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***IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL. A. 789/2011

Decided on 7th November, 2012.

SURESH @ SURESHWAR Appellant
Through: Mr. Ashwani Vij, Adv.
versus

STATE Respondent
Through: Ms. Fizani Hussain, APP

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

A.K.PATHAK, J. (ORAL)

1. This appeal is directed against the judgment dated 26th May, 2011 and order on sentence dated 27th May, 2011 passed by the Trial Court; whereby appellant has been convicted under Section 307 IPC and sentenced to face rigorous imprisonment of five years with fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for three months. Benefit of Section 428 Cr.P.C. has also been given to the appellant.

2. Prosecution story, as emerges from the record, is that the appellant was living in the same building as a tenant where PW1 Ram Awtar s/o Ram Babu had been residing along with his brothers PW7 Vinod and PW9 Balak Ram. PW2 Ram Avtar s/o

Raja Ram is brother-in-law of PW1 who was also living with him. PW5 Smt. Rajshri is wife of PW7 Vinod. On 31st May, 2005 when the men folk were away for work and PW5 was alone in the house appellant misbehaved with her. When PW1, PW2, PW7 and PW9 returned home in the evening PW5 informed them that the appellant had misbehaved with her during the day time. When PW2 Ram Avtar and PW1 Ram Awtar asked the appellant as to why he misbehaved with PW5 Rajshri he quarreled with them. He also threatened them with dire consequences. PW1 Ram Awtar intervened and pacified them. Thereafter, all of them returned to their respective rooms.

3. In the night intervening 31st May, 2005 and 1st June, 2005 PW1 Ram Awtar, PW2 Ram Avtar and PW9 Balak Ram were sleeping on the roof of the house when at about 2 am appellant came there and stabbed PW2 Ram Avtar. On hearing cries of PW2 Ram Avtar, PW1 Ram Awtar and PW9 Balak Ram woke up and saw PW1 in injured condition and appellant standing besides him with a knife in his hand. PW1 Ram Awtar and PW9 Balak Ram tried to apprehend appellant but he jumped in the gali and tried to

escape. However, he was apprehended by PW4 Ms.Krishna. Appellant had sustained injuries due to fall.

4. PCR came there and took PW2 Ram Awtar to hospital. Appellant was handed over to the police officials. PW2 Ram Avtar was first taken to Lal Bahadur Shastri Hospital where his MLC was prepared. Thereafter he was shifted to GTB Hospital where he was operated. PW2 remained hospitalized from 1st June, 2005 to 28th June, 2005. His injuries were opined as “dangerous”.

5. Trial Court has found the testimony of PW1 Ram Awtar, PW2 Ram Avtar (injured) and PW9 Balak Ram trustworthy and reliable so as to conclude that it is the appellant who had stabbed PW2 Ram Avtar causing injuries on his person. Testimonies of PW3 Girish Chand, PW15 Dr.Rakesh Singh and PW16 Dr.Naveen Sharma coupled with the MLC Ex.PW15/A and discharge summary Ex.PW3/A were considered as sufficient to conclude that PW2 had sustained dangerous injuries on his person. Statement of PW5 Smt.Rajshri was also accepted by the Trial Court with regard to the previous incident wherein appellant had misbehaved with her during the day time. Her statement regarding first incident was

supported by the PW1 Ram Awtar, PW2 Ram Avtar, PW7 Vinod and PW9 Balak Ram as she had complained to them on their return in the evening that the appellant had misbehaved with her during the day time. Trial Court has held that the appellant was having motive to assault PW2 Ram Avtar in the night and this was taken as corroborative piece of evidence. Trial Court was of the view that from the circumstances as also the nature of injuries sustained by PW2, intention and knowledge on the part of appellant that had he caused death of the injured by his act he would have been guilty of committing attempt to murder was deducible. Accordingly, appellant has been convicted under Section 307 IPC.

