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

+ CRL.A. 527/2012 and CrI. M.B. No 872/2012

% Decided on: 4<sup>th</sup> September, 2012

KAMAL @ BUNTY ..... Appellant  
Through :Major Siya Ram, Adv.

versus

STATE ..... Respondent  
Through : Mr. Mukesh Gupta, APP

**CORAM:**  
**HON'BLE MR. JUSTICE A.K. PATHAK**

**A.K. PATHAK, J. (Oral)**

1. This appeal is directed against the judgment dated 15<sup>th</sup> December, 2011 and order on sentence dated 22<sup>nd</sup> December, 2011 passed by the trial court whereby appellant has been convicted under Section 308 IPC as well as under Sections 25 and 27 of Arms Act, 1959; sentenced to undergo rigorous imprisonment for five years with fine of ₹1,000/- (Rupees One Thousand Only) and in default of payment of fine to undergo simple imprisonment for one week under Section 308 IPC; rigorous imprisonment for three years with fine ₹1,000/- (Rupees One Thousand Only) and in

default of payment of fine to undergo simple imprisonment for one week under Sections 25 and 27 of Arms Act, 1959. Both the sentences have been directed to run concurrently. Benefit of Section 428 of the Code of Criminal Procedure, 1973 has also been accorded to appellant.

2. Briefly stated, prosecution story as unfolded, is that on 21<sup>st</sup> July, 2008 at about 9:30 PM Ravinder Singh, Balwant Singh and Raju Das were standing near their buses parked near MCD Primary School, Police Post Khyala. They were settling their daily accounts. In the meanwhile, a black colour Pulsar motorcycle bearing registration no. DL4S-AK-1338 driven by juvenile accused Vinni hit Ravinder. Appellant was sitting on the pillion seat of the motorcycle. A verbal altercation took place between Ravinder and Vinni. Ravinder slapped Vinni. At this, appellant got down from the motorcycle, took out a knife from the pocket of his pant and stabbed Ravinder on his right side of chest. Thereafter, the appellant and Vinni started running. Tarvinder Singh with the help of Balwant Singh and other public persons, who were present there apprehended appellant, whilst Vinni succeeded in escaping.

3. On receiving information about the incident, PCR arrived at the spot and removed Ravinder to DDU hospital. Investigating Officer also reached the spot and arrested appellant and seized the blood stained knife after preparing its sketch. Knife was sealed in a pullanda with the seal of VS. Investigating Officer reached DDU Hospital but could not record the statement of Ravinder as he was declared “unfit for making a statement”. FIR under Sections 307/34 read with Sections 25 of the Arms Act was registered in the Police Station Tilak Nagar, on the statement of Tarvinder Singh recorded by Investigating Officer. Motor cycle bearing registration No. DL-4S-AK-1338 was seized from the spot. Later on, it was revealed that number plate of motor cycle was a forged one and the original registration number of same was DL-SA-K3736. Blood was lifted from the spot with the help of cotton and was sealed. Pant and underwear of Ravinder, which were sealed in a pullanda by the doctor with the seal of CMO, DDU hospital, were taken in possession by the Investigating Officer. Case properties were deposited in the malkhana and later sent to Forensic Science Laboratory (FSL).

4. Report of FSL dated 9<sup>th</sup> January, 2009 was obtained. Blood of human origin was found on the pant and underwear of Ravinder as also on the knife. Doctor opined the injuries of Ravinder as 'dangerous'.

5. Appellant was also medically examined in DDU hospital since he had also sustained injuries, which were mostly in the nature of abrasions. Appellant had disclosed to the doctor that he was beaten by the public and this fact is mentioned in the MLC.

6. Injured Ravinder has been examined as PW2. Complainant Tarvinder Singh, who also happens to be an eye witness to the incident, has been examined as PW1. Other two eye witnesses Raju and Balwant Singh have been examined as PW7 and PW12, respectively. Trial court has found their statements as trustworthy and reliable, inasmuch as sufficient enough to conclude that it is the appellant, who had stabbed Ravinder on his chest by a buttondar knife. I have also carefully perused their statements and find the aforesaid witnesses to be trustworthy and reliable. PW2 has deposed that on 31<sup>st</sup> July, 2008 at about 9/9:30 PM he along with Tarvinder Singh, Balwant Singh and Raju Dass was standing

