

IN THE HIGH COURT OF DELHI, AT DELHI

Crl.A.No.92/2001

SUNIL @ TIGAN @ AKHILESH Appellant
Through: Mr.Mike Desai, Advocate

Versus

\$ STATE OF DELHI (NCT DELHI) Respondent
Through: Mr.O.P. Saxena, APP for the State

O R D E R
11.02.2009

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

G.S.SISTANI, J (ORAL)

1. The present appeal is directed against the judgment dated 24.1.2001 and order on sentence dated 25.1.2001 passed by the Court of ASJ, Delhi, in case no. 34/95, FIR No.264/93, under Section 307, Indian Penal Code, 1860 (hereinafter referred to as the, "IPC"), P.S. Samaipur Badli, by virtue of which, the appellant has been awarded sentence to undergo Rigorous Imprisonment (hereinafter referred to as, "RI") for two years and to pay a fine of Rs.5000/- for the offence under Section 307, IPC, and in case of default of the payment of fine, the appellant was to undergo Simple Imprisonment for a period of one year.

2. The necessary facts, as noticed by the court below are that in the night intervening 2nd and 3rd of July, 1993 S.I. Satish Kumar (I.O.) received the copy of the DD entry from the constable Ranjit Singh, acting upon which he proceeded to D-98, Yadav Nagar, Libas Pur, Delhi, the place of incident, and from where he came to know that all the injured persons along with the appellant had already been removed to Hindu Rao Hospital by a PCR van and an ambulance. Leaving behind constable Ranjit Singh for preserving the spot, S.I. Satish Kumar, himself along with constable Rajinder went to the Hospital. In the hospital the injured persons, namely, Sanjivan, Annu, Radhey Shyam, Vimal Chand, Meera, Ram Singh, Poonam, Sunil Kumar and Deep Chand were found admitted and fit to make a statement. S.I. Satish Kumar recorded the statement of the injured complainant - Meera, that appellant, Sunil @ Tigana, resides in front of her house; about three to four days prior to the date of incident, the appellant had misbehaved with her sister (Annu) at night when she was sleeping and when she raised an alarm, people gathered over there and reprimanded the appellant and then let him go. On the night of 2.7.1993 at about 12:00 a.m., complainant, Meera was not feeling well and was awake. The appellant came, abused her in a filthy language and asked for her sister, Annu. On being asked about the reasons, the appellant started beating the complainant with a 'Danda'. The complainant, Meera raised an alarm, as a result of which the family members and neighbours came to the spot. At

that time appellant took out a knife, started wielding the same and began causing injuries to all those who came in his contact and were trying to prevent him from causing damage. Annu, the sister of the complainant, Poonam, Sanjivan, Radhey Shyam, Vimal Chand, Ram Singh, Deep Chand were all injured by the appellant with the knife. The appellant tried to escape from the spot, however, he was chased, caught and over-powered. The 'Danda' and the knife were also recovered from the spot. The appellant was charged for the offence punishable under Section 307, IPC, for causing grievous injuries by a sharp weapon on the person of Sanjivan; dangerous injury by a sharp weapon on the person of Radhey Shyam; simple injuries on the person of Vimal Chand by a sharp weapon; and, simple injury by a blunt weapon on the person of Annu. The appellant was also charged for the offence punishable under Section 27 of the Arms Act.

3. It is contended by the learned Amicus Curiae, appointed by this Court that the judgment and order of conviction cannot be sustained in law. It is next contended that the evidence of the prosecution is unreliable and not trustworthy as the witnesses produced by the prosecution were interested witnesses. And secondly, that the prosecution has failed to examine any independent witness in this case and it goes to the root of the matter to discredit and falsify the case of the prosecution. Learned counsel submits that no case is made out under section 307, IPC.

4. *Per contra* learned counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. He submits that the presence of the appellant at the spot has not been denied. The 'Danda' and the knife were recovered from the spot and besides this, the appellant was also over powered by the neighbours. Learned counsel for the State submits that the ingredients of section 307 IPC are made out. The appellant had misbehaved with Annu three/four days prior to the date of the incident and when Annu had raised an alarm, people had gathered over there and reprimanded the appellant. Later on, the appellant yet again visited the house of Meera and Annu. It is thus contended that the appellant had a motive to visit the house of Annu again and this time he was armed with a 'Danda' and a knife which would show that the appellant had visited the place of the incident duly armed and with a motive, thus, *mens rea* is proved. Learned counsel for the State contends that in fact the trial court has taken a very lenient view in the matter and has only awarded sentence to the appellant for two years of Rigorous Imprisonment and a fine of Rs.5,000/-, where in fact nine (9) persons were injured in the incident and out of those nine persons, two (Sanjivan and Radhey Shyam) had suffered grievous and dangerous injuries. Learned APP submits that in the facts of this case it would be relevant to consider whether the appellant, convicted under Section 307, IPC could have been convicted under Section 326, IPC.

