

(2014) 05 DEL CK 0069

Delhi High Court

Case No: Criminal Appeal No. 311 of 2006

Zafar Khan

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision: May 28, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 325, 34

Citation: (2014) 3 JCC 1642

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Suman Chauhan, Advocate for the Appellant; Fizani Hussain, APP and Manish Kumar, SI, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Indermeet Kaur, J.

The appellant is aggrieved by the impugned judgment and order of sentence dated 03.03.2006 and 04.03.2006 respectively wherein he has been convicted u/s 325/34 of the IPC (other two co-accused have been declared "proclaimed offenders") and has been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs. 10,000/- of which Rs. 8,000/- was to be released to the victim; in default of payment of fine, he was to further undergo SI for 6 months. The version of the prosecution was revealed in the statement of Suresh (PW-2) wherein it was alleged that on 15.03.2002 at about 10:00 pm when he had gone to Bengali Basti, ward No. 2, Mehrauli two boys of the locality started abusing him and objected as to why he has come there despite the fact that they had earlier told him not to visit Bengali Basti; meanwhile two more boys had come there and all four of them caught hold of him and started beating him. He became unconscious. He was taken to AIIMS hospital in a PCR where he was medically examined by Dr. Pawan (PW-8). His MLC was proved as Ex. PW-7/C. The MLC revealed that the victim at the time of his admission had

consumed alcohol; he was drowsy. The X-ray of his pelvis, nasal area and chest was recommended. He was referred to the ENT department. The X-ray of his chest revealed a fracture on the 6th, 7th and 8th rib. The X-ray was proved through Dr. Lavina Verma (PW-3) as Ex. PW-3/A. The opinion on the MLC of the victim was thus opined to be "grievous"/"dangerous".

2. The accused was arrested on the following day i.e. on 16.03.2002 vide memo Ex. PW-1/C at 10:30 pm by the Investigating Officer SI Braham Parkash (PW-7) who had been accompanied by HC Vijender (PW-1). The disclosure statement of the accused was recorded. The place of occurrence was pointed out vide memo Ex. PW-7/G No recovery was effected pursuant to the said disclosure statement.

3. In the statement of the accused recorded u/s 313 of the Cr.P.C., he pleaded innocence stating that he has been falsely implicated in the present case.

4. No evidence was led in defence.

5. On the basis of the aforementioned evidence collected by the prosecution, the accused was convicted and sentenced as aforementioned.

6. On behalf of the appellant, arguments have been addressed in detail by learned amicus-curiae. It is pointed out that in the first statement of the victim recorded on 16.03.2002, the victim had categorically stated that he does not know the names of the accused persons. He was admittedly conscious at that time. Thereafter, a supplementary statement is alleged to have been recorded by the Investigating Officer on the same day i.e. on 16.03.2002 when all of a sudden, the names of three persons had surfaced including the name of the present appellant; submission being that even as per this supplementary statement, there is a reference to Zafar wherein the complainant had stated that the third person was referred to as Zafar meaning thereby that the appellant was not known to the injured and in the absence of any other detail i.e. parentage and appearance of the appellant, there was nothing to connect the appellant with the crime. On this ground alone, the appellant is entitled to a benefit of doubt and a consequent acquittal. The second submission of the learned amicus curiae being that the testimony of PW-2 who is the star witness of the prosecution is full of contradictions and to nail the accused only on this version would be highly unjust as this statement does not reconcile with his statement given to the Investigating Officer u/s 161 of the Cr.P.C. Attention has been drawn to the testimony of PW-2 recorded on oath in Court. It is further pointed out that the arrest of the accused took place on 16.03.2002 by the Investigating Officer (PW-7) who had been accompanied by PW-I; submission being that neither of the aforementioned witnesses have stated that the complainant had accompanied them and how the accused came to be arrested in the absence of detail of the accused is a question mark which has not been answered.

7. Arguments have been refuted. It is pointed out that on no count, does the impugned judgment call for any interference. It is pointed out that the testimony of

PW-2 clearly establishes that Zafar was one of the accused persons and he was living in the Bengali Basti where admittedly the incident had taken place; thus the identity of the appellant stood fully established. Version of PW-2 also suffers from no infirmity.

