

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

+ CRL.A. 273/2005

% Judgment reserved on: 19th March, 2012
Judgment delivered on: 2nd July, 2012

SANDEEP Appellant
Through: Mr. Rajat Aneja, Adv.
versus

STATE Respondent
Through: Ms. Rajdipa Behura, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is being filed while challenging the judgment dated 11th March, 2005 passed by learned Additional Sessions Judge, Karkardooma Courts, Delhi, whereby, the appellant has been held guilty under Section 307 read with Section 34 of I.P.C.

2. Appellant also challenged the order on sentence, whereby, he has been sentenced to undergo R.I for two years and also to pay a fine in sum of Rs.7,000/- each and in default of which, to further undergo SI for four months.

3. The case of the prosecution in brief that the complainant Ramesh used to reside in House No. D-156, Gokalpuri, Delhi. On 12th August,

1999, the appellant along with co-accused Ranjan and Anil, who, according the complainant, were vagabonds came to his house. Complainant Ramesh got annoyed and asked them not to visit his house in future. All the accused threatened him that they would see to it.

4. Thereafter on 13th August, 1999, complainant Ramesh along with his friend Anil went to recover the bills on two-wheeler scooter. After recovery of his dues, they were going back to their respective houses. At about 10:30 a.m, they arrived at A-Block, DDA Park, Gokalpuri. All the three accused accosted them and got their scooter stopped. On enquiry, they told Ramesh that he would be taken to task. They removed him from the scooter. The co-accused Anil brought out a dagger from his 'unti' and tried to plunge it into Ramesh. Complainant Ramesh tried to ward it off with his right hand. Co-accused Ranjan and appellant Sandeep caught hold of him and Anil thrust the dagger into his abdomen. Accordingly, Ramesh raised an alarm. Co-accused Anil, Ranjan and appellant Sandeep took to their heels. Many people collected at the spot including Dharam Pal, brother of Ramesh. Dharam Pal took Ramesh to the hospital and police was informed.

5. Sub-Inspector Sewa Singh investigated this case. He recorded the statement of injured Ramesh and got this case registered vide FIR No. 377/1999 at Police Station Gokalpuri, Delhi for the offences punishable under Sections 307/34 Indian Penal Code, 1860.

6. After the investigation, the prosecution filed the charge-sheet. Thereafter, learned trial court framed charges under Sections 307/34 Indian Penal Code, 1860 vide its order dated 30th April, 2001. They all pleaded not guilty and claimed trial including the appellant.

7. The prosecution examined 11 witnesses in all to prove its case. PW2 Ramesh, PW3 Jugal Kishore and PW5 Anil were the eye witnesses.

8. Dharam Pal, brother of the complainant Ramesh took his injured brother to the hospital after the incident. Banarsi another brother of injured, PW6 stated that accused persons had indulged in incident. Banarsi raised the objection but they threatened and abuse him. He narrated this incident to Naresh, who, got annoyed and scold to him and directed him not to meet these boys again. He testified that on 13th August, 1999, the accused persons had stopped his brother. PW7 Hukum Singh is another brother of the injured. He also arrived at the spot after the incident. He stated that he caught hold of appellant and took him to the police station while other accused namely Anil and Ranjan had escaped from the spot.

9. PW8 Dr. Adarsh, CMO, proved MLC Ex-PW-8/A which depicts the following injuries.

“1. There were two incised wounds one on right side of umbilicus measuring 2 cm x 1 cm x depth not known and other on left lumbar and of the same dimension.

2. 2 x 5...on right palm near the thumb.”

10. Dr. Marut Dass referred the patient to Senior Resident Surgery, after Dr. Pankaj Wadhwa gave him first aid. Dr. Adarsh identified the hand-writing of Dr. Marut Dass Bansal and Dr. Pankaj Wadhwa on Ex-PW8/A.

11. He stated that Dr. Wadhwa had opined at the encircled portion Mark X on the MLC ExPW8/A that the injuries caused on the person of Injured was grievous. Dr. Adarsh stated that these doctors had left the hospital and their present whereabouts were not known.

