

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

Judgment reserved on: July 21, 2010
Judgment delivered on: December 14, 2010

+ **CRIMINAL APPEAL NO.42/2005**

RAJ KUMAR

....APPELLANT

Through: Mr.B.S.Chaudhary, Advocate with
Ms.Chitra Goswami, Advocate.

Versus

STATE(N.C.T.) OF DELHI

....RESPONDENT

Through: Mr.Pawan 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.

1. This appeal is directed against the impugned judgment dated 20.11.2004 as also the consequent order on sentence dated 29.11.2004 in Sessions Case No.122/2001 FIR No.476/2003 under Section 307 IPC P.S. Kirti Nagar whereby the appellant has been convicted for the offence under Section 307 IPC and sentenced to undergo RI for the period of seven years and also to pay fine of ₹1000/- in default of payment of fine to undergo RI for further period of two months.

2. Briefly stated, case of the prosecution is that on 09.11.2003 at about 10:50 pm, DD No.21A (Ex.PW9/A) was recorded at P.S. Kirti Nagar on receipt of information about stabbing of a person behind fire station Kirti Nagar. On this information, SI Prahlad Singh (PW9) along with Constable Jagbir Singh (PW4) reached at the spot of occurrence B-37, Lakkar Mandi, Kirti Nagar. There, they found some blood lying on the spot and came to know that the injured had been removed to hospital. SI Prahlad Singh left Constable Jagbir Singh to protect the spot of occurrence and went to DDU Hospital. There, he collected the MLC of the injured Ramesh, who was declared unfit for statement. Constable Kamal Singh, on duty at DDU Hospital, handed over a sealed packet duly sealed with the seal of 'CMO' alleged to contain clothes of the injured and the sample seal to SI Prahlad Singh which were seized vide seizure memo Ex.PW9/B. SI Prahlad Singh made his endorsement on DD entry itself. He returned to the spot and sent the rukka to the police station for the registration of the case. SI Prahlad Singh got the scene of occurrence photographed. He lifted the blood sample on a gauze and seized it and prepared the site plan. Subsequently, on 11.11.2003, SI Prahlad Singh (PW9) recorded the statement of injured Ramesh (PW10). Subsequent investigation was taken over by ASI Jai Prakash, who arrested the accused Raj Kumar from near Jhuggi No.D-206, Jhuggi Chuna Bhatti, Kirti Nagar on 13.12.2003 at the instance of the complainant. The accused, on interrogation, made a disclosure statement but it did not lead to recovery of weapon of offence. On conclusion of investigation, charge sheet under Section 307 IPC was filed against the appellant.

3. The appellant was charged for the offence punishable under Section 307 IPC to which he pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the appellant, prosecution has examined 13 witnesses.

5. Case of the prosecution is essentially based upon the testimony of injured complainant Ramesh (PW10) who supported the case of prosecution on all material aspects by deposing that on the fateful night at about 10:30 pm, while he was present in front of premises No.B-125, Lakkar Mandi, Kirti Nagar, New Delhi, he noticed 6/7 boys quarrelling with each other. Two boys came to him and enquired as to in which direction the boys who were quarrelling with them had gone. He told them that he was not aware in which direction they had gone. On this, those boys threatened him. One of them caught hold of his collar. He somehow managed to release himself and ran towards premises No.B-37, Lakkar Mandi. Aforesaid boy, who had caught hold of him, suddenly gave a knife blow on the left side of his chest and after assaulting him, aforesaid boy and his associates ran away towards Chuna Bhatti, Kirti Nagar. Witness claimed that because of the stab injury, he fell down and became unconscious and regained consciousness in DDU Hospital. He further stated that on 13.12.2003, he was present with the police party and in his presence, appellant Raj Kumar was arrested by the police. His arrest memo Ex.PW4/B was prepared and his personal search was conducted vide memo Ex.PW4/C. Witness identified the appellant in the court.

6. Other public witnesses examined by the prosecution are PW7 Anil Kumar, PW8 Sunder @ Bal Thackrey and PW11 Raj Kumar. None of them, as per the case of the prosecution, witnessed the actual incident of stabbing. Out of said three witnesses, PWs Anil Kumar and Sunder @ Bal Thackrey did not support the case of prosecution and they were got declared hostile by learned prosecutor and were cross-examined. PW11 Raj Kumar is the witness of the conduct of the injured after the occurrence. According to his testimony, on the fateful night, he was sleeping within the premises of B-37, Lakkar Mandi, Kirti Nagar. At around 10:30 pm, victim Ramesh (PW10) came inside the premises and he woke up. Ramesh requested him to take out the dagger that was stuck in his body but he declined to do so. Thereafter, Ramesh went out and after some time, he was taken to the hospital by a PCR van.

