

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

+ **CRL. APPEAL NO.764/2010 & Crl. MB 914/2010**

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Reserved on: 11th February, 2011

Decided on: 28th April, 2011

ATUL CHANDRA DASS

..... Appellant

Through: Ms. Sonia Raina, proxy counsel.

versus

STATE

..... Respondent

Through: Mr. Pawan Bahl, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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 lays a challenge to the judgment dated 15th July, 2009 convicting the Appellant for offence punishable under Section 307 IPC and the order on sentence dated 18th July, 2009 directing him to undergo Rigorous Imprisonment for seven years and to pay fine of ₹3,000/- and in default of payment of fine to further undergo Simple Imprisonment for

three months.

2. Briefly the prosecution case is that one Mansoor and the Appellant were working as waiters in the marriage parties etc. with one contractor Guddu and they used to sleep in Rain Basera. On 1st May, 2006 a quarrel ensued between the Appellant and Guddu when the Appellant demanded ₹200 from him as he had received the payment from the owner. The Appellant was under the influence of alcohol and when they tried to make the Appellant understand, they were sent out from the Rain Basera by its in-charge. Outside the Rain Basera, they again had a quarrel and the Appellant took out a surgical blade from the dub of his pant and gave injury on the front side of the neck of Mansoor. The Appellant was overpowered when he was trying to run away with the help of three more persons who were passing by and was handed over to the police persons who were present patrolling there. After the investigation, charge sheet was filed and after examination of the prosecution witnesses and Appellant under Section 313 Cr.P.C. the Appellant was convicted as above.

3. Learned counsel for the Appellant contended that there are material contradictions in the testimony of PW1 Mansoor. Despite of his being injured and suffering from a dangerous injury, he had sufficient energy to hand over the Appellant to the police. The Appellant allegedly asked for money from

Guddu and thus, there was no reason why he would have inflicted injury on PW1 Mansoor, leaving aside PW2 Guddu. Though PW1 Mansoor in his examination-in-chief says that after apprehending the accused with the help of Guddu and two three more persons who were passing by from that place, the accused was handed over to the police, however, in his cross-examination he says that the police met him in the hospital. PW1 has further stated that PW2 Guddu was their contractor whereas PW2 Guddu states that PW1 Mansoor was their head. Despite number of public persons having collected and allegedly apprehending the Appellant, no public person was examined as a witness. Since the Appellant was admittedly heavily drunk, no intention to kill can be attributed to him. As per the MLC, PW1 Mansoor was taken to the hospital by PW2 Guddu and the alleged history of assault is by an unknown person. As PW2 had taken PW1 to the hospital, he should have named the Appellant as the assailant since he knew the Appellant. The injury was opined to be grievous after 21 days. Even as per the prosecution case, the fight was at the spur of the moment and the Appellant was not the aggressor. PW4 has not deposed about the recovery of surgical blade and in his cross-examination states that no proceedings took place in his presence except the arrest memo being prepared. The version of PW5 Constable Rajesh who allegedly saw the incident that two boys were quarreling and grappling with

each other and gave a surgical blade to ASI Vijay Kumar from the right side pocket of his pant and that of PW4, Constable Suryakant who had reached at the spot of the incident with SI Vijay Kumar and has deposed that the Appellant has allegedly produced a blade before PW11 SI Vijay Kumar from the right side pocket, are highly improbable. In case the Appellant was still grappling with PW1 or PW3 when PW5 saw them, then there was no occasion for the Appellant to have put the blade in his pocket. The witnesses have stated that the blade was blood stained however, as per the CFSL report Ex.PW11/B blood was not detected on the surgical blade. The Appellant also received injury and there is failure to explain the injuries on the Appellant by the prosecution. Reliance is placed on *Provincial Government C.P. and Berar vs. Abdul Rahman s/o Ubehdulla Musalman*, AIR (30) 1943 Nagpur 145 to contend that injury on chest by knife itself is not sufficient to prove the requisite intention or knowledge contemplated in Section 307, IPC. Relying on *Prabhu vs. State of Karnataka*, 2001 Cri.L.J 1427 it is contended that the Courts must guard against half baked unprofessional opinions that are based on a very unrealistic and immature knowledge of medical science. In the present case though the MLC states that the patient was conscious and the blood pressure was normal however, he was still declared unfit for statement which strongly casts a doubt upon the true opinion. No opinion of the doctor