5. However, learned counsel for the petitioner submits that there was no intention on the part of the appellant to kill anyone and that the injuries were caused to the neighbours and family members on account of self-defence.
6. I have heard learned counsel for the parties and gone through the material on record. Twelve witnesses (12) were examined by the prosecution, however, no evidence was led by the defence. Statement of the accused under Section 313 Cr.P.C. was recorded, wherein he denied the allegations of the prosecution and stated that he was innocent and had been falsely implicated in this case. It is also noted that the appellant was also admitted in the hospital by the police as he also had suffered grievous injuries.
7. The primary contention of learned counsel for the appellant is that the case of the prosecution is unreliable as the same is set upon the testimony of interested witnesses. It would be worthwhile to note herein the observations of this Court in Crl.A.No.470/2003, **Harish Vs. The State**, particularly paragraphs 41, 42, 43, 44.

*“41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of **Masalte Vs. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, relevant portion of which is reproduced below:-*

“14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

42. Similar view has also been expressed in the case of **State of Punjab Vs. Karnail Singh**, reported at **AIR 2003 (90) Supreme Court 3613:-**

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and others v. The State of Punjab* (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses.

Speaking through Vivian Bose, J. it was observed:-

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rajasthan', (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

9. Again in *Masalte and others v. The State of U.P.* (AIR 1965 SC 202) this Court observed : (pp. 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

10. To the same effect is the decision in *State of Punjab v. Jagbir Singh*, (AIR 1973 SC 2407) and *Lehna v. State of Haryana*, (2002 (3) SCC 76). As observed by this Court in *State of Rajasthan V. Smt. Kalki and another*, (AIR 1981 SC 1390), normal discrepancies in evidence are those who are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest

and truthful a witness may be. Material discrepancies are those who are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in *Krishna Mochi and others v. State of Bihar etc.* (JT 2002 (4) SC 186)."

43. This view has again been reiterated recently in the case of **State of NCT of Delhi Vs. Rani Kant Sharma & Ors.**, reported at 2007 (3) JT 501, relevant portion is reproduced below:-

11. In some cases persons may not like to come and depose as witnesses and in some other cases the prosecution may carry the impression that their evidence would not help it as there is likelihood of partisan approach so far as one of the parties is concerned. In such a case mere non-examination would not affect the prosecution version. But at the same time if the relatives or interested witnesses are examined, the court has a duty to analyse the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased. Whenever a plea is taken that the witness is partisan or had any hostility towards the accused, foundation for the same has to be laid. If the materials show that there is partisan approach, as indicated above, the court has to analyse the evidence with care and caution. Additionally, the accused persons always have the option of examining the left out persons as defence witnesses.

44. Again in the case of **Manoj Vs. State of Tamil Nadu**, reported at 2007(5) JT 145.

9. In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal

the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

10. In **Dalip Singh and Ors. v. The State of Punjab** it has been laid down as under:-

“A witness is normally to be a considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

11. The above decision has since been followed in **Guli Chand and Ors. v. State of Rajasthan** in which **Vadivelu Thevar v. State of Madras** was also relied upon.”

8. While relying upon the evidence of interested witnesses Courts have to be cautious and circumspect in evaluating the witnesses. Further merely because the witnesses are in relation that would not imply that they are interested witnesses. An interested witness is one who derives some direct or indirect benefit from the litigation or one who has an interest in seeing that the

accused is somehow convicted. In the present case before me, PW-1, complainant, Meera, in her statement recorded by the Police, has identified the appellant and stated that he was living in a house opposite to her. She has further stated that about three to four days prior to the date of incident, while her sister was sleeping in front of her house at the night, the appellant had touched her and when her sister raised an alarm, the neighbours came and reprimanded the appellant. She has also stated that on 2.7.1993 at about 12 '0 clock in the night, she was sitting as she was not well, the appellant came to her and abused her in the name of her sister and enquired about her sister. The appellant is then stated to have hit her with a 'Danda' on account of which she raised an alarm. At that stage, the neighbours and other family members came at the spot and the appellant started giving knife blows to them. According to her statement, the appellant had an intention to kill them.

9. PW-2, Poonam, has deposed that she was sleeping in the night on 2.7.1993 with Meera and other sisters. On hearing noises, she got up and saw that the appellant was beating and was also abusing her sister. PW-2 has further deposed that her uncle, Radhey Shyam came to the spot and when he tried to stop the appellant, he gave knife blows to Radhey Shyam as well as inflicted injuries on other persons. The appellant was apprehended, when he tried to escape. Similar evidence has been given by PW-3, Radhey Shyam, who was also a victim. The

