

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

RESERVED ON : 20th NOVEMBER, 2013

DECIDED ON : 27th NOVEMBER, 2013

+ CRL.A. 578/2000 & CRL.M.A.Nos. 1497/2007 & 1498/2007

TASVIR SINGH

....Appellant

Through : Mr.Prag Chawla, Advocate with
Mr.Saurabh Shoken & Mr.C.R.Sagar,
Advocates.

VERSUS

STATE OF DELHI

....Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Tasvir Singh (the appellant) impugns the correctness of a judgment dated 11.09.2000 in Sessions Case No. 22/96 arising out of FIR No. 157/95 PS Narela convicting him for offence under Section 326 IPC. By an order dated 12.09.2000, he was awarded RI for three years with fine ₹ 500/-. The case of the prosecution as projected in the charge-sheet was that on 22.05.1995 at about 09.15 P.M. at village Bakner, Harijan Basti, the appellant inflicted injuries to Satpal in an attempt to murder him. During investigation, statements of the witnesses conversant with the facts were recorded. The accused was arrested and after completion of

investigation, a charge-sheet was submitted against him in the Court in which he was duly charged and brought to trial. In order to bring home the charge, the prosecution examined ten witnesses. Statement under Section 313 Cr.P.C. was recorded to explain the incriminating circumstance appearing against him to which the appellant pleaded false implication and claimed that the injuries were due to fall on damaged iron gate when the victim was under the influence of liquor. DW-1 Vedpal appeared in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant guilty for the offence mentioned previously giving rise to the filing of the present appeal.

2. I have heard learned counsel for the parties and have examined the record. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error in relying on the testimonies of interested witnesses without independent corroboration. The witnesses have given conflicting and inconsistent version regarding the incident and cannot be believed. Initially, the case was registered under Section 324 IPC and in connivance with the police, the complainant got the case altered to Section 307 IPC. Counsel adopted alternative argument to take

lenient view as the matter has since been settled with the complainant/victim. Learned Addl. Public Prosecutor urged that there are no sound reasons to discard the testimony of the injured which is corroborated by medical evidence.

3. Though the prosecution relied upon the testimony of PW-3 (Nand Kishore) and PW-4 (Savitri), the Trial Court suspected their presence at the spot and placed no reliance on their deposition. Star witness is PW-2 (Satpal) on whose statement (Ex.PW-2/A), First Information Report was lodged in promptitude by sending rukka (Ex.PW-7/A) at 11.45 P.M. after the occurrence at 09.15 P.M. The complainant, who was taken to Hindu Rao Hospital by HC Rajpal from PCR named Tasvir Singh for inflicting injuries on abdomen by a knife. MLC (Ex.PW-10/A) records arrival time of the patient at 10.40 P.M. with the alleged history of being stabbed by someone. While appearing as PW-2, the complainant proved the version given to the police at the earliest available opportunity without major improvements or variations. He deposed that an altercation had taken place between his brother Nand Kishore and Sonu (appellant's son). When he objected to the accused for the beatings to his brother Nand Kishore aged about 14 years, the appellant injured him by a knife on abdomen and fled the spot. In the cross-examination, he denied to

have consumed liquor or to have sustained injuries due to fall on the railing. The appellant was unable to elicit major discrepancy to dislodge the testimony of the injured victim on material facts. He did not deny his presence at the time of occurrence. In fact, injuries sustained by the victim are not under challenge. Appellant's only plea is that he was not the author of the injuries and the victim who was under the influence of liquor got it by fall on the railings. MLC (Ex.PW-10/A) does not show that the patient was under the influence of liquor or had consumed liquor. The Investigating Officer categorically denied if there was any railing around the 'chaupal' where the occurrence took place. The appellant did not produce on record any site plan to show if there was any iron gate / railing around the 'chaupal'. PW-9 (Dr.V.P.Singh) who medically examined the victim opined the nature of injuries as 'dangerous'. He admitted in the cross-examination that injuries described in the MLC were possible due to fall on a sharp edged railing / pointed object. Mere putting a suggestion is not enough to discredit the testimony of the injured. The appellant did not adduce any evidence to establish that on the date and time of the occurrence, the victim was under the influence of liquor or had a fall on the railing. Non-examination of independent public witness is not fatal to the prosecution case. Minor discrepancies and improvements highlighted

by the learned counsel for the appellant are not of that magnitude to affect the core of prosecution case that the injuries were inflicted by the appellant by a knife on the abdomen of the injured. Minor discrepancies here and there which do not go to the root of the case are inconsequential. After the conviction, the appellant opted to settle the dispute with the complainant which further strengthens the case of the prosecution. Initially, the case was registered under Section 324 IPC. However, when the victim moved the Court under Section 156 (3) Cr.P.C. it was altered to Section 326 IPC. When the examining doctor opined the nature of injuries as 'dangerous', the offence charged was altered to Section 307 IPC. I find nothing unusual in it. PW-3 (Nand Kishore) and PW-4 (Savitri) have supported the prosecution on other aspects and corroborate the testimony of the complainant to that extent. Exclusion of their evidence would not dilute the veracity of the statement given by the complainant in the Court. The prosecution was able to establish beyond reasonable doubt that the appellant was the author of the injuries.

4. The Trial Court by the impugned judgment convicted the appellant under Section 326 IPC and he was awarded RI for three years and fine ₹ 500/-. He remained in custody only for 14 days as per nominal roll on record. However, during the pendency of the appeal, Crl.M.A.Nos.

1497/2007 and 1498/2007 were moved by the appellant and victim Satpal respectively to inform that the matter has been settled and the complainant had no grievance against the appellant and did not intend to pursue the matter further. The appellant and the complainant appeared in the Court on 23.02.2007. The complainant filed an affidavit stating that he had no grievance of any nature left against the appellant and did not want to pursue the case. On 14.03.2007, the Investigating Officer appeared in the Court and identified the complainant. The complainant affirmed his signatures on the affidavit dated 25.01.2007 and compromise deed and again, informed the Court that he did not want to pursue the case. It appears that the matter has since been settled with the complainant who was represented by his counsel amicably. The incident pertains to the year 1995 and had taken place on a trivial issue when a quarrel took place between his brother Nand Kishore and Sonu (appellant's son). The weapon of offence could not be recovered. There was no previous history of enmity between the parties. The appellant has undergone the ordeal of the trial / appeal for about 18 years. Taking into consideration the mitigating circumstances and the fact that the matter stands settled with the complainant and he does not want any further action, no useful purpose will be served to send the appellant who has no criminal

antecedents and is aged about 59 years to jail. To compensate the victim, the appellant can be directed to pay ₹ 50,000/- as compensation.

5. In the light of above discussion, the period already spent by the appellant in this case is taken as the substantive sentence under Section 326 IPC. The appellant shall deposit compensation of ₹ 50,000/- in the Trial Court within fifteen days besides depositing unpaid fine (if any) and the compensation will be released to the complainant after due notice.

6. The appeal stands disposed of in the above terms. Pending applications also stand disposed of.

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

(S.P.GARG)
JUDGE

NOVEMBER 27, 2013/*tr*