

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

CRL.A. 633/2020

Reserved on: 13.08.2021

Date of Decision: 06.09.2021

IN THE MATTER OF:

SONU

..... Appellant

Through: Mr. S.S. Ahluwalia, Advocate
(DHCLSC) alongwith Mr. Mohit Bangwal,
Advocate.

Versus

THE STATE (GOVT. OF NCT), DELHI

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for
State with SI Deepak, P.S. Mukherjee Nagar.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present appeal has been preferred under Section 374(2) read with Section 383 Cr.P.C. on behalf of the appellant challenging the judgment on conviction dated 09.08.2019 and the order on sentence dated 09.08.2019 passed by the learned Additional Sessions Judge-05 (North District), Rohini Courts, Delhi in SC No. 58477/2016 arising out of FIR No. 605/2015 registered under Sections 392/394/34 IPC at Police Station Mukherjee Nagar, Delhi, whereby the appellant was convicted for the offences punishable under Section 392 IPC read with Section 397 IPC and sentenced to undergo Rigorous Imprisonment for a period of 07 years along with fine of Rs.1,000/-, in default whereof to undergo Simple Imprisonment for a period of one month.

2. For the sake of felicity, the facts of the case as noted by the Trial Court are extracted hereunder:-

“1. Prosecution case in brief is that on 01.05.2015 a PCR call was received in Police Station Mukherjee Nagar vide DD No. 69 B. After receipt of call, SI Manzoor Alam along with staff reached at H. No. 33/1, Indira Vikas Colony, Delhi, where the complainant Sunil got recorded his statement that he was going towards his home after meeting his friend. When he reached in front of H. No. 22/7, Indira Vikas Colony, Delhi, suddenly one Sonu S/o Nanak Chand, who earlier used to reside in Munshi Ram Dairy came along with three persons and pointed a knife at his waist and demanded money. When the complainant objected this, Sonu slapped him. His three accomplices caught hold of the complainant and Sonu took out Rs.1000/- from his pocket and said that if the complainant told anything to anyone, he would kill him. On the complaint of the complainant the above case was registered and investigation was taken up.

2. During investigation, the accused was searched at H. No. 118, Jhuggi Munshi Ram Dairy, Delhi but he was not found there. It was transpired that the accused and his family had vacated the house and were living somewhere else. The accused and his accomplices were searched but could not be found.

3. On 05.05.2015, the complainant came to PS and stated that he had seen accused Sonu along with some of his friends sitting at Yograj Colony, Bus Stand. The said facts were brought into the notice of SHO, who prepared a raiding team to arrest the accused. A raid was conducted on the instance of complainant and accused Sonu was arrested in the case. During the search of accused, one knife was also recovered and the same was identified by the complainant. The recovered knife was seized vide seizure memo Ex.PW2/C and deposited in Malkhana. During his interrogation, accused

Sonu stated that he along with his three accomplices robbed the complainant. He further stated that he did not know the address of the accomplices namely Raju, Monu and Sunil but he could get arrest the accomplices. One day PC remand of the accused was obtained and search of other co-accused was made but the accused Sonu did not cooperate in the investigation and the co-accused persons could not be arrested. After one day PC remand, accused was sent to JC”.

3. After completion of investigation, a charge sheet was filed and the appellant was charged under Sections 392/34 IPC read with Section 397 IPC by the Trial Court. The appellant pleaded not guilty and claimed trial.

4. While arguing the present appeal, learned counsel for the appellant has assailed the conclusions arrived at in the impugned judgment by contending that: (i) there are contradictions in proving of the place of incident by the prosecution as to whether it occurred *near 22/7 Indira Vikas Colony* or at *33/1 Gurdwara Wali Gali*, (ii) no public witness present at the time of arrest of the appellant was made to join the proceedings, (iii) the knife recovered during apprehension of the appellant could not be connected with him as no fingerprints were taken, and (iv) the Trial Court did not consider the testimony of DW-1, *Raju Paswan @ Pannu Chai Wala*, who had stated that he had seen a quarrel take place between the appellant and one boy whom he could not name but no incident of robbery or snatching had taken place in that quarrel.

5. Learned APP for the State, on the other hand, has supported the impugned judgment. He has submitted that the appellant was already known to the complainant. It is also submitted that besides the present case, the appellant has other previous involvements.

