

(2014) 07 DEL CK 0006

Delhi High Court

Case No: Criminal Appeal No. 1226 and 1536 of 2011

Rajiv APPELLANT

Vs

State RESPONDENT

Date of Decision: July 8, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 324, 34, 356, 379

Citation: (2014) 3 JCC 1917

Hon'ble Judges: S.P. Garg, J

Bench: Single Bench

Advocate: Azhar Qayum, Amicus Curiae, Advocate for the Appellant; M.N. Dudeja, APR, Advocate for the Respondent

Judgement

S.P. Garg, J.

Crl. M.A. No. 11725/2011 (Delay) in Crl.A. No. 1226/2011

Crl. M.A. No. 19424/2011 (Delay) in Crl.A. No. 1536/2011

For the reasons mentioned in the applications, the delay in filing the appeals is condoned.

The applications stand disposed of.

Crl.A. No. 1226/2011 & Crl.A. No. 1536/2011

1. The appellants Rajiv @ Raj (A-1) and Sunil Kumar (A-2) impugn a judgment dated 11.03.2010 in Sessions Case No. 23/10 arising out of FIR No. 134/09 registered at PS Timar Pur by which they were convicted under Section 307/ 34 IPC. Vide order dated 16.03.2010, they both were sentenced to undergo RI for eight years with fine Rs. 5,000/-each. The prosecution case as reflected in the charge-sheet was that on 05.08.09 at about 09.30 pm at Budh Bazar Road, Timar Pur; the appellants in furtherance of common intention inflicted injuries to the complainant-Tahir in an

attempt to murder him. Duty Ct.Rajender at Trauma Centre informed about the admission of injured-Tahir stabbed by some boys while purchasing household articles in the market and the knife was embedded in the head. This information was reduced into writing and DD No. 41 B (Ex. PW-6/A) came into existence at 11.35 pm. The investigation was assigned to ASI Mahender Singh who after recording Tahir's statement (Ex. PW-3/A) lodged First Information Report by a rukka (Ex. PW-6/D). In the complaint given to the police at the first available opportunity, the victim implicated A-1, A-2 and their associate Lalla (since Pro-claimed Offender) ascribing definite role to A-1 inflicting a blow with churi on his head and A-2 assaulting him on neck with a sharp object. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against the appellants; they were duly charged and brought to trial. The prosecution examined ten witnesses to substantiate the charges. In 313 statements, the appellants pleaded false implication without producing any evidence in defence. The trial resulted in their conviction as aforesaid.

2. The occurrence in which the victim sustained injuries on his body occurred at around 09.30 pm. PW-1 (Raju), Tahir's father, disclosed that when at around 09.45 pm, Salman brought Tahir, his son, in an injured condition at his tea shop, he was bleeding from his head and throat and a knife was found inserted in his head. He immediately took Tahir to Trauma Centre and from there referred to Irwin hospital. PW-4 (Salman) who had accompanied Tahir to Budh Bazar to purchase household articles also deposed that after the victim was injured, he took Tahir to the tea shop of his father and thereafter the victim was taken to Trauma Centre. He fairly admitted that he did not intervene to save the victim due to fear. Only after the assailants fled the spot, he gathered courage to take him at his father's tea shop. MLC (Ex. PW-2/A) at Trauma Centre reveals that the patient was admitted by his father-Raju with the alleged history of "assault" at 10.30 pm. Two injuries on the neck and head of the victim were noticed. Apparently, there was no delay in lodging the report with the police. Lodging of FIR in promptitude ruled out any false implication of the appellants who were named therein with definite role. PW-2 (Dr. Dhiraj Kumar), medically examined Tahir by MLC (Ex. PW-2/A) and found the following injuries on his body:--

"(i) Lacerated wound on right side of neck, size 7 cm x.5 cm x.5 cm.

(ii) Penetrating injury on the left temporal area with knife partly penetrating the skull."

