

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

RESERVED ON : November 19, 2013

DECIDED ON : December 02, 2013

+ CRL.A. 433/2001

DEEP CHAND Appellant

Through : Mr.R.Ramachandran, Advocate.

VERSUS

STATE & ANR. Respondents

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Deep Chand (the appellant) and Harish were arrested in Case FIR No.189/1998 under Section 308/34 IPC registered at Police Station Najafgarh and sent for trial on the allegations that on 28.04.1998 at 02.00 P.M. near 'Park' at Chawla Bus Stand, Najafgarh, they inflicted injuries to Umesh. The police machinery came into motion when Daily Diary (DD) No.63-B (Ex.PW-6/1) was recorded at 04.45 P.M. on getting information from duty Ct.Sunil Kumar at Safdarjang hospital about the admission of Umesh Kumar by his brother Dalip in injured condition. The investigation was assigned to HC Shyambir who with Ct.Baljit went to the hospital and moved an application (Ex.PW4/1) seeking permission to

record injured's statement but could not do so as he was declared unfit for statement. He lodged First Information Report after making endorsement (Ex.PW-4/2) on DD No.63-B. During investigation, statements of the witnesses conversant with the facts including that of the injured Umesh were recorded. The accused persons were arrested. After completion of investigation a charge-sheet was submitted against them in the court and they were duly charged and brought to trial. The prosecution relied upon the testimonies of eight witnesses besides medical evidence to bring home the charge. In their 313 statements, the accused persons denied their involvement in the crime and pleaded false implication. DW-1 (Tilak Singh) appeared in defence. After considering the rival contention of the parties and appreciating the evidence on record, the Trial Court by the impugned judgment convicted Deep Chand for committing offence under Section 308 IPC and Harish under Section 323 IPC. By an order dated 02.05.2001 Deep Chand was awarded Rigorous Imprisonment for two years with fine ₹500/- . Harish was released on probation. It is relevant to note that Harish did not challenge conviction under Section 323 IPC.

2. I have heard the learned counsel for the parties and have examined the record. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and relied

upon the sole testimony of injured Dalip Kumar who was in the habit of teasing women folk of the locality and was beaten. No reliance can be placed on his testimony as he did not lodge the report soon after the incident and recorded statement after unexplained delay of three days. The crime weapon could not be recovered during investigation and the Investigating Officer did not seize the blood stained clothes of the injured. No independent public witness was associated during investigation. Name of the assailant was not disclosed to the doctor who medically examined the injured. It is not clear as to when the victim was discharged from the hospital. Non-examination of the doctor who declared the victim 'unfit for statement' is fatal. Reliance was placed on *Balakrushna Swain v.the State of Orissa* (AIR 1971 SC 804); *G.B.Patel & Anr.v.State of Maharashtra* (AIR 1979 SC 135); *Bijoy Singh & Anr.v.State of Bihar* (AIR 2002 SC 1949); *Devinder v.State of Haryana* (AIR 1997 SC 454) and *Bhagirath v.State of Madhya Pradesh* (AIR 1976 SC 975). Learned Additional Public Prosecutor supporting the findings urged that there are no sound reasons to discard the testimony of the injured who suffered grievous injuries on vital organ and the testimony has been corroborated by medical evidence.

3. There is no challenge to the injuries sustained by the victim. The appellant's only plea/defence is that he was not the author of the injuries and these were caused to him by public at large when as usual, he teased the women folk of the locality. Since he (the victim) nurtured grudge against him for teasing his wife, he was falsely implicated. Umesh was taken to Safdarjang hospital soon after the occurrence by his brother (PW-2) Dalip Kumar who deposed that after coming to know Umesh lying unconscious in the house, he went there and took him to Safdarjang hospital. His testimony remained unchallenged. MLC (Ex.PW-1/1) records arrival time of the patient at about 05.00 P.M. PW-1 (Dr.Manisha) examined the patient at 05.00 P.M. The patient was brought by his brother with the alleged history of assault at around 02.00 P.M. at Najafgarh and hit by wooden stick on the head, face, arm and legs. The following injuries were found on the body:

- (i) Swelling behind the right ear about 3 cms in diameter.
- (ii) Swelling and tenderness on the right forearm in the lower 1/3rd.
- (iii) Contusion 15cms x 4 cms on the lateral aspect left arm about 20 cms above the elbow joint yellow reddish in colour.
- (iv) Abrasion and tenderness at left knee joint.

- (v) Line bruises on the back 4 in number-2 on the right and 2 on the left side. 3 cms broad with intervening gap of ½ cms each about 15 to 20 cms. long on the inter and intrascapular region reddish in colour.
- (vi) Swelling on the lower lip.

