

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

Judgment reserved on: July 05, 2010
Judgment delivered on: August 12, 2010

CRIMINAL APPEAL NO.123/2005

GAURE LAL **....APPELLANT**

Through: Mr.Narender Vashishta, Advocate.

Versus

STATE OF DELHI **.....RESPONDENT**

Through: Mr.R.N.Vats, APP.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Gaure Lal, appellant herein, has preferred this appeal against the impugned judgment passed by the learned Additional Sessions Judge on 08.10.2004 in terms of which the appellant was convicted on the charge under Section 307 IPC and also against the consequent order on sentence dated 11.10.2004 in terms of which the appellant has been sentenced to undergo RI for the period of six years and also to pay a fine of Rs.5,000/- and in default of payment, to undergo RI for further period of five months.

2. Briefly stated, case of the prosecution is that on 13.09.2003 at about 9:26 pm, Head Constable Ram Niwas of PCR informed Police Station Vasant Kunj that one person has been stabbed with a knife near House No.112, H-Block, Lal Khet, Marwari Camp. This information was recorded as DD No.39A dated 13.09.2003 in the daily diary register and copy of the DD report was entrusted to SI Harkesh for verification, who along with Constable Satinder left for the spot of occurrence. There, SI Harkesh, PCR van No.Z-29 and ASI Mangla Ram in-charge of the van informed him that the injured Ramjeet had already been taken to Safdarjung Hospital. ASI Mangla Ram also produced the appellant Gaure Lal before SI Harkesh and told him that he was the person who had quarrelled with PW Hoob Lal and when injured Ramjeet intervened and tried to pacify them, the appellant stabbed him with a knife on the left side of his abdomen. It is claimed that, on interrogation, appellant had produced one blood-stained knife from the roof of a Jhuggi. Said knife was measured, its sketch was prepared and it was converted into a sealed parcel and taken into possession by the Investigating Officer. Since the appellant as well as witness Hoob Lal had also suffered minor injuries in the quarrel, they were also taken to Safdarjung Hospital for medical examination. At the hospital, SI Harkesh collected MLC of the injured Ramjeet who was declared 'unfit for making statement'. The injury on his person was opined to have been caused by a sharp object. SI Harkesh appended his endorsement on the DD report detailing the aforesaid facts and sent it to the police

station for the registration of the case. On the basis of said rukka, formal FIR under Section 307 IPC was registered at Police Station Vasant Kunj being FIR No.534/03, at 2:10 am.

3. During investigation, SI Harkesh prepared rough site plan of the spot of occurrence. He recorded the statements of the witnesses. As per the doctor, the injury sustained by injured Ramjeet was dangerous in nature. On conclusion of the investigation, appellant was challaned and sent for trial.

4. Learned Additional Sessions Judge on consideration of the evidence collected during investigation, charged the appellant for attempting to commit murder of Ramjeet, an offence punishable under Section 307 IPC. The appellant pleaded not guilty to the charge and claimed to be tried.

5. In order to bring home the guilt of the appellant, prosecution has examined 10 witnesses in all. However, the case of the prosecution is mainly based upon the testimony of PW2 Hoob Lal and PW4 Ramjeet (injured). Before advertng to the submissions made by the respective parties, it would be useful to have a look upon the testimony of some of the important witnesses, including PW2 Hoob Lal and PW4 Ramjeet(injured).

6. PW2 Hoob Lal, who according to the prosecution is an eye witness to the occurrence, has turned hostile and has not supported the case of prosecution. He has deposed that he owed Rs.10/- to the

appellant Gaure Lal which amount was demanded by the appellant from him. Thereafter, the appellant left and picked up quarrel with Ramjeet. According to him, he is not aware as to what happened in the quarrel. In the cross-examination, he denied the suggestion of learned APP that it was the appellant who stabbed Ramjeet with knife when Ramjeet tried to intervene in the quarrel between him and the appellant. He, however, stated in his cross-examination that after sustaining injuries, Ramjeet was removed by the PCR van to the hospital.

