

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Criminal Appeals No. 10 & 35 of 2006**

% Reserved on: 22nd December, 2009
Pronounced on: 23rd December, 2009

AQUIL KHAN Appellant
! Through: Mr. R.N. Sharma, Adv.

versus

\$ STATE Respondent
! Through: Amit Sharma, APP.

AND

MOHD. YAMIN Appellant
! Through: Mr. R.N. Sharma, Adv.

versus

\$ STATE Respondent
! Through: Amit Sharma, APP.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the 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 |

: **V.K. JAIN, J.**

1. These are two criminal appeals arising out of a common judgment dated 30th November, 2005, and Order on Sentence dated 6th December, 2005, whereby both the appellants were convicted under Section 307 of IPC read with Section 34 thereof.
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The appellant Mohd. Yamin was sentenced to undergo R.I. for two years and to pay a fine of Rs.1,000/- or to undergo R.I. for four months, in default, whereas the appellant Aquil/Akhil Khan was sentenced to undergo R.I. for one year and to pay fine of Rs.500/- or to undergo R.I. for three months, in default.

2. The case of the prosecution, as disclosed in the FIR lodged by the injured Amit, is that on 1st December, 1998 at about 7.30 P.M. when he was returning home, accompanied by his friend Jitu and Vinod, and reached main road of H Block, Shakurpur, some boys, including Yamin and Aquil came from opposite direction and started beating Jitu. He alleged that Aquil was holding Jitu when Yamin was beating him. He further alleged that when he tried to save Jitu, Aquil held him, whereas Yamin caused injuries on his head, right hand and other parts, with a sharp object.

3. The injured Amit came in the witness box as PW-3 and stated that on the day of this incident, when they were going towards H Block, about 10-15 boys, including Yamin and Aquil came there. Yamin took hold of his friend and when he tried to rescue him, Yamin gave knife blow on his stomach and on back side of his neck. The boys then ran away and he went to Chawla Hospital where the police recorded his statement Ex.PW3/A, which is signed by him at point A. He identified both the

appellants, who were present at the time of recording his statement.

4. PW-1 Jitender stated that on 1st December, 1998 at about 7.30 PM, when he came out of Ashirward Restaurant alongwith Amit and Vinod, Yamin and Aquil caught hold of him and they started beating him. Amit tried to save him and thereupon they caught hold of Amit. Yamin took out some pointed object from his pocket and struck on the abdomen and hand of Amit, who started bleeding and fell down. Both the accused then ran away from the spot. They went to call the relatives of Amit and then all of them took him to Chawla Nursing Home, where he was treated. He further stated that on 4th December, 1998, Yamin made a disclosure statement Ex.PW1/A and stated that he could get a knife recovered. Next day, he got recovered one knife Ex.P1, which was sealed with the seal of AK. The seal after use was handed to him and the knife was seized vide memo Ex.PW1/B.

5. PW-2 Vinod has stated that on 1st December, 1998, when he came out of Ashirwad Restaurant, alongwith Jitender and Amit, Yamin, who was previously known to him, caught hold of Jitender. Amit tried to save him as they were grappling. Yamin then took out some sharp edged article and attacked Amit on his head, stomach and hand. Amit started bleeding. He went to the house of Amit and narrated the incident. He also stated that the

other accused present in the Court had also come alongwith Yamin and had caught hold of Jitender.

6. PW-4 Daya Kaur is the mother of the injured Amit. She has stated that in the evening of 1st December, 1998, Vinod and Jitender came to their house and informed that Yamin had stabbed their son Amit. She alongwith others removed Amit to hospital. PW-5 is the brother of the injured Amit. He stated that on 1st December, 1998, Vinod and Jitender came to their house and informed that Yamin had stabbed his brother Amit.

