

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

RESERVED ON : 1st OCTOBER, 2013

DECIDED ON : 8th OCTOBER, 2013

+ CRL.A. 290/2001

PREM CHAND @ RAJU Appellant
Through : Ms.Purnima Maheshwari, Advocate with
Mr.Manoj Kumar, Advocate along with
appellant in person.

versus

THE STATE (GOVT. OF N.C.T. OF DELHI) Respondent
Through : Mr.Lovkesh Sawhney, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Prem Chand @ Raju (the appellant) impugns a judgment dated 11.04.2001 in Sessions Case No. 168/1997 arising out of FIR No. 386/1995 PS Ambedkar Nagar by which he was convicted under Section 326 IPC. By an order dated 20.04.2001, he was sentenced to undergo SI for three years with fine ₹ 2,000/-. Allegations against the appellant were that on 22.06.1995 at around 01.40 P.M. near Shop No. C-35, C-block Market, Dakshinpuri, Delhi, he and his associate Darshan Kumar (since acquitted) in furtherance of common intention inflicted injuries to Manmohan with knife on chest. The police machinery came into motion

after getting information vide Daily Diary (DD) No.8A (mark 'A') recorded at 02.25 P.M. about stabbing incident at Dakshinपुरi. The investigation was assigned to SI Anil Kumar who with Const. Mukesh went to the spot and found Manmohan lying in injured condition. The Investigating Officer recorded Manmohan's statement (Ex.PW-1/A) and lodged First Information Report. Prem Chand and Darshan Kumar were arrested on 10.07.1995. Pursuant to Prem Chand's disclosure statement, knife used in the crime was recovered. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against Prem Chand @ Raju and Darshan Kumar for committing offence under Sections 307/34 IPC. The prosecution examined ten witnesses. In their 313 Cr.P.C. statements, the accused persons pleaded false implication. Phool Singh appeared in their defence. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, acquitted Darshan Kumar of the charges; Prem Chand @ Raju was convicted under Section 326 IPC. The State did not challenge the verdict.

2. Appellant's counsel 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 testimony of the complainant – Manmohan

against whom a cross-case under Section 325 IPC for causing injuries to the Prem Chand and Darshan Kumar prior in time on the said day was registered vide FIR No. 358/95 PS Kalkaji. Complainant was also booked under Sections 107/150 Cr.P.C. There was no material before the Trial Court to ascertain nature of injuries as 'grievous' in nature in the absence of examination of concerned doctors. Knife and blood stained clothes were not sent to Forensic Science Laboratory (FSL). Recovery of knife from the shop of the appellant's father is highly doubtful and the said premises were not in his exclusive possession. Appellant's father had instituted proceedings to get the premises vacated from the complainant (a tenant in the house) and that was the motive to falsely implicate him. Counsel adopted alternative argument to release Prem Chand on probation of good behaviour as he was of seventeen years of age on the day of occurrence. Learned Addl. Public Prosecutor urged that there are no sound reasons to disbelieve the testimony of victim – Manmohan who received 'grievous' injuries on vital organs.

3. I have considered the submissions of the parties and have examined the record. The occurrence took place at about 01.40 P.M. and Daily Diary (DD) No. 8A (mark 'A') was recorded at 02.25 P.M. at PS Ambedkar Nagar. The injured was taken to AIIMS and the arrival time

recorded in the MLC (Ex.PW-7/A) is 02.41 P.M. After recording victim's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report by making endorsement on the rukka (Ex.PW-10/B) at 03.40 P.M. Apparently, there was no delay in lodging the First Information Report. In the statement (Ex.PW-1/A), the victim gave graphic detail of the incident as to how and under what circumstances, he was stabbed with knife by Prem Chand @ Raju and Darshan Kumar and attributed specific role to each of them. Since the FIR was recorded promptly, there was least possibility of fabricating a false story in such a short interval. While appearing as PW-1, the victim proved the version given to the police at the first instance without major variation and implicated both for inflicting injuries to him by a knife. Specific role was assigned to Prem Chand whereby he gave knife blows on the chest, head and right knee. Despite lengthy cross-examination, no material discrepancies could be elicited to impeach his testimony. PW-2 (Suresh Chand) corroborated his version to the extent that Prem Chand was one of the assailants who had come on a scooter and with whom Manmohan had grappled and sustained knife injuries. Medical evidence is in consonance with ocular testimony. PW-7 (Dr.Padmanabhan) proved the MLC (Ex.PW-7/A) as he was conversant with the handwriting and signatures of examining doctor Gopesh Modi

