(2011) 05 DEL CK 0431

Delhi High Court

Case No: Criminal Appeal No. 505 of 2001

Shiv Paltan		APPELLANT
	Vs	
State N.C.T. of Delhi		RESPONDENT

Date of Decision: May 31, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 308, 34

Citation: (2011) 3 JCC 1796

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Anil K. Gujral, for the Appellant; Pawan Bahl, APP for the State and Sanjiv Mandal, SI, for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

This is an appeal filed by the Appellant against the judgment dated 11th May, 2001 convicting him for offence punishable u/s 308 IPC and order on sentence dated 9th July, 2001directing him to undergo Rigorous Imprisonment for a period of one year and to pay a fine of `5000/- and in default of payment of fine, to further undergo Rigorous Imprisonment for a period of two months, passed by the learned Additional Sessions Judge in case FIR No. 81/1995 registered at P.S. Vinay Nagar under Sections 308/34 IPC.

2. The prosecution case in a nutshell is that on 8th February, 1995 at about 7:30 A.M. one Raju had gone to fetch water from the municipal tap in Saheed Arjun Dass Camp, Laxmibai Nagar. After sometime his brother Neki Ram, PW2 also reached at the spot to accompany his brother. There a quarrel took place between Neki Ram and Shiv Paltan and Ram Pher on the turn to take water from the tap and heated exchange of arguments took place. On hearing the noise, Raghubir Singh, PW1 who is the real brother of Neki Ram, came to the spot and tried to pacify Neki Ram and

Shiv Paltan. On this, the accused Shiv Paltan went in his juhggi which was a few steps away from the water tap and brought out a saria and gave blow on the head of Neki Ram and Raghubir Singh with that saria. In the meantime, Ram Pher also came there with lathi type danda and assaulted Neki Ram with the danda blow on his hands. Both the injured were removed to the hospital. Since Raghubir was found to be fit for making statement, his statement was recorded and both the accused were arrested after registration of the abovementioned FIR. After recording the statements of the prosecution witnesses and the Appellant, he was convicted and sentenced as above.

3. Learned Counsel for the Appellant contends that despite the fact that the incident occurred at a public place on the issue of filling up of the water, no independent witness has been associated. The two witnesses are the Complainant Neki Ram PW 2 and his brother Raghubir Singh PW1. Admittedly, the incident took place on the issue of filling up of the water at spur of the moment after exchange of heated arguments and so it was not a premeditated act. There is no evidence on record that the alleged injury inflicted was caused with an intention to cause culpable homicide.

4. It is further contended that the weapon of offence, that is, the saria, is alleged to have been recovered from the jhuggi of the Appellant. However even at the time of recovery, no independent witness has been associated. The recovery of weapon of offence cannot be used against the Appellant as it has not been linked with the injury caused as neither it has been sent to the CFSL for matching with the blood nor any opinion has been taken from the doctor concerned. As per the testimony of the injured witness, the Appellant caused injury on the head and other co-accused gave injury by danda blow on the hand. However, no injury was found on the hand of the complainant; so the ocular evidence is contrary to the medial evidence. Thus, the testimony of the eye-witnesses'' cannot be relied upon. Learned Counsel for the Appellant relies upon the decision in Naresh v. State of Haryana 2005 (2) C.C.C. 271. The co-accused Ram Pher has already been acquitted by the learned trial Court as he was falsely implicated. Thus the Petitioner be also acquitted as the testimony of the eye-witnesses is unreliable. In the alternative, it is contended that the Petitioner is 62 years old, suffering from ailments and had to be admitted in the hospital during custody. He has already undergone major surgeries so he should be released on the period of imprisonment already undergone.

5. Learned APP for the State on the other hand contends that the testimony of Raghubir PW1 the injured witness and Neki Ram PW2, clearly implicate the Appellant. The weapon of offence has been recovered at the instance of the Appellant and the same has been identified by the witnesses, hence it is connected with the offence committed. There is no discrepancy in the testimony of eye-witnesses and hence no case for acquittal is made out. The Petitioner has already been dealt with leniently as he has been awarded a sentence of imprisonment for a period of one year and hence there is no reason to further

reduce the sentence of the Appellant. It is thus prayed that the present appeal be dismissed being devoid of any merit.

6. I have heard learned Counsel for the parties and perused the record. PW2 Neki Ram, the injured has stated that on 8th February, 1995 at about 7:00 or 7:15 A.M. he went to take water from the tap. There he saw accused Shiv Paltan had filled one bucket and was going to fill the second bucket. When he told the Appellant that it was his turn to fill the bucket an exchange of hot arguments ensued. The Appellant went to his jhuggi which was at a distance of 3-4 steps from the water tap, brought out a saria and hit on the head of the PW2. His brother Raghubir PW1 came there and tried to persuade the Appellant not to quarrel. Thereafter Shiv Paltan asked Ram Pher who was standing at some distance to bring a danda. Ram Pher brought a lathi/danda from his jhuggi and he gave blows on Neki Ram''s hands. PW2 has identified the saria and danda. The statements of this witness is corroborated by the MLC of PW2 and PW1, Ex. PW7/1 and Ex.PW7/2 respectively which show injuries on their heads. The injury received by PW2 Neki Ram is grievous in nature whereas the injury to PW 1 was opined to be simple in nature. Similarly, PW1 Raghubir has stated about the fight and thereafter stated that on hearing the noise, he went to the public water tap. He tried to persuade Shiv Paltan who went to the jhuggi and brought a saria and gave saria blow on his brother Neki Ram. He further stated that thereafter the Appellant gave saria blow on his head. This version of PW1 that he witnessed the saria blow on the head of PW2 is corroborated by PW2, who has stated that his brother had come there before accused Shiv Paltan hit him with a saria on his head and had tried to persuade the Appellant not to raise the quarrel. PW1 was injured and this fact is duly corroborated by the testimony of both PW1 and PW2 and the MLC of PW1 Ex.PW7/2, which records that the patient had suffered contused lacerated wound on the left parietal region of head. Moreover, when an injured is being beaten, he may not be in a position to notice who are the other witnesses to have witnessed the incident and when they reached the spot. Thus, I find no force in the contention of learned Counsel that the witnesses have not been able to name any of the jhuggi dewellers, who were present at the spot. The weapon of offence, that is, the saria has been recovered at the instance of the Appellant from his house. The saria has been duly identified by the witnesses and thus connected with the injuries caused.

7. The testimony of the injured witness is reliable and cogent and I find no reason to discard the same. Moreover, non-joining of the public witness cannot be held to be fatal to the prosecution case.

8. I find no merit in the present appeal. As regards the contention that the sentence of the Appellant be reduced to the period already undergone, it may be noted that the Appellant has been awarded a sentence of imprisonment for a period of one year. The injury caused to the PW2 is grievous in nature. As regards the medical status of the Appellant, a report has been received from the Senior Medical Officer,

Central Jail, Tihar, stating that the Appellant is a follow up case of CAD and at present his general condition is stable and all the prescribed medicines and medical diet are being provided to him at the Jail Dispensary. Thus, I find no reason to reduce the sentence of the Appellant.

9. The appeal is dismissed. The Appellant is in custody. He will undergo the remaining sentence. Copy of this judgment be sent to the Appellant through Superintendent, Central Jail, Tihar.