



2024:DHC:9268



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

Date of decision: 29th November, 2024

+ CRL.A. 199/2023

RAJINDER KUMAR

.....Appellant

Through: Mr. Arjun Malik, Advocate.

versus

THE STATE (GOVT. OF NCT) OF DELHI
& ANR.

.....Respondents

Through: Ms. Meenakshi Dahiya, APP with SI
Ashwini Kumar, PS: Rajouri Garden.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been preferred on behalf of the appellant challenging conviction vide judgment dated 28.11.2022 and order on sentence dated 04.01.2023 passed by learned ASJ-03, West District, Tis Hazari Courts, Delhi, in FIR No.0365/2018, under Sections 394/397 IPC and Sections 25/54/59 Arms Act registered at PS: Rajouri Garden.

Appellant has been thereby sentenced to undergo Rigorous Imprisonment (RI) for seven years and fine of Rs.10,000/- for offence punishable under Section 394 read with Section 397 IPC (in default of payment of fine, to undergo SI for one month) and RI for seven years and fine of Rs.10,000/- for

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offence punishable under Section 27 of Arms Act (in default of payment of fine, to undergo SI for one month) with benefit of Section 428 Cr.P.C.

2. In brief, as per the case of prosecution, appellant tried to rob complainant Ritik, a student of XII Class aged about 17 years of his bag containing books and mobile phone on 13.06.2018 about 09:40 PM, when he was returning after attending a tuition. However, as the complainant resisted, he was stabbed with a knife over left buttock by the appellant. Appellant was apprehended by the persons from the public at the spot and in the meanwhile, police officials, who were patrolling, also reached the spot.

3. Charge was initially framed against the appellant under Sections 394/397 IPC and Section 25 of Arms Act, to which he pleaded not guilty and claimed trial. Additional charge for offence under Section 27 of Arms Act was thereafter framed by the learned Trial Court vide order dated 18.11.2022.

4. In support of prosecution case, five witnesses were examined, namely HC Sidheshwar Dubey (PW-1); Shri Ritik (PW-2/victim/complainant); Ct. Amit Kumar (PW-3); HC Ram Lubhaya (PW-4) and SI N.L. Yadav (PW-5).

5. PW-2 Ritik is the star witness of the prosecution and deposed that on 13.06.2018, when he reached at Murga Market, appellant tried to snatch his bag containing books and mobile phone. Further, when he resisted, appellant stabbed him on the back side of his waist. In the meanwhile, persons from public gathered and apprehended the appellant. PW-2 further stated that he was taken to Guru Gobind Singh Hospital, wherein police also reached and his bloodstained clothes were taken into possession. Further, he was discharged from the hospital on the same day and was taken to P.S. Rajouri Garden



wherein appellant was also present. PW-2 correctly identified his pant, which he was wearing at the time of incident along with bag containing notebooks but could not identify the knife, which was produced during the course of trial.

6. PW-1 HC Sidheshwar Dubey (Duty Officer) proved the FIR (Ex.PW-1/A) as well as DD No.57A (Ex.PW-1/D) which was recorded on 13.06.2018 at about 09:45 PM, on receipt of PCR call regarding the incident.

7. PW-3 Constable Amit Kumar deposed that he had reached Guru Gobind Singh Hospital along with SI N. L. Yadav (PW-5), wherein they met complainant and collected his MLC. Thereafter, they along with complainant reached at Murga Market, Tagore Garden, wherein, appellant had been apprehended by public persons. On search of appellant, a button actuated knife was recovered from his pocket. He further proved the sketch of the knife (Ex.PW-3/A), which was prepared by the IO (SI N. L. Yadav/ PW-5) along with Seizure Memo (Ex.PW-3/B). He further stated that he took rukka for registration of FIR and thereafter returned back to the spot. The bloodstained pant of complainant is stated to have been taken into possession along with bag, vide Seizure Memo (Ex.PW-2/B and PW-2/C) and appellant was arrested vide Arrest Memo (Ex.PW-2/D). He further proved Personal Search Memo of appellant (Ex.PW-2/E) and Disclosure Statement of appellant (Ex.PW-3/C).

