
Shafiq Vs The State

Criminal Appeal No.397 of 2006

Court: Delhi High Court

Date of Decision: Jan. 6, 2009

Acts Referred:

Arms Act, 1959 " Section 25, 27#Criminal Procedure Code, 1973 (CrPC) " Section 313#Penal Code, 1860 (IPC) " Section 324, 379, 382, 392, 393

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: R.K. Srivastava, for the Appellant; Amit Sharma, Additional Public Prosecutor, for the Respondent

Judgement

Sunil Gaur, J.

In this appeal, Appellant is challenging impugned judgment of 11th May 2006 of learned Additional Sessions Judge,

Karkardooma Courts, Delhi, vide which he has been convicted for committing offences u/s 455/392/394 and 397 of Indian Penal Code and also

u/s 25 of the Arms Act and order of the trial court of the same day, vide which he has been sentenced to undergo rigorous imprisonment for four

years and to pay a fine of Rs.1,000/- separately on two counts, i.e., for the offences u/s 392 and 455 of the Indian Penal Code. In default of

payment of fine he has been directed to undergo rigorous imprisonment for six months each.

2. Appellant is further sentenced by the trial court to undergo rigorous imprisonment for seven years with fine of Rs.1,000/-, separately on two

counts, i.e., for the offence punishable u/s 394 and 397 of Indian Penal Code. In the event of default of payment of fine, Appellant has been

directed to undergo rigorous imprisonment for six months each.

3. The above said substantive sentences have been ordered, by the trial court, to run concurrently.

4. The factual background which needs to be noticed is as follows:

On 9th November, 2005, DD No. 30-A (copy Ex.PW5/A) was assigned to Sub Inspector Lal Chand Yadav at Police Station Welcome, Delhi

for investigation who alongwith Constable Des Raj went to Prachin Hanuman Mandir, Welcome, Delhi at about 4.00 pm where Sushil Kumar

Tiwari met them. Sub Inspector Lal Chand Yadav, Investigating Officer recorded the statement of Sushil Kumar Tiwari and after making

endorsement thereon sent the same to police station for registration of this case. Sushil Kumar Tiwari produced appellant as well as dagger and

mobile phone, besides a sum of rupees 150/- before the investigating officer. The aforesaid objects were converted into separate parcels and

sealed with the seal of LC and were taken into possession vide memo Ex.PW1/E and Ex.PW1/A respectively. The sketch of the dagger was

prepared before converting it into a parcel. Appellant was arrested. Sushil Kumar Tiwari was having stab injuries on first finger of his right hand

and was sent to Hospital for medical examination. Investigating officer inspected the site and prepared the site plan Ex.PW5/B, recorded the

statements of witnesses, got the appellant medically examined and thereafter he was produced before the court concerned. After completion of

investigation, charge sheet for the offence u/s 379/382/506/411/394/397/393 of IPC and Section 25/27 of Arms Act was filed against the

accused/appellant.

5. Since the Appellant/accused had claimed trial in this case, by pleading not guilty to the charges framed against him for the offences punishable

u/s 455/392/394/397/506 of Indian Penal Code and for offence punishable u/s 25 of the Arms Act, before the trial court, evidence of six

witnesses was recorded during the trial in support of the charges framed against the Appellant. Out of them, the main witnesses are the injured/first

informant $\bar{A} \hat{A} \hat{A} \frac{1}{2}$ Sushil Kumar (PW-4); eye witness Dhiraj Shukla (PW-2); Dr. Prabhakar (PW-6), who has proved the MLC $\bar{A} \hat{A} \hat{A} \frac{1}{2}$ Ex.PW6/A of

injured (PW-4) and the Investigating Officer SI Lal Chand, (PW-5). 6. Appellant in his statement u/s 313 of Cr. P.C., before the trial court,

denied the prosecution case and stated that he was going to Ghazipur Mandi and Constable Desh Raj (PW-1) met him at Welcome turn and told

him that he was called by SHO, Police Station Welcome and took him there and framed him in this case. However, Appellant did not lead any

evidence in his defence before the trial court. After the trial, Appellant stands convicted and sentenced as noticed above.

