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Reserved on: 25th January, 2011

Decided on: 1st February, 2011

JAI KUMAR @ JAI @ PAPPU Petitioner
Through: Mr. Lal Singh, Amicus Curiae
versus

STATE Respondents
Through: Mr. Pawan K. Bahl, APP for the State

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. By the present appeal, the Appellant challenges his conviction for offence punishable under Sections 324/353/186 IPC and 27 of Arms Act in Sessions case No. 170/1997 and the order on sentence whereby he has been awarded Rigorous Imprisonment for a period of one year each for offence punishable under Sections

324/353 IPC and 27 Arms Act and Rigorous Imprisonment for three months for offence punishable under Section 186 IPC with all the four sentences to run concurrently.

2. In brief the prosecution case is that on the 5th October 1996 at about 4 p.m., the Appellant was going along with the two co-accused Rakesh and Ratan when PW6 HC Shiv Om at 'Nakabandi' stopped them as one of them was a Badmas of the area. They pushed his motorcycle with the result he fell down. The two other accused persons made on escape whereas the Appellant fled away on the motorcycle. PW6 followed him whereafter the Appellant inflicted an injury to PW6 by the 'ustara' which was in his pocket. The Appellant was apprehended on the spot along with the razor (ustara). Subsequently, co-accused Rakesh Kumar was also arrested and a charge-sheet was filed against both of them after declaring the third accused Ratan a proclaimed offender. A complaint under Section 195 Cr.P.C. Ex. PW10/A was filed by the DCP after perusal of the facts along with the charge-sheet. After examination of the prosecution witnesses and recording of the statements of the accused under Section 313 Cr.P.C , the co-accused Rakesh was acquitted as he was a lame person and thus the learned Judge held that he could not have got down suddenly from the motorcycle and pushed PW6 and in the absence of any corroborative evidence, gave him the benefit of doubt, and the Appellant was convicted and sentenced as above.

3. Learned counsel for the Appellant challenging the conviction contends that PW1 and PW3, the two alleged eye-witnesses have not supported the prosecution case. No public witness was associated with the recovery of the razor from the Appellant. The seizure memo of the razor Ex. PW4/A has not been signed by the Appellant. As per the investigating officer and PW4 H.C. Rajinder Parshad who accompanied the investigating officer when he reached the spot, the Appellant was holding the razor and this is highly improbable that a person will continue holding the razor for such a long time. The MLC of PW6 the Complainant i.e. Ex. 14/A has not been proved as the doctor who examined the Complainant has not been examined in the Court instead PW14 Dheer Singh, a record clerk has been examined, despite the fact that the address of the doctor was available. No blood-stains were found on the inner-side of the shirt where the alleged injury was caused. Despite the fact that the complainant knew the name of the assailant when he was examined by the doctor, he did not name him. The scooter and the motorcycle have not been mechanically examined. The area was crowded and it is not possible to ride a motorcycle on a high speed in such a crowded area. The judgment of the Trial Court is based on conjectures and surmises. The Appellant is thus entitled to be acquitted.

4. Per contra, learned APP for the State says that PW6 Shiv Om is the injured Complainant who has described the entire incident. Nothing material has been

elicited in his cross-examination. The 'ustara' and the shirt of the Complainant were both blood-stained and the same were sent to the CFSL. The CFSL report Ex. PW13/F mentioned that both the ustara and the shirt were stained with human blood of group 'AB'. Though PW1 & PW2 have turned hostile as to witnessing the incident, but they still corroborated the fact that an incident took place and a phone call was made from their shop whereupon the police came. The doctor was not examined as he was not available in the hospital and in his absence record clerk has proved and exhibited the MLC. There is no enmity between the Appellant and PW6. It is thus prayed that the Appeal be dismissed being devoid of any merit.

