

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

RESERVED ON : 8th NOVEMBER, 2013

DECIDED ON : 26th NOVEMBER, 2013

+ CRL.A. 450/2000

MOHD.ILYAS & ANR. Appellants

**Through : Mr.K.B.Andley, Sr. Advocate with
Mr.M.L.Yadav, Advocate.**

versus

THE STATE Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Mohd. Ilyas (A-1) and Mohd.Afzal (A-2) challenge the legality and correctness of a judgment dated 17.07.2000 in Sessions Case No. 19/2000 arising out of FIR No. 110/99 PS Geeta Colony convicting them under Sections 307/324/323/34 IPC. By an order dated 19.07.2000, they were sentenced to under RI for five years with fine ₹ 200/-, each under Section 307/34 IPC; RI for one year with fine ₹ 100/-, each under Section 324/34 IPC and SI for two months under Section 323/34 IPC. All the sentences were directed to operate concurrently.

2. The case of the prosecution as projected in the charge-sheet was that on 13.06.1999 at 04.30 P.M. in front of House No. 17/113, Geeta Colony, the appellants with their associates in furtherance of common intention inflicted injuries to Ram Saran Dass, Shyam Sunder and Kishan Malik in an attempt to murder them. Daily Diary (DD) No. 25A (Ex.PW-6/C) was recorded at 04.50 P.M. at PS Geeta Colony on getting information about a serious quarrel at House No. 17/113, Geeta Colony. SI Mohan Singh who was directed to investigate went to the spot with Const. Srijan and shifted injured in PCR van to SDN Hospital. The Investigating Officer collected their MLCs and lodged First Information Report after recording Ram Saran Dass's statement (Ex.PW-1/A). During investigation, statements of the witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was filed in the Court. A-1 and A-2 were duly charged and brought to trial. In order to establish their guilt, the prosecution examined fifteen witnesses and produced medical evidence. In their 313 statements, the appellants denied their complicity in the crime and alleged false implication. The trial resulted in their conviction for the offences mentioned previously giving rise to the filing of the present appeal.

3. Learned Senior Counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses without independent corroboration. No specific role in the occurrence was attributed to A-1. Vital discrepancies and improvement in the evidence were ignored without sound reasons. The complainant had attempted to implicate the appellants' father but during investigation his role could not be ascertained and no charge-sheet was filed against him. Learned Addl. Public Prosecutor urged that the injured persons have given consistent version and had no ulterior motive to falsely implicate the accused.

4. The First Information Report was lodged in quite promptitude, after recording victims' statement and rukka was sent at 07.45 P.M. by making endorsement (Ex.PW-6/B) over Ex.PW-8/A. In the complaint Ram Saran Dass gave graphic detail of the incident as to how and under what circumstances, he, his sons Shyam Sunder and Kishan Malik were assaulted and injured by the appellants and their associates. He also disclosed genesis of the incident. The occurrence took place at 04.30 P.M. and the First Information Report was lodged at 07.45 P.M. Prior to that Daily Diary (DD) No. 25A (Ex.PW-6/C) was recorded at PS

Geeta Colony at 04.50 P.M. MLCs (Ex.PW-9/A and Ex.PW-14/A) reveal that the victims were taken to hospital soon after the occurrence in between 05.00 to 06.00 P.M. There was least possibility of the complainant to concoct a false story implicating the appellants in such a short interval. In the complaint (Ex.PW-1/A), the appellants were named for the injuries inflicted and specific / definite role was assigned to them. While appearing as PW-1 (Ram Saran Dass), complainant, proved the version given to the police at the earliest available opportunity without major variations or improvements. He identified A-1 and A-2 in the Court and attributed specific role in causing injuries first to him and thereafter, to his sons Shyam Sunder and Kishan Malik. He deposed that his objection to A-1 for passing comments on ladies while sitting on his scooter parked outside their STD booth, resented him and he brought A-2 and his companions for assault. Despite lengthy cross-examination, no material discrepancies could be elicited to suspect the version given by the witness or to shatter his testimony. He fairly admitted that there was no previous enmity with the appellants and no quarrel had taken place earlier. He reasserted that A-1 had a hockey and A-2 carried an iron rod with which they were injured. PCR reached the spot within 5 to 10 minutes and took them to the hospital. He denied that PW-2 (Shyam Sunder) received