7. PW4 Ramjeet was injured in the occurrence. He has stated that on the relevant day i.e. 13.09.2003 at around 8:00 or 8:30 pm, appellant Gaure Lal and PW Hoob Lal were quarrelling with each other. On hearing the noise, he reached at the spot and suddenly the appellant Gaure Lal came and stabbed him with a knife on the left side of his abdomen. Thereafter, PCR van came and removed him to the hospital. In the cross-examination on behalf of the appellant, he admitted that there was no light at the spot and it was not possible to recognise a person due to darkness. He denied the suggestion that he has falsely implicated the appellant Gaure Lal only because of the fact that he quarrelled with Hoob Lal.

8. PW3 Dr. Ramesh Prasad has stated that on 13.09.2003, he medically examined injured Ramjeet, a male aged 38 years. He found a clean incised wound on the left hypochondiri region. According to

him, the injury was caused by a sharp object and it was dangerous in nature. He has proved the MLC prepared by him as Ex.PW3/A.

9. PW1 Constable Satinder had accompanied SI Harkesh to the spot of occurrence pursuant to DD No.39A. He has stated that when they reached at the spot, ASI Mangla Ram, in-charge PCR van produced appellant Gaure Lal before SI Harkesh. He was interrogated and he made a disclosure statement Ex.PW1/A. Pursuant to the said disclosure statement, appellant Gaure Lal got recovered one knife Ex.P1 which was seized vide memo Ex.PW1/B after preparing its sketch Ex.PW1/C.

10. The appellant was confronted with the incriminating evidence appearing against him in his statement under Section 313 Cr.P.C. The appellant denied the prosecution story and claimed that he has been falsely implicated in this case. He did not prefer to lead evidence in defence.

11. The learned Additional Sessions Judge, on consideration of the evidence produced by the prosecution and the submissions made by the respective parties, found the appellant guilty of committing the offence of attempting to commit murder of the injured Ramjeet and convicted him on the charge under Section 307 IPC and sentenced him accordingly.

12. Learned Shri Narender Vashisht appearing for the appellant has submitted that the appellant has been falsely implicated in this case.

Dilating on the argument, learned counsel submitted that the case of the prosecution is based mainly upon the testimony of PW2 Hoob Lal who is claimed to be an eye witness to the occurrence and PW4 Ramjeet(the injured). Out of them, PW2 Hoob Lal has not supported the case of the prosecution. He was declared hostile. Even in the cross examination, learned APP could not elicit anything incriminating against the appellant. As regards PW4 Ramjeet, learned counsel submitted that his testimony regarding identification of the appellant as the assailant who inflicted injury is not reliable for the reason that PW4 in his cross examination has admitted that at the time of incident, it was dark and there was no light at the spot and it was not possible to recognize a person in the darkness. Therefore, he could not have identified the assailant.

13. I am not convinced with the aforesaid argument. Although, PW2 Hoob Lal has turned hostile but his testimony does establish the presence of the appellant at the spot. PW2 Hoob Lal has stated that he owed Rs.10/- to the appellant Gaure Lal which amount was demanded back by him. Thereafter, the appellant picked up a quarrel with PW4 Ramjeet and he did not see what happened in that quarrel. The above version of PW2 Hoob Lal remains uncontroverted because the appellant has not cared to cross examine him on the aforesaid aspect. Thus, even from the testimony of PW2 Hoob Lal, presence of the appellant at the spot and his having picked up a quarrel with injured Ramjeet is established. PW4 Ramjeet is categoric in his version that he was