8. Head Constable Ram Lubhaya (PW-4) deposed that on 13.06.2018, he was posted at PS: Rajouri Garden and was on patrolling duty along with Head Constable Gurcharan Jeet Singh. Further, when they reached near Murga Market, they heard noise '*chor chor*' and saw that public persons were chasing the appellant who was apprehended.



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Subsequently, SI N. L. Yadav along with Constable Amit Kumar and complainant reached the spot. A button actuated knife was recovered from possession of appellant. SI N. L. Yadav (IO) prepared the sketch of the knife and the same was seized vide Seizure Memo (Ex.PW-3/B). He further deposed regarding forwarding of *rukka* to PS for registration of FIR as well as the seizure of bloodstained pant along with bag of complainant. He also proved the Arrest Memo (Ex.PW-2/D) and Personal Search Memo (Ex.PW-2/E).

PW-5 SI N. L. Yadav deposed on similar lines regarding conduct of investigation.

9. Appellant denied prosecution version in his statement under Section 313 Cr.P.C. and claimed that he had been falsely implicated by the police. He further claimed that buttandar knife was planted upon him and his photographs were shown to the victim prior to identification. However, no evidence was led in defence.

10. Learned Trial Court convicted the appellant noticing that the prosecution version was duly supported by the victim/complainant (PW-2) and appellant was identified by the victim. Further, nothing came on record in cross-examination of victim/PW-2 to presume that appellant had been falsely implicated. It was also observed that the victim was merely 17 years old at the time of incident and was apparently nervous and showing signs of breaking down during recording of evidence and informed the Court about the threats extended to him by the family members of the accused/appellant. It was also observed that during cross-examination recorded on 24.10.2019, victim/PW-2 explained that while trying to run away, the cloth wrapped by the appellant



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around his face had opened and he had clearly seen the face of the appellant from distance of one metre.

11. Learned counsel for the appellant reiterated the contentions raised before the learned Trial Court and contended that prosecution version is full of *lacunae* and discrepancies, since no independent public witness was joined in the proceedings and no explanation in this regard has been placed on record. He further contended that there is contradiction on the point of apprehension of appellant at the spot since complainant denied the presence of police officials at the time of apprehension of appellant. He further points out that Test Identification Parade (TIP) of the appellant was not conducted and identification in Court of law is doubtful. He also emphasized that prosecution failed to establish that knife allegedly recovered was used in the incident, since the same was not forwarded to FSL for examination. The knife is further claimed to have been planted by the police.

12. On the other hand, learned APP for the State contended that the prosecution version is duly supported by the victim/PW-2 and nothing has come on record to assume that appellant had been falsely implicated. She further contends that appellant was apprehended at the spot immediately after the incident by persons from public and, as such, there was no requirement for conducting of TIP. It is vehemently pointed out that all efforts were made to ensure that victim/PW-2 turns hostile as threats were extended through the family members of the appellant and the same was evident while recording of statement of victim/PW-2. It is urged that appellant is a habitual offender since he is involved in three other cases as reflected in Nominal Roll dated



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18.04.2024 (*i.e.* FIR No.44/2018 under Sections 392/397/384/411/120B/34 IPC registered at PS: Tilak Nagar, FIR No. 94/2021 under Sections 25/54/59 Arms Act, registered at PS: Rajouri Garden and FIR No. 668/2021, under Sections 25/54/59 Arms Act, registered at PS: Rajouri Garden).