He referred Tahir for x-ray of skull to neuro surgery ENT as the injury was sharp and penetrating. PW-5 (Dr. P.N. Pandey), Head Neuro Surgery, Lok Nayak hospital examined and operated Tahir for brain injury caused by a penetrating weapon. He was discharged on 15.08.09. He further revealed that a metallic knife penetrated in the brain through left frontal bone caused brain damage and was removed during surgery and the brain was repaired by a team of doctors. The nature of injuries as

proved by Dr. J.K. Basu (PW-10) was "grievous" in nature. These injuries cannot be considered self-inflicted or accidental due to fall on the ground as alleged. The photographs (Ex. PW-3/1 to Ex. PW-3/5) speak volume of the brutality with which the stab blow was given on the head of the victim. In fact, the injuries suffered by the victim are not under challenge. The appellants pleaded that the victim was thrashed by someone for teasing or molestation. The appellants did not produce any defence to substantiate their charge and put conflicting suggestions in the cross-examination. No such suggestion was given to the victim if he was inflicted injuries by someone because of teasing. The appellants did not specify as to who was teased and why no complaint was lodged for that. The victim, who sustained multiple injuries on vital parts of the body was not expected to spare the real offender and to falsely implicate the appellants with whom he had no prior animosity and was well acquainted with them before.

3. In Court statement PW-3, Tahir fully proved the version given to the police without any deviations. He highlighted that on 05.08.2009 at about 9.00 pm, when he had gone to Budh Bazar, Timar Pur for purchasing some household articles. A-1, A-2 and Lalla (Proclaimed Offender) met and caught hold of him. A-1 accused him of implicating his brother in a case of theft. When he replied in the negative, on the exhortation of A-1 (Ise Pakar, Ise Aaj Sabak Sikhayen Ge), Lalla caught hold of him and A-1 inflicted a knife blow on his head. A-2 inflicted some pointed object on his right side neck after his fall (the Trial Judge noted a cut mark on the right side of the neck of the witness as shown during his deposition). He further deposed that his cousin Salman took him to his father's tea shop. In Trauma Centre, his statement (Ex. PW-3/A) was recorded. He identified the knife (Ex. P-1) used in the crime. Despite lengthy and in-depth cross-examination, no material discrepancies could be extracted to shatter his version. He elaborated the incident which continued for about five minutes after he objected to a slap given by A-1, he stabbed him on head. He denied the suggestion that A-1 was falsely implicated due to a complaint lodged by his wife against him in the police station lodged by his wife. No such complaint was placed on record. In the absence of prior animosity, it is highly improbable that the complainant would screen and spare the real assailants and falsely enrobe the appellants. PW-4 (Salman) has corroborated this version in its entirety. His presence at the spot was quite natural and probable as he had gone to the market with him and had shifted Tahir to his father's tea stall nearby. He gave reasonable and plausible explanation that due to fear of life, he could not intervene to save Tahir.

4. Ocular testimony of the prosecution witnesses is in consonance with the medical evidence referred above and there is no conflict between the two. Since the injuries were caused without any provocation on vital parts of the body by sharp weapon, the findings of the trial court for recording conviction under Section 307/ 34 IPC cannot be faulted. The unarmed victim was taken by surprise without having any inkling of impending danger in the market where he had gone in routine to purchase household articles. The appellants and his associate Lalla (PO) dared to

attack or assault the victim to the full view of the public in the market. It shows how desperate they are and have scant regard or fear of law. The trial court record reveals their involvement in many criminal cases. Nominal roll dated 12.02.2014 reveals that A-1 suffered conviction in FIR No. 190/09 under Section 395/ 397/ 34 IPC Police Station Dwarka; FIR No. 576/08 under Section 379/ 356 IPC Police Station Timar Pur; and FIR No. 76/10 under Section 324 IPC Police Station Subzi Mandi. His conduct in jail was also unsatisfactory and was given punishments on 04.06.10, 30.03.11, 10.04.11, 06.06.11 and 23.12.11. A-2's nominal roll dated 10.02.2014 shows that he was convicted in FIR No. 378/2008 under Section 392/ 397/ 411 IPC Police Station Timar Pur and FIR No. 306/2006 under Section 394/ 411/ 34 IPC Police Station Timar Pur. He was also awarded punishments due to his unsatisfactory jail conduct on number of dates. The appellants having criminal antecedents deserve no leniency. In the light of the above discussion, the appeals filed by the appellants are dismissed as unmerited. Trial Court record be sent back forthwith along with the copy of this order.