12. PW-3 Head Constable Pawan Kumar and PW10 Head Constable Lal Singh accompanied PW11 Sub Inspector Sewa Singh who investigated this case.

13. PW9 Jage Ram, ASI, the then Head Constable recorded FIR Ex-PW9/A and DD No. 8A ExPW9/B.

14. Statement of accused persons were recorded under Section 313 of Cr.P.C, wherein, they sought permission to bring defence witnesses. Accordingly, they produced DW1 Ganga Ram who stated that appellant, who is a retail grocery shopkeeper was taken by police officials on 13th August, 1999 at 8:30 a.m. He further stated that he had never made any complaint to the higher authorities that appellant had been framed in this case.

15. DW2, Ram Nath stated that on 13th August, 1999 he saw Ramesh etc. who were going on a scooter and when they reached near a corner, due to patti (iron strip), the scooter lost his balance and they fell down. He denied having made report to the higher authorities that

accused had been falsely implicated in this case.

16. Learned Defence Counsel argued before the trial court that Anil Kumar, the most important witness in this case, stated about the presence of accused Anil only and he did not whisper a word or syllable about the presence of the remaining two accused persons. The aforesaid Anil Kumar further stated in clear, specific and unequivocal terms that he had not seen anyone else quarrelling with Ramesh.

17. This witness was declared hostile and cross-examined by learned Additional Public Prosecutor, and he again reiterated his stand. He, however, deposed that an altercation between Ramesh and Anil took place in his presence. He also saw that Anil was having knife in his hand and Ramesh tried to save himself. Meanwhile, he went to call Dharampal and when he returned, he saw Ramesh was having injuries in his stomach.

18. Jugal Kishore, another eye witness, firstly deposed that he had seen that Anil gave knife blows on the person of Anil, subsequently he corrected himself by mentioning the name of Ramesh. He had seen Sandeep/appellant and did not see anyone else with Anil. The appellant Sandeep was apprehended by the public and when the police came there, he was handed over to the police. Accused Anil had run away from the spot.

19. This witness also declared hostile. With the permission of the Court, learned Additional Public Prosecutor cross-examined him, wherein, he admitted having made a statement to the police in which

he had named appellant Sandeep, co-accused Anil and Ranjan. The appellant and Ranjan had caught hold of Ramesh and Anil had plunged the knife into his person.

20. PW2 Ramesh, has however, supported the prosecution case from top to toe. Although PW Anil Kumar supported the prosecution case to some extent, the depositions of Ramesh and Jugal Kishore cannot be pushed under the carpet. They have clearly and unambiguously stated that all the three accused persons were present at the spot. Both these witnesses have stated that Sandeep and Ranjan had caught hold of the victim and co-accused Anil gave knife blows. They have supported the prosecution case in tandem.

21. Due to the discussion recorded above, the learned trial Judge was of the opinion that there was no reason to discard their testimonies. Therefore, the offence stands proved against all the three persons involved as they took part in the aforesaid incident.

22. The contention raised by the learned Defence Counsel before the trial court was that there is a contradiction whether appellant Sandeep was apprehended at the spot or not. In this context, learned counsel drawn the attention of the learned trial judge towards the statement of PW3 Head Constable Pawan Kumar. He contradicted the prosecution story by stating that none of the accused was found present at the spot. On the other hand, the public witnesses as well as the Investigating Officer, SI Sewa Singh, stated that one of the accused was apprehended at the spot.

23. The learned trial judge has recorded that this is a small contradiction which does not cut much ice. The incident happens on 13th August, 1999 and the statement of Head Constable Pawan Kumar was recorded in the Court on 13th August, 2001. The learned trial judge was of the opinion that the Courts must be borne in mind that police officials have to work day in and day out. Human memory is vicissitudinary. Therefore, he was of the considered view that this argument must be eschewed out of consideration.

24. The learned defence counsel also pointed out that few witnesses described the weapon of offence as knife and others mentioned it as Chhuri i.e. Dagger. On this argument, the learned trial judge has recorded its opinion that he was unable to locate much significance in this argument. There is a wafer thin difference between two. This is a common knowledge that rustic and illiterate people also call the knife as dagger and vice versa.

