knife from his trousers and attacked the complainant. The complainant held the knife with his left hand and sustained an injury while doing so. He shouted for help and in response, the complainant's cousin brother-in-law (Rajeev Bhasin) rushed to help him and apprehend the accused. It

is alleged that the accused shouted “*if he would intervene, then he would kill him as his name was Shashi Badmash*”. Thereafter, he gave a knife blow on the left side of the chest of Rajeev Bhasin with the intention to kill him. By that time, many persons had gathered and they caught hold of the accused and beat him up. The complainant also recovered his mobile phone from the possession of the accused. On enquiry, the accused disclosed his identity. The complaint was made and a FIR was registered.

3. Charges were framed against the appellant under Section 307 of the IPC for attacking and injuring Rajeev Bhasin. Charges under Sections 394/397/411 of the IPC were framed against the appellant with reference to the acts committed against Jayant Chatterjee (complainant). Charges under Sections 25/27 of the Arms Act were also framed against the appellant. To prove its case, the prosecution examined sixteen witnesses. The appellant pleaded that he was innocent and was not present at the spot of the incident and had been wrongly implicated in the case.

4. The Trial Court found that the testimonies of PW11 (complainant) and PW15 (Rajiv Bhasin) were consistent with reference to the fact that the appellant had inflicted injuries on them. Further, the medical evidence brought on record clearly substantiated that injuries had been sustained by PW11 and PW15. The expert witness also opined that the said injuries could not be self-inflicted. The Court found that the appellant had failed to prove that he had been falsely implicated. PW11 and PW15 did not know the appellant and therefore, they would

have no motive to falsely implicate the appellant and let the actual accused go free. Based on the testimonies of PW11 and PW15, the identification of the appellant by PW11 and PW15 and the medical evidence obtaining in this case, the Trial Court held that the appellant was guilty of charges framed against him.

Evidence

5. Before proceeding further, it is relevant to refer to testimonies of some of the witnesses. Dr. Bhawana Gupta, CMO, Bhagwan Mahavir Hospital, Pitampura had prepared the MLC of the accused (Ex. PW1/A), and was examined as PW1 and she stated that on 09.12.2014, the appellant was brought to her and on examination, she had found two injuries. There was a swelling present on his lower lip with no active bleeding and there was CLW present on the occipital injury approximately 5x1 cm. She deposed that the patient refused stitches.

6. ASI Vinay Kumar was examined as PW5 and he deposed that on 09.12.2014, he was posted at Communication Department, Police Head Quarter. On that day, he received a call from Commander 72 PCR van, the contents of which were *“Ek ladke ko chaku laga tha jo pehle hi Namalum Hospital ja chuka hai, chaku marne wale bhi injured hai jise lekar Bhagwan Hospital ja rahe hai”*. He also brought and proved the original PCR record (Ex. PW5/A).

7. Dr. Madhav, DMO, Max Hospital, Pitam pura, Delhi was examined as PW6 and he proved the MLC reports of PW11 (Ex. PW 6/B) and PW15 (Ex. PW6/A) which were prepared by Dr. Nitish. With

reference to PW11, he stated that on local examination, a laceration (sharp edge wound) 5x1x1 cm approximately, was found on the left hand of PW11. The nature of the injury was opined to be simple. PW6 also proved the MLC report of PW15 (Ex PW 6/A) and deposed that two injuries were found on the body of PW15. One was a laceration over the left side chest wall lateral side, 1x0.5x0.1 cm, and the other injury was an abrasion over the left index finger, 1x0.5 cm approximately. The nature of the injury was opined to be simple.

8. PW6, in his cross examination, stated that the laceration injuries could also be caused by an accidental fall on a pointed object and the abrasion could also be caused by a fall on hard surface. However, he denied the suggestion that the said injuries could be self-sustained in nature. He accepted the fact that the MLC reports did not mention the nature and the type of the weapon of offence.

