Mohd.Anwar vs State (Nct Of Delhi) on 19 August, 2020

Equivalent citations: AIR 2020 SUPREME COURT 5134, AIRONLINE 2020 SC 689

Author: Surya Kant

Bench: Surya Kant, S. Abdul Nazeer, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1551 of 2010
[Arising out of Special Leave Petition (Crl.) No. 3388 of 2010]

Mohd. Anwar ..... Appellan

VERSUS

The State (N.C.T. of Delhi) .....Respondent(

JUDGMENT

Surya Kant, J:

The present criminal appeal, which has been heard through video conferencing, is at the instance of Mohd. Anwar who impugnes the judgment dated 22.02.2010 of the High Court of Delhi whereby his appeal against a judgment dated 27/29.04.2004 of the Additional Sessions Judge, Karkardooma, convicting and sentencing him under Section 394 of the Indian Penal Code, 1860 ("IPC") and Section 25 of the Arms Act, 1959, was turned down.

FACTS & CASE HISTORY

2. The case of the prosecution is that the victim-complainant, Tabban Khan (PW-1), was riding his motorcycle on the main road near Shahdara around 11:30PM on 17.05.2001, when he stopped to ease himself near a Page | 1 fishpond. Suddenly, three boys (including the appellant) caught hold of him and started assaulting him. They were armed with a knife and revolver. Upon extortion, the complainant handed over a bundle of five-hundred- rupees notes totalling around thirty thousand (Rs 30,000) to the boys, who then contemplated murdering him by stabbing, so that he would not report the matter to the police. Hearing commotion of passers-by, the three boys left the complainant and ran towards a warehouse. The complainant then returned to his home and reported the matter to the jurisdictional police the following evening. This complaint was

subsequently converted into an FIR on 20.05.2001 at 7:45PM.

3. A police party, on 20.05.2001 at about 8:30PM, during routine checking of buses near GT Road, noticed three boys surreptitiously deboarding a bus through the rear door. On suspicion, Constable Vinod Kumar (PW-4) and Constable Prakash Chand (PW-7) chased and apprehended them, and recovered a prohibited buttondar knife from the appellant and his co-accused. They also confessed to having robbed the present complainant. All three were arrested and produced before the Metropolitan Magistrate for a Test Identification Parade ("TIP") the following day, which they refused to undergo.

4. The prosecution examined twelve witnesses during trial which included the victim-complainant (PW-1), the Metropolitan Magistrate who sought to conduct the TIP proceedings (PW-10) and a total of ten Page | 2 policemen. Sketches of the knife, arrest memos, site plans, and recovered money and weapons were admitted in evidence. The appellant and his co- accused plainly denied the allegations and claimed that the case was planted by the police upon their failure to pay a bribe of rupees twenty-five thousand. They, however, led no evidence in defence.

5. The trial Court discarded the defence plea for want of supporting material, and further found the likelihood of false implication being remote. All twelve prosecution witnesses were noted to have withstood cross- examination and their testimonies were designated as being stellar. The trial Court explained the absence of any public witness as being nothing abnormal given the circumstances of the case. The unreasoned refusal of the accused to take part in the TIP proceedings was found to be highly incriminating and substantiating their guilt.

6. The trial Court, thus, held all three accused guilty of robbery with attempt to cause grievous hurt and sentenced them to seven years rigorous imprisonment under Section 397/34 of IPC, five years rigorous imprisonment under Section 392/34 of IPC, two years rigorous imprisonment under Section 25 of the Arms Act and fine of rupees five thousand (or imprisonment of six months in lieu thereof).

7. The appellant approached the High Court which dismissed the charge under Section 397 of IPC, and instead convicted him under Section 394 with a reduced sentence of only two years rigorous imprisonment.

Page | 3 Another co-accused, Mohd Aslam, was acquitted on charges of robbery as the version of the complainant qua him was found doubtful. The High Court noted that although as per the FIR three 'unidentified' persons had robbed the victim but PW-1 admitted during his cross-examination that he previously knew Mohd Aslam who was a friend of his children.

8. As far as the present appellant was concerned, the High Court specifically noted that no animosity or motive for false implication had been proferred by him, and that there were no contradictions in the testimonies of the witnesses as regards his role in the crime. The minor delay in lodging of the FIR was considered insignificant, for it was a late time occurrence and the victim could therefore not be expected to visit a police station in such terrorised mental state of mind. Use of a revolver was

considered an improvement for it had not been mentioned in the FIR. Considering the absence of any specific weapon being attributed to the appellant, charges of robbery with grievous hurt or attempt to murder were dropped.