5. I have heard learned counsel for the parties and perused the record. The prosecution case is largely based on the testimony of PW6 Head Constable Shiv Om, the injured Complainant in this case. According to him, on 5th October, 1996 while posted at police post Anazmandi, when he was present near ration office while on patrolling duty, he saw one motorcycle DL5SG-2431 of black colour coming from the other side at a fast speed with three boys sitting thereon. He recognized Rakesh and Ratan who were in the middle and rear seat of the motorcycle. He gave them signal to stop, but they did not stop, so he chased them by his two wheeler scooter. He again gave a signal and then Rakesh and Ratan alighted from the motorcycle and pushed his scooter as a result of which he fell down along with the scooter. He got up and tried to catch the third person who

was driving the motorcycle but he also pushed him and ran away. In the meantime, the other two persons ran away. The Complainant chased the motorcycle with his scooter and finally the motorcycle slipped near gali no. 4, Mahabir Block. After this, the Complainant caught hold of Jai Kumar, the Appellant by chasing him for 15-20 steps on which the Appellant grappled with him and took out an 'ustara' from the pocket of his jeans and gave blows on his left cheek, forehead, left side of neck and right hand. The Complainant however did not release him and called out the public for help. In the meantime, S.K. Bansal and Nathu Singh informed the police on phone around 4:15 p.m., pursuant to which ASI Manbir Singh, HC Dayanand, HC Rajinder Parsad and Constable Narinder came and caught hold of the Appellant along with the 'ustara' in his right hand. This witness has been cross-examined at length. However nothing has been elicited to discredit the testimony of this witness. The testimony of this witness is further corroborated by the MLC Ex.PW14/A wherein injuries mentioned are abrasions at the left cheek, forehead and neck, incised wound 1 c.m. linear muscle deep between index finger and thumb.

6. I find no force in the contention of learned counsel for the Appellant that PW 14 Dheer Singh who was the record clerk could not have exhibited the MLC. PW 14 Dheer Singh, medical record clerk, SDN Hospital has stated that the MLC was prepared by Dr. Manoj Kumar and he was conversant with the signature and

handwriting of Dr. Manoj Kumar as he had seen him signing the documents during the course of his official duties. Dr. Manoj Kumar has since left the hospital, his whereabouts are not known. In his cross-examination the only thing which is elicited is that in the hospital record, a permanent residential address of the doctor is available. The prosecution in this case has exhibited the MLC by calling PW14 and has discharged its onus and in case, there was something which was required to be brought out from the MLC, the Appellant should have got the same done by calling the doctor. Moreover, objection regarding proof of a document should be taken at the trial as held in *Phool Kumar v. Delhi Administration* 1975(1) SCC 797. There is also no merit in the contention that the shirt of the Complainant was not blood-stained. The shirt and the 'ustara' were seized and sent to CFSL. As per the CFSL report Ex.13/F, both the exhibits had human blood of Group 'AB'. Thus, the blood on the shirt of the injured Complainant tallied with the blood on the razor, thereby connecting the weapon used during the offence.

7. PW 6 is an injured witness. His testimony is sufficiently corroborated by scientific evidence and there being no reason for PW6 to falsely implicate the Appellant, I find no ground to disbelieve the testimony of this witness. The testimony of this witness is wholly reliable, cogent and convincing. The Hon'ble Supreme Court in *Akhtar and others v. State of Uttranchal* (2009) 13 SCC 722, noting its earlier decisions, held that credence to the testimony of injured eye

witnesses is given since their presence at the scene of crime is seldom doubtful. In the report it was observed:

“18. In Krishan v. State of Haryana, this Court has taken the view that if the prosecution case supported by two injured eyewitnesses and if their (injured eyewitnesses) testimony is consistent before the police and the court and corroborated by the medical evidence, their testimony cannot be discarded. Similarly, in Surender Singh v. State of Haryana, this Court has opined that: (SCC p. 251, para 9)

“9. The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence, lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes.”

This Court has taken the view in State of M.P. v. Mansingh that: (SCC p. 419, para 9)

“9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.”

8. I find no infirmity in the impugned judgment. The appeal is, accordingly, dismissed. The Appellant is in custody. Copy of this judgment be communicated to the Appellant through the Superintendent, Tihar Jail.

(MUKTA GUPTA)
JUDGE

FEBRUARY 01, 2011
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