6. I have heard learned counsels for the parties and gone through the Trial Court Record.

7. A perusal of the record would show that *Sunil* (PW-2), the complainant, deposed in his testimony that on 01.05.2015, when he was coming back from the house of his friend, the appellant along with his three associates met him. The appellant put a knife on the waist of the complainant and demanded money. When the complainant refused, the appellant slapped him. While the associates of the appellant caught hold of the complainant, the appellant took out Rs.1,000/- from the complainant's pocket and extended threats to him thereafter. The complainant further deposed that the site plan was prepared at his instance. On 05.05.2015, he is stated to have spotted the appellant with some boys at *Yograj Colony, Bus Stand* wherefore he informed the police and the police personnel approached the *Bus Stand* along with him. On seeing the police party, the appellant is stated to have tried fleeing away but he was apprehended after a chase. The other associates of the appellant however, managed to escape. In the appellant's personal search, a knife was recovered and it was identified by the complainant as the same knife which was used at the time of the incident. The complainant has identified his signatures on the sketch of the knife (*Ex.PW2/B*) as well as on the seizure memo (*Ex.PW2/C*) vide which recovery of the knife was effected.

On being confronted with the site plan during his cross-examination, the complainant stated that he was unable to understand it and that the police officials had not asked him anything regarding preparation of the site plan. He stated that on 05.05.2015 at about 4:00 p.m., he saw the appellant at the *Bus Stand* of *Yograj Colony*. He

admitted that *Yograj Colony, Bus Stand* was a highly inhabited area. He admitted that he was aware of the address of the appellant who was an erstwhile classmate and that he had told the Investigating Officer about it. He denied the suggestion that he had falsely implicated the appellant at the behest of *Nitin* with whom the appellant had a quarrel. He also denied that he had an altercation with the appellant on the issue of driving motorcycle when the appellant was living at *Village Gopalpur, Delhi*. He stated that the distance between *Yograj Colony* and Police Station Mukherjee Nagar could be covered on foot in 25-30 minutes.

8. *SI Manzoor Alam*, the Investigating Officer, was examined as PW-6. He deposed that on receipt of DD No. 69B (*Ex.PW3/A*), he had reached the spot i.e., *33/1 Gurdwara Wali Gali, Indira Vikas Colony, Mukherjee Nagar* and recorded the statement of the complainant. On 05.05.2015, the complainant had come to the Police Station Mukherjee Nagar and informed him that the appellant was present with his associates at the *Bus Stand of Yograj Colony*. He, along with *Ct. Madan, Ct. Narender* and the complainant had gone to the *Bus Stand, Yograj Colony*. Some passers-by were requested to join the investigation but they refused. On the identification of the complainant, the appellant was apprehended after a chase and from the right-side pocket of his jeans pant, a knife was recovered.

In cross-examination, he stated that on 05.05.2015, the complainant had come to the Police Station at about 7:00 p.m. and after about 30 minutes from his arrival, they had left the Police Station.

9. *HC Madan*, who had joined the proceedings with the Investigating Officer on 05.05.2015, was examined as PW-4. His testimony is cumulative to the testimony of *SI Manzoor Alam*.

10. *Ct. Rahul* (PW-5) deposed that he along with the Investigating Officer had gone to search for the appellant in *Munshi Ram Colony, Delhi* but there they came to know that the appellant had already vacated his *Jhuggi*. In cross-examination, he stated that when he reached the spot on the day of the incident, there were many persons present. He stated that there was a five-minute walking distance between the Police Station and the spot of incident.

11. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein he stated that on the day of the incident, he had an altercation with the complainant who was an employee of one *Nitin*, a supplier of water gallons (containers). He further stated that *Nitin* was carrying a grudge against him on account of a quarrel that had taken place in a *Gulli Danda* match and for this reason the complainant had falsely implicated him at the behest of *Nitin*. He also stated that he was arrested from his house in the morning.

12. In his defence, the appellant had examined one *Raju Paswan @ Pannu Chai Wala* as DW-1. He deposed that about 4 years ago, a quarrel had taken place between the appellant and one boy, however, no incident of robbery and snatching had taken place in the said quarrel/fight. He had informed the appellant's family about the quarrel. In cross-examination, he stated that he was a tea vendor and had a shop in *Indira Vikas Colony, Mukherjee Nagar*. He stated that his shop was about 100 yds. away from the place of incident and he had witnessed the quarrel. He denied the suggestion that on account of presence of crowd, he could not have seen the entire incident minutely.

13. The appellant also examined his brother *Monu* as DW-2, who stated that he came to know about the aforesaid quarrel from *Raju*

Paswan @ Pannu Chai Wala. He also deposed that the appellant was arrested from his house at about 3 a.m. In cross-examination, he stated that he got married on 01.05.2015 and his brother was arrested after 4/5 days of his marriage.