6. I have carefully perused the statements of aforesaid material witnesses and am of the view that Trial Court has rightly convicted the appellant under Section 307 IPC by accepting their version. I find these witnesses to be trustworthy and reliable. PW2 has fully supported the prosecution story. He has deposed that on 31st May, 2005 when he along with PW1 Ram Awtar and PW7 Vinod returned home PW5 Rajshri informed them that appellant had misbehaved with her during the day time. He called appellant and

asked him as to why he did so at which appellant became angry. PW2 slapped the appellant at which appellant uttered that he would see him later. While he was sleeping on the roof of his house along with PW1 and PW9 appellant came there at about 2-2:30 a.m. and at that time he was carrying a knife in his hand. Thereafter, appellant gave a knife blow on the left side of his abdomen. He got up and cried. PW1 Ram Awtar and PW9 Balak Ram woke up on hearing his cries. Appellant fell down from the roof of the house and tried to escape. PW1 and PW9 have fully supported this version of PW2. PW5 Smt.Rajshri has also supported the version of PW1 with regard to the first incident wherein appellant had teased her. She has deposed that she informed PW7 about the incident. PW1 has also supported the version of PW2 as regards the first incident and also with regard to the second incident which happened on the same night wherein appellant had stabbed PW2 with a knife. PW1 has deposed that on hearing cries of PW2 he woke up and saw the appellant standing near PW2 with a knife in his hand. PW2 was in injured condition. PW9 Balak Ram has deposed in line with PW1 and PW2. Their statements in cross-

examination have remained unshattered on material points and there is no reason to disbelieve them.

7. I do not find any force in the contention of learned counsel for the appellant that conviction of the appellant cannot be based only on their testimonies, they being interested witnesses. In my view, statement of victim and his/her relatives cannot be disbelieved in absence of corroboration from other public witnesses. In *Masalte and Ors. vs. State of U.P.* AIR 1965 SC 202, it has been held that it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; often enough, where factions, prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected

because it is partisan cannot be accepted as correct. In *Dilip Singh & Ors. vs. The State of Punjab* AIR 1953 SC 364, it has been held thus “we are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar vs. State of Rajasthan*: 1952 SCR 377 at Page 390. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.” In *Manoj vs. State of Tamil Nadu* JT 2007 (5) SC 145, Supreme Court has held thus “in regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person.

Foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible”. PW2 is injured and victim of crime and there is no reason as to why he would falsely implicate the appellant by screening the real culprit. He being injured is a natural witness and his presence at the spot cannot be doubted. Statements of PW1, PW5 and PW7 cannot be discarded only because they are related to PW2. There is no law that testimony of victim and his relatives cannot be made basis of conviction. A careful scrutiny of their statement shows them to be truthful witnesses.

8. PW4 Smt. Krishna is not related to the victim and his family. It is she who had apprehended the appellant in the gali and handed him over to Ram Awtar @ Pappu. She has deposed in this regard. Accordingly, presence of appellant at the spot is also established from the testimony of PW4. Her version corroborates the statements of PW1, PW2 and PW9 that after assaulting PW2 appellant jumped in the gali and tried to escape but was apprehended by the public persons.

9. PW3 Girish Chand, Record Clerk of GTB Hospital has produced the discharge summary of PW2 in Court and has proved the same as Ex.PW3/A. PW16 Dr. Naveen Sharma from GTB Hospital has appeared in Court and after perusing the discharge summary has opined that the injuries were dangerous in nature. MLC Ex.PW15/A also contains the same endorsement. PW16 has categorically deposed that in his opinion nature of injuries were dangerous. Ex. PW3/A mentions following injuries:

1. 4x1 cm lacerated wound left flank-bowel loops visible through wound.
2. 2 litres of Hemoperitoneum
3. 5 Perforations in jejunum
4. Spleenic vessels actively bleeding
5. 2x2 cm perforation spleenic flexure

10. Discharge summary further indicates that PW2 Ram Avtar had remained admitted in the hospital for 28 days. This itself shows that injuries on the person of PW2 were serious in nature, inasmuch as, the same have been opined to be dangerous by PW16, who is an expert in the field. In view of the specific statement of PW16 that injuries were dangerous in nature coupled with Ex.PW3/A injuries of PW2 have rightly been accepted as “dangerous” by the Trial Court. In the facts of this case, non

examination of doctor who had made the endorsement on the MLC would not be fatal. Accordingly, contention of the learned counsel that as the doctor, who had opined the injuries as “dangerous” by making an endorsement on the MLC to this effect, was not produced the injuries have to be taken as simple, is hereby rejected.