9. ASI Narayan Singh, was examined as PW8, and was the person who had made the said PCR call. On 08.12.2014, at about 12:000 midnight, he was standing with PCR Van commander 72 at PCR Base in front of Red Carpet Banquet Hall NSP. He saw a person taking photographs outside the Red Carpet Banquet Hall and the accused had shown the knife to the said person to steal his mobile. The said person had resisted and caught the knife due to which he sustained injuries. Another person rushed to intervene and sustained an injury on his chest. On seeing the said incident, PW8 rushed to save the injured and by then, public persons had apprehended the accused and given him beatings. PW8 placed a PCR call at 100 number and had given information

regarding the incident. PW8 took the accused (appellant) in the PCR van and got him admitted at Bhagwan Mahavir Hospital. In his cross-examination, PW8 stated that there was a security guard who had attempted to stop the accused, however was not successful in doing so. In his cross-examination, he deposed that both the injured (PW11 and PW15) went to a private hospital. PW8 also stated that he remained in Bhagwan Mahavir Hospital for about 15-20 minutes after admitting the accused. In his presence, IO or any other police official had not come to the hospital.

10. Madan Lal, the security guard, was examined as PW10, and he deposed that on 08.12.2014, he was on duty at Red Carpet Banquet Hall, Netaji Subhash Place Pitampura and there was a marriage party in the said banquet hall on that day. At about 11:30 pm, he saw some boys picking garbage and he was trying to shoo them away. Meanwhile, he saw a person coming outside the said banquet hall and he was carrying a phone with him. A boy had shown a knife to the person attending the wedding. On seeing the same, PW10 got scared and ran away inside the hall to call the manager. After some time, he came back and no one was there. He stated that he could not identify the accused due to his weak eye sight and bright light at the place of incident. The Learned APP declared that the witness had become hostile as he had resiled from his earlier statement. On being cross examined, he stated that the person who had shown the knife was twelve feet away and his eye sight only extends to things not more than ten feet away. He also denied having witnessed the entire incident. In his cross examination, he stated that he

was called to the police station 10-12 days after the incident but his statement (Mark- PW 10/A) was not read over to him.

11. PW 11, the complainant and the injured person, deposed that on 08.12.2014, he had gone to attend the reception party of his brother (PW 13). At about 11.45 pm, he had come outside the banquet hall to smoke. He stated that his other brother in law, Madhur Dhawan, and his wife were standing at the gate of the above said banquet hall. He was about to click pictures of them, when someone from his rear tried to snatch his phone. When he turned, he saw that the person had a dagger in his right hand. He stated that the person assaulted him with the knife and his mobile fell to the ground. He tried to protect himself but he sustained injuries on his left palm and blood started to ooze out. When he raised an alarm, his other brother in law, Rajiv Bhasin came and tried to help him, the accused told him “*mai tumhe jaan se maar dunga*” and caused injury on the chest of the brother in law, Rajeev Bhasin, due to which blood started oozing from his chest. On seeing this, public persons apprehended the accused and gave him beatings and handed him over to PCR officials. Thereafter, Police officials came from Police Station Subhash Place and they were taken to Max Hospital. At the hospital, he handed over his phone and the dagger to the police officials and the IO recorded his statement. In his cross examination, PW11, stated that there was no police vehicle near the place of incident.

12. Ct Vijay Tiwari, was examined as PW12, and he deposed that on 09.12.2014, IO SI Pramod Kumar received DD No. 7-A. Thereafter, they went to the said spot, that is, the Red Carpet Banquet Hall, and

were informed that the accused was at Mahavir Hospital and the injured persons were at MAX Hospital. The accused was taken from Mahavir Hospital to MAX Hospital by him, where the complainant, PW11 identified him. Thereafter, the IO recorded the statement of the complainant and sent Ct Devender along with the same for the registration of the case. The complainant was taken to the spot and a site plan was prepared at his instance. IO also arrested the accused and the arrest memo also bears his signatures.

13. Sudhanshu Bhasin, was examined as PW13 and he deposed that on 08/09.12.2014, there was a reception party at the Red Carpet Banquet Hall. At the time of the incident he was on the stage with his wife inside the banquet hall. From his friends and relatives, he came to know that his brother in law Jayant Chatterjee and his cousin, Rajiv Bhasin were taken to MAX Hospital due to injuries caused by a person with a dagger who had attempted to snatch a mobile phone. He stated that he had not seen the assailant. On making the previous statement, the Learned Addl PP declared the witness hostile as he had resiled from his previous statement. On being cross examined, he explicitly denied that his brother in law was taking his photos and that he had witnessed the said incident. He reiterated that he had come to know about the incident through his friends and relatives. He denied the fact that the accused was apprehended in his presence and that he had accompanied PW11 and PW15 to the hospital. Even on being confronted with his statements, he did not change his stance. On being pointed out the accused, he did not identify him and stated that he was not present at

the time of the incident and hence could not identify him.

