Shri Balram Vs State

Crl. A. 956 of 2015

Court: DELHI HIGH COURT

Date of Decision: Oct. 18, 2016

Acts Referred:
Penal Code, 1860 (IPC) - Section 34, Section 392, Section 397, Section 452

Citation: (2016) 10 ADDelhi 170 : (2016) 4 JCC 2504

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

Bench: Single Bench

Advocate: Mr. K. Singhal, Advocate, for the Appellant; Mr. Amit Gupta, APP, for the Respondent

Final Decision: Disposed Off

Judgement

S.P. Garg, J. - Aggrieved by a judgment dated 17.07.2015 of learned Addl. Sessions Judge in Sessions Case No. 36/2013 arising out of FIR

No. 301/2012 PS Khyala whereby Shri Balram (A-1) was held guilty for committing offences punishable under Sections 452/392/34 read with

Section 397 IPC; and Mohd. Wasim @ Pappu @ Riaz (A-2) was convicted under Sections 452/392/34 IPC, the instant appeals have been

preferred by them. By an order dated 20.07.2015, they were awarded various prison terms with fine.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 21.12.2012 at about 05.00 a.m. at P-217, Raghubir Nagar,

Delhi, the appellants armed with knives in furtherance of common intention robbed victims Ã¯Â¿Â½ Arjun, Virender, Sanjesh and Anil Kumar of their

cash, mobiles and gold ornaments. The incident was reported to the police and Daily Diary (DD) No. 6A (Ex.PW-8/A) came to be recorded at

06.20 a.m. at PS Khayala. The Investigating Officer after recording Arjun''s statement (Ex.PW-4/A) lodged First Information Report. During

investigation, statements of the witnesses conversant with the facts were recorded. The accused persons were arrested. The application for

conducting Test Identification Proceedings was moved. Upon completion of investigation, a charge-sheet was filed against both the appellants in

the Court. The prosecution examined eight witnesses to prove its case. In 313 Cr.P.C. statement, the appellants denied their involvement in the

crime and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been

preferred by them.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place on 21.12.2012 at around 05.00 a.m.

The incident was conveyed to the police promptly without any delay and DD No. 6A (Ex.PW-8/A) came into existence at 06.20 a.m. It was

informed therein that at P-217, Raghubir Nagar, 3 - 4 individuals had robbed the inmates after showing knife and gun. The victim in his statement

(Ex.PW-4/A) to the police gave detailed account as to how and in what manner, they were robbed by two assailants armed with knife and danda.

Since the FIR was lodged without any delay there was least possibility of the complainant to fabricate a false story particularly when the assailants

were not named by him in the complaint.

4. The Trial Court in the impugned judgment after appreciating the evidence on record came to the conclusion that the prosecution was unable to

prove beyond reasonable doubt if knife (Ex.3/A1) was recovered from A-1"s possession. Accordingly, he was given benefit of doubt and was

acquitted of the charges under Sections 25/27 Arms Act. State did not challenge the said acquittal. It is also pertinent to note that PW-4 (Arjun) in

his Court statement did not support the prosecution regarding complicity of the appellants in the crime; he did not opt to identify them to be the

perpetrators of the crime.

5. Material testimony is that of PW-5 (Virender Yadav), another victim living on the first floor of the rented accommodation, P-Block, Raghubir

Nagar. He deposed that on 21.12.2012 at about 05.00 a.m. he was sleeping in the rented accommodation on the floor. In the meantime, A-1

knocked the door. When he opened it, two assailants including A-1 entered inside the house; A-1 was armed with a knife and A-2 had a danda.

4/5 other individuals working with him were also lying on the floor. The accused persons removed their blankets and showed them ''knife''. They

snatched their mobiles three in number and threatened to hand over the money. He himself handed over his Rs. 10,000/-; Sanjay gave Rs. 4,500/-

and Anil handed over Rs. 3,000/- to the accused persons. The accused persons gave them beatings with a danda. A-1 threatened not to disclose

the incident to anybody. After the crime, both the accused fled the spot. They informed their landlord Bunty who called the police. He identified the

appellants to be the perpetrators of the crime. In the cross-examination, he disclosed that A-1 was arrested from his house at the time of second

visit. He had put signatures on the documents (Ex.PW-3/C and Ex.PW-3/D) in the Police Station. Denying that a false statement was given by him

at the behest of the police, he volunteered that whatever had happened with him, it was disclosed.

6. On scanning the testimony of the victim Virender Yadav, it transpires that no material discrepancies or infirmities could be extracted to

disbelieve his version. No ulterior motive was assigned to this independent witness to falsely implicate the appellants with whom he had no prior

animosity or acquaintance. In the absence of any ill-will or animosity, the victim is not expected to falsely implicate the appellants and to spare the

real offenders. He must be interested to bring the real culprits to book. The witness was not going to be benefitted in any manner by implicating the

appellants falsely.

7. PW-7 (Anil), another victim has corroborated PW-5"s version in its entirety without any variation. He also deposed that on 21.12.2012 when

he was sleeping in his room along with 3Ã¯Â¿Â½4 individuals namely Virender, Sanjay and others, at about 05.00 a.m. the appellants entered the room.

A-1 was having a knife and the other was armed with a danda. They snatched from him Rs. 3,000/- and a mobile besides snatching Rs. 10,000/-

from Virender and Rs. 4,500/- from Sanjay. Thereafter, they fled the spot bolting the door from outside. A-1 was arrested from his house and was

brought to the Police Station. In the cross-examination, he disclosed that they were five individuals living in the said room at the relevant time.