and deposed that as per the MLC (Ex.PW-7/A) the nature of injuries was 'grievous' caused by sharp object. There were stab wounds on left chest, head, forehead and knee. PW-8 (Dr.Seema) proved the handwriting and signatures of Dr.S.Yadav (Ex.PW-8/A). Since competent doctors who were familiar with the handwriting and signatures of the doctors who medically examined the patient had opined the nature of injuries as 'grievous' by sharp object, it cannot be inferred that there was no material before the Trial Court to ascertain the nature of injuries. The injuries were not self-inflicted or accidental in nature. The complainant who sustained 'grievous' injuries on his vital organ is not expected to let the real assailant go scot free and rope in the innocent one. The accused persons could not establish that they were victims at the hands of the complainant or had sustained 'grievous' injuries on their bodies. The proceedings in FIR No. 358/95 PS Kalkaji are not on record and its outcome is unclear. The appellant did not examine any doctor in defence to show that he sustained injuries prior to the said occurrence or was admitted in the hospital. It is true that PW-3 (Kare Singh) has not opted to support the prosecution and has exonerated the appellant and his associate but that does not dilute the complainant's veracity and his testimony cannot be discredited on that score. The discrepancies and defects highlighted by the

appellant's counsel are inconsequential. Injured's testimony which is accorded a special status in law coupled with medical evidence is sufficient to establish the guilt of the appellant. In the case of '*State of Uttar Pradesh vs. Naresh and Ors.*', (2011) 4 SCC 324, the Supreme Court held:

"The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein."

4. In the case of '*Abdul Sayed Vs. State of Madhya Pradesh*', (2010) 10 SCC 259, the Supreme Court held :

"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".

5. The findings of the Trial Court are based upon fair appraisal of the evidence whereby the co-accused Darshan Kumar was given benefit of doubt and was acquitted. The appellant was held guilty under Section 326 IPC only. The findings require no interference. The appellant was sentenced to undergo Simple Imprisonment for three years with fine ₹ 2,000/-. Nominal roll dated 13.11.2010 reveals that he remained in custody for ten days and not involved in any other criminal case. His overall jail conduct was satisfactory. It further reveals that Prem Chand was aged eighteen years. At the time of addressing arguments on point of sentence, age of the appellant was claimed less than eighteen years. However, no application was ever moved to claim juvenility. Trial Court record reveals that the appellant was a student of B.Com Part-III and was to take examination vide Roll No. 37891 at the Examination Centre Sahid Bhagat Singh College in April, 1999. The complainant was the tenant in the house and appellant's father had instituted eviction proceedings. The complainant was involved in the proceedings under Section 107/150 Cr.P.C. Appellant's father had lodged earlier complaints against him about his conduct and behaviour. The appellant has undergone the agony

of the trial/ appeal for about 18 years. He is now married and has small family to take care of. He is doing a private job. No useful purpose will be served to send him to imprisonment. To protect the victim's interest, the appellant can be directed to pay reasonable compensation. Learned Addl. Public Prosecutor has no objection to this course of action. Resultantly, the appellant is sentenced to undergo the period already spent by him in this case. Other terms and conditions of the Sentence order are left undisturbed. In addition, he shall pay ₹ 50,000/- as compensation to the victim and shall deposit it within fifteen days before the Trial Court. The Trial Court shall issue notice to the victim – Manmohan to receive the compensation.

6. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

OCTOBER 08, 2013/*tr*