25. Finally, the trial judge recorded its opinion that two accused caught hold of the victim and third inflicted injuries with a sharp weapon, on a very vital part. The intention on part of the accused is crystal clear. There is no hinge nor loop to hang a doubt on. Such like defence story, having no legs to stand can be created at any time. It all boils down to a case of attempt to murder. Thus he convicted all the accused persons for the offence punishable under Section 307 read with Section 34 of IPC.

26. Mr. Rajat Aneja, Learned counsel appearing on behalf of the

appellant has argued that the learned trial court, while passing the impugned judgment dated 11th March, 2005 did not take into consideration the evidence adduced by the prosecution which was absolutely contradictory and wanting whereby the prosecution failed to prove its case miserably and therefore, the learned trial judge fell in grave error by misconstruing the evidence on record which clearly show that false implication of the appellant at the behest of the complainant and thus the judgment and order dated 11th March, 2005 respectively and 14th March, 2005 respectively are liable to be set aside.

27. It is pertinent to mention here that though there were three accused involved in this case, however only appellant Sandeep is before this court.

28. To strength his arguments, the learned counsel for the appellant submitted that the learned trial judge fell in grave error by relying on the testimony of PW-2 Ramesh & PW-4 Jugal Kishore, who were real brothers in relation having a common vested interest against the appellant and thus the deposition of such interested witnesses was wholly incredulous and unreliable.

29. He further submitted that the complainant/injured, Ramesh Kumar who appeared as PW-2 before the trial court was cross-examined at length, wherein, he clearly stated that in the witness box that in pursuance to the threat extended to him by the appellant along with other two accused persons in the night of 12th August, 1999, he

did not complaint either to the police authorities or the parents of the accused persons regarding the same. Moreover, PW-2 has deposed that many people had collected but since he was asked he did not know the number of people who had collected at the spot. On the contrary, it has come on record through the deposition of the brother of the injured/complainant that one of his brother Dharampal came at the spot and picked up his brother. Therefore, the injured did not even show the presence of his brother Dharampal whereas Dharampal who appeared as PW-1 in the witness box, stated that on 13th August, 1999, he saw his brother Ramesh in injured condition at DDA Park at A-Block. He took his injured brother to the police station and after that he removed to GTB Hospital.

30. Learned counsel has pointed out that the entire testimony of the brother of the injured, who did not utter a word about the presence of other persons at the spot nor could he say anything about the role on any of the accused persons. Whereas, on the contrary, the injured i.e. PW2 Ramesh stated nothing about the arrival of his brother Dharampal at the spot, therefore, the possibility of false implication at the behest of the complainant cannot be ruled out particularly keeping in view the fact that he was on inimical terms with the appellant who was having a small grocery shop in the same vicinity.

31. Mr. Aneja further submitted, undisputedly, according to injured/complainant, the knife wound was inflicted by the other co-accused persons Anil, and the role of the appellant has been confined to the extent of holding one of the hands of the injured. Therefore, the

learned trial judge did not notice material contradictions in the depositions of the witnesses which went to the root of the matter and clearly established that the appellant Sandeep was falsely implicated.

32. He has further argued that the complainant injured has deposed that he was going on his scooter along with his friend Anil, who was also an eye witness to the occurrence. Thus, the testimony of the said eye witness, Anil, assumed paramount importance in precedence to all other prosecution witnesses. The said Anil Kumar appeared as PW-5 before the trial court who categorically stated that it was only one accused Anil who had stabbed Ramesh and except him nobody else was present. He was the only eye witness who is an independent witness and was accompanied the injured on the scooter at the time of occurrence.