has been sought whether the injury caused could result in death and thus, no conviction under Section 307 IPC is warranted. Reliance is placed on *Kulamani Sahu and another vs. State of Orissa, 1994 Cri.L.J. 2245* wherein the conviction under Section 307 IPC was altered to one under Section 326 IPC as there was no medical evidence to show that the act of throwing acid on face and eyes of the injured would have caused death. Simply because the injury has been caused on the vital part and the weapon used is sharp, the same is not sufficient to bring the offence under the ambit of Section 307 IPC as reported in *State of Punjab vs. Bant Singh and another, 1996 Cri.L.J. 3886*. Relying on *Tukaram Gundu Naik vs. State of Maharashtra, 1994 Cri.L.J 224 (SC)* and *Dharma Pal vs. State of Punjab, 1993 Cri.L.J 2856 (SC)* it is contended that even if the Appellant is convicted for an offence punishable under Section 307 IPC, the sentence awarded to him is extremely high as he has been awarded a punishment of Rigorous Imprisonment for seven years. Thus, the Appellant be either acquitted or released on the period of imprisonment already undergone.

4. Learned APP for the State on the other hand contends that PW1 Mansoor and the Appellant were working as daily wagers. There is no contradiction in the testimony of PW1 and PW2. Though the initial money demanded was ₹200/- but later on the Appellant came down to ₹50/-. PW1 is

the injured witness and his testimony cannot be washed away merely in view of minor contradictions which do not go to the root of the matter. There is no suggestion given to PW1 or PW2 that the salary of the Appellant was with PW2. The prosecution has proved beyond reasonable doubt the incident and the injury caused by the Appellant to PW1. The Appellant was arrested at the spot and the recovery of weapon of offence, that is, the surgical blade was made at the spot itself. The ingredients of Section 307 IPC are clearly attracted. It is thus prayed that there is no merit in the appeal and the same be dismissed.

5. I have heard learned counsel for the parties and perused the record. PW1 Mansoor is the injured witness in this case. He has stated that after working on the night of 29th and 30th April, 2006 they came back to Rain Basera, Ravi Dass Colony, Nabi Karim on 1st May, 2006. Besides working as a plumber, he was working as waiter in the marriage parties etc. The Appellant was also working as a labourer with him and PW2 Guddu was the contractor under whom they were working. When they reached Rain Basera, the Appellant demanded ₹200 from PW2 Guddu as he had received the same from the owner. Despite making him understand, the Appellant did not relent and thus they were sent out of the Rain Basera by Mahinder Pal PW3 who was the in-charge of the Rain Basera. When they came out, PW2 and PW1

caught hold of the Appellant to hand him over to the police. However, the Appellant fell down on the shutter of the Shyam Tent House. Immediately the Appellant got up and took out a surgical blade from the dub (belt side) of his pant and gave injury on the front side of his neck. The Appellant tried to run away but he was caught hold of by him and PW2 and two three other people passing from there. In the meantime, the police reached and the Appellant was handed over to the police. PW1 remained admitted in the hospital for six days. His t-shirt and gamcha which were used for stopping the blood were blood stained and were seized. He identified the same as Ex.P1 and Ex.P2. This witness also identified the surgical blade Ex.P3 by which injury was inflicted on his neck.

6. Learned counsel for the Appellant has sought to discredit the testimony of this witness on the count that in his cross examination he has contradicted his version in the examination-in-chief, like, in his examination-in-chief, he has stated that the Appellant was demanding ₹200 from PW2 whereas in the cross examination, this witness has stated that the Appellant was demanding ₹50. A perusal of the testimony of PW1 shows that this witness in the cross-examination itself has clarified that initially the Appellant demanded ₹200 however, subsequently he ended up demanding ₹50 only. Learned counsel for the Appellant has also sought to discredit the testimony of this witness on the