evidence of PW-4 also fully corroborates the evidence of PW-1, the complainant (Meera), with respect to the incident which took place about two/three days prior to the date of the present incident. PW-4 has also supported the case of the prosecution that on the night intervening 2nd-3rd July, 1993, she woke up on hearing the shouts of her sister, Meera and that other family members also woke up. PW-4 stated that she saw the appellant beating her sister and also holding a knife in his hand. She shouted "*CHACHA BACHAO*" and when she tried to save her sister, she was stabbed by the appellant in her elbow. The appellant also stabbed Radhey Shyem, her uncle, in the abdomen, besides causing injuries to others. The statement of PW-5 (Sanjivan) has also been recorded and he also lends strength to the case of the prosecution. PW-6 (Ram Singh) deposed that on 2.7.1993 at around 12 '0 clock in the night, on hearing some noises, he came out in the gali and saw that Radhey Shyam was lying in an injured condition and the appellant was having a knife in his hand. PW-6 deposed that the appellant gave knife blows to Sanjivan, Vimal Chand, Poonam, Meera and other persons, whoever came near him and that the appellant also caused injuries to him (PW-6). The appellant was apprehended at the spot. Similar is the evidence of PW-8 (Deep Chand). Bearing in mind the principles enunciated by the Apex Court with regard to interested witnesses, I find the evidence of victims to be cogent, reliable and trustworthy and that witnesses have also sustained

injuries at the hand of the appellant. The nature of injuries stand discussed in the MLC. The evidence of the witnesses is consistent with regard to the identity of the appellant, the date and time of the incident. The witnesses have clearly described the date and time of the incident and the manner in which the appellant had caused knife blows to the nine (9) persons. From the evidence, it is also clear that Meera was sleeping outside her room as it was summer season, being the month of July. The witnesses have deposed convincingly and nothing has come in the cross-examination, which may suggest that the witnesses had been deposing falsely. The nature of injuries have been duly proved without any element of doubt, as being grievous injuries on the person of Sanjivan and Radhey Shyam and simple injuries with respect to the other persons. The MLCs, Ex.PW-7/A (Sanjeevan), Ex.PW-7/B (Radhey Shyam), PW-7/C (Vimal Chand), PW-7/D (Meera), PW-7/E (Poonam), PW-7/F (Sunil) and PW-7/G (Deep Chand) have been proved by Dr. P.K. Govila, Chief Medical Officer of Hindu Rao Hospital. MLCs, Ex.PW-11/A (Annu) and PW-11/B (Ram Singh) have been duly proved by Dr.Ashok Tyagi, Medical Officer, Hindu Rao Hospital.

10. Learned counsel for the appellant has placed reliance upon the case of ***Parsuram Pandey & Ors. Vs State of Bihar***, reported at ***AIR 2004 SC 5068*** and more particularly paragraph 14 of the same, in support of his arguments that to constitute an offence under Section 307 IPC 'intention or 'knowledge' relating to the

commission of the offence is a necessary ingredient. There is no quarrel to this proposition of law, which is sought to be urged before this Court. Section 307 of the IPC reads are as under:

“Attempt to murder .—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.”

11. Section 307 was elaborately discussed in the case of **State of M.P. Vs. Imrat & Anr.**, reported at **(2008) 11 SCC 523**, wherein it was observed:-

“11. 11.....

12. *To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be*

the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

This position was highlighted in State of Maharashtra V. Balram Bama Patil, reported at 1 (1983) 2 SCC 28; Girija Shankar V. State of U.P., reported at 2 (2004) 3 SCC 793; R. Prakash V. State of Karnataka, reported at 3 (2004) 9 SCC 27; and State of M.P. V. Saleem, reported at 4 (2005) 5 SCC 554.

12. "15. In Sarju Prasad v. State of Bihar it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury. The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

17. Section 307 deals with two situations so far as the sentence is concerned. Firstly,

whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly, if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years. The maximum punishment provided for in Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine.””

12. Applying the aforesaid principles and the law laid down by the Apex Court to the facts of this case, I find that having regard to the evidence of the witnesses and the said established stand that two-three days prior to the date of incident the appellant had teased Annu and when an alarm was raised, the complainant (Meera), her sisters, other family members and neighbours had woken up, and the appellant was scolded and reprimanded. In order to take revenge, on 2.7.2003, the day of the incident, the appellant in a drunken state came to the spot in the middle of the night, duly armed with a 'DANDA' and a 'knife'. The appellant enquired from Meera as to the whereabouts of her sister, Annu and when Meera objected to it, the appellant hit her with a 'Danda'. Meera raised an alarm and her family members woke up. The appellant then inflicted injuries to as many as nine (9) persons, out of which, grievous injuries were caused to two persons (Sanjivan and Radhey Shyam), who had tried to intervene to save the complainant – Meera and her sister, Annu. It is further

be noticed that *mens rea* was followed by *actus reus* in so much as that the appellant gave effect to his criminal intent. The appellant premeditatedly, armed himself with a 'Danda' and a knife, came to the spot and used the 'Danda' and the knife as a dangerous weapon of assault. The appellant stabbed and injured as many as nine (9) persons. Thus, it cannot be said that *mens rea* which is essential to the offence under Section 307 IPC, was absent.

13. In view of the above findings, I find no grounds to interfere in the impugned judgment dated 24.1.2001 and order on sentence dated 25.01.2001 passed by the ASJ, Delhi, in Case No.34/95, FIR No.264/93, under Section 307, IPC, Police Station Samaipur Badli. The appeal is accordingly dismissed.
14. The fee of the learned Amicus Curiae is fixed at Rs.7,500/-.

February 11, 2009
'ssn'

G.S. SISTANI
(JUDGE)