11. I also do not find any force in the contention of learned counsel that since injuries of appellant had remained unexplained, inasmuch as, his MLC was not produced in Court nor proved prosecutions story has to be disbelieved being doubtful. It is true that MLC of appellant had not been placed on record before the Trial Court nor was it proved though same has been shown to this Court during the hearing by the learned APP from the police file. Injuries mentioned therein are not serious in nature, inasmuch as, it is mentioned therein that same were sustained due to fall. If injuries of accused are explained the same will not be fatal to the prosecution case. In my view, injuries on the person of appellant have been duly explained by the prosecution. PWs have categorically deposed that the appellant had jumped from the roof in order to escape and sustained injuries but was apprehended.

Only because of lapse on the part of prosecution to place on record the MLC of appellant will not be sufficient to disbelieve the witnesses more so when their statements have been found trustworthy regarding culpability of appellant in the crime.

12. Section 307 IPC envisages that if a person commits an act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of attempt to murder. In *State of M.P.v.Imrat and Anr.*, (2008)11 SCC 523, Apex Court has held that it is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt, in order to be criminal, need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. In somewhat similar circumstances a bench of coordinate jurisdiction in *Sunil @Tigan @Akhilesh v. State of Delhi* (NCT

Delhi) MANU /DE/1376/2009 has held thus “Applying the aforesaid principles and the law laid down by the Apex Court to the facts of this case, I find that having regard to the evidence of the witnesses and the said established stand that two-three days prior to the date of incident the appellant had teased Annu and when an alarm was raised, the complainant (Meera), her sisters, other family members and neighbours had woken up, and the appellant was scolded and reprimanded. In order to take revenge, on 2.7.2003, the day of the incident, the appellant in a drunken state came to the spot in the middle of the night, duly armed with a ‘Danda’ and a ‘knife’. The appellant enquired from Meera as to the whereabouts of her sister, Annu and when Meera objected to it, the appellant hit her with a ‘Danda’. Meera raised an alarm and her family members woke up. The appellant then inflicted injuries to as many as nine (9) persons, out of which, grievous injuries were caused to two persons (Sanjivan and Radhye Shyam), who had tried to intervene to save the complainant – Meera and her sister, Annu. It is further be noticed that mens rea was followed by actus reus in so much as that the appellant gave effect to his criminal

intent. The appellant premeditatedly, armed himself with a 'Danda' and a knife, came to the spot and used the 'Danda' and the knife as a dangerous weapon of assault. The appellant stabbed and injured as many as nine (9) persons. Thus, it cannot be said that mens rea which is essential to the offence under Section 307 IPC, was absent.

14. In this case, assault was pre-mediated in order to take revenge of the incident that had taken place in the evening wherein PW2 had slapped the appellant, inasmuch as he had even extended a threat to PW2 that he would see him later. In the night appellant armed with a knife went to the roof, where PW2 was sleeping along with PW1 and PW9 and stabbed PW2 on his abdomen causing 'dangerous' injuries on his person. The circumstances in which incident took place coupled with the nature of injuries, intention and knowledge on the part of appellant can be inferred. Thus, in my view, Trial Court has rightly convicted the appellant under Section 307 IPC and his conviction. Keeping in mind the nature of injuries sustained by PW2 sentence awarded by the Trial Court to the appellant also needs no interference.

15. Appeal is accordingly dismissed.

A.K. PATHAK, J.

NOVEMBER 7, 2012
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