stabbed with a knife by the appellant Gaure Lal, which version of PW4 stands corroborated by his MLC Ex.PW3/A which was prepared on 13.09.2003. There is nothing on record to suggest any motive or enmity on the part of PW4 Ramjeet to falsely implicate the appellant. Therefore, I find no reason to suspect the correctness of his version, only for the reason that PW4 Ramjeet in his cross examination has admitted that it was dark at the relevant time and it was not possible to recognize a person due to darkness. On perusal of the charge sheet, it transpires that both the appellant Gaure Lal as well as injured Ramjeet were residents of jhuggi in Lal Khet on the Marwari Camp, Vasant Kunj, New Delhi. Since they were neighbours obviously appellant was known to PW4 Ramjeet, therefore it is natural that PW4 Ramjeet could identify the appellant Gaure Lal as the assailant as he was stabbed by him with a knife from a striking distance. Otherwise also, as per the case of prosecution as well as testimony of PW4 Ramjeet, the occurrence took place somewhere around at 8.30 pm to 9.15 pm. According to MLC, Ex.PW3/A of injured Ramjeet, his MLC was prepared at 10.50 pm and the FIR in this case was registered at 2.10 am i.e. within few hours of the incident, wherein the name of the appellant finds mention as the assailant who stabbed Ramjeet on his abdomen. Therefore, I find no reason to suspect the version of injured Ramjeet, which stands corroborated by his MLC Ex.PW3/A as also to some extent by the testimony of PW2 Hoob Lal.

14. Another infirmity pointed out in the prosecution case by learned counsel for the appellant is that as per the case of the prosecution first information regarding the incident was conveyed to the PCR by someone through Telephone No.9810639701. Learned counsel submitted that as per PW4 Ramjeet it was one Chandrika who had informed the police from his mobile phone. Despite that, Chandrika has not been produced as a witness. Learned counsel submitted that since the prosecution has withheld an eye witness, an adverse presumption should be drawn that had Chandrika been produced, he would not have supported the prosecution story. I do not find any merit in this contention. Failure of the prosecution to produce Chandrika cannot be taken as a reason to disbelieve the version of PW4 Ramjeet whose presence at the time of incident cannot be suspected as he sustained injury and whose testimony is otherwise consistent and reliable.

15. The next submission on behalf of the appellant is that this is a case of mistrial for the reason that the charge framed against the appellant is defective and this in itself is a sufficient ground for acquittal of the appellant. Expanding on the argument, learned counsel submitted that as per the case of prosecution, the appellant attempted to commit murder of the injured Ramjeet whereas he was charged for attempting to commit murder of Mangla Ram and this has resulted in a grave prejudice to the defence.

16. In order to properly appreciate the above contention on behalf of the appellant, it would be appropriate to have a look on the charge framed against the appellant by the learned Additional Sessions Judge, which reads thus:-

“That on 13/9/2003 at about 9:15 P.M. at jhuggi Marwari camp near water tank, Lal Khet, Kusumpur Pahari Vasant Kunj, New Delhi you assaulted Mangla Ram with a knife with such intention and knowledge and under such circumstances if by that act you had caused his death you would have been guilty of culpable homicide not amounting to murder you caused injury on the person of Mangla Ram and thereby committed an offence punishable u/s 307 IPC and within my cognizance.

And I hereby direct you to be tried by this court for the abovesaid offences.”

17. On perusal of the charge, it is apparent that in the formal charge the name of the injured person has been mentioned as Mangla Ram instead of Ramjeet. Charge is a very important component in a criminal trial. Basic purpose of framing of charge before proceeding to record evidence of prosecution is to inform the accused about the precise nature of accusation which he has to meet and defend. Therefore, it is an obligation on the court to be careful in framing of charge because the defect in charge sometimes has a potential to mislead the accused and thereby prejudice his defence. Undoubtedly, in the instant case, the name of the victim has been wrongly mentioned as Mangla Ram instead of injured Ramjeet, otherwise, the

factual components in the charge framed against the accused are correctly mentioned. The question which arises for determination is whether the mistake about the name of the injured in the charge has caused any prejudice to the appellant in his defence? On perusal of record, it transpires that during the recording of evidence of prosecution witnesses, the case put forth by the prosecution was regarding the injury caused by the appellant to PW4 Ramjeet. The appellant has cross examined the witnesses through his counsel and the tone and tenor of cross examination indicates that the appellant was well aware that he was being prosecuted for causing knife injury on the person of PW4 Ramjeet. Therefore, it cannot be said that the defect about the name of the injured in the charge has caused any prejudice to the defence of the appellant. As such, much importance cannot be given to the aforesaid minor defect in the charge and, in my considered view, the defect does not vitiate the trial.