33. PW5 has further deposed to the following effect:-

“Ramesh was driving the scooter. When we reached A-Block in front of park in Gokal Puri somebody had stoped the scooter of Ramesh. He stepped down from the scooter. I remained sitting on the scooter. Ramesh went inside the Gali and I saw Ramesh and Anil, accused present in the Court, were doing ‘Tu-Tu’ Main-Main’ and Anil was having a knife in his hand. Ramesh tried to save himself. After seeing this incident I immediately left the spot and went at the house of Ramesh at the same scooter to inform his brother. At the some distance brother of Ramesh Dharam Pal met me and I informed him about the iincident. I came back to the spot but none was found there. We went to the P. Station Gokal Puri. I saw Ramesh was having injury in his stomach and he was being taken to the hospital. I have not seen anybody else quarrelling

with Ramesh”

34. Mr. Aneja, learned counsel has further argued that PW-5 Anil who was accompanied the injured at the time of incident and saw the incident thread-bar with his own eyes, his testimonies has assumed significant proportions in order to determined the role of each accused person. From the aforesaid testimony, he had categorically deposed that it was accused Anil only who stopped the scooter whereas he remained sitting on the scooter and the injured went inside the gali where Ramesh and accused Anil were stating “Tu Tu Main Main” and Anil was having a knife in his hand. With regard to the role of appellant Sandeep PW-5, Anil clearly deposed that **“I have not seen anybody else quarrelling with Ramesh”**.

35. At this stage, learned prosecutor cross-examined PW-5 Anil and the witness was entirely consistent in his statement even during his cross-examination by learned public prosecutor.

36. Thus, in view of the testimony of PW5 Anil, there remains no room for doubt that the appellant Sandeep was not present at the time of incident and he was picked up by the police subsequently in order to falsely implicate him. All other witnesses who had deposed are real brothers of the injured who were holding grudges against the appellant and thus motive of false implication is writ large on its face.

37. Learned counsel has further argued that it is also indeed pertinent to mention that even the other witnesses i.e. brother of injured, namely Banarsi (PW6), Jugal Kishore (PW4), Hukam singh

(PW7) & Dharampal (PW1) deposed in an entirely contradictory fashion and in case their testimonies are read together as a whole, they cannot be reconciled with the stories of the prosecution.

38. The learned counsel further argued that the learned trial judge also failed to consider the testimony of PW-4 Jugal Kishore, wherein, he has stated that he was playing cricket in DDA park, he saw accused Anil stopping the scooter of Ramesh who quarrelled with Anil and further he saw that accused Anil gave a knife blow on the person of injured Anil.

39. Further, he submitted that the learned trial judge also did not take into consideration that it was not Anil who was injured in this incident and on the contrary it was his brother Ramesh who had been injured. Therefore, PW-4 even did not know who the injured was. Further more, the said PW-4, also did not utter a word about the presence of the appellant at the site of occurrence in his examination-in-chief.

40. Learned counsel has further argued that the trial judge also failed to appreciate that PW-1 Dharampal who also happens to be a real brother of injured Ramesh, did not utter a word about the presence of the appellant at the site. Moreover, PW-1 stated that he took his injured brother to the police station whereas all the contrary, PW-4 Jugal Kishore stated in his cross-examination that he took the injured to the hospital on the scooter of Dharampal. However, Dharampal did not say anything to this effect in his own testimony.

41. PW5 stated in his cross-examination that the ‘injured Ramesh had gone himself to the Police Station’. Therefore, there were large scale of contradictions in the depositions of all the witnesses which could have thwarted the learned Sessions Judge by passing an order of conviction against the appellant and therefore, the findings returned by the trial judge are totally perverse and liable to be set aside.

42. On the conviction for the offence under Section 307, learned counsel has argued that the injuries on the person of injured Ramesh were opined by Dr. Pankaj Wadhwa and the MLC was prepared by one Dr. Marut Dutt Bansal, both of whom were never produced by the prosecution despite being mentioned in the list of witnesses. In the absence of the aforesaid witnesses, the injuries on the person of the injured could not be adjudged by the learned trial judge on the basis of testimony of Dr. Adarsh from GTB Hospital who came to the witness box and deposed that as per record there were two incised wounds – one on the right side of umbilicus measuring 2cm. X 1 cm. X **depth not known** and other on the left lumber, which were opined as grievous by Dr. Pankaj Wadhwa.