7. PW-7 ASI Baljeet Singh has stated that on 5th December, 1998 Yamin got recovered one Dagger Ex.P-1 from the bathroom of his house. After preparation of the sketch of the dagger and sealing it with the seal of AK, it was sealed vide memo Ex.PW1/B. PW-9 Const. Prem Singh has corroborated the deposition of PW-7 regarding recovery of dagger. PW-15 Anant Kiran is the IO of the case. He has also corroborated the other depositions of the officials of the case regarding recovery of the knife from the bathroom at the instance of the appellant Yamin.

8. PW-13 Dr. D.P. Chawla examined and treated the injured Amit in Chawla Nursing Home and prepared his MLC Ex. PW13/A. He also gave his opinion Ex.PW13/C after examining the weapon of offence, which was sent to him on 18th February, 1999 for giving opinion. According to him, he had resealed the

knife with the seal of CNH. He identified Ex.P1 as the knife which was sent for his opinion.

9. In his statement under Section 313 of Cr.P.C., appellant Yamin denied allegations against him and stated that he has been falsely implicated in this case. The appellant Aquil Khan also denied allegations against him and claimed to be innocent.

10. So far as the appellant Aquil is concerned, the case of the prosecution, as disclosed in the FIR, is that he had held the injured Amit, when knife blows were given to him by the appellant Yamin. No injury to Amit has been imputed to the appellant Aquil. However, when the injured Amit came in the witness box, he did not impute any such act to the appellant Aquil. He did not claim that Aquil had held him when knife blows were given to him by the appellant Yamin. PW-2 Vinod Kumar, who is the eye-witness of the incident, also did not say that the appellant Aquil had held Amit when knife blows were given to him by Yamin. According to Vinod, the appellant Aquil had caught hold of Jitender. He does not say that he had caught hold of the injured Amit. Therefore, no act to the appellant Aquil has been imputed by this witness.

11. PW-1 Jitender also did not say that the appellant Aquil had held Amit when knife blows were given to him by the appellant Yamin, though he stated that the appellant Aquil had also caught hold of Jitender and both the appellants had given beating to

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him. He also stated that when Amit saved him, the appellants caught hold of him. But he does not say that the appellant Aquil had held Amit when knife blows were given to him by Yamin. In any case, the appellant Aquil cannot be convicted merely on the basis of such a vague statement of PW-1, when neither the injured nor PW-2 Vinod attribute any such act to him. Therefore, the prosecution has failed to prove the role attributed to the appellant Aquil in the FIR.

12. Though it has come in the deposition of PW-1 Jitender that both the appellants had given beating to him, I find that no charge has been framed against either of the appellants in respect of beating, alleged to have been given to PW-1 Jitender. In the absence of any charge, no punishment can be given to the appellant in respect of the beating alleged to have been given to PW-1 Jitender.

13. I do not see any reason to disbelieve the testimony of the injured Amit. No motive has been imputed by the appellant Mohd. Yamin to him to make false allegations of stabbing against him. The injured is the best witness of the incident in which injuries were caused to him and, therefore, his testimony is entitled to great weight. The presence of such a witness at the time and place of occurrence cannot be doubted. It is not likely that he would spare the real assailant and implicate an innocent person. Being the victim of crime, he would be most keen to ensure that the real culprit does not go scot free. In *Mer* Crl.A. Nos. 10&35 of 2006

Dhana Side vs. State of Gujarat vs. State of Gujarat AIR 1985 SC 386, three injured witnesses had supported the prosecution. It was held by the Hon'ble Supreme Court that as there were three injured witnesses, and we would require very convincing submissions to discard the evidence of the injured witnesses whose injuries would at least permit a reasonable inference that they were present at the time of occurrence. Undoubtedly, this is subject to the requirement that there must be evidence to show that these witnesses received injuries in the same occurrence. Very cogent and convincing ground would, therefore, be required to discard the evidence of the injured. In *Machhi Singh vs. State of Punjab* 1983 CrL. LJ 1457 one witness Hakam Singh himself had sustained injuries in the course of incident in question. It was observed by the Hon'ble Supreme Court that it was difficult to believe that he would implicate the persons other than the real culprits and that the evidence of that witness alone was sufficient to bring home the guilt of the appellants even if one were to exclude from consideration the evidence of other PWs . Identical view was taken by the Hon'ble Supreme Court in a number of other cases including *Makan Jivan and Ors. vs. State of Gujarat* AIR 1971 SC 1797; *Mori Lal and Anr. Vs.State of U.P.* AIR 1970 SC 1969; and *Jamuna Chaudhary and ors. vs. State of Bihar* AIR 1974 SC 1822.