14. Ct Devender Kumar had registered the FIR and was examined as PW14. He deposed that on 09.12.2014, at about 12 pm midnight, he came to know about the alleged incident. On reaching the spot, he came to know that the accused had been taken to Mahavir Hospital and the injured were taken to Max Hospital. He reached MAX Hospital, where the IO recorded the statement of the complainant and the *pulanda* of the mobile phone. He handed over both to PW14. The IO also prepared a sketch of the knife (Ex. PW 11/C) and prepared a *pulanda* for the same. Ct Vijay Tiwari brought the accused to MAX Hospital where he was identified by the complainant. Thereafter, IO prepared the *tehrir* and sent him to the PS for the registration of the case.

15. The other injured person, Rajiv Dhawan, PW15 deposed that on 08.12.2014, he had gone to attend the reception party of his cousin Sudhanshu Bhasin at the Red Carpet Banquet Hall. When he heard some noise outside the banquet hall, he came out and saw PW 11 being assaulted by the accused. He tried to intervene and, however the accused told him “*hatt jao nahi to mai tumhe jaan se maar dunga*” and caused injury on the left side of chest. Other public persons gathered and gave him a beating. Since his shirt was soaked in blood, he removed the same and threw it somewhere. He stated that the relatives took him and Jayant to MAX Hospital. During his treatment, the concerned doctor took his blood stained vest (*baniyan*). He stated that the accused was brought to the hospital, and he and PW15 both identified him.

16. In his cross examination, he stated that when he came outside the gate of the banquet hall, some persons were taking photographs near the gate. However, he did not remember the name of those persons.

17. PW 16, SI Pramod Kumar, deposed that on 09.12.2014, at about 12.15 pm, he received DD No. 7-A and 5-A. Thereafter, he alongwith Ct Vijay Tiwari reached the spot and were told the whereabouts of the accused person and injured persons. They went to Bhagwan Mahavir Hospital where custody of the accused was handed over to him by the PCR officials. He left Ct. Vijay Tiwari for the treatment of the accused and went to MAX Hospital. He collected the MLCs of the injured persons and recorded their statement. The complainant also handed over his phone and the knife that was used to commit the robbery. He was also handed over a sealed *pulanda* by the doctor containing PW15's blood stained shirt. He also prepared a sketch of the knife. The accused was brought to MAX Hospital and was identified by the injured persons. Ct Devender was sent to register the FIR and after registration of the FIR, the accused was arrested. A site plan was also prepared at the instance of the complainant.

18. PW16 stated in his cross examination that ASI Narayan Singh (PW8), in-charge PCR had handed over custody of the accused.

19. The appellant in his statement under Section 313 of the CrPC, stated that he was not present at the spot of the alleged incident and he had been falsely implicated in the present case at the instance of the IO. He also stated that PW8 was a planted witness. He did not lead any

evidence in his defence.

Discussion and Conclusion

20. The learned counsel appearing for the appellant submitted that there are various inconsistencies in the testimonies of the prosecution witnesses. He referred to the testimony of the security guard (PW 10); the testimony of the PCR official (PW8) and the testimony of the complainant (PW11) and his statement at the material time (PW11/A).

21. With reference to clicking of the photographs, the case of the prosecution is that PW11 was clicking pictures of PW 13, Sudhanshu Bhasin and his wife. However, in his testimony, PW11 had stated that he was clicking photographs of his other brother-in-law, namely Madhu Dhawan and his wife. He stated that neither Madhu Dhawan nor his wife were examined by the prosecution. Further, PW15, Rajiv Dhawan, deposed that when he came outside on hearing a noise, he saw persons clicking photographs and he did not recognize any one. He did not mention the presence of Madhu Dhawan or his wife in his testimony, to whom he is related. PW13, Sushandhu Bhasin, brother in law of PW11, also denied the fact that PW11 was taking his pictures or that of his wife when the alleged incident took place. He explicitly stated that he heard about the incident from his friends and relatives.

22. He also submitted that PW10 also did not support the case of the prosecution. He deposed that when he had seen the person with a knife, he had gotten scared and had fled from the spot and had called the manager. He also deposed that he had not seen the assailant due to his

weak eye sight. Even on being pointed the accused, he did not identify him as the person who had committed the crime. The witness was declared hostile by the Learned APP. PW8 had stated in his cross examination that he had seen the security guard try and stop the accused but he was unable to do so.