43. Learned counsel submitted that the said injuries could not be termed as so fatal with a view to attract the provisions of Section 307 and therefore, in the absence of the witnesses as aforesaid who examined the injured the charge of Section 307 could not be attracted because the intention of the accused persons could not be ascertained in regard to the fact that whether the said injuries were sufficient to cause death of a person or inflicted with such an intention and

therefore the impugned judgment is bad in law and is liable to be set aside.

44. According to the eye witness the incident took place at about 10:30 a.m and then 15 minutes thereof, the injured was allegedly taken to the police station and thereafter to the hospital, whereas on the contrary, PW-10 Constable Lal Singh stated that he received the intimation at about 2:00 p.m on 12th August, 1999.

45. Learned counsel submitted that both of the aforesaid aspects are absolutely contradictory because the story of the prosecution alleges that it was at 11:00 a.m on 13th August, 1999. On this aspect, learned Additional Public Prosecutor cross-examined PW10 Lal Singh but nothing material could be elicited from him and the said witness remained firm on his stand. The said contradictions also went to the root of the matter and the impugned judgment suffers from grave illegality and is liable to be set aside.

46. He further submitted that the learned trial judge failed to consider the evidence of PW-3 HC Pawan Kumar who deposed that as soon as he reached at the spot on 13th August, 1999 with SI Sewa Ram, **none was found there.**

47. Mr. Aneja learned counsel has argued that the learned trial court failed to take into consideration the ingredients of provision of Section 307 Indian Penal Code, 1860 which states to the following effect:-

***Attempt to murder-** Whoever does any act with such intention or knowledge, and under such circumstances that, if*

he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

48. Learned counsel submitted, from the reading of the aforesaid provision as well as the illustration provided with the said provision, it is crystal clear that the pre-requisite and the *sine qua non* of the provision is the establishment of intention on the part of the accused which could only be inferred by the facts and circumstances of the case in as much as the nature of injury, the organ on which it was inflicted and the surrounding circumstances.

49. He submitted in the present case it has not been proved that the injury was caused with an intention to cause death and even the matter of injuries were not proved in accordance with law.

50. On the other hand, learned prosecutor Ms. Rajdipa Behura has argued that Jugal Kishore PW4 is not a brother of the injured/complainant however in some relation and all the three accused came one day before i.e. on 12th August, 1999 and threatened the complainant. The appellant and co-accused Ranjan caught hold the injured and the third accused Anil stabbed with knife. Eight injuries in grievous nature and all on vital parts of the body.

51. Learned APP has further submitted that PW2 Ramesh/complainant deposed that accused persons namely Anil, Ranjan and appellant Sandeep they came on 12th August, 1999 and

threatened and thereafter very next day on 13th August, 1999, they committed this offence.

52. She further submitted that PW-1 Dharampal was not the eye witness of the incident who stated that on 13th August, 1999 he saw his brother Ramesh in injured condition at DDA Park at A-Block. He took his injured brother to the police station and after that he was sent to GTB Hospital.

53. The appellant was apprehended at the spot by the public persons, therefore, he was arrested on 13th August, 1999 itself. The other co-accused namely Anil and Ranjan ran away from the spot, therefore, they were arrested on 19th August, 1999 and 13th February, 2000 respectively.

54. As PW5 Anil Kumar resiled from his statement and declared hostile. He seems to be own over witness as stated that he left his friend in injured condition and went on the scooter to call his brother.

55. In cross-examination by learned APP, he deposed that he knew Sandeep, he did not know Ranjan. The accused persons told that “Abhi Batate Hain” and injured Ramesh was brought down from the scooter by them. The accused Anil took off a Churi from his unti and attacked on the person of Ramesh which was guarded of by the Ramesh and thereafter, the accused Ranjan and appellant caught hold Ramesh and Anil gave a knife blow on the stomach of Ramesh and he further gave another blow on the right side of stomach of Ramesh.

56. Learned APP has further submitted that PW-7 Hukam Singh who heard the noise of incident, he saw some persons of public had caught hold of appellant. Co-accused Ranjan and Anil had escaped from the spot. He saw Ramesh was in injured condition was having knife injury in his stomach and he was being taken to the police station. He along with other persons took Sandeep to the hospital.