Nature of injuries was given as 'grievous' by blunt object. There was fracture of right parital bone and left Ulna. PW-5 (Dr.Rajiv Chaudhary), who examined X-ray plate found fracture of right parietal bone and left Ulna vide report (Ex.PW5/1). The doctors were not cross-examined despite an opportunity given and their opinion remained unchallenged. Apparently, Umesh Kumar had sustained grievous injuries with blunt object on his body in the occurrence.

4. Umesh Kumar in his court statement as PW-3 implicated both Deep Chand and Harish for inflicting injuries to him. He deposed that at about 02.00 P.M. when he was going to bakery of Bhardwaj Bread Supplier near telephone exchange, Najafgarh, from his house on 28.04.1998 and reached Chawla Bus Stand, Deep Chand came there with a hockey and gave blows on his head, hands and legs. After some time Harish also came there and gave him fists and kicks blows. They both fled the spot after the occurrence. In the cross-examination, he fairly admitted that he had not disclosed the name of the assailants to the

examining doctors. He reiterated that he remained admitted in the hospital for three days. He denied the suggestion that he had a quarrel with someone else and falsely implicated the accused. Apparently, the appellant was unable to elicit any material or vital discrepancy in the cross-examination to suspect or doubt his version. The accused persons did not deny their presence at the crime scene at the time of incident and did not set up plea of alibi. Nothing was suggested to him as to who else was the assailant who had caused injuries to him and what was his motive. The accused did not reveal to whom the victim used to tease and who had injured him for that. No such victim or her relative appeared in defence. No complaint was ever lodged prior to the occurrence against the victim for teasing the women folk. The victim who had sustained extensive injuries on the body was not expected to spare the real assailant and to falsely implicate the accused persons charge-sheeted by the prosecution. There are no strong grounds for rejection of the evidence of the injured witness which has got a special status in law. Material facts deposed by the victim remained unchallenged in the cross-examination. It is true that there is delay of three days in recording the statement of the victim under Section 161 Cr.P.C. but for remissness of the IO, otherwise cogent and reliable testimony of the victim cannot be brushed aside. Application

(Ex.PW-4/1) was moved by the Investigating Officer on 28.04.1998 to seek permission from the doctor to record injured's statement. However, he was declared unfit for statement by the concerned doctor and endorsement appears on portion 'A' of Ex.PW-4/1. The appellant did not challenge the statement of PW-4 (HC Shamvir Singh) in this regard in cross-examination. No explanation was sought from the Investigating Officer for not recording the statement of the victim soon after the incident. He was not asked as to when the victim became fit to make statement in the hospital. No specific suggestion was put to the doctors who were examined as PWs 1 and 5.

5. Non-examination of independent public witnesses is of no consequence. There is no legal impediment in convicting the person on the sole testimony of a single witness. It is not the number or the quantity, but the quality that is material. The evidence has to be weighed and not counted. It is open to a competent court to fully and completely rely on a solitary witness if his testimony has a ring of truth, is cogent, credible and trustworthy. The oral testimony of the victim is in consonance with medical evidence and there is no conflict between the two. It is not the case that the First Information Report was lodged after three days of the occurrence. The fact is that the police came into motion

soon after the occurrence when DD No.63-B (Ex.PW-6/1) was recorded and the Investigating Officer moved an application (Ex.PW4/1) to record the statement of the injured. Non-recovery of weapon of offence is not fatal. Discrepancies/omissions and improvements highlighted by the appellant's counsel are not of that magnitude to affect the core of prosecution case and to discard the injured's statement. Omission of the victim to not disclose the name of the assailant to the doctor cannot be taken as none was the author of the injuries or that it were accidental in nature. The complainant attributed specific motive to the appellant for inflicting injuries as he had suspected him of teasing his wife. All the relevant contentions of the appellant have been taken into consideration by the Trial Court and the impugned judgment is based upon fair appraisal of the evidence and warrants no interference.

6. The appellant was awarded Rigorous Imprisonment for two years with fine ₹500/- Nominal Roll dated 02.12.2010 shows that he remained in custody for three months and eighteen days. The injuries suffered by the victim were grievous in nature and he remained admitted in hospital for three days. Repeated blows on vital organs were caused with blunt object deliberately and intentionally. The incident pertains to the year 1998. The appellant was not involved in any criminal case and

was employed as 'Karigar' at Aggarwal Sweets House on the day of incident. Considering these circumstances, Sentence order is modified and the substantive sentence is reduced to one year. Other terms and conditions of the order are left undisturbed. The appellant shall pay ₹25,000/- as compensation to the victim Umesh Kumar and shall deposit it within 15 days in the Trial Court. The amount shall be released to the victim after notice.

7. The appeal stands disposed of in the above terms. The appellant shall surrender before the Trial Court on 09.12.2013 to serve the remaining period of sentence. The Registry shall transmit the Trial Court records forthwith.

(S.P.GARG)
JUDGE

December 02, 2013
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