ground that though he was given an injury by the surgical blade on the neck, however, he still had the courage to catch hold of the Appellant which is highly improbable. From the narration of events and the cross examination which version is duly corroborated by the other witnesses, it is clear that the quarrel was going on and after falling on the closed shutter of the shop, the Appellant immediately got up and gave a blade blow on the neck of PW1 and thereafter he was caught hold of by PW1 and PW2 along with public persons. PW1 immediately on being inflicted with the surgical blade would not have been incapacitated to the extent that he could not have caught hold of the Appellant. The testimony of this witness is duly corroborated by the testimony of PW2 Guddu whose presence on the spot is verified by the testimony of PW3. PW2 in his testimony has corroborated the version of PW1. Despite being cross-examined, nothing material has been elicited from this witness to discredit the prosecution case. The testimonies of PW1 and PW2 are further corroborated by that of PW3 Mahinder the in- charge of the Rain Basera who is an independent witness. PW3 has stated that on the 1st May, 2006 at about 6.30/6.45 P.M., he was present in the Rain Basera and a quarrel took place between the Appellant, Guddu and Mansoor. He asked them to go out and they left the Rain Basera. PW3 has also proved by the entries contained in the register that the Appellant, PW1 and PW2 were

staying at the Rain Basera. Though there was no entry for the 1st May, 2006, however this fact has been clarified that the entries in Rain Basera are made at 7.00 P.M. and as is apparent in this case that at 6.30/6.45 P.M. the quarrel took place when they were sent out and thereafter the incident occurred and PW1 was sent to the hospital and the Appellant was arrested. The testimony of PW1 and PW2 is further corroborated by PW5 Constable Rajesh who was on patrolling duty on 1st May, 2006, who found two boys grappling with each other and blood was oozing out of the neck of one person whose name later came to be known as Mansoor. He had identified the Appellant as the person who was present at the spot. He caught hold of the Appellant and sent Mansoor to the hospital with Guddu. The testimony of PW1 and PW2 is further corroborated by DD No. 28A Exhibit PW8/A which was a call received about the incident that a boy had been hit on the neck by a knife. The MLC and the discharge summary Ex.PW10/B of PW1 also corroborates the version of PW1. The fact that no blood was detected on the surgical blade as per the FSL report Ex.PW11/B explains the version of PW 4 who stated that the recovery of the surgical blade was from the pocket of the Appellant and thus, the blood if any would have been wiped out by the cloth.

7. For dealing with the contention of the learned counsel for the Appellant that from the facts proved an offence under Section 307 IPC is not

made out, it will have to be seen from the facts of the present case whether the Appellant can be said to be possessed of the said intention necessary for constituting the offence punishable U/s 307 IPC or not. In *Ratan Singh v State of M.P. & Anr. 2009 (12) SCC 585*, their Lordship's held that whether the accused is possessed of the intention to commit an offence punishable under Section 307 IPC or not has to be gathered from the facts and circumstances surrounding the offence. In the present case the admitted position is that the quarrel ensued between the Appellant and PW2 on the issue of money, when PW1 also intervened. In such a situation it cannot be said that the Appellant came with a premeditated mind for the offence of attempt to commit murder. The quarrel was going on only verbally and when the Appellant fell on the door of the closed shutter of the shop. It is then that he immediately got up and gave a surgical blade blow injury to PW1. From this it can be inferred that the infliction of the blade injury was instant and not pre-planned and motivated. Thus, it cannot be said that the Appellant had caused the injury with the intention to commit murder of PW1. The Appellant certainly had the knowledge that the injury caused by the Appellant could cause death of PW1 as he inflicted the surgical blade blow on the neck of PW1. From the facts proved, it can safely be inferred beyond reasonable doubt that the Appellant inflicted the injury with an intention to commit

culpable homicide not amounting to murder and is thus liable to be convicted for offence punishable under Section 308 IPC.

8. In view of the discussion above, the conviction of the Appellant is modified to one for an offence punishable under Section 308 IPC. The Appellant has been in custody for a period of five years and five months and thus his sentence is modified to the period of imprisonment already undergone.

9. Appeal and the application are accordingly disposed of. The Appellant is in custody. He be released forthwith by the Superintendent of Jail, if not required in any other case.

(MUKTA GUPTA)
JUDGE

April 28, 2011
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