

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

% **Crl. Appeal 979 OF 2006**

+ **Date of Decision: 6th January, 2011**

RAM JANE **...Appellant**
! **Through: Mr. Rajesh Mahajan, Advocate.**

Versus

\$ **THE STATE (GOVT. OF NCT) DELHI** **...Respondent**
^ **Through: Mr. Sanjay Lau, APP**

AND

Crl. Appeal 1008 OF 2006

SURENDER SINGH YADAV **...Appellant**
! **Through: Mr. Harkesh Kishan Aggarwal, Adv.**

Versus

\$ **THE STATE** **...Respondent**
^ **Through: Mr. Sanjay Lau, APP**

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment? (No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

JUDGMENT

P.K.BHASIN, J:

The two appellants stand convicted by a Sessions Court for their having committed an offence punishable under Section 307 of the Indian Penal Code('IPC' in short) vide judgment dated 16th September, 2006 and vide order dated 19th September, 2006 both of them have

been awarded sentence of rigorous imprisonment for a period of ten years and fine of ₹ 2000 each with a default stipulation that in case of non-payment of fine they shall undergo further imprisonment for one year. Feeling aggrieved by the said judgment and order of the learned Additional Sessions Judge both the convicted accused had filed separate appeals but since both the appeals were heard together they are now being disposed of by this common judgment.

2. The prosecution case, as appears from the trial Court record, was that on 26th May, 2005 at about 6.15 a.m. PW-6 Sikandar noticed PW-10 Pappu @ Lightbaj lying in an injured condition near the railway track on platform no. 6/7 at the New Delhi Railway Station. Since the injured was bleeding PW-6 lifted him up and kept him on a handcart and brought him outside the railway station where PW-1 Head Constable Zile Singh, who was on duty at the station at that time, saw the injured being brought by Sikandar. At that time the injured was in semi-conscious condition. Head Constable Zile Singh sent the injured to Lady Harding hospital on an auto-rickshaw of PW-3 Prem Shankar. At the hospital the injured was examined by the doctor and as per the prosecution case as reflected in the MLC, at that time the blood pressure and pulse of the injured were not recordable. He had to be operated upon. The multiple injuries found on the body

of the injured were later on opined to be dangerous in nature. Since the injured was not in a fit condition to give any statement about the incident on the day of the incident the police could not come to know that day as to how he had received those injuries. However, considering the nature of injuries sustained by the injured the police registered a case under Section 307 IPC vide FIR no. 277. When the injured was declared fit for making a statement on 29th May, 2005 he informed the police that in the incident in which he had received injuries four persons were involved and he named accused Ram Jane to be one of the culprits. Accused–appellant Ram Jane was then arrested on 30th May, 2005 on the pointing out of a secret informer. He was required to participate in a test identification parade(TIP) but he refused to participate in the identification parade. It appears that since in the statement of the injured he had only given the name of this accused and not any other details the police wanted to fix the identity of this accused and that is why TIP was got arranged. Since the other culprits could not be arrested the police initially filed the charge-sheet against Ram Jane only and in due course the case against him came to be committed to Sessions Court. On 19th July, 2005 accused–appellant Surinder Singh Yadav, who had been named by Ram Jane in his disclosure statement as his associate in the crime in question, also was arrested and he also refused to participate in the

test identification parade. Thereafter, a supplementary challan was presented in Court in respect of accused Surinder Singh Yadav and the same also came to be committed to Sessions Court and finally the challans against both these accused persons were clubbed together and both of them were tried together. Their other two associates, however, could not be arrested.