7. PW5 Dr. Santosh Kumar Gupta prepared the MLC of the injured and he has proved the MLC as Ex.PW5/A. PW1 Dr. Vinod Yedalwar subsequently examined the injured as well as perused his MLC and opined that the injury sustained by the injured Ramesh was dangerous in nature. He proved his opinion as Ex.PW1/A.

8. PW4 Constable Jagbir Singh is another important witness. He had accompanied SI Prahlad Singh, initial Investigating Officer to the spot of occurrence on 09.11.2003 and he took rukka to the Police Station for the registration of the case. He also stated that there was some blood lying at the spot and the blood sample was lifted and seized by SI Prahlad Singh. According to PW4 Constable Jagbir Singh, on 13.12.2003 he was joined in

investigation. PW Ramesh also came along with him and they went to Jhuggi No.D-206, Chuna Bhatti, Kirti Nagar, from where accused Raj Kumar was arrested.

9. Other witnesses are Investigating Officers and the police officials who participated in investigation at one stage or the other.

10. The appellant was examined under Section 313 Cr.P.C. to afford him an opportunity to explain the incriminating evidence appearing against him. In his statement, he denied the prosecution version in its entirety. He claimed that he has been framed by the police because his name happens to be Raj Kumar, on the basis of suspicion. The appellant did not opt to lead evidence in support of his defence.

11. Learned Additional Sessions Judge, on consideration of the evidence, found the testimony of PW Ramesh reliable and returned the finding of conviction of the appellant on charge under Section 307 IPC which was followed by consequent order on sentence.

12. Learned counsel for the appellant submits that the appellant is innocent and he has been falsely implicated on suspicion because his name happens to be Raj Kumar and as per the testimony of the complainant the associates of the assailants, at the time of incident, addressed him as Raj Kumar. Learned counsel argued that the case of prosecution rests solely on the testimony of PW-10 Ramesh Kumar (complainant), whose evidence regarding the identity of the assailant in the Court after a span of almost one year from the incident is highly suspect, particularly when no Test Identification Parade(T.I.P.) was got

conducted to fix the identity of the appellant. Learned counsel further contended that as per the case of the prosecution, the occurrence took place in the night at 10.30 pm and it could not have taken more than a few minutes, therefore there is no possibility of the complainant having seen the face of the assailant thoroughly to identify him after a period of one year.

13. I am not convinced with the above submission for the reason that as per the case of the prosecution, the appellant was arrested from Jhuggi D-206, Jhuggi Chuna Bhatti, Kirti Nagar, on 13th December 2003, on the pointing of the complainant Ramesh. Perusal of the arrest memo of the accused Ex.PW-4/B reveals that as per this document, the appellant was arrested about a month after the incident on 13th December 2003 in the presence of the complainant Ramesh who is the attesting witness of the arrest memo. Since the appellant was arrested at the instance of the complainant Ramesh, there was no occasion for requesting for the T.I.P. to fix the identity of the appellant. From the above, it is apparent that the appellant was identified by the complainant within a period of slightly more than a month of the incident. Therefore, there is no reason to doubt the Doc identification of the appellant by the complainant Ramesh in his testimony as PW-10.

14. Learned counsel further contended that the case of the prosecution is highly doubtful for the reason that the weapon of offence could not be recovered pursuant to the disclosure statement made by the appellant. I do not find any merit in this contention. Non recovery of weapon of

offence would not make much difference to the prosecution case for the reason that from the MLC of the injured complainant Ramesh Kumar, it is apparent that he had sustained a stab injury CLW of size 6 cm/10 cm in the chest on the left side, 5 cm far from the left nipple. As per the opinion of the doctor, the injury was caused by a sharp object. Thus, there is no reason to suspect the testimony of PW10 Ramesh that he was stabbed by the appellant with a dagger/knife. Merely because the police could not recover the weapon of offence, it cannot be taken as a reason to suspect or reject the otherwise reliable testimony of the complainant.

15. Learned counsel for the appellant further submitted that in the instant case, apart from the complainant, prosecution has examined three independent witnesses, namely, PW-7 Anil Kumar, PW-8 Sunder @ Bal Thackrey and PW11 Raj Kumar. Out of them, PW-7 Anil Kumar and PW-8 Sunder have not supported the case of the prosecution, which by itself, casts a strong shadow of doubt on the correctness of the prosecution story as well the version of the complainant Ramesh.

