

State vs Shahid on 23 December, 2024

THE COURT OF SH. UDBHAV KUMAR JAIN,
JUDICIAL MAGISTRATE FIRST CLASS-04,
SHAHDARA DISTRICT, KARKARDOOMA COURTS, DELHI

STATE v. SHAHID

FIR No.-: 859/2014
Police Station :- Madhu Vihar
Section(s) :- 323/341 IPC
Cr. Case No. :- 79707/2016

1.	CIS number	:	DLSH020023172015
2.	Name of the complainant	:	Shankar Thakur S/o Sh. Sukhai Thakur R/o B-13, Joshi Colony, Delhi
3.	Name of the accused, parentage & residential address	:	Shahid S/o Sh. Masi Jaan R/o D-566, West Vinod Nagar, Delhi
4.	Offence complained of or proved	:	Sections 323/341 IPC
5.	Date of commission of offence	:	02.08.2014
6.	Plea of the accused	:	Pleaded not guilty and claimed trial.
7.	Final Judgment	:	Acquittal
8.	Date of judgment/order	:	23.12.2024

Date of Institution:	20.06.2015
Date of Reserving Judgment:	23.12.2024
Date of Pronouncement of Judgment:	23.12.2024
Duration:	9 years 6 months 3 days

Argued by: Sh. Kapil Sharma, Ld. APP for the State.
Sh. Ganesh Dutt, Ld. Counsel for accused.

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JUDGMENT

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FACTUAL MATRIX

1. Briefly stated, the case of the prosecution against the accused is that on 02.08.2014 at about 03:00 PM at D-566, West Vinod Nagar, Delhi within the jurisdiction of PS Madhu Vihar, accused Shahid gave beatings to the complainant Shankar Thakur and when complainant tried to run away, accused Shahid stopped his way. As such, it is alleged that the accused committed the offence under sections 323/341 of the Indian Penal Code, 1860 (hereinafter, "IPC") for which FIR No.859/2014 was registered at Police Station Madhu Vihar, Delhi.

INVESTIGATION AND APPEARANCE OF ACCUSED

2. After registration of FIR, the investigating officer (hereinafter 'IO') conducted investigation and on culmination of the same, chargesheet against the accused namely Shahid for the alleged commission of offences u/s 323/341 IPC was filed. Ld. Predecessor of this Court took cognizance of the offences vide order dated 20.06.2015. After taking cognizance of the offence, accused appeared before the Court to face trial. He was supplied the copy of documents relied upon in the charge sheet in terms of section 207 of the Code of Criminal Procedure, 1973 (hereinafter, "CrPC").

3. Since prima facie offences against the accused were made out, Ld. Predecessor of this Court vide order dated 29.01.2018 framed charge against accused Shahid for the offences punishable u/s 323/341 IPC, to which accused pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

4. During the trial, prosecution led the following oral and documentary evidence against the accused to prove its case beyond reasonable doubt: -

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Kumar 2024.12.23 Date:

Jain 13:15:16 +0530 ORAL EVIDENCE PW1 Insp. Sanjeev Kumar DOCUMENTARY EVIDENCE Ex.PW1/A Statement of complainant Ex.PW1/B Endorsement on rukka Ex.PW1/C Site plan Ex.PW1/D Arrest memo of accused Shahid Ex.PW1/E Personal search memo of accused ADMITTED DOCUMENTS U/S 294 CrPC Ex. P2 DD No. 31A dated 02.08.2014

5. Insp. Sanjeev Kumar (PW-1) in his examination-in-chief deposed that on 02.08.2014, he was posted as SI at PS Madhu Vihar. On that day, he received DD Entry No. 31A, Ex.P-2. After receiving the aforementioned DD entry, when he was leaving the police station, he came to know that a PCR van had taken the injured to LBS Hospital. Subsequently, he went to LBS Hospital, where he inquired about the injured person and collected the MLC bearing No. 13525/14, on which the doctor had opined "alleged history of assault" and the nature of injury as "U/O." Meanwhile, Ct. Naveen arrived at the hospital, and he recorded the statement of the injured person namely Shankar Thakur as Ex.PW1/A bearing his signature at point A. After recording Shankar's statement, he prepared a rukka and endorsed the same as Ex.PW1/B bearing his signature at point A. Thereafter, he sent Ct. Naveen to the police station for registration of the FIR, which was subsequently registered as Ex.P1.

He then proceeded with the injured, Shankar, to the spot, i.e., D-566, West Vinod Nagar, where he prepared a site plan at Shankar's instance as Ex.PW1/C bearing his signature at point A. Ct. Naveen also reached the spot with a copy Udbhav by Udbhav Kumar Jain FIR No.859/2014 State vs. Shahid Page no. 3 of 7 Kumar Date:

2024.12.23 Jain 13:15:27 +0530 of the FIR and the original rukka. He provided a copy of the FIR to the injured, Shankar Thakur, and recorded Ct. Naveen's statement. He also searched for the accused Shahid (who was present in the Court that day and was correctly identified by the witness) but could not locate him despite his best efforts. On

03.08.2014, he arrested the accused Shahid through an arrest memo, Ex.PW1/D, bearing his signature at point A, and conducted a personal search of the accused through a personal search memo, Ex.PW1/E, bearing his signature at point A. As the offence was bailable, he released the accused on bail. He also recorded the statement of Ct. Kanwar Sain under Section 161 CPC. Subsequently, he obtained the final opinion on the MLC, Ex.P-3. After completing the investigation, he filed the charge sheet before the court.

