(2011) 07 DEL CK 0439

Delhi High Court

Case No: Criminal A.136 of 1999

State		APPELLANT
	Vs	
Dewan Singh		RESPONDENT

Date of Decision: July 7, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307

Citation: (2011) 07 DEL CK 0439

Hon'ble Judges: Sunil Gaur, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Pawan Sharma, Criminal and Harsh Prabhakar, for the Appellant; Savita Rao, Amicus Curiae, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.
The appeal has reached for hearing today and since none appears for the Respondent, we had appointed Ms. Savita Rao, Advocate who is present in Court today as the Amicus Curiae and since the paper book consists of only 30 pages, 12 out of which are the deposition of witnesses recorded at the trial and 7 are the exhibited documents, we had handed over the paper book to learned Amicus Curiae in the forenoon with a request that if learned Counsel could prepare herself, arguments could be heard in the post-lunch session.

2. Fee of learned Counsel is fixed at Rs. 5,500/-, to be paid by the Delhi High Court Legal Services Committee.

3. At the post-lunch session, learned Amicus Curiae has expressed her readiness with the matter and hence we heard arguments.

4. Charged with the offence punishable u/s 307 IPC relating to the injuries suffered by Sunil Kumar PW-2, vide impugned judgment and order dated 8.6.1998, the Respondent has been acquitted by the learned Trial Judge.

5. It is settled law that pertaining to an order of acquittal, if the Appellate Court finds that the view taken by the learned Trial Judge is a plausible view, merely because another view is equally possible would not be a grant to interfere with an order of acquittal. Only if it is found that material evidence or circumstance has been ignored by the learned Trial Judge or it is found that a wrong principle of law has been applied to draw inferences or if it is found that irrelevant material or irrelevant circumstances have been considered by the learned Trial Judge, alone then can the Appellate Court interfere.

6. A perusal of the impugned judgment would reveal that the reasons for acquittal are penned by the learned Trial Judge in paras 12 to 15 of the impugned decision, and we note the same:

The prosecution examined injured (PW-2) and his father (PW-3) as an eye witnesses of the occurrence. From the perusal of the statement of PW-3, his presence at the spot is highly doubtful. According to him, accused came to his house at about 6 or 6:30 PM alongwith 5/6 persons and started quarrelling with his son PW-2 who was present in his house and he was called outside the house and gave 5/6 knife blow. The further stated that he took the injured to the hospital. His testimony is not corroborated by PW-2. There are material contradictions in the statement of these two witnesses. In the first instance according to PW-3, incident took place at about 6 or 6:30 PM; whereas according to the injured, it took place at about 8:00 PM; whereas according to the prosecution, the incident took place at about 7:00 PM as per Rukka Ex.PW-6/A. According to PW-2, accused gave one churi blow on his stomach; whereas according to PW-3, accused gave 5/6 knife blows to PW-2. He has nowhere stated that PW-3 was present at the spot. According to him, his mother took him to the hospital. I, think, if PW-3 had present at the spot, he would have definitely taken the injured to the hospital instead of the mother of the injured.

13. According to PW-2, he returned from his job normally between 8:00 P.M to 9:00 P.M.; whereas according to PW-3, on the day of the incident PW-2 returned to the house at about 5 or 6 PM. It does not stand to reason when PW-2 himself admitted that he returned from the job between 8 PM to 9 PM as to how he could be in the house on the day of the alleged incident at about 5 or 6 PM. Further, according to PW-2, the quarrel took place for about 10/15 minutes; whereas according to PW-3, it took about one hour. According to PW-2, the police met him the hospital at about 2 or 3 A.M. and recorded his statement: whereas according to PW-3, police came in the hospital at about 8:30 PM and recorded the statement of his injured son when he was in semi-conscious condition. PW-2 further stated in his cross examination that his statement was recorded by the police after 15 days of the incident at his house; whereas his statement Ex.PW-2/A was recorded by the I.O. on 3.2.97. This creates a doubt as to whether the I.O. has manipulated his statement or the injured had with-held the true facts.