8. Arguments have been heard. Record has been perused.

9. The incident had occurred on 15.03.2002 at about 10:00 pm. The first statement of the injured (Ex. PW-2/A) was recorded by the Investigating Officer on 15.03.2002 on which statement the rukka had been dispatched at 12:10 am meaning thereby that the incident having occurred at 10:00 pm, this statement of the victim had been recorded within the next 2 hours i.e. before 12:05 am on 16.03.2002. Ex. PW-2/A has been perused. This statement details the incident wherein PW-2 has stated that when he had gone to ward No. 2 of Bengali Basti, Mehrauli at about 10:15 pm, two boys came there and started abusing him. Thereafter, they were joined by two other persons; he was attacked by them and they beat him up. He lost his consciousness; he was removed to the hospital; in this statement it was categorically stated that Suresh (PW-2) does not know their names but he may be able to identify them by appearance. Thereafter on the same day, a supplementary statement of the victim was recorded by the Investigating Officer; this statement stated that out of four boys who had attacked him, one was named as Rashid, second was Gulzar and third person was referred to as "Zafar" (the present appellant). Thereafter these three persons were joined by four other persons.

10. Testimony of PW-7 is also relevant. He is the Investigating Officer. He had recorded both statements of the injured i.e. Ex. PW-2/A on the basis of which rukka was dispatched and FIR had been registered and also his supplementary statement. In Ex. PW-2/A, it was stated that although the injured had stated that he does not know the names of the persons but thereafter on the same day in the early morning hours after his pain had reduced, he had given details of the accused persons. The details of co-accused by their complete names had been given; the present appellant had also been named; Zafar was the name revealed in this statement.

11. The fact that Zafar was a resident of Bengali Basti, Ward No. 2, Mehrauli is an admitted fact. It was in the first version of PW-2 that the details of Ward No. 2, Bengali Basti, Mehrauli had been given; it was in this first statement itself that PW-2 had stated that two boys had started hurling abuses at him when he had reached Bengali Basti and those boys were living in the same locality; they objected to his visit to Ward No. 2 as he had earlier been asked not to come there. It is thus clear that in the very first version of PW-2 (Ex. PW-2/A) it has come on record that his assailants were the persons living in Bengali Basti. In the supplementary statement, the name of Zafar was revealed. It is also not the case of the present appellant that he is not residing at Bengali Basti. He was arrested at 10:30 pm from his residence by PW-7 who had been accompanied by PW-1. The identity of the present appellant thus stood fully established. Argument of the learned amicus curiae on this score is

thus rejected.

12. The testimony of PW-2 is cogent and coherent. It matches the version which he has given before the Investigating Officer. On oath in Court, PW-2 had detailed the incident and has explained the manner in which he was attacked by the accused persons; their objection being to the fact that he had come to the same area where he had been asked not to come. PW-2 had disclosed that he received injuries on armpit and he lost his consciousness. In his cross-examination, he was confronted with his version Ex. PW-2/A which matched the version on oath in Court reiterating that two boys had given filthy abuses to him and had objected to his coming to their Basti as earlier they had asked the appellant not to visit their Basti.

13. The MLC of the victim (Ex. PW-7/C) has been perused. His X-ray report proved as Ex. PW-3/A had evidenced a fracture of the right 6th, 7th and 8th rib. The victim stayed in the hospital for 18 days His medical record speaks volume. In fact this medical record i.e. Ex. PW-3/A and Ex. PW-7/C matches his ocular versions completely. Injuries have been inflicted in his armpit as also on his ribcage.

14. The prosecution has been able to prove its case to the hilt. It has been established through both oral and documentary evidence that the appellant along his accomplices had voluntarily caused a grievous injury to the injured. However this Court notes the fact that this incident had occurred on a spur of the moment; it was not premeditated. This has come in the version of PW-2.

15. Thus while maintaining the conviction of the appellant u/s 325 of the IPC, this Court is inclined to modify the sentence and the sentence of RI 3 years is modified to RI 1 year. This is keeping in view the fact that the incident having occurred in 2002 i.e. more than one decade ago and both, the victim and the accused at that time were young in years; the quarrel had erupted suddenly when the injured was subjected to a verbal duel followed by a physical assault.

16. The nominal roll of the appellant reflects that he has undergone incarceration of about 6 months. The appellant be taken into custody to serve the remaining sentence. Bail bonds cancelled. Surety Discharged. Appeal disposed off in the above terms.