7. Contention advanced by both the sides have been pondered over and the evidence on record has been scrutinised.

8. In short, the prosecution case is that on the night intervening 8th and 9th November 2005, during the night at about 3.30 AM,

Appellant/accused alongwith his associate trespassed into Pracheen Kuainwala Mandir at A-1 Block, Welcome, Delhi and removed cash of

Rs.150/- and a mobile phone from the pocket of the shirt of Sushil Kumar (PW-4) and the said shirt was hanging on a peg on the wall inside the

aforesaid temple. While associate of Appellant / Accused was searching for the goods in the other room of the temple, Dheeraj Shukla (PW-2)

woke up to urinate and he noticed the Appellant/accused in the temple and raised alarm of Thief-thief.. Then, Sushil Kumar (PW-4) also woke

up and rushed towards the Appellant/accused, who gave a knife/ dagger blow on the right hand of Sushil Kumar (PW-4). However,

Appellant/accused was overpowered by Sushil Kumar (PW-4) and from the possession of the Appellant/accused cash of Rs.150/- and mobile

phone of Sushil Kumar (PW-4) and the knife/dagger was recovered.

9. Learned Counsel for appellant has sought to dislodge the aforesaid prosecution case by contending that even if it is assumed that prosecution

case is true, without admitting it to be so, still the offence made out, would be of attempted theft because as per the MLC of injured Sushil Kumar

(PW-4), the injury on the index finger of the right hand has been found to be simple and blunt, which rules out, the prosecution case of

Appellant/accused assaulting injured (PW-4) with a knife/dagger. It has been contended on behalf of the Appellant that injured (PW-4) had

sustained the injury while apprehending the accused and not while the alleged offence was being committed.

10. Trial Judge has rendered the impugned judgment in narrative form and upon its perusal it is difficult to make out if the aforesaid contention was

raised before the trial court. In any case, it has not been dealt with by the trial court. However, trial judge has concluded that the knife/dagger

Ex.P-1 was used by accused/appellant, when he attempted to carry away the stolen property and hurt was caused to injured Sushil Kumar (PW-

4) while committing robbery.

11. A bare perusal of the testimony of the injured (PW-4) makes it clear that injured (PW-4) got up upon hearing the alarm of Thief-Thief

being raised by eye witness (PW-2) and he had seen that eye witness (PW-2) and accused/appellant were grappling and when injured (PW-4)

went to rescue eye witness (PW-2), then appellant/accused gave knife blow to injured (PW- 4) as soon as he reached near the injured. It has also

come in the evidence of injured (PW-4) that he had snatched the knife of the hands of accused/appellant. Possibility of injured (PW-4) sustaining

1/2x1/2 Cm injury on index finger of his right hand, in the process of injured (PW-4) snatching the knife from the hand of accused/appellant,

cannot be ruled out. It has not come in the evidence of the injured (PW-4) or the eye witness (PW-2) that accused/appellant had caused hurt to

the injured (PW-4) while committing robbery or that accused/appellant had used knife/dagger Ex.P-1 while attempting to carry away the stolen

property. Thus, it is evident from the evidence on record that the aforesaid finding of the trial court is factually incorrect. Apparently, there is

misreading of the evidence by the trial judge, which renders the conviction of accused/appellant for the offence u/s 392/394/397 of the Indian

Penal Code illegal and is hereby set aside.

12. Simply because the injury/lacerated wound on the index finger of the hand has been opined to be blunt/simple in the MLC Ex.PW6/A, it

cannot be said that the aforesaid injury is not possible by the knife/dagger Ex.P-1 as it has not come in the evidence on record about knife/dagger

Ex.P-1 being blunt on one side. In any case, nothing turns on it as the accused/appellant was arrested at the spot and the aforesaid knife/dagger

Ex.P-1 was recovered from him at the spot only. The offence made out against accused/appellant falls u/s 379 and 324 of the Indian Penal Code

which is lesser offence than those u/s 392/394/397 of the Indian Penal Code, for which accused/appellant had faced the trial.

13. Appellant/accused has been now found guilty for the offences u/s 324 and u/s 379 of the Indian Penal Code which are punishable for a term

extendable up to three years. In the facts and circumstances of this case, sentence of RI for three years each with a fine of rupees one thousand

each is imposed upon the appellant for the offence u/s 324 and u/s 379 of the Indian Penal Code respectively. In default of the payment of

aforesaid fine, appellant shall undergo SI for three months each. However, conviction and the sentence imposed upon the appellant for offences u/s

455 of the Indian Penal Code and Section 25 of the Arms Act by the trial court is well justified and calls for no interference by this Court.

14. This appeal stands partly allowed to the extent indicated above. Appellant be informed of this order through the concerned Jail Superintendent.