9. Learned counsel for the appellant raised new arguments of juvenility and insanity before the High Court. It was claimed that Mohd Anwar was merely 15 years at the time of occurence and was undergoing treatment for a mental disorder at a government hospital. This was supported through a copy of an OPD card and the testimony of the appellant's mother who stated that he sometimes had to be kept chained at home to prevent harm to himself and others. The High Court took notice of the appellant's age Page | 4 being 21 years at the time of recording of his Section 313 Cr.P.C. statement in March 2004 and concluded that the appellant would therefore have been an able-minded major at the time of incident in May, 2001. CONTENTIONS OF PARTIES

10. These very same arguments have again been canvassed before us by learned counsel for the appellant. Assailing the judgments of the High Court and the trial Court on the charge of robbery, he urged that the prosecution failed to discharge its burden of proof beyond reasonable doubt. He asserted that lack of independent witnesses, absence of injuries on the person of the complainant as well as the inconsistency in the complainant's version regarding his knowledge of co-accused Mohd Aslam, all together evidenced that no incident of robbery ever took place. Further, the FIR had been lodged after an unexplained delay of three days, despite the police station being walking distance from the site of the incident, thus suggesting that the entire proceedings were concocted.

11. Learned Additional Solicitor General, on the other hand, buttressed the judgment of the High Court by highlighting the various evidences and consistent testimonies of the twelve witnesses. He maintained that the belated defences of juvenility and insanity were an afterthought, and that the High Court had already taken a lenient view by reducing the sentence from seven to two years.

Page | 5 ANALYSIS

12. At the outset, it must be highlighted that appellate Courts ought not to routinely re-appreciate the evidence in a criminal case. This is not only for reasons of procedure, expediency, or finality; but because the trial Court is best placed to holistically appreciate the demeanour of a witness and other evidence on record. Given the concurrent finding of the Courts below on key aspects of the robbery, we do not find it a fit case for such re-appraisal of evidence.

13. Further, the testimonies of the witnesses are indeed impeccable and corroborative of each other. The crime of robbery with hurt has been established by the testimony of PW-1 and the other evidence on record. The complainant (PW-1) had no motive to falsely implicate the appellate and/or to allow the real culprits to go scot-free. The refusal to participate in the TIP proceedings and the lack of any reasons on the spot, undoubtedly establish the appellant's guilty conscience and ought to be given substantial weight.1 The three-day delay in registration of FIR, as projected by the appellant, is devoid of factual basis. The original record shows that the complaint was, in fact, registered within a few hours of the incident on 18.05.2001. It was because of preliminary police enquiry that another two days passed between reporting and subsequent lodging of FIR on Ashwani

Kumar v. State of Punjab, (2015) 6 SCC 308, ¶ 19.

Page | 6 20.05.2001.

14. Pleas of unsoundness of mind under Section 84 of IPC or mitigating circumstances like juvenility of age, ordinarily ought to be raised during trial itself. Belated claims not only prevent proper production and appreciation of evidence, but they also undermine the genuineness of the defence's case.

15. As noted by the High Court, no evidence in the form of a birth certificate, school record or medical test was brought forth; nor any expert examination has been sought by the appellant. Instead, the statement recorded under Section 313 CrPC shows that the appellant was above 18 years around the time of the incident, which is a far departure from the claimed age of 15 years.

16. The plea of mental disorder too remains unsubstantiated. No deposition was made by any witness, nor did the appellant himself claim any such impairment during his Section 313 CrPC statement. On the contrary, his conduct of running away from the spot of the crime on 17.05.2001 as well as the attempt to escape from the bus on 20.05.2001 evidence an elevated level of mental intellect. The answers recorded in response to the questions put forth by the Additional Sessions Judge at the Sec 313 CrPC stage are also not mechanical or laconic. For example, the appellant explains his refusal to participate in the TIP proceedings by alleging that his face had already been shown by the police to the complainant.

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17. Mere production of photocopy of an OPD card and statement of mother on affidavit have little, if any, evidentiary value. In order to successfully claim defence of mental unsoundness under Section 84 of IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious-enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. 2 Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defences are thus well reasoned and unimpeachable.

18. Regardless thereto and given the ingrained principles of our criminal law jurisprudence which mandates that substantive justice triumph limitations of procedure, this Court on 22.07.2020 tried to enquire into the mental health of the appellant, by requesting the learned Additional Solicitor General to get the appellant mentally examined. However, notwithstanding such efforts, the appellant who had been granted bail by this Court earlier, is untraceable. The government counsel submits that the appellant is not residing at his claimed address since the past eight years, and even the appellant's own counsel fairly admitted to not having received any instructions from his client since the past ten years. We are thus left with no option but to hold that the plea of mental illness is nothing but a made-up story, and is far from genuine.

TN Lakshmaiah v. State of Karnataka, (2002) 1 SCC 219, ¶ 9.

Page | 8 CONCLUSION

19. Given such inability of the appellant to establish juvenility or insanity, raise any doubt regarding guilt; and considering the detailed reasons accorded by the High Court, the reliable testimony of twelve witnesses as well as the leniency shown in sentencing, we see no reasons to interfere with the impugned order(s). The appeal is accordingly dismissed. The appellant's bail bonds are cancelled and the respondent-State is directed to take the appellant into custody to serve the remainder of his sentence.

..... J.

(N.V. RAMANA) ..... J.

(S. ABDUL NAZEER) .....J. (SURYA KANT) NEW DELHI DATED : 19.08.2020
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