

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.366 OF 2013

RAJ KUMAR @ RAJU

.....APPELLANT

VERSUS

STATE OF NCT OF DELHI

....RESPONDENT

O R D E R

In the present appeal by special leave, we are concerned with the appellant viz., Raj Kumar @ Raju. He has been held guilty by the trial court for commission of offence under section 302, 307, and 323/34 of the Indian Penal Code (for short the 'IPC'). He has been sentenced to undergo imprisonment for life and fine of Rs.1,000/- with default clause under section 302 IPC, rigorous imprisonment for three years and fine of Rs.1,000/- with default clause under section 307 IPC, and rigorous imprisonment for one month under section 323 IPC. His conviction and sentence has been affirmed by the High Court.

According to the prosecution, the altercation was going on between PW-1 Om Prakash and other accused with whom we are not concerned in the present appeal and when Om Prakash cried for help, his younger brother Surender @ Rinku and his uncle PW-4 Nirmal Singh came at the spot. According to the prosecution, on the exhortation of one of the accused, this appellant gave several blows to the deceased Surender with knife. It is further alleged that when PW-4 Nirmal Singh tried to rescue the deceased, he was assaulted with knife by the appellant. After commission of the crime, according to the prosecution, they fled away from the place of occurrence. Prosecution in order to bring home the charge has mainly relied on the evidence of PW-1 Om Prakash the informant in the case and PW-4 Nirmal Singh. They claimed to be eyewitnesses to the occurrence and were injured in the incident. The prosecution further relied on the evidence of PW-5 Dr. B.N. Acharya who had conducted the post-mortem examination on the dead body of Surender and found incised stab wounds on his person.

Mr. Avadh Bihari Kaushik, learned counsel appearing for the appellant, submits that the conduct of the alleged two eyewitnesses viz., PW-1 and PW-4 rendered their evidence unreliable. According to him, there is a contradiction as to how and in what manner PW-4 had reached the hospital. He further points out that it is the father of the deceased who had taken the deceased to the hospital but the First Information Report (for short the 'FIR') was registered by the police on the basis of statement of PW-1. According to him, all these conducts make the evidence of PW-1 and PW-4 doubtful.

Mr. D.K. Thakur, learned counsel appearing for the respondent-State, however, submits that PW-1 and PW-4 are injured eyewitnesses

and the injuries sustained by them being not self-inflicted, their presence at the spot stand proved. He submits that there is no material contradiction in the evidence of PW-1 and PW-4 and their testimony have been corroborated by PW-5 Dr. B.N. Acharya who had conducted the post-mortem examination on the dead body of the deceased. He submits that the conviction of the appellant is not fit to be interfered.

We have bestowed our consideration to the rival submissions and we do not find any substance in the submission of Mr. Kaushik. PW-1 and PW-4 are the injured witnesses. They have sustained injuries in the occurrence which have been proved by the medical report. There is nothing to suggest that the injuries sustained by them are self-inflicted. A witness to the occurrence who has sustained injury in the incident is generally considered to be reliable as such a witness comes with in-built guarantee of his presence at the place of occurrence. PW-1 and PW-4 have clearly stated in their evidence that it was the appellant who gave several knife blows to the deceased and their evidence is corroborated by PW-5 Dr. B.N. Acharya who had conducted the post-mortem examination. We do not find any reason to disbelieve their evidence.

Mr. Kaushik, then submits that the recovery of knife from the appellant is doubtful. In this connection, he has drawn our attention to the observation made by the trial court that the knife said to have been recovered from the appellant and produced before the court was brand-new. This aspect of the matter has been discussed by the trial court itself and it is observed that the knife having been passed through several hands, the aforesaid observation of the court in no way discredits the case of the prosecution. In any view of the matter as rightly observed by the High Court that even if the recovery is discarded, the eyewitness account which has been supported by the medical evidence establishes the case of the prosecution beyond any reasonable doubt. We are of the opinion that the trial court on appraisal of the evidence rightly convicted and sentenced the appellant and the High Court did not commit any error in affirming the same.

It is common ground that the appellant is a patient of HIV positive (+ve). Learned counsel appearing for the respondent-State assures us that the appellant shall be given proper treatment.

In the result, we find no merit in this appeal and it is dismissed accordingly with the observation aforesaid.

.....J
[Chandramauli Kr. Prasad]

.....J
[Pinaki Chandra Ghose]

New Delhi;
February 27, 2014.

ITEM NO.101(PH)

COURT NO.9

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO.366 OF 2013

RAJ KUMAR @ RAJU

Appellant (s)

VERSUS

STATE OF NCT OF DELHI

Respondent(s)

(With appln(s) for bail and office report)

Date: 27/02/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s) Mr. Avadh Bihari Kaushik, Adv.
Mr. Pankaj Kumar, Adv.
Mr. Pawan Kumar Verma, Adv.
For Mr. Ranbir Singh Yadav, Adv.

For Respondent(s) Mr. D.K. Thakur, Adv.
Mr. Mohit Garg, Adv.
Ms. Richa Pandey, Adv.
For Mr. D.S. Mahra, Adv.

UPON hearing counsel the Court made the following
O R D E R

This appeal is dismissed in terms of the signed order.

| (Sanjay Kumar) Court Master | (Indu Satija) |
| | Assistant Registrar | |

(Signed order is placed on the file)