57. In cross-examination, he deposed that when he reached at the spot appellant was in custody of public persons. Thereafter, he took him to the police station.

58. This witness has further deposed in his cross-examination that his statement was recorded at 11:30 a.m from the spot. He immediately went to the police station along with Sandeep and remained there for about one and half hour.

59. Learned APP has further submitted that PW-11, SI Sewa Singh, the IO of the case has suggested the arrest of the appellant though the trial judge has not given any opinion of causing injuries, however, it would not vital the case as the appellant was arrested by apprehend at the spot and the other co-accused ran away and arrested thereafter. Therefore, the learned trial judge by considering all the submissions of the parties and record came to the conclusion that the accused persons including the appellant was the person who committed the offence, therefore, they have been rightly convicted by the learned trial court.

60. Since the prosecution witnesses were discussed above who have been declared hostile, therefore, she has relied upon a judgment of

Himanshu @ Chintu Vs. State of NCT of Delhi [2011] 2 SCC

36/[2011] 1 wherein it is held as under:-

In Prithi v. State of Haryana (2010) 8 SCC 5363 decided recently, one of us (R.M. Lodha, J.) noticed the legal position with regard to a hostile witness in the light of Section [154](#) of the Evidence Act, 1872 and few decisions of this Court as under:

*25. Section [154](#) of the Evidence Act, 1872 enables the court in its discretion to permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Some High Courts had earlier taken the view that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part, but must be excluded altogether. However this view has not found acceptance in later decisions. As a matter of fact, the decisions of this Court are to the contrary. In *Khujji @ Surendra Tiwari v. State of M.P.* [MANU/SC/0418/1991](#) : (1991) 3 SCC 627, a three-Judge Bench of this Court relying upon earlier decisions of this Court in *Bhagwan Singh v. State of Haryana* [MANU/SC/0093/1975](#) : (1976) 1 SCC 389, *Sri Rabindra Kumar Dey v. State of Orissa* [MANU/SC/0176/1976](#) : (1976) 4 SCC 233 and *Syad Akbar v. State of Karnataka* [MANU/SC/0275/1979](#) : (1980) 1 SCC 30 reiterated the legal position that: (*Khujji case*, SCC p. 635, para 6)*

6. ...the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof.

61. Learned counsel has also relied upon another judgment on the same issue in a case of the Apex Court reported 2012 STPL (Web) 173 SC titled **Bhajju @ Karan Singh Vs. State of M.P.** has held in as under:-

19. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the Appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section [161](#) of the Code of Criminal Procedure., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section [154](#) of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The

Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the cases:

a. *Koli Lakhmanbhai Chanabhai v. State of Gujarat* [MANU/SC/0719/1999](#) : (1999) 8 SCC 624

b. *Prithi v. State of Haryana* [MANU/SC/0532/2010](#) : (2010) 8 SCC 536

c. *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)* [MANU/SC/0268/2010](#) : (2010) 6 SCC 1

d. *Ramkrushna v. State of Maharashtra* [MANU/SC/7352/2007](#) : (2007) 13 SCC 525

62. A recent judgment delivered by the Apex Court in a case of **Mano Dutt & Anr. Vs. State of U.P.** The judgment delivered on 29th February, 2012 and held as under:-

In our view, non-examination of Nankoo, to which the accused raised the objection, would not materially affect the case of the prosecution. Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more res integra, as has been consistently stated by this Court in uniform language. We may merely refer to the case of Abdul Sayeed v. State of Madhya Pradesh [MANU/SC/0702/2010](#) : (2010) 10 SCC 259, where this Court held as under:

28. *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." (Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.)*