23. He contended that the testimony of PW8 raises doubt, wherein he stated that he was standing with PCR Van Commander 72 at PCR Base in front of the Red Carpet Banquet Hall, NSP. He stated that he had witnessed the incident and had tried to help the injured persons. However, PW11, clearly stated in his cross examination that there was no police van in sight.

24. Undisputedly, there are certain inconsistencies in the testimonies of various witnesses as pointed out by the learned counsel for the appellant. PW11's testimony is not consistent with the statement recorded at the material time (Ex.PW11/A). In his statement, he stated that he was clicking photographs of his brother-in-law (Sudhanshu Bhasin) and his wife. However, in his testimony before the Court, he claimed that he was clicking photographs of his other brother-in-law Madhur Dhawan and his wife. Sudhanshu Bhasin had unequivocally denied that the complainant was taking his or his wife's photographs at the time of the incident. In fact, he had stated that he was inside the hall at the time of the incident and had not witnessed the same. However, this Court is of the view that the said inconsistency in his statement recorded on 09.12.2014 at the hospital (Ex.PW11/A) and his testimony, is not material. The material aspect of his statement and testimony is

that he was using his mobile phone for taking his photographs. There is no discrepancy in his description of the incident. He had clearly described that while he was going to click photographs from his mobile, one man (the appellant) had approached him and had attempted to steal the mobile phone. He had turned around and had resisted the attempt and at that stage, the appellant had taken out a knife (*bada sa chaaku*) from his trousers and had assaulted him. PW11 deposed that he had caught the knife and in the process, had injured his hand. He stated that he had raised an alarm and on doing so, his brother-in-law (Rajeev Bhasin) who deposed as PW15 came there and tried to save him. He caught hold of the robber (the appellant) who threatened him and assaulted him with his knife which caused injury on his chest. Other persons gathered there and had caught hold of the appellant therein. The testimony of PW15 fully corroborates PW11's testimony. He stated that he had heard the noise outside the banquet hall and he saw the appellant assaulting his brother-in-law (PW11) with the knife. He saw that his brother-in-law had caught hold of the knife. He stated that he had immediately rushed towards them and tried to hold the accused. On doing so, the appellant had threatened him and thereafter assaulted him with his knife causing injury on the left side of his chest. At that stage, other persons gathered there and caught hold of the appellant and started to beat him.

25. PW8 had also witnessed the incident. He had deposed that he had seen the appellant showing the knife to PW11 for taking his mobile. PW11 had caught hold of the knife due to which he had sustained

injuries on his hands. He had stated that in the meanwhile another person (PW15) had come out of the banquet hall and had rushed towards PW11 to save him. He had also offered resistance to the appellant and on doing so, the appellant had caused the injury on his chest. The testimony of PW11, PW15 and PW8 leave no room for any doubt that the appellant was involved in the incident and had attacked PW11 to rob him of his mobile. He had also delivered injuries to PW11 and PW15. As noticed above, the medical evidence also supported the case set up by the prosecution.

26. PW10 (the security guard) had resiled from his statement and so did PW13 (Sudhanshu Bhasin). Although PW13 had identified his signatures on the statement recorded earlier, he denied having witnessed the incident. The testimony of PW13 and PW10 do not discredit the testimony of PW11 and PW15. Thus, even if the testimony of PW10 and PW13 are discarded, there is sufficient evidence to establish that the appellant had committed the offences for which he has been convicted. PW8 in his cross-examination had also referred to the presence of PW10 at the material time, even though PW10 had denied the same in his testimony.

27. It is relevant to note that in cross-examination, suggestions were put to various witnesses to the effect that there was some other person who had attempted to snatch the mobile from the injured persons. It does appear from the above that there is no dispute that the incident of snatching of mobile is not seriously disputed. However, the accused disputes his involvement in committing the crime. In this regard, PW11

and PW15 (who are the injured witnesses) have identified the appellant and there is no doubt regarding the same.

28. In view of the above, this Court is of the view that even though there are certain inconsistencies in the testimony of PW11 and his statement recorded earlier and two of the prosecution's witnesses have not supported their case, there is sufficient evidence to establish, beyond reasonable doubt, that the appellant had committed the offences for which he has been convicted.

29. In view of the above, this Court finds no fault with the impugned decision. The appeal is, accordingly, dismissed. The pending application is disposed of.

JANUARY 06, 2020
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VIBHU BAKHRU, J

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