14. Learned counsel for the appellant contended that there is material contradiction in the present case as to the place of the incident. From a perusal of the record, it is apparent that on one hand, the first information lodged through DD No. 69B (*Ex.PW3/A*) and the testimony of the Investigating Officer mentions the place of incident as *33/1 Gurudwara Wali Gali, Indira Vikas Colony, Mukherjee Nagar* however, on the other hand, the *Rukka* and the site plan mention the place of incident as “mark A” at *22/7, Indira Vikas Colony*. In the site plan, no mention has been made of *33/1 Gurudwara Wali Gali, Indira Vikas Colony*. In fact, *HC Madan* has deposed that the appellant had pointed out the place of incident in front of *22/7, Indira Vikas Colony*. Making matters worse, the complainant had stated that the site plan was not prepared at his instance while *SI Manzoor Alam* deposed that the site plan was prepared at the instance of the complainant.

15. There also appears to be greater inconsistency on the point of arrest of the appellant. While the complainant deposed that on 05.05.2015 after seeing the appellant at *Yograj Colony, Bus Stand* at about 4:00 p.m., he had reached the Police Station in an auto rickshaw and the police personnel immediately accompanied him to the *Bus Stand*, the Investigating Officer testified that the complainant had reached Police Station Mukherjee Nagar at about 7:00 p.m. on the said date. He further stated that they had left the Police Station after 30 minutes from the arrival of the complainant. He also stated that the distance between

the *Yograj Colony* and the Police Station was about 6-7 kms and it took them 10-15 minutes to reach. The aforesaid two testimonies are in clear contrast to each other and when looked at in light of the testimonies given by the appellant and his brother (*Monu*) that the appellant was arrested from his house, it seems highly improbable that the appellant continued to remain at the *Bus Stand* for more than 3 and ½ hours or that it took the complainant about 3 hours to reach the Police Station.

16. In this regard, it may also be noted that the Supreme Court in Dudh Nath Pandey v. State of Uttar Pradesh reported as **(1981) 2 SCC 166**, opined that Courts should avoid the error of attributing motives to defence witnesses merely because they are examined by the defence. Defence witnesses are entitled to equal treatment with those of the prosecution and Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. To a similar extent, in State of U.P. v. Babu Ram reported as **(2000) 4 SCC 515**, the Supreme Court has observed as under:

“23. Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.”

17. Later, in Munshi Prasad and Others v. State of Bihar reported as **(2002) 1 SCC 351**, the Supreme Court made the following observation on the appreciation of evidence of defence witnesses:

“3. ...we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted

one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution - a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses."

18. In the present case, the Trial Court has brushed aside the evidence of defence witnesses as one coming from interested witnesses. In view of the inconsistency noted above in the events leading to the appellant's arrest, it is equally probable that the appellant was arrested from his house and not in the manner stated by the prosecution.

19. It is an admitted fact that both the complainant and the appellant were known to each other being erstwhile classmates. The appellant from the inception has taken the consistent defence of false implication at the instance of one *Nitin* and also on account of previous quarrel between him and the complainant. The Trial Court incorrectly reached the conclusion that the appellant had taken contradictory defences in the trial. In opining so, the Trial Court noted that while cross examining the complainant, no suggestion was given on behalf of the appellant that the altercation with *Nitin* had taken place in a *Gulli Danda* match. The Trial Court failed to appreciate that the suggestion of an altercation with *Nitin* was duly given and only the word '*Gulli Danda* match' was not mentioned, which was clarified by the appellant in his statement recorded under Section 313 Cr.P.C.

20. In light of the above analysis, it was imperative for the prosecution to cite independent public witnesses but none was produced. It is also worthwhile to note that evidence in the present case is replete with

statements that public persons were present at the time of incident and also at the time of arrest. However, for both occasions, no public witness has been cited. In fact, the first information about the quarrel was given by a third person from mobile number 9213970007, which resulted in recording of DD No. 69B. In the entire evidence, there is not even a whisper of any efforts having been made to trace the caller. He could have been cited as an independent witness. In the facts of the case, the deposition of such independent witness would have lent a much-needed corroboration to the prosecution case and assured fairness in the conduct of the Investigating Officer. The non-examination of any independent witness has seriously impaired the credibility of the prosecution case.

21. On a conspectus of the entire evidence brought on record and as analyzed hereinabove, this Court is of the opinion that the prosecution has failed to prove its case against the appellant beyond reasonable doubt.

22. Consequently, the impugned judgment on conviction and order on sentence are set aside. The appeal is allowed and the appellant is acquitted of the charges framed against him. He is directed to be set free unless required in any other case.

23. A copy of this judgment be communicated electronically to the Trial Court as well as to the concerned Jail Superintendent forthwith.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 6, 2021
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