

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL. A. 251/2001**

% Reserved on: 10th January, 2011

Decided on: 28th January, 2011

OM PRAKASH Appellant
Through: Mr. Kishore Kumar, Advocate.

versus

STATE Respondent
Through: Mr. Pawan Bahl, APP.

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 challenge is laid to the impugned judgment convicting the Appellant for offence punishable under Sections 326/323 IPC and sentence of Rigorous Imprisonment for a period of three years and a fine of ₹500/- and in default of payment of fine to further undergo simple imprisonment for a period of one month for offence punishable under Section 326 IPC and a sentence of Rigorous Imprisonment for six months and a fine

of ₹500/- and in default of payment of fine to further undergo simple imprisonment for one month for offence punishable under Section 323 IPC.

2. Briefly the prosecution case is that on 1st June, 1997, one Harpal Singh stated to the police that at about 7.00 P.M. he was going to market to fetch some medicines on his scooter but on the way one Jitender Singh son of Mahender Singh his neighbour blocked his way. On his asking him to clear the way Jitender Singh abused and threatened him. Raj Kumar, the brother of Harpal Singh asked Jitender as to why he was abusing on which he brought a hockey stick and hit on the head of his brother Rajkumar as a result of which he sustained injuries. Raj Kumar went to the police Station and Jitender followed him. Both were medically examined at the AIIMS however, no FIR was registered for this incident. At about 8.30 P.M. Om Prakash, elder brother of Jitender along with two-three associates armed with dandas came to the house of Harpal Singh and started threatening his father and him. Om Prakash hit his father on the leg and the chest besides giving fist and kick blows. His brothers Tulsi Ram and Kartar Singh reached home and tried to intervene, on which Om Prakash asked his associates to catch hold of Tulsi Ram and Kartar Singh and he gave knife blows on the person of both of them as a result of which they fell down. On this the Appellant along with his associates fled away from the spot. Both the injured were taken to the

hospital where they were medically examined and their injuries were subsequently opined to be grievous. A Case FIR No. 372/1997 under Sections 307/323/506/34 IPC was registered on the statement of Harpal Singh. After investigation the charge sheet was filed.

3. The learned Additional Sessions Judge initially framed charge under Section 307 IPC against the Appellant along with the charge under Section 323 IPC and subsequently, an additional charge under Section 326 IPC was also framed. After examining the prosecution witnesses and recording the statement of the Appellant under Section 313 Cr.P.C. and defence evidence, the learned Judge passed the impugned judgment.

4. Learned counsel for the Appellant challenging the impugned judgment contends that there is no iota of evidence against the Appellant. No weapon of offence has been recovered at the instance of the Appellant. As per the statement of the Complainant, Harpal Singh the Appellant was accompanied by three/four other persons, however, neither have they been arrested nor charge sheeted. Thus, the statement of the Complainant cannot be relied upon. No earth soil has been collected from the place of occurrence to connect the alleged place of incident i.e. the house of the injured to the crime. Learned counsel states that it is highly improbable that a person enters the house where six-seven persons are present and inflicts injuries and comes out

unharmd. No public witness has been associated and the conviction has been based on the testimony of the relation witnesses who are all interested witnesses. The defence of the Appellant that he was living separately and was not present at the spot is probable and thus, the Appellant is entitled to the benefit of doubt and thereby acquittal.

5. Per contra learned APP for the State contends that on the said date two incidents occurred. The first incident took place at about 6.30-7.00 P.M. when Jitender, the brother of the Appellant injured Rajkumar, the brother of the Complainant Harpal Singh with a hockey stick. Thereafter at about 8.00-8.30 P.M., the Appellant went to the house of the Complainant along with three/four other persons and gave knife blows to Tulsi Ram and Kartar Singh after his associates caught hold of them and also gave injuries by dandas, kicks and fist blows to the Complainant and his parents. The testimony of these injured witnesses cannot be brushed aside. Since the incident took place inside the house of the victims no, public witnesses would be present and only the inmates would be the witnesses to the occurrence. The testimonies of these witnesses are cogent and convincing which are corroborated by their MLCs. The MLCs Ex.PW15/A and Ex.PW15/B have been proved by PW15 Dr. S. Raghwan who has not been cross-examined by the defence and thus, his testimony has gone unchallenged. Thus, the prosecution has proved the

charges beyond reasonable doubt against the Appellant and there is no merit in the appeal and the same deserves to be dismissed.