3. The prosecution had mainly relied upon the evidence of the injured(PW-10) for establishing its case against the two accused-appellants since there was no other eye witness of the occurrence. The defence taken on behalf of accused Ram Jane in the cross-examination of the injured Pappu was that on the day of the incident the injured himself had attacked the accused persons and while they were saving themselves the injured had sustained injuries. It was also suggested to the injured that at the time of the incident he was accompanied by 3-4 other persons also all of whom had run away from the spot after attacking the accused. and when his statement were recorded under Section 313 Cr.P.C. by the trial Court he had claimed that the injured Pappu was a bad character and had caused injury on his face with a knife ten days before the alleged incident but no action was taken against him. Surinder Singh Yadav had claimed that he had a business of transport at Loha Mandi in Naraina. He

was taken by some policemen in civil dress to the police station when he was waiting for a bus at the bus stop and there he was beaten and falsely implicated in this case. No evidence was, however, adduced in defence by any of the two accused.

4. It appears that the injured as well as this accused were not having any fixed abode and were using the railway station platforms as their residence. The injured, in fact, himself had candidly admitted that sometimes he was indulging in pick-pocketing also as he was a drug addict. From the suggestions put to the injured during his cross-examination on behalf of accused Ram Jane also it becomes clear even according to this accused he was known to the injured. The learned additional public prosecutor had submitted that test identification parade in respect of accused Ram Jane was got arranged by the police since only his name had been disclosed by the injured in his afore-said statement and this accused had been arrested at the instance of a secret informer and the refusal of accused Ram Jane to participate in the test identification parade also confirmed his identity as one of the persons involved in the incident. As far as the identity of accused Ram Jane is concerned his counsel Mr. Rajesh Mahajan also did not dispute the same. He also could not possibly challenge the veracity of the evidence of the injured

Pappu(PW-10) in view of the fact that this accused himself had admitted that the incident in which PW-10 got injured had taken place and further because he had not even attempted to establish his defence that it was the injured himself who had attacked him first or that ten days before the incident in question PW-10 had injured him. Not only that, there are no circumstances brought on record on behalf of this accused which could even probabalise the said defences taken by him. Therefore, this Court has no reason to disbelieve the testimony of the injured Pappu who had categorically deposed that he was assaulted by four persons all of whom were armed with knives and accused Ram Jane was one of them. Not only in his examination-in-chief but in cross-examination also the injured Pappu had claimed that accused Ram Jane had also given knife blows to him. Nothing could be elicited in the cross-examination of the injured which could discredit him and no contradictions or improvements in his evidence had been shown to have been made by him. So, as far as the involvement of accused Ram Jane is concerned, the learned trial Court has rightly come to the conclusion that he was one of the assailants who had assaulted PW-10 Pappu.

5. Learned counsel for the appellant Ram Jane also could not claim that the offence made out was not of attempt to murder. That

even otherwise is established by the medical evidence. The relevant portion of the evidence of the doctor from Lady Harding Medical College (PW-7) is reproduced below:-

“On 26.5.05 at 6.40 am one unknown patient son of unknown adult male was brought in the hospital by Prem Shanker with the alleged history of found semi conscious at NDLS Platform car parking. The patient was examined by doctor Surya Vikram who had referred the patient to Unit-C (Surgery) for further management.

The patient was referred to us and he was bleeding profusely from his left thigh. On examination his pulse and BP were very low and he bore multiple wounds all over his body. In addition there was through by through stab wound in left thigh and there was another stab wound in the right gluteal region. The patient was resuscitated and shifted to the OT for immediate exploration and repair of his injuries. A team of doctors led by Dr.O.P. Pathania operated on this patient on 26.5.05. During the operation in the left thigh there was a large tear in the left femoral vein which was giving rise to the profuse bleeding. The vent in this femoral vein was repaired. On abdominal exploration there was a through by through tear in the urinary bladder which was giving rise to bleeding per urethra. The vent in the bladder was repaired. Also there was a large hematoma at the base of the urinary bladder due to which an injury to the rectum could not be ruled out, therefore, a sigmoid colostomy was performed for feacal diversion. Drains were put and abdomen was closed.”