14. According to PW-2, he was called in the street by the accused which was not a thorough fare and it was dark in the street where he was given knife blow. On the other hand, PW-3 has stated that there were about 30/40 persons present in the street when the accused gave knife blow to PW-2. It does not stand to reason when so many persons were present in the street, as to how the accused could give knife blow to the injured in their presence, particularly when there was a dark in the street. It is also admitted that accused was not alone and it creates a doubt as to which of the person with the accused had caused injury.

15. The perusal of the statement of PW-6 also creates doubt regarding the investigation conducted by him at the spot. According to him, he reached the spot at about 8 PM when injured was removed to the hospital at about 8:15 PM by him. Whereas, according to injured PW-2, incident had taken place at about 8 PM. He further admitted that when he reached the hospital, none of the eye witness was present except the father Pw-3 of the injured. It means and includes that PW-3 was not the eye witness but he was later on made eye witness in connivance with the IO (PW-6). If at all, he was present at the spot as to why he had obtained his signatures on the statement of the injured Ex.PW-2/A. Site plan was also not prepared at the instance of PW-3. The aforesaid facts go to show that PW-3 was not present at the spot at the time of the alleged incident. Thus, there is a material discrepancy in the statement of injured PW-2. His statement does not inspire any confidence. It is also admitted that he is also facing a trial in a case instituted at the instance of the accused. Moreover, accused had also injury which has not been explained by the prosecution which is a fatal to it.

7. From the evidence it is apparent that apart from Sunil Kumar PW-2, the person injured, his father Hans Raj PW-3 were the star witnesses of the prosecution. It is on account of material discrepancies in the testimony of the two that the learned Trial Judge has formed an opinion of giving the benefit of doubt to the accused after factoring in the testimony of Roop Chand DW-1.

8. Thus, we have proceeded to acquaint ourselves with the testimony of the three witnesses i.e. PW-2, PW-3 and DW-1.

9. Indeed, we find the discrepancies noted by the learned Trial Judge. Whereas the father says that the accused came to his house at about 6:00 or 6:30 PM with 5/6 persons and inflicted 5/6 knife blows on the person on his son, the injured i.e. the son claims that the incident took place at 8:00 PM and indeed, the time of the incident, as per the FIR is stated to be 7:00 PM. As against the father stating that his son was given 5/6 knife blows, the son claims only 1 knife blow being inflicted upon him. Surprisingly, we find that in the MLC of Sunil the injuries noted, caused by a sharp edged weapon are 6. We find it strange that Sunil claims being injured only once. From the MLC we find that it is the mother of Sunil who accompanied him to the hospital and had the father been present in the house it was but natural that it was he who would have taken his son to the hospital. As noted by the learned Trial Judge, we find that Sunil claims to have returned home

between 8:00 PM to 9:00 PM but the father claims that his son returned home at 5:00 PM or 6:00 PM. If Sunil claims to have returned home at 8:00 PM it assumes importance that the father claims the stabbing to have taken place at 6:00 or 6:30 PM and even as per the challan the stabbing took place at 7:00 PM. The discrepancies noted by the learned Trial Judge as to the time and place when the police recorded the statements of the father and son are indeed to be found in their testimony. Indeed, reasons given by the learned Trial Judge in para 15 that there is a doubt regarding the investigation conducted by the IO at the spot are correct. The claim of the IO that no eye witness except the father was at the hospital is highly doubtful keeping in view the fact that as per the MLC the injured was brought to Hindu Rao Hospital at 8:45 PM by his mother.

10. We concur with the reasoning of the learned Trial Judge and hold that in view of the evidence of DW-1 that Sunil had an altercation with 3/4 persons at the dispensary at B-Block, Jahangir Puri, the accused needs to be extended the benefit of doubt as has been extended by the learned Trial Judge.

11. We dismiss the appeal and discharge the personal bond and surety bond furnished by the Respondent.