13. ANALYSIS

On the face of record, PW-2/victim/complaint was a student aged about 17 years at the time of incident and was stabbed with a knife, since he resisted an attempt to rob him, about 09:30 PM on 13.06.2018, while returning back after attending the tuition. A contused lacerated wound (CLW) measuring 3 x 0.5 cm was suffered on left buttock by the complainant as noticed in MLC and there was no reason for the victim/complainant to falsely implicate the appellant as he was earlier not known to the victim. PW-2 duly identified the appellant after fearful hesitation and also identified the bloodstained pant which was worn by him at the time of the incident along with the school bag containing the notebook. He also explained that he had taken out the mobile phone from his bag when the same was handed over to the police.

During cross-examination PW-2/victim clarified that when the accused (appellant) stopped him, no other public person was present and the cloth wrapped by the appellant around his face opened. As such, PW-2 was in a clear position to identify the face of appellant from a distance of about one metre. PW-2 further corroborated that sketch of knife was prepared in his presence.

In the facts and circumstances, the testimony of victim (PW-2) is natural, convincing and trustworthy. No discrepancy striking to the root of the case has been brought out during cross-examination. It cannot be ignored that appellant



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was apprehended at the spot immediately after the incident and minor discrepancies on the point of investigation in no manner dent the testimony of the complainant/victim/PW-2.

14. The evidentiary value of an injured witness is well settled and an injury to the victim/witness is an inbuilt guarantee to his presence at the spot of the incident and his deposition should not be rejected unless there are strong grounds for rejection of his evidence on the basis of contradictions striking to the root of the case. It may also be noticed that that the necessity for TIP for identification of accused is required when accused is unknown to the witnesses to lend an assurance to the Investigating Agency that they are proceeding on the correct lines of investigation. When the accused is apprehended at the spot immediately during the course of incident and the injured has an opportunity to see the accused, the conduct of TIP is obviated. Since the testimony of injured has been found to be reliable, there does not appear to be any exceptional circumstances to presume that the appellant has been falsely implicated.

15. It may also be observed that merely because an independent person from the public was not joined, it cannot lead to a presumption that appellant has been falsely implicated. It may be emphasized that PW-2 clarified that at the time of incident, no person from the public was present and appellant was apprehended after commission of offence. It cannot be ignored that persons from the public are hesitant to be a witness to criminal proceedings for want of their own safety and testimony of PW-2 cannot be disbelieved merely on this count.



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16. This Court is of the considered opinion that evidence of PW-2 led on record is cogent, convincing, reliable and trustworthy and the case has been proved beyond reasonable doubt.

17. The contention raised on behalf of the appellant that use of weapon of offence in the incident has not been proved, since the knife was not forwarded to FSL for examination, is also without any merit. Any irregularity or deficiency in conduct of investigation by the prosecution is not always fatal to the prosecution version if there is other cogent and trustworthy evidence to pin the accused. The mere fact that the alleged knife used in the incident had not been forwarded to FSL, does not impact the substratum of the prosecution evidence in the light of testimony of victim/PW-2. The evidence of PW-2 (victim), which is *prima facie* trustworthy, cannot be overlooked by adopting a hyper-technical approach. The case cannot be proved with cast iron perfection and the shifting and assessment of evidence clearly points out that victim had been stabbed in the process of robbery by the appellant, since he resisted the same. Minor contradictions or infirmities pointed out by learned counsel for appellant cannot undermine the substantive evidence of PW-2 which is untainted and reliable.

18. For the foregoing reasons, there does not appear to be any infirmity in the judgment and order on sentence passed by the learned Trial Court. Further, there do not appear to be any extenuating circumstances for reducing the sentence imposed by the learned Trial Court since it has been pointed out by learned APP for the State that appellant has been involved in three other FIRs. The conduct of the appellant in threatening the complainant during the course of



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trial in order to win over the witness as brought on record during examination of complainant also needs to be deprecated. Appeal is without any merits and is accordingly dismissed.

A copy of this judgment be provided to the appellant through Superintendent Jail and be also forwarded to the learned Trial Court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

NOVEMBER 29, 2024/sd