6. As noticed already, the injuries sustained by the injured Pappu were opined to be dangerous. This evidence of PW-7 leaves no manner of doubt that but for prompt medical aid received by PW-10 he would not have survived. Thus, Ram Jane has been rightly convicted under Section 307 IPC.

7. I now come to the prosecution case against accused Surinder Singh Yadav. This accused was not known to the injured Pappu and

that is why a test identification parade was got arranged to get him identified from the injured himself. As per the prosecution case, this accused had also refused to participate in the identification parade. Even in respect of this accused nothing could be elicited in the cross-examination of the seriously injured PW-10 Pappu which could throw any kind of doubt about the veracity of his version that this accused was also one of the assailants who had attacked him. The prosecution case was sought to be challenged on behalf of accused Surinder Singh Yadav on the grounds that there was no recovery of weapon of offence and that there were serious contradictions in the evidence of the injured. However, this Court does not find any merit in these grounds of challenge. When there is wholly reliable evidence of someone who had been seriously injured in some incident non-recovery of weapon of offence has no adverse impact on the prosecution case. The evidence of the injured in the present case is wholly reliable and I have not found any infirmity in his evidence which could discredit him. Since this witness had not been confronted with his police statement when he was cross-examined it cannot be said that he had made any contradictory statement or given an improved version in Court.

8. The prosecution had also sought to seek corroboration for the evidence of the injured from the refusal of accused Surinder Singh Yadav in the test identification parade. That circumstance was sought to be rejected on the ground that test identification proceedings conducted have not been proved by the prosecution and the Magistrate who had conducted the identification proceedings had also not been examined. Mr. Sanjay Lau, learned additional public prosecutor had, however, submitted that this accused himself had admitted during his statement under Section 313 Cr.P.C. that he had refused to participate in the test identification parade and further that even though he had taken the plea that he had refused to participate in the identification parade since his photograph had been taken and shown to the witnesses but no such suggestion was put to any of the police witnesses and, therefore, an adverse inference has to be drawn against him because of his unjustified refusal to participate in the identification parade. It was further contended that the statement of the injured did not, in fact, require any corroboration and, therefore, even if the refusal of accused Surinder Singh Yadav to participate in the identification parade is not to be given any weightage in favour of the prosecution case his conviction can still be maintained.

9. I find merit in the submissions made by Shri Sanjay Lau, learned additional public prosecutor for the State to the effect that the evidence of the injured in this case did not require any corroboration and in any event the same got corroborated by the refusal of accused Surinder Singh Yadav to participate in the test identification parade. Since this accused had himself admitted in his statement under Section 313 Cr.P.C. that he had refused to participate in the identification parade the non-examination of the Magistrate concerned becomes inconsequential. No suggestion was given to the injured Pappu that photograph of this accused had been shown by the police to him before the test identification parade. Therefore, refusal of accused Surinder Singh Yadav to participate in the identification parade has to be taken as an adverse circumstance against him pointing towards his guilt.

10. I, therefore, do not find any merit in the challenge to the conviction of any of the two accused – appellants.

11. Learned counsel for the appellants had also made a submission that the punishment awarded to the two accused by the trial Court was very harsh and so they should be let off with a lesser punishment

of imprisonment. It was submitted that both the accused are young boys and should be given a chance to reform themselves.

12. As far as the sentence awarded to the two accused – appellants is concerned, this Court is of the view that considering all the facts and circumstances, interest of justice would be fully met in case the sentence of imprisonment in respect of both the convicted accused is reduced to six years.

13. In the result, both the appeals are dismissed as far as the conviction of the two appellants is concerned but sentence of imprisonment of ten years awarded to them by the trial Court is reduced to six years while maintaining the sentence of fine imposed by the trial Court. Sentence of imprisonment of accused – appellant Surinder Singh Yadav was suspended during the pendency of the appeal and now that his conviction is being maintained his bail bonds stand cancelled. He shall now be taken into custody and lodged in jail to serve out the sentence of imprisonment.

P.K. BHASIN,J

January 06, 2011
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