injuries due to fall. PW-2 (Shyam Sunder), another injured, supported the prosecution and corroborated PW-1's testimony on all relevant and material facts. He also implicated both A-1 and A-2 who were armed with hockey and iron rod respectively for causing injuries to them. In the cross-examination, he was unable to tell as to what was the real cause of quarrel between his father and the assailants. He explained that, at the time, he was sitting in the STD booth. He categorically denied that injuries were caused to him by someone else and the accused persons were implicated due to political rivalry. He also denied that they had beaten A-1 when he came to fetch milk from the booth near their house and when the public persons intervened to save him, they sustained injuries. PW-4 (Jai Kishan Malik) though turned hostile and did not implicate the accused, nevertheless, deposed that he had taken the injured Shyam Sunder to Anand Hospital and admitted there. He also took Kishan Malik to the hospital. PW-5 (Kishan Malik) merely deposed that someone gave a panch on his face in the quarrel but he was not aware, who was the assailant.

5. On scrutinising the testimonies of the witnesses referred above, it stands established that A-1 and A-2 were among the assailants who caused injuries with iron rod and hockey to PW-1 (Ram Saran Dass)

and PW-2 (Shyam Sunder). Both the victims have proved their involvement in the incident beyond reasonable doubt. Despite searching and lengthy cross-examination, their testimonies could not be shattered by extracting material inconsistencies or discrepancies. The victims had no prior ill-will or enmity to falsely implicate the appellants. Nothing emerged on record if there was any political rivalry forcing the injured to spare the real culprits and to falsely rope in the appellants. The occurrence had taken place when PW-1 (Ram Saran Dass) had objected to the lewd comments made by A-1 on the ladies while sitting on the scooter in front of his STD booth. The rebuke given by PW-1 (Ram Saran Dass) annoyed A-1 and soon after 5 or 10 minutes, he brought his associates including A-2 and inflicted injuries to PW-1 at first instance. When they saw PW-2 in the STD booth, they barged into it after breaking open the glasses and dragged him out of the cabin and caused head injuries. A-2 was apprehended at the spot. The appellants have given conflicting suggestions regarding the injuries sustained by PW-1 and PW-2. They did not examine any witness in defence to prove plea of 'alibi'. A-2 did not explain the circumstances of his apprehension at the place of occurrence. The fact that PW-1 and PW-2 sustained injuries at the time and place of occurrence, lends support to their testimony that they were present during

the occurrence. In the absence of any history of hostile relations, no valid reason exists to discard the testimony of injured witnesses which is accorded a special status in law.

6. In '*Md. Ishaque and ors. vs. State of West Bengal and ors.* ',

2013 (6) SCALE 523, the Supreme Court observed :

*"11. We also fully endorse the view of the High Court that the mere fact that some of the witnesses are interested witnesses, that by itself is not a ground to discard their evidence, the evidence taken as a whole supports the case of the prosecution. In **Hari Obula Reddy and Ors. v. The State of Andhra Pradesh** : (1981) 3 SCC 675, this Court laid down certain broad guidelines to be borne in mind, while scrutinising the evidence of the eye-witnesses, in para 13 of the judgment, this Court held as follows:*

But it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story

narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations.”

7. Medical evidence is entirely in consonance with ocular testimony. PW-15 (Dr.Richa Malvia) examined PW-2 (Shyam Sunder) (brought by Jai Kishan Malik) for medical examination with the alleged history of head injuries with an iron rod by eight people on 13.06.1999 at 04.30 P.M. in front of House No. 17/113, Geeta Colony. The patient was unconscious for five minutes and had vertigo. He was transferred to ICU and MLC (Ex.PW-14/A) was prepared. PW-14 (Dr.Mohd. Mehtab) opined the nature of injuries suffered by him ‘dangerous’ (Ex.PW-14/B). He explained that there was head injury and cut marks on the forehead of

the size of 4 inches long. The patient was unconscious on arrival at the hospital. PW-9 (Dr.Santosh Kumar) proved Kishan Malik's MLC (Ex.PW-9/A) whereby he sustained injuries simple in nature by blunt object. The accused persons did not produce any evidence to show that they were given beatings by the complainant and his sons in any quarrel.