6. I have heard learned counsel for the parties and perused the records. PW3 Tulsi Ram the injured witness has stated that when he reached his house at about 8.30 P.M. along with his brother Kartar Singh back from duty, he saw the Appellant along with some persons quarrelling with his mother, father and younger brother Harpal Singh. They were giving beatings to them with dandas and when he tried to save them, Om Prakash asked his associates to catch hold of him and his brother Kartar Singh. His associates caught hold of them while the Appellant Om Prakash inflicted knife injuries on his stomach and hip. The Appellant inflicted knife injuries on his younger brother Kartar Singh at four-five places, that is, two in the abdomen, one on chest and one on back. His brother fell unconscious and accused Om Prakash ran away after inflicting injuries. His clothes were seized by the police which pulanda he identified as Ex.P5 containing one pant, one shirt, one vest, one handkerchief and one underwear. An opportunity was given to the defence counsel to cross- examine this witness on 7th March, 1998, however this witness was not cross examined on that day. He was recalled for cross-examination on 16th January, 2001. Despite lengthy cross-examination of this witness, nothing material could be elicited. Similar is the statement of PW4 Kartar Singh who

was also not cross-examined on 17th March, 1998 despite opportunity being given to the learned defence counsel and was thereafter recalled for cross-examination on 16th January, 2001 where also nothing could be elicited. The testimonies of these two injured witnesses are sufficient to prove the case of the prosecution beyond reasonable doubt against the Appellant. These witnesses are further corroborated by PW1 Bhawani Shankar, their father who has also stated the same facts, PW6 Harpal Singh the maker of the FIR with whom the first incident took place and is the injured eye witness of the occurrence. He has narrated the entire incident without any contradictions and has described the role of the Appellant in inflicting injuries on the five family members. The mother PW7 Smt. Janak Pyari has also deposed about the incident that took place at the house at around 8-8:30 pm and has corroborated the version of the other prosecution witnesses. The fact that the mother PW7 and the father PW1 were also beaten is further corroborated by the testimony of PW8 Dr. Anil Kaul who had examined Smt. Janak Pyari PW7 immediately after the incident at about 9.15 P.M. and found abrasions on the right elbow which fact stands recorded in her MLC Ex.PW8/B. PW1 Bhawani Shankar was examined by PW9 Dr. Rangel Nel who found minor abrasions on the left thigh mid level and left hand, tenderness over sternum and opined injuries on the person of PW1 to be simple and caused by blunt object vide MLC

Ex.PW9/A. The MLCs of PW3 Tulsiram and PW4 Kartar Singh were prepared by Dr. Bhartiman Dutta and since he had left the hospital, Dr. S. Raghwan appeared as PW15 and exhibited the MLCs. The two MLCs Ex.PW15/B and PW15/A respectively clearly corroborate the testimonies these two injured witnesses. As per the Doctor the injuries on the person of PW3 were:

1. Incised wound $\frac{1}{2}$ " X $\frac{1}{2}$ X $\frac{1}{4}$ " over the middle of lower back.
2. Incised wound 3cm X 1 cm X 2 cm over the left iliac fossa.
3. Small contused lacerated wound $\frac{1}{4}$ " X $\frac{1}{4}$ " over the ferum of upper lip.

Injuries on the person of PW4 were:

1. Stab wound over 2 cm medial to the aerola region, superficial.
2. Stab wound over left reual angle 1 cm above the left iliac crest

7. The nature of injuries were opined to be grievous and caused by sharp object. In the backdrop of this evidence, I find no merit in the contentions of the learned counsel for the Appellant, that the testimony of the five injured witnesses should not be relied upon merely because no public witness has been examined and they all were related witnesses. The incident took place inside the house. The witnesses in their cross-examination have clarified that

though the neighbors collected after the incident but none entered the house and kept standing outside the door. The fact that no weapon of offence has been recovered does not belie the testimony of these witnesses and the same is not fatal to be prosecution case as there is sufficient and cogent evidence placed on record to prove the prosecution case beyond reasonable doubt. The defence of the Appellant that he was not living in the neighbourhood and was living at Sangam Vihar was highly belated and has been put in the cross-examination after recalling the witnesses, which suggestion, that is, that the Appellant after his marriage was not residing with his father and was residing in Sangam Vihar has been denied by all the witnesses. The defence witness DW1 Smt. Kamlesh, the wife of the Appellant has been discredited in view of her conduct by the learned Trial Court and I find no reason to differ with the same.

8. 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.”

9. I also do not find any merit in the prayer seeking modification of the sentence of the Appellant to the period already undergone. The Appellant has been awarded a sentence of Rigorous Imprisonment for three years and a fine of ₹5,000/-. Considering the nature of injuries inflicted on the vital parts of the injured persons by knife blows I find no reason to reduce the same.

10. The appeal is dismissed. The bail bond and the surety bond are cancelled. The Appellant be taken into custody to serve the remaining sentence.

(MUKTA GUPTA)
JUDGE

JANUARY 28, 2011/vn