18. Lastly, it was contended on behalf of the appellant that as per the case of prosecution, the stabbing incident took place in the heat of moment and there was no motive or intention on the part of the appellant to commit murder or to cause dangerous injury to PW4 Ramjeet. Thus, he has submitted that by no stretch of imagination, the act committed by the appellant falls within the purview of Section 307 IPC. As such, his conviction under Section 307 IPC for attempt to commit murder of Ramjeet is unwarranted. Learned counsel argued that at best the act committed by the appellant falls within the purview

of Section 326 IPC i.e. causing grievous injury with a dangerous weapon.

19. Learned counsel for the State, on the other hand, has submitted that the learned Trial Judge has rightly convicted the appellant under Section 307 IPC. He argued that the appellant has inflicted a stab injury on the left side of abdomen of the deceased which is a vital part of the body and even as per PW3 Dr.Ramesh Prasad who medically examined the injured on 13.09.2003, the injury sustained by Ramjeet was dangerous in nature and was caused by a sharp object, which clearly indicates that while inflicting the injury on the person of PW4 Ramjeet, the appellant was expected to have known that said injury may result in death of Ramjeet.

20. As per the case of prosecution as disclosed in the FIR, the stabbing incident took place at the spur of moment when the injured Ramjeet intervened in a quarrel between the appellant and PW2 Hoob Lal. Even as per the testimony of PW4 Ramjeet, Hoob Lal and the appellant were quarrelling when he reached at the spot and suddenly the appellant inflicted knife injury on his abdomen. There is nothing in the testimony of PW4 Ramjeet to show that there was any motive or reason on the part of the appellant for causing injury to the victim Ramjeet. As per the MLC of Ramjeet Ex.PW3/A, only one stab wound was inflicted on the person of the injured. From the aforesaid factual matrix, it can be safely inferred that there was no previous enmity or

motive on the part of the appellant to cause harm/injury to the victim Ramjeet and the appellant had inflicted knife injury on the person of Ramjeet in the heat of moment. As per the case of prosecution, the knife used by the appellant was a kitchen knife. In these circumstances, it is difficult to infer the intention on the part of the appellant to cause death of Ramjeet. Admittedly, it was dark at the time of occurrence and the appellant, therefore, could not have anticipated as to where his knife blow would land. As such, even the knowledge that the blow given to the injured Ramjeet could possibly result in his death cannot be imputed to the appellant. Since neither the intention to cause death nor the knowledge that the injury inflicted on the person of Ramjeet could possibly result in his death can be imputed to the appellant, in my view, the essential ingredient of offence under Section 307 IPC is lacking in this case. Therefore, I find that the learned Additional Sessions Judge has committed an error in law by convicting the appellant for attempt to commit murder under Section 307 IPC and, in my view, the act of the appellant in inflicting dangerous injury with a knife to PW4 Ramjeet falls within the purview of the offence of grievous hurt punishable under Section 326 IPC.

21. In view of the discussion above, I do not find any merit in the appeal so far as the role played by the appellant in inflicting knife injury on the abdomen of PW-4 Ramjeet is concerned. However, in the given facts of the case the offence committed by the appellant does not fall within the purview of Section 307 IPC but actually it amounts to

the offence of causing grievous injury with a dangerous weapon punishable under Section 326 IPC. Thus, while holding the appellant guilty of causing injury with a dangerous weapon i.e. knife to Ramjeet and offence punishable u/s 326 IPC, his conviction under Section 307 IPC is set aside and converted into conviction under Section 326 IPC.

23. Coming to the sentence, learned counsel for the appellant has pressed for a lenient view on the ground that the appellant is a married man having a family comprising of his old mother, a wife and three children who are dependent upon him for their subsistence. He further submitted that otherwise also the incident took place in the heat of moment and there is no past criminal antecedents of the appellant. Keeping in view the aforesaid factual matrix, while maintaining the sentence of fine imposed upon the appellant, his sentence of imprisonment is reduced from six years to three years R.I.

24. Appeal is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

AUGUST 12 , 2010
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