8. Recovery of crime weapons iron rod (Ex.P-2) and hockey (Ex.P-3) is an incriminating circumstance. Minor contradictions, improvements and discrepancies, highlighted by the learned Senior Counsel are not of serious magnitude to affect the core of the prosecution case and to discard their testimonies in its entirety. When such kind of sudden incident happens and injuries are inflicted with quick succession in short time, it is too much to expect from a witness to narrate the exact injuries caused on a particular location of the victim / injured. Mere marginal variations in the statements cannot be dubbed as improvements. Exaggerations per se do not render the evidence brittle. The fact is that A-1 and A-2 participated in the crime and were instrumental in inflicting injuries to the victims. A-1 had brought A-2 and his associates at the spot after he was scolded by PW-1 (Ram Saran Dass) for passing comments upon girls. They had come prepared to cause injuries to the victims and were armed with weapons. Not only they confronted PW-1 outside the

STD booth, they broke open the glasses of the STD booth and entered inside it to beat Shyam Sunder after dragging him out. Apparently, they shared common intention to cause injuries. In ‘Virendra Singh vs. State of Madhya Pradesh’, 2010 (8) SCC 407, the Supreme Court observed :

“47. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be a pre-arranged and pre- meditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the pre-meditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with Section 34.”

9. PW-2 (Shyam Sunder) sustained head injuries which were opined ‘dangerous’ in nature. If a man deliberately strikes another on the head (a vital organ) with a heavy iron rod so as to inflict dangerous injuries, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause such bodily injury as was sufficient to cause death. All the relevant contentions have been dealt

with in the impugned judgment which is based upon fair appraisal of the evidence and warrants no interference. The conviction of the appellants for the offences mentioned above is maintained.

10. A-1's nominal roll reveals that he suffered incarceration for two years and four days besides earning remission of seven months and three days as on 14.07.2002 before enlargement on bail on 12.11.2002. He was not involved in any other criminal case and his jail conduct was satisfactory. He was aged about nineteen years on the day of occurrence. Considering his role in the incident and other mitigating factors, the period already spent by him in custody is taken as substantive sentence. He, however, will have to pay ₹ 50,000/- (Fifty Thousand Rupees) as compensation to the victim Shyam Sunder.

11. A-2's nominal roll reveals that before his substantive sentence was suspended on 21.03.2003, he had undergone three and a half years including remission in custody. A-2 is the main assailant who inflicted head injuries to PW-2 which were 'dangerous' in nature. The initial confrontation had taken place with his brother A-1 when PW-1 (Ram Saran Dass) objected his conduct to pass comments upon ladies. Without ascertaining the true facts, he (A-2) rushed to the spot with him and inflicted injuries to PW-1 (Ram Saran Dass). PW-2 (Shyam Sunder)

who had no fault at all and had not even intervened at the time of initial altercation / confrontation was not spared and caused head injuries by iron rod putting his life in danger. The offence was intentional and deliberate and for that reason, A-2 deserves no leniency. His conviction and sentence are maintained. The appeal preferred by him is dismissed. He shall surrender before the Trial Court on 03.12.2013 to serve the remaining period of sentence.

12. A-1 shall deposit compensation of ₹ 50,000/- in the Trial Court within fifteen days besides depositing the fine imposed by the Trial Court (if unpaid) and it will be released to PW-2 (Shyam Sunder) after notice. The appeal preferred by A-1 stands disposed of in the above terms.

13. Trial Court record be sent back with the copy of the order.

(S.P.GARG)
JUDGE

NOVEMBER 26, 2013/tr