There was sufficient light at the spot it being winter. They all were sleeping on the floor. He further disclosed that though it was dark inside the

room but the accused persons themselves had switched "on" the light. He further disclosed that A-1 had first snatched the money from Virender.

He volunteered to state that thereafter they themselves had handed over the money to him.

8. Again, no discrepancies emerged in the cross-examination to suspect the version given by this witness who did not nurture any grievance or ill-

will against the appellants. No suggestion was put that the appellants were not present at the spot at the relevant time or were present at any other

specific place of residence or job. No extraneous consideration to depose falsely was assigned to this victim.

9. True, PW-4 (Arjun) who participated in the Test Identification Proceedings during investigation did not identify A-2 to be one of the culprits.

The Investigating Officer, however, did not join PW-5 (Virender Yadav) and PW-7 (Anil) in the Test Identification Proceedings. For his

carelessness or remissness identification by both these witnesses during their Court statements cannot be faulted. Identification in the Court is the

substantive evidence.

10. In the case of Malkhansingh and Ors. v. State of M.P. (2003) 5 Supreme Court Cases 746, the Supreme Court observed :

7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the

Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused

persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court.

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The

purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule

of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to

them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is

impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to

the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a

right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed

by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of

identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept

the evidence of identification even without insisting on corroboration.

8. In Jadunath Singh v. State of U.P. the submission that absence of test identification parade in all cases is fatal, was repelled by this Court after

exhaustive consideration of the authorities on the subject. That was a case where the witnesses had seen the accused over a period of time. The

High Court had found that the witnesses were independent witnesses having no affinity with the deceased and entertained no animosity towards the

appellant. They had claimed to have known the appellants for the last 6-7 years as they had been frequently visiting the town of Bewar. This Court

noticed the observations in an earlier unreported decision of this Court in Parkash Chand Sogani v. State of Rajasthan wherein it was observed:

(SCC pp. 522-23, para 11)

It is also the defence case that Shiv Lal did not know the appellant. But on a reading of the evidence of PW 7 it seems to us clear that Shiv Lal

knew the appellant by sight. Though he made a mistake about his name by referring to him as Kailash Chandra, it was within the knowledge of

Shiv Lal that the appellant was a brother of Manak Chand and he identified him as such. These circumstances are quite enough to show that the

absence of the identification parade would not vitiate the evidence. A person, who is well known by sight as the brother of Manak Chand, even

before the commission of the occurrence, need not be put before an identification parade in order to be marked out. We do not think that there is

any justification for the contention that the absence of the identification parade or a mistake made as to his name, would be necessarily fatal to the

prosecution case in the circumstances.

The Court concluded: (SCC pp. 523-24, para 15)

15. It seems to us that it has been clearly laid down by this Court in Parkash Chand Sogani v. State of Rajasthan that the absence of test

identification in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of

course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of

the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case.

11. The appellants had remained at the spot for sufficient duration and had direct confrontation with the victims. It has come on record that the

appellants themselves had switched "on" the lights. Obviously, the victims had reasonable opportunity to recognise the assailants and to identify

them before the Court.

12. Merely because of non-examination of other victims and non-recovery of robbed articles, its benefit cannot be given to the appellants. The

testimony of PW-5 and PW-7 is consistent and non-examination of other victims is of no consequence. The Court is concerned with the quality

and not the quantity of witnesses examined before the Court. Minor discrepancies, infirmities or contradictions highlighted by the appellants''

counsel do not affect the core of the prosecution case. For defective investigation, the benefit should not accrue to the appellants and the otherwise

cogent and natural version of the independent public witnesses cannot be discredited.

13. The prosecution was unable to establish beyond doubt the recovery of knife i.e. crime weapon used in the incident. The prosecution witnesses

in their deposition had claimed that the knife (Ex.PW-3/A-1) was used in the crime. The Trial Court for the reasons mentioned in the impugned

judgment did not believe this portion of the statement and acquitted A-1 for being in possession of the knife. Under these circumstances, A-1"s

conviction under Section 392 read with Section 397 IPC is unsustainable.

14. Both the appellants are thus liable to be convicted for committing offences under Sections 452/392/34 IPC.

15. Regarding sentence, A-1"s Nominal Roll dated 01.12.2015 shows that he was convicted under Sections 452/392 read with Section 34 IPC

and sentenced to undergo RI for two years with total fine Rs. 2,000/-. He has suffered incarceration for two years, eleven months and seven days

besides remission for one month and two days as on 30.11.2015. Apparently, the conviction awarded under Sections 452/392 IPC has already

been served out by A-1.

16. A-2''s Nominal Roll dated 26.11.2015 shows that he has remained in custody for four months and fourteen days besides remission for four

days as on 25.11.2015. He is not a previous convict and is not involved in any other criminal case. Crime committed by the appellants (A-1 and

A-2) is serious and grave whereby the innocent individuals were robbed of their valuable articles at their place of residence. Considering the

gravity of offence, Sentence order qua A-2 needs no modification.

17. In view of the above discussion, the conviction and sentence under Sections 452/392/34 IPC are affirmed. A-1''s conviction under Section

397 IPC is set aside.

18. The appeals stand disposed of in the above terms.

19. A-2 shall surrender before the Trial Court on 2nd November, 2016 to serve out the remaining period of sentence.

20. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.