29. *While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)*

28. *Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it*

is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

63. I have heard the learned counsel for the parties.

64. The appellant along with co-accused Ranjan and Anil came to the residence of the complainant Ramesh on 12.08.1999 and threatened him that they would see to it. Next day i.e. on 13.08.1999 complainant along with his friend Anil went to recover the bills on two-wheeler scooter. After recovery of the same, they were going back to their

houses. At about 10:30 a.m., when they arrived at A-Block, DDA Park, Gokalpuri, all the three accused accosted them and got their scooter stopped. Co-accused Anil brought out a dagger from his *unti* and tried to plunge it into Ramesh. Complainant Ramesh tried to ward it off with his right hand. Co-accused Ranjan and appellant caught hold of him and co-accused Anil thrust the dagger into his abdomen. Complainant Ramesh raised an alarm. Co-accused Anil, Ranjan and appellant took to their heels. Many people collected at the spot including Dharam Pal, brother of Ramesh and the appellant was apprehended by the public collected over there and took him to police station while the other co-accused Anil and Ranjan had escaped from the spot. Though PW4 Jugal Kishore was declared hostile by the prosecution, but on cross-examination by Id. APP, he admitted having made a statement to the police station, in which he had named the appellant and along with two other accused namely Anil and Ranjan. He also stated that appellant and Ranjan had caught hold of Ramesh and Anil had plunged a knife into his person.

65. PW-2 Ramesh, has supported the prosecution case from top to toe. Although PW-5 Anil Kumar supported the prosecution case to some extent, the depositions of complainant Ramesh and Jugal Kishore (PW4) cannot be pushed under the carpet. They have clearly and unambiguously stated that all the three accused persons including appellant were present at the spot. Both these witnesses have stated that appellant and co-accused Ranjan had caught hold of the victim and co-accused Anil gave knife blows. By this act all the accused persons,

caused 8 injuries in the person of complainant Ramesh, which are grievous in nature are all are in vital parts of the body.

66. Law has been settled by the Apex Court in a case of *Himanshu @ Chintu (Supra)* wherein Their Lordships observed that evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof.

67. Of the hostile witness, the settled law is that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence.

68. Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit.

69. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his

actual assailants in order to falsely implicate someone.

70. In the present case, complainant Ramesh sustained injuries at that time place of occurrence lend support to his testimony that he was present during the occurrence. The said witness was cross-examined and nothing can be elicited to discard his testimony. The two accused persons caught hold of the victim and third inflicted injuries with a sharp weapon on vital parts of the complainant. The intention on the part of the accused was crystal clear. There is no hinge nor loop to hang a doubt on. Such like defence story, having no leg to stand, can be created any time.

71. Therefore, I find no discrepancy in the judgement and order delivered by the Id. Trial Judge.

72. Before parting with the instant petition, I note that instant case was of the year 1999. The appellant has suffered about 13 years and no other case prior to this incident and even thereafter have ever been reported against the appellant till date. He never remained in jail. He has been on anticipatory bail and at the time of conviction, he was admitted on bail. Thereafter, from the very first day on admitting the appeal, he was released on bail by this Court vide order dated 05.04.2005.

73. The appellant was 18 years of age at the time of incident, has old parents and two children as recorded in the order on sentence. However, keeping in view the antecedents of the appellant, he may be given benefit of Probation of Offenders Act under Section 361 of

Cr.P.C, as he was less than 21 years of age at the time of incident and also have unblemished record.

74. Appellant has been rehabilitated in life and no useful purpose would be served in uprooting and sending him back to serve the remaining sentence, as similar view has been taken by the Coordinate Bench of this Court in *Jaswant Singh and Anr. vs. State 1992(22)DRJ555* while referring the case of *Hari Kishan and State of Haryana vs. Sukhbir Singh & Ors 1989Cri.L.J.116*.

75. Accordingly, while maintaining the conviction, appellant is released on probation. He shall furnish a bond of good conduct for a sum of Rs.10,000/- for a period of one year to the satisfaction of the ld. Trial Court.

76. Instant petition stands disposed of with no order as to cost. Consequently, appellant shall appear before the ld. Trial court on 19.07.2012 at 2 Pm for further direction.

77. Ld. Trial Court shall be at liberty to call for the report of the Probationary Officer if it is deemed fit in the facts of the case.

78. TCR be sent back to the court concerned forthwith.

SURESH KAIT, J

JULY 02, 2012

Rita/jg