5.1. On his cross-examination by Ld. Counsel for accused, witness stated that he did not remember the exact time he reached the spot. He recalled reaching LBS Hospital after 3:30 p.m. Apart from the complainant, he did not record the statement of any public witness. He did not remember the exact duration he remained at the hospital that day. He denied the suggestion that he failed to join the investigation or visit the hospital or that he was deposing falsely.

6. During course of trial, complainant/injured Shankar Thakur remained unserved in the present matter even after steps taken through DCP and accordingly he was dropped from the list of witnesses vide order dated 18.03.2023. As the witness PW-1 was already examined and formal documents without their contents were already admitted by the accused u/s 294 CrPC hence, this Court by relying upon the order of the Hon'ble Apex Court of India in the matter titled In Re: Speedy Trial of Under Trial Prisoners (dated 22.10.2018), dropped witnesses namely Constable Naveen and Kanwar Sain from the list of witnesses vide order dated 14.10.2023. Thereafter, prosecution evidence was closed.

Digitally signed by Udbhav Udbhav Kumar Jain FIR No.859/2014 State vs. Shahid Kumar Date: Page no. 4 of 7 Jain 2024.12.23 13:15:40 +0530 STATEMENT AND DEFENCE OF ACCUSED

7. On 23.12.2024 i.e., today whatever evidence and material came on record against the accused were put to the accused and his statement u/s 313 CrPC was recorded whereby accused chose not to lead evidence in his defence.

ARGUMENTS

8. I have heard the Ld. APP for the State and Ld. Counsel for the accused. I have also given my thoughtful consideration to the material available on record.

POINT OF DETERMINATION

9. After going through the record and considering the material available on record, the only point of determination that is left is whether the prosecution in the absence of material witness can substantiate its case and prove the guilt of accused beyond reasonable doubt.

REASONS FOR DECISION OF THE CASE

10. The general burden of proof on the prosecution is to prove the guilt of the accused beyond a reasonable doubt. The presumption of innocence of the accused has to be rebutted by the prosecution by adducing cogent evidence that points towards the guilt of the accused. The evidence in the present case is to be weighed keeping in view the above legal standards.

11. The complainant/injured Shankar Thakur remained unserved in the present matter, and he was dropped from the list of witnesses. In the absence of complainant/injured Shankar Thakur, identification of accused, commission of offence and his presence on the spot remains doubtful. It is not the case that the alleged offence was committed behind closed doors, and it is highly unlikely that not even a single person saw the alleged commission of offence. No public witness was called to support the case of prosecution. Therefore, non-

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appearance of complainant/injured Shankar Thakur and absence of any public witness are factors which makes the story of prosecution unbelievable.

12. Now, if the whole evidence available on record is sift through then it is evident that the whole case of prosecution was dependent on the testimony of complainant/injured Shankar Thakur who saw the accused committing the alleged offence. Neither presence of accused can be confirmed on the spot nor there is anything on record to connect the accused with the commission of the offence. PW-1 is the Investigating Officer of the case, but he did not see the alleged commission of offence. As such, even if all the other prosecution witness cited in the list of witnesses were to be examined, the case of the prosecution could not be proved.

13. Furthermore, it has been held by Hon'ble Supreme Court in S.L. Goswami (Dr) v. State of M.P., (1972) 3 SCC 22 that the accused is entitled to benefit of doubt where the onus of proving the ingredients of the offence is not discharged by the prosecution. The same view was reiterated by the Hon'ble Apex Court recently in Nanjundappa & Anr. v. The State of Karnataka 2022 SCC OnLine SC 628. In the present case, as already noted above, the prosecution could not discharge the onus of proving the ingredients of offence due to non-appearance of complainant and eyewitness. Thus, accused Shahid is entitled to benefit of doubt.

CONCLUSION

14. In view of the above discussion, the accused Shahid is hereby found not guilty as prosecution failed to prove the guilt of accused beyond reasonable doubt. Accordingly, accused Shahid is hereby acquitted of the offences under section 323/341 IPC. Udbhav Digitally signed by Udbhav Kumar Kumar Jain Date: 2024.12.23 Jain 13:16:09 +0530 FIR No.859/2014 State vs. Shahid Page no. 6 of 7 Bail bond already furnished stands accepted for the purpose of Section 437A CrPC.

File be consigned to record room after due compliance.

Announced in open court today i.e., 23.12.2024.

Udbhav Digitally by Udbhav Kumar Jain signed Kumar Date:

2024.12.23 Jain 13:16:22 +0530 (UDBHAV KUMAR JAIN) JMFC-o4:SHD:KKD This judgment contains 7 pages all signed by the presiding officer.

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