16. I am unable to agree with this contention. It is true that PW-7 and PW-8 have turned hostile, but this does not affect the case of the prosecution for the reason that neither PW-7 Anil Kumar nor PW-8 Sunder are claimed to be the eye witnesses of the occurrence. Therefore, their resiling from their earlier statements made to the police is of no consequence so far as the reliability of the version of the complainant is concerned.

17. Learned counsel for the appellant submits that as per the case of the prosecution, the assailant ran away with the weapon of offence but PW-11 Raj Kumar, in his testimony, has stated that immediately after the incident, complainant Ramesh Kumar came inside premises No.B-37, Lakkar Mandi, Kirti Nagar and asked him to take out the dagger which was stuck deep his body. This contradiction in the testimony of PW-11 Raj Kumar vis-à-vis the prosecution story, as per the counsel for the appellant, is material and it goes to the foundation of the case and makes the entire prosecution story suspect.

18. I am not convinced with the above contention of the appellant. PW-11 Ramesh Kumar is not an eye witness to the occurrence. If he gave an exaggerated version in his testimony as PW11, it cannot be taken as a circumstance to suspect or disregard the otherwise reliable testimony of the complainant Ramesh Kumar which gets corroborated by the fact that he actually sustained a dangerous stab injury, as is apparent from his MLC Ex.PW 5/A. PW10 Ramesh has fully supported the prosecution case and he has identified the appellant as the assailant who stabbed him. I find no reason to suspect or doubt the correctness of his version, particularly when there is nothing on the record to suggest that there was any enmity or motive on the part of PW-10 to falsely implicate the appellant Raj Kumar. Thus, I am of the view that the learned Trial Judge has rightly found the appellant guilty of stabbing PW-10 Ramesh and causing him a dangerous injury on the left side of his chest.

19. Learned counsel for the petitioner further submitted that even if the prosecution story is taken to be true, conviction of the appellant under Section 307 IPC is unwarranted. He contended that as per the case of prosecution, it is a case of chance occurrence, which took place abruptly in the heat of moment. The appellant had no pre-acquaintance with the victim and he had no reason, enmity or motive to cause injury to the complainant/victim. Thus, by no stretch of imagination can it be inferred that the appellant had any intention to cause the death of the complainant nor from the aforesaid fact, any knowledge can be imputed to the appellant that the act committed by him was such that if that act resulted in death of the complainant, he would be guilty of murder.

20. In order to appreciate the above contention of learned counsel for the appellant, it is necessary to have a look on the medical evidence. Ex.PW 5/A is the MLC of the complainant/injured Ramesh which was prepared on 9th November 2003 at 11.00 p.m. As per the MLC, the complainant sustained CLW of size 6 cm/10cm on the left side of the chest at a distance of 5 cms from the nipple. PW-1 Dr.Vinod Yedalwar, who had examined the injured Ramesh and prepared his MLC has opined that the injury sustained by Ramesh was dangerous in nature and this opinion is recorded on the MLC (Ex.PW5/A) at point Ex.PW-1/A. The fact that the appellant was stabbed with a sharp weapon on the left side of the chest, resulting in an injury 6 cm/10 cm, in my view is sufficient to impute knowledge on the part of the appellant that if the said act of appellant had caused death of Ramesh, he would have been guilty of committing murder of Ramesh.

21. Thus, in my opinion, learned Additional Sessions Judge has rightly convicted the appellant under Section 307 IPC. Had the knife pierced the heart of Ramesh, he definitely would have died.

22. Learned counsel for the appellant has lastly pressed for reduction of sentence. He contended that as per the prosecution case, the occurrence took place in the heat of the moment, otherwise the appellant had no reason or motive whatsoever to cause injury to the complainant. Learned counsel further submitted that the appellant is a young man. He belongs to poor strata of society, his father has already expired and he is the sole bread earner of his family.

23. As per the latest nominal roll of the appellant placed on record, the conduct of the appellant in jail has been satisfactory and there is no previous record of any criminal activity by the appellant. Taking into account aforesaid factors, I find that this is a fit case in which the appellant deserves leniency and he deserves one more chance to prove himself to be a useful member of the society. Thus, I partially accept the appeal. While maintaining the sentence of fine, I reduce the sentence of imprisonment awarded to the appellant from 7 years to 5 years.

24. The appellant is on bail. He be taken into custody to undergo the remaining period of his sentence.

25. The appeal is disposed of accordingly.

26. Copy of this order be sent to the Superintendent Jail for compliance.

(AJIT BHARIHOKE)
JUDGE

DECEMBER 14, 2010

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