14. The deposition of the injured has been corroborated by PW 1&2, both of whom were present at the time of this incident.

The presence of PW 1 & 2 at the time of this incident finds corroboration from the deposition of PW 4 Daya Kaur, the mother of the injured and PW 5 Sonu Singh, brother of the injured. Had they not witnessed this incident, there would have been no occasion for them to go to the house of the injured and inform his family members about the appellant Mohd. Yamin stabbing him. In the FIR lodged by him the injured Amit himself has stted that he was accompanied by Jitender and Vinod when this incident took place. All of them had food together in Ashirwad Restaurant and were going together when this incident took place. But, even if the testimony of PW 1 & 2 is excluded from consideration, the deposition of the injured Amit coupled with other corroborative evidence on record is sufficient to prove the guilt attributed to the appellant Mohd. Yamin.

15. The testimony of PW 1 Jitender and PW 15 SI Anant Kiran shows that while in police custody the appellant Mohd. Yamin made disclosure statement Ex. PW 1/A and told the police that he could get a knife recovered. The testimony of PW 1 who is a public witness and PW 7, PW 9 and PW 15 who are police officials also proves that the appellant Mohd. Yamin took the police to a bathroom and got recovered one knife/dagger Ex.P1 from there. The disclosure statement Ex.PW 1/A is admissible in evidence under section 27 of the Indian Evidence Act, since pursuant to the disclosure statement the police discovered the fact that a knife had been kept in the bathroom, from which it

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was later on recovered. In fact, during cross-examination of PW 5 Sonu Singh, the learned counsel for the appellant Mohd. Yamin suggested to him that the accused had disclosed to him in the evening of 4th December, 1998 that the knife was inside the bathroom in asbestos sheet. It was further suggested to him that the bathroom from where knife was recovered was not inside the house No.881, Shakarpur but was outside, adjacent to it. By giving these suggestions, the appellant Mohd. Yamin himself admitted having stated to the police that knife had been kept inside the bathroom under asbestos sheet. This is not the case of the appellant Mohd. Yamin that he had come to know from some other person that there was a knife kept inside that bathroom underneath asbestos sheet. Therefore, the inevitable inference is that the knife Ex.P1 was concealed in the bathroom by none other than the appellant Mohd. Yamin himself and that is why this fact was in his knowledge and was disclosed by him to the police on 4th December, 1998.

16. The testimony of PW 1 Jitender also shows that after the knife had been sealed with the seal of 'AK', the seal was handed over to him. This is yet another corroboration of the case of the prosecution as regards recovery of knife at the instance of the appellant Mohd. Yamin, pursuant to the disclosure statement made by him while in police custody.

17. It has been opined by PW 13 Dr. D.P. Chawla, vide his opinion Ex.PW 13/C that the injuries caused to the injured Amit

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were possible with knife/dagger Ex.P1. A perusal of the opinion given by PW 13 shows that the knife when received by him was sealed with the seal of 'AK'. It further shows that after examining the knife PW 13 had sealed it with the seal of 'CNH', obviously 'CNH' stands for Chawla Nursing Home. A perusal of the report of the Forensic Science Laboratory(FSL) Ex. PW 14/A would show that the knife was sealed with the seal of CNH when it was received in FSL. Thus, it stands proved that the knife examined by PW 13 and later examined in FSL was the same knife which was recovered at the instance of and pursuant to the disclosure statement made by the appellant Mohd. Yamin. This is yet another corroboration of the testimony of PW 1 to PW 3 as regards the injuries caused to PW 3 Amit.

