

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

Judgment delivered on: July 29, 2010

+ **CRIMINAL APPEAL NO.393/2005**

SALEEM @ NAKTA

....APPELLANT

Through: Mr. Rajesh Mahajan, Advocate with
Ms. Satsheel Sheokand, Advocate

Versus

STATE(GOVT. OF NCT) DELHI

.....RESPONDENT

Through: Mr. Pawan K. Bahl, 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.(ORAL)

1. Saleem @ Nakta, the appellant herein, has preferred this appeal against his conviction for the offences punishable under Section 307 IPC and Section 387 IPC read with Section 511 IPC as also under Section 27 of the Arms Act in Sessions Case No. 34/04, FIR No. 60/04, P.S. Seelampur vide impugned judgment dated 19th February, 2005 and the consequent order on sentenced dated 21st February, 2005.

2. Briefly stated, case of the prosecution is that on 06th February, 2004, on the receipt of information regarding admission of injured complainant Swalin with a stab injury at GTB Hospital vide DD NO. 11A,

P.S. Seelampur, ASI Bhim Singh (hereinafter referred to as 'Investigating Officer') along with the Constable Ram Rattan reached GTB Hospital where he obtained MLC of injured Swalin, who was declared fit for statement by the doctor concerned. Investigating Officer recorded his statement wherein injured Swalin stated that on 06th February, 2004 at about 01:00 p.m., while he was going home, appellant Saleem @ Nakta met him in a '*gali*' near his house and demanded Rs.1000/-. When he told that he was having no money, the appellant started abusing him and threatened to kill him. He thereafter took out a knife from his pant and inflicted a knife blow on portion of right hand side of his chest and ran away.

3. ASI Bhim Singh, after obtaining signatures of the complainant on his statement, sent it to the police station along with his endorsement through Constable Ram Rattan for the registration of the FIR. During the course of investigation, the appellant was arrested. On interrogation, he made a disclosure statement which led to the recovery of the weapon of offence i.e. the knife. Statements of witnesses were recorded and on completion of the investigation, charge sheet against the appellant was filed in the Court.

4. The learned Additional Sessions Judge, vide order dated 22nd July, 2004 framed charges under Sections 307/387 IPC and Section 27 and 25 of the Arms Act against the appellant, who 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 9 witnesses in all.

6. The appellant, when examined, under Section 313 Cr.P.C. denied the prosecution case. He claimed that he is innocent and has been falsely implicated in the case on suspicion. He, however, did not opt to lead evidence in his defence.

7. The case of the prosecution hinges mainly upon the testimony of injured Swalin (PW-3) and his brother Mobin (PW-4). Before adverting to the submissions made on behalf of the appellant, it would be useful to have a look upon their testimonies.

8. PW-3 Swalin (injured) has stated in his testimony that on 06.02.2004 at around 1.00 p.m. when he was going to his house, the appellant met him in the "*gali*" and demanded Rs.1000/- from him. When he told the appellant that he was not having money, the appellant started abusing him and suddenly took out a knife from the pocket of his pant and inflicted a knife blow on the right side of his chest, as a result of which, he sustained injury and became unconscious. When he gained consciousness, he found himself in the hospital, where his statement Ex.PW3/A was recorded by ASI Bhim Singh.

9. PW-4 Mobin has testified that on 06.02.2004, on hearing the noise, he came outside his house located at the first floor. He was told by the neighbours that the appellant Saleem @ Nakta had inflicted a

knife injury on the chest of his brother. Thereafter, he took his brother to GTB Hospital. From the hospital, he came to the spot along with the police officials and the investigating officer prepared the site plan Ex.PW-4/A with his assistance. In the cross-examination however, he could not tell the name of the person who told him that appellant Saleem alias Nakta had inflicted injury on the person of PW3 Swalin. He stated in his cross examination that on the inquiry made by the examining doctor, he had told him the name of the assailant who had inflicted knife injury on the chest of his brother.

10. Learned Shri Rajesh Mahajan, Advocate appearing for the appellant has submitted that the case of the prosecution hinges mainly on the testimony of the complainant i.e. PW3 Swalin and his brother Mobin PW4 who claims to have reached at the spot immediately after the occurrence and took the injured Swalin to the hospital. Learned counsel contended that case of the prosecution is that the appellant was well-known to the victim, despite of that his name does not find mention as an assailant in the MLC Ex.PW2/A although as per the MLC, PW3 Swalin was conscious and oriented when examined by the Doctor. Learned counsel submitted that even in DD No.11A, P.S. Seelampur (Ex.PW6/A), which according to the prosecution set the investigating machinery into motion, the name of the appellant as assailant is not mentioned. From this learned counsel has urged this Court to infer that PW3 and PW4 are not telling the truth and that PW3 was stabbed by someone else otherwise there is no reason that PW3 Swalin would

not have disclosed the name of the appellant as assailant to the Doctor at the time of preparation of his MLC.