near the MCD school when a motorcycle came from the side of Chand Nagar, driven by Vinni and hit Ravinder. Appellant was sitting on the rear seat of the motorcycle. He slapped the driver of motorcycle. In the meanwhile, appellant took out a knife from his pant's pocket and stabbed him on the right side of his chest just below the nipple. PCR came there and removed him to DDU hospital. Number of motorcycle was 1338. This version of PW2 has remained unshattered, in his cross-examination. PW1 Tarvinder Singh, PW7 Raju and PW12 Balwant Singh have fully corroborated this version of PW2. Their testimonies have also remained unshattered in their cross-examination on this point. From their statements, in my view, prosecution has succeeded in proving beyond the shadow of reasonable doubt that the appellant had stabbed PW2 Ravinder on the right side of his chest by a knife, resulting in injury to him. PW3 Dr. Rajeev Tyagi has proved MLC of PW2 as Ex. PW3/A. Testimony of PW3 has remained unchallenged as he was not cross-examined by the appellant's counsel. As per the MLC, PW2 had suffered CIW measuring 1 cm X 2 cm over anterior aspect of chest wall on the right side in

the incident. Nature of injuries have been opined as “dangerous”. MLC Ex. PW3/A corroborates the statements of victim PW2 and eye-witnesses (PW1, PW7 and PW12). It supports the version of victim and eye witnesses that it is the appellant who had stabbed Ravinder on his chest by a knife.

7. PW12 Balwant Singh has categorically deposed that after stabbing PW2, appellant tried to run away from the spot but public persons present there apprehended him along with the knife. Later on, appellant was handed over to police officer along with knife, which was sealed and seized after its sketch was prepared. He has identified his signatures on the sketch of knife Ex. PW1/D and also on the seizure memo PW1/E. PW1 Tarvinder Singh is also a witness to recovery of knife. PW1 has also deposed that the appellant was arrested and knife was recovered from him. PW1 has also identified his signatures on Ex. PW1/D and PW1/E. PW1 has further deposed that the knife was kept in a pullanda, sealed with the seal of VS and taken in possession. Investigating Officer and HC Purshottam have also corroborated the recovery and seizure of knife vide Ex. PW1/D and PW1/E. Appellant was

apprehended at the spot and blood stained knife was recovered and seized. FSL report clearly indicates that blood of human origin was found on the weapon of offence, that is, knife. Recovery of blood stained knife also corroborates the prosecution version. In view of the above referred clinching evidence on record, in my view, Trial Court has rightly concluded that it is the appellant who had stabbed Ravinder Singh on his chest causing dangerous injuries to him. Thus, I do not find the view taken by trial court to be inconsistent with the evidence led by the prosecution.

8. As regard to injuries on the person of appellant are concerned, Trial Court has observed that the same might have been suffered by him in the hands of public, I do not find this view to be erroneous or inconsistent with the evidence adduced on record. Injuries on the person of appellant, majority of which are in the shape of abrasions appears to be result of appellant having been apprehended at the spot by the public persons immediately after he had stabbed the victim. Injuries on the person of appellant have been duly explained and will not be sufficient enough to discard the statements of victim and the eye witnesses.

9. Section 308 IPC envisages that 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 culpable homicide not amounting to murder, shall be guilty of committing the offence under the said provision. In this case, a quarrel ensued after the motorcycle driven by Vinni had hit Ravinder. Initially, a verbal altercation took place between the injured and Vinni which led to scuffle and only thereafter appellant stabbed the injured. The events as unfolded from the evidence on record clearly indicate that the assault was not pre-meditated. At the spur of moment appellant appears to have stabbed the injured. However, the circumstances under which injury has been caused, the kind of weapon used and the vital part of the body where injury has been caused certainly discloses knowledge on the part of appellant that his act of stabbing would have resulted death of Ravinder, even though he may not have had intention to commit his murder, thus, appellant has been rightly held guilty by the Trial Court for the offence punishable under Section 308 IPC. Accordingly, conviction of appellant under Section 308 IPC is upheld.

10. Knife Ex.P-1 has been used by the appellant and was seized at the spot itself. Witnesses have identified this knife as the same which was used by the appellant. Sketch of knife Ex.PW1/D clearly shows that its total length was 24 cm with blade of 11 cm and handle of 13 cm. The Gazette Notification dated 17<sup>th</sup> February, 1979 bearing No. F.13/203/78-Home (C) prohibits possession of a knife open or close, with any of the mechanical device, with a blade of 7.62 or more in length and 1.72 cms. or more in breadth. The knife used by appellant, in the commission of crime, is beyond the prescribed notified limits, thus, Trial Court has rightly convicted the appellant for the offences punishable under Sections 25 and 27 of Arms Act, 1959. Conviction of appellant under the said provisions is also upheld.

11. As regards to sentences handed down to appellant by Trial Court same requires no interference, not only keeping in mind the gravity of offence involved in this case but also for the reason that the appellant is involved in as many as 12 other cases, details whereof have been mentioned in the order of sentence.

12. For the foregoing reasons, appeal is dismissed.

Miscellaneous application is disposed of as infructuous.

**A.K. PATHAK, J.**

**SEPTEMBER 05, 2012**

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