18. It has come in the deposition of PW 13 that there were traces of blood on the knife Ex.P1 when it was received by him. It is true that the report of PW 13 does not contain any endorsement to the effect that there were traces on the knife when it was received by him. But, there is absolutely no reason to disbelieve the oral deposition of PW 13 in this regard, particularly when the seizure memo of the knife Ex.PW1/B also shows that it was stained with blood when it was recovered from the bathroom and was seized by the IO and blood was also found on it when it was examined later in FSL.

19. The report of the FSL also shows that blood of Group 'A' was found on the knife/dagger sent to it. The blood of the same

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group was found on the underwear and baniyan of the injured Amit. This is yet another corroborative evidence which indicates that the injuries to PW 3 Amit were caused using the dagger Ex.P1 and that is why blood of the same group was found on the dagger and cloths of the injured.

20. It was contended by the learned counsel for the appellant that no permission was taken by PW 8 from the doctor before he recorded the statement in Chawla Nursing Home. It has come in the deposit of PW 13 Dr. D.P. Chawla that when he took round at about 11.00 A.M. on 2nd December, 1998, the condition of the injured was satisfactory. Therefore, the injured was in a position to give statement to PW 2 at about 2.00 P.M. on 2nd December, 1998. In fact, even the application submitted by PW 8 to the doctor and the endorsement made by the doctor declaring him fit for statement is also available on the judicial file though it has not been proved during evidence. What is material is that the injured should have been fit for giving statement at the time his statement is alleged to have been recorded and the testimony of PW 13 leaves no reasonable doubt that the injured was fit for statement when he was examined by PW 8 in Chawla Nursing Home at about 2.00 P.M. on 2nd December, 1998.

21. It was contended by the learned counsel for the appellant Mohd. Yamin that the signature of the injured Amit on the statement Ex.PW1/A were obtained on blank paper as stated by PW 3 in his cross-examination and he did not know what was

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later on written on this document. PW 3 Amit admits his signature on Ex.PW3/A which is his statement recorded by PW 8 HC Shukhan Singh. During cross-examination of PW 8 no suggestion was given to him that he had obtained signature of the injured Amit on a blank paper and had later on incorporated a statement on that blank paper, without the injured knowing what had been written in the document. Moreover, had PW 8 not examined the injured Amit in Chawla Nursing Home on 2nd December, 1998, he could not have come to know how this incident had taken place. The very fact that the formal FIR was also recorded on 2nd December, 1998 and there is no reasonable possibility of the formal FIR being ante dated shows that PW 8 had, in fact, recorded the statement of Amit on 2nd December, 1998 and that is why the formal FIR was registered on the basis of that statement on that very date. Since the injured Amit had sustained serious injuries which took place on 1st December, 1998, it is quite possible that he did not recollect all the facts when he was examined in the court on 6th May, 2002. As regards PW 3 not knowing the contents of the document, I find that according to him he did not know the contents of Ex.PW1/A. Ex. PW 1/A is the disclosure statement of the appellant Mohd. Yamin and not the statement of the complainant Amit. Therefore, nothing turns on this part of the deposition of the injured. In any case, there is no reason to disbelieve the deposition of the injured in the court which has stood the test of CrI.A. Nos. 10&35 of 2006

cross-examination as far as the appellant Mohd. Yamin is concerned and which finds ample corroboration not only from the deposition of PW 1 and 2 but also from the recovery of the knife/dagger Ex.P1 at is instance and pursuant to the disclosure statement made by him.

22. For reasons given in the preceding paragraphs, I hold that the appellant Mohd. Yamin had caused injuries as mentioned in the MLC PW 3/A to the injured Amit using the dagger Ex.P1.

23. A perusal of the MLC Ex.PW13/A would show that the following serious injuries were sustained by PW 3 Amit at the hands of the appellant Mohd. Yamin:

“Stab wound on the abdomen below & left of the umbilicus 2.5 cm long, greater omentum popping out of the wound.