11. I am not convinced with the argument. It is true that the injured Swalin was conscious and oriented at the time of preparation of the MLC Ex.PW2/A. It is also true that the name of the appellant is not mentioned as the assailant in the history of injury recorded by the Doctor concerned in the MLC Ex.PW.2/A. This, however, cannot be taken as a circumstance to disbelieve the eye witness account given by the injured Swalin or the testimony of his brother PW4 Mobin. It is pertinent to note that PW4 Mobin stated in his cross-examination that he disclosed the name of the appellant as the assailant to the Doctor who prepared the MLC Ex.PW2/A. While assessing the contention of learned counsel for the appellant, we cannot lose sight of the fact that PW3 Swalin had sustained a stab injury on the right side of his chest. Therefore, when he reached at the hospital, the main concern of the attending Doctor was to save his life and if in that hurry the Doctor concerned failed to record the name of the assailant in the history recorded in the MLC, it cannot be taken as a circumstance to doubt the version of the injured Swalin. In my aforesaid view, I draw support from the judgment of the Supreme Court in the matter of **Pattipati Venkaiah V. State of A.P.**, (1984) 4 SCC 80. Further, perusal of DD No.11A, P.S. Seelam Pur (Ex.PW6/A) reveals that this daily diary entry was recorded at the Police Station on the basis of information conveyed by Duty Constable Mukesh from GTB Hospital regarding the

admission of injured Swalin in injured condition at GTB Hospital. Obviously, Duty Constable Mukesh who is the informant of this DD report was not the eye witness of the occurrence. Therefore, there was no occasion for him to mention the name of the assailant which was not known to him. As per the FIR which is based upon the complaint statement of Swalin Ex.PW3/A, the incident took place at 1:00 pm. As per the MLC Ex.PW2/A and DD No.11A (Ex.PW6/A), the injured was admitted in the Casualty of GTB Hospital by his brother Mobin somewhere around 1:25/1:30 pm. Rukka Ex.PW9/A was sent to the Police Station at 3:30 pm and the FIR Ex.PW5/A of this case was registered at 3:55 pm. From this, it is apparent that the FIR pertaining to the incident was registered promptly within three hours from the incident on the basis of statement Ex.PW3/A of injured Swalin who specifically named the appellant as the person who had inflicted knife injury on his person. The fact that the FIR has been registered promptly rules out any possibility of false implication of the appellant on an afterthought.

12. Learned counsel for the appellant has drawn my attention to the disclosure statement of the appellant Ex.PW7/B and the recovery memo pertaining to the weapon of offence i.e. knife Ex.PW7/D. He has submitted that as per the disclosure statement of the appellant, he disclosed that he had concealed the knife at Pandushila, Gautam Puri, whereas as per the recovery memo Ex.PW7/D, the knife was purportedly recovered at the instance of the appellant concealed by

the side of a wall of the drain(“*nali*”) adjacent to his House No.C-1/27, Imam Bara, New Seelampur, Delhi. Learned counsel submitted that this mismatch between the disclosure statement pertaining to the place where the knife was concealed and the recovery memo regarding the place of recovery raises a strong doubt against the correctness of prosecution version regarding recovery of knife at the instance of the appellant. He further submitted that otherwise also the recovered knife has not been connected with the injury as the prosecution has failed to place medical opinion on record to establish that the injury found on the person of the injured Swalin could have been caused by the aforesaid knife.

13. Much significance cannot be attached to the mismatch between the disclosure of the appellant Ex.PW7/B and the recovery memo Ex.PW7/D as regards the place of hiding of knife and the place of recovery of knife. A possibility cannot be ruled out that at the time of his interrogation by the police, with a view to mislead the Investigating Officer, the appellant might have given a wrong version pertaining to the place where he had hidden the knife and later on he took the Police to the actual place where he had hidden the knife and got it recovered. Otherwise also, non-recovery of weapon of offence or failure of prosecution to link the recovered knife with the injury of the victim, by itself, is not fatal to the prosecution case if there is sufficient reliable ocular evidence to bring home the guilt of the appellant.

14. PW3 Swalin has fully supported the case of the prosecution and his version finds corroboration from the testimony of his brother Mobin as well as MLC Ex.PW2/A wherein it is recorded that he had sustained an incised wound 3.5 X 2 cm on the right side of his chest. There is no reason to doubt said evidence particularly when the complainant had no motive or reason to falsely implicate the appellant. Otherwise also, it is beyond comprehension as to why the complainant would falsely implicate the appellant and allow the real culprit to go scot free. Thus, I find that the learned trial Judge has rightly relied upon the testimony of PW3 Swalin and PW4 Mobin to find the appellant guilty of charges under Sections 307 IPC and 387 IPC read with Section 511 IPC and Section 27 of the Arms Act.

15. In view of the above, I find no reason to interfere with the impugned judgment of conviction and order on sentence. The appeal is accordingly dismissed.

JULY 29, 2010
ks/pst

(AJIT BHARIHOKE)
JUDGE