Omentum pushed inside the abdomen and a fresh (L) paramedian, muscle-splitting incision given and abdomen opened.

A pool of blood (around 500 ml) was seen inside the abdomen, in paracolic gutters and pelvis, which was sucked and mopped out.

Rectus muscle was badly torn across/damaged and bleeding.

A large retro-peritoneal haematoma located at the region of pancreas in the mesentry of duodeno-jejunal loop of intestines loops of intestines.”

24. A perusal of the sketch of the knife Ex. P1 would show that the blade of the knife was 7.5 inch long. Thus, it was not a kitchen knife and was a dangerous weapon. The injuries to PW 3 were caused on the vital parts of his body. A perusal of Ex.PW 13/A would show tht the injuries inflicted by the appellant Mohd. Yamin to PW 3 had resulted in serious intra-peritoneal damage and haemorrhage. It has also come in the testimony of PW 13 that injured was subjected to operation which continued till 10.30 P.M. and he had to be given anaesthesia for that purpose. He was thereafter kept in ICU. Thus, serious injuries using a dangerous weapon were caused on the vital parts of the body of the injured Amit.

25. In order to succeed the prosecution was required to prove (1) that the death of a human being was attempted, (2) that such death was attempted to be caused by or in consequence of the act of the accused and (3) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injuries as the accused knew to be likely to cause death or were sufficient in the ordinary course of nature to cause death. To justify conviction under section 307 of IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances. What the court has to see is whether

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the act irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. The intention of the assailants can be gathered from the nature of weapon used, number of blows given by him and the parts of the body where the injuries are inflicted and other surrounding circumstances, if any. The language of the section makes it clear that even if mere hurt is caused by an act which is done with such intention or knowledge and under such circumstances, that if by that act death is caused, the offender would be guilty of murder, this section will apply. This section itself provides a punishment of 10 years for doing an act which amounts to an attempt to murder even though the act causes no hurt to any one, but the offender is liable to the heavier punishment of imprisonment for life, if the injury is actually inflicted. The nature of injuries by themselves may be of considerable help in arriving at the finding as to whether the accused had the intention of causing the death of the victim. While the intention of the accused to inflict injuries sufficient enough to cause death is established from the nature of the injuries and other circumstantial evidence, it cannot be said that there was no evidence that the injuries caused were known to be accused to be likely to cause death.

26. In the present case, there was no quarrel before stab injuries were given to PW 3 Amit by the appellant Mohd. Yamin.

Therefore, it cannot be said that the injuries were caused to PW

3 at the spur of moment or in a fit of anger. The appellant Mohd. Yamin was already carrying a deadly knife with him which he used for causing injuries to PW 3 Amit. This indicates preplanning on his part. He chose to select vital parts of the body of Amit for giving knife blows to him. He did not stop at giving one knife blow and gave multiple blows to the injured. The very fact that the wounds were bone deep and a surgery had to be performed after giving anaesthesia to the injured shows that the injuries were serious and could even have endangered the life of Amit, had he not been rushed immediately to Chawla Nursing Home and not been subjected to emergency operation. Therefore, it can be safely said that the appellant Mohd. Yamin attempted to cause death of PW 3 Amit or that he gave stab blows to him with the intention of causing such bodily injuries which he knew to be likely to cause death. Hence, the offence under section 307 of IPC stands proved against him beyond any reasonable doubt.

27. For the reasons given in the preceding paragraphs, the conviction of the appellant Mohd. Yamin under section 307 of IPC is maintained. In the matter of sentence, the appellant Mohd. Yamin has already been dealt with rather softly by the trial court and there is absolutely no scope for reduction of the sentence awarded to him. The appellant Aquil Khan is given benefit of doubt and is hereby acquitted.

28. Crl. Appeal Nos.10 of 2006 and 35 of 2006 stand disposed of accordingly.

(V.K.JAIN)
JUDGE

DECEMBER 22, 2009
AG/RS