

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

RESERVED ON : 1st October, 2013

DECIDED ON : 24th October, 2013

+ CRL.A.640/2001

PRITAM CHAUHAN Appellant
Through : Mr.Sudhir Batra, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent
Through : Mr.M.N.Dudeja, APP.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Pritam Chauhan (the appellant) has questioned the legality of the judgment dated 25.08.2001 of learned Additional Sessions Judge in Sessions Case No.28/2000 arising out of FIR No.221/1999 registered at Police Station Sarita Vihar by which he was convicted under Section 307 IPC and awarded RI for three years with fine ₹1,000/-. The facts emerging from the record of the case are as under:

2. On 18.05.1999 at about 07.15 P.M. near Madanpur Khadar, Pritam Chauhan inflicted injuries with a knife to Sunder Singh in an attempt to murder him. The police machinery came into motion after recording Daily Diary (DD) No.43B (Ex.PW-10/A) at 07.45 P.M. at

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Police Station Sarita Vihar about a quarrel near Girls school, Madanpur Khadar and the investigation was taken over by SI Parveen Kumar who with Ct.Madan Pal went to the spot. The injured had already been taken to Holy Family hospital. SI Parveen Kumar recorded Sunder's statement (Ex.PW-3/A) in the hospital and lodged First Information Report after making endorsement (Ex.PW-11/A) thereon. During the course of investigation, statements of witnesses conversant with the facts were recorded and the accused was arrested. Injuries suffered by the victim were 'grievous' in nature. After completion of the investigation in a charge-sheet submitted in the court, Pritam Chauhan was duly charged and brought to trial. The prosecution examined 11 witnesses to establish the appellant's guilt. In 313 Cr.P.C. statement, he pleaded false implication and examined Rajender Singh (DW-1) 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 of the offence under Section 307 IPC. Being aggrieved, he has preferred the appeal.

3. Appellant's counsel urged that the trial court did not appreciate the evidence in its true and proper perspective and ignored the vital circumstance of non-recovery of crime weapon. The injuries on the

victim's body were not 'dangerous' in nature and were described 'grievous' without any basis. Ingredients of Section 307 IPC were missing. Counsel adopted alternative plea for appellant's release on probation as he has a family with two children to take care of them and had remained in custody for 15 days before release on bail. He offered to pay reasonable compensation to the victim. Learned Additional Public Prosecutor urged that multiple injuries were inflicted on various body parts of the victim and impugned judgment requires no interference.

4. I have considered the submissions of the parties and have examined the record. After the occurrence took place at 07.15 P.M., Daily Diary (DD) No. 43 B (Ex.PW-10/A) was recorded at 07.45 P.M. at Police Station Sarita Vihar and SI Parveen Kumar lodged First Information Report at 09.30 P.M. after recording victim's statement without any delay. In the first version (Ex.PW-3/A) the victim narrated graphic account as to how Pritam Chauhan brought knife from his house and inflicted multiple injuries on the body. In Court statement as PW-3 he proved the version given to the police at the first instance without any variation or major improvements. He described the genesis of the occurrence that at about 07.00 P.M. when he, Umesh, Babli and five-six boys after playing cricket in the fields were coming to their respective

houses, Pritam Chauhan slapped a boy aged 8 or 10 years coming from the opposite direction. When he intervened to protect the child by taking him in his lap, the appellant in annoyance brought a knife from his house and inflicted injuries on his left cheek near his eye. The attempt to struck a knife blow on stomach was foiled with a bat in his hand. The appellant again gave a blow on his neck but he took it on his left arm and was assaulted on his left leg, palm and fingers. Several knife blows given blindly made him unconsciousness and he was taken to Holy Family hospital where he lodged report (Ex.PW-3/A). In the cross-examination, the witness disclosed that Shammi was the child rescued by him. He denied to have given a false statement at the instance of Ravinder and Parsa Pandit. It reveals that no discrepancy could be elicited in his cross-examination to discredit his version. Prior to the occurrence, the victim and the appellant were playing cricket together and there was no animosity between them. No ulterior motive was assigned to the victim in the cross-examination to falsely implicate him. The material facts deposed by the injured remained unchallenged in the cross-examination. PW-5 (Umesh) who took Sunder to hospital fully corroborated the victim's version and attributed specific role to the appellant in causing injury with a knife on various body organs. The appellant fled the spot

after causing injuries. Sunder lost consciousness and fell down. PW-4 (Babli) who was with the complainant at the time of incident deposed on similar lines and gave detailed account of the incident and specifically deposed that Pritam Chauhan stabbed Sunder by a knife and caused injuries on cheek, hands and leg. Despite lengthy cross-examination, his testimony could not be shattered on material facts. PW-9 (Ram), victim's brother, received a call from his parents and was informed that Sunder was stabbed by the accused. He reported the matter to the police station Sarita Vihar. The injuries sustained by the victim were not accidental or self-inflicted. The testimony of the injured witness is accorded a special status in law and no good grounds exist to disbelieve the injured. 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.”

5. 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.” [Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]

6. Ocular and medical evidence are not at variance. PW-1 (Dr.Sudha Kanojia), CMO, Holy Family Hospital examined Sunder on 18.05.1999 vide MLC (Ex.PW-1/A) and noticed multiple lacerated wounds on the body. PW-2 (Dr.Naresh Chander Gaur), Orthopedics Surgeon found two wounds at the back of left fore-arm 9 X 5 c.m. over the middle 1/3rd and 6 X 4 c.m. distal 1/3rd left fore arm with deep

extensive damage to most of the muscles and the back of left forearm. Another wound 4 X 1 c.m. on the palm of right hand was found. The patient underwent operation on 19.05.1999 and remained in hospital for treatment till 24.05.1999. In 313 statement, the appellant did not give plausible explanation to the incriminating circumstances proved against him. Non-recovery of crime weapon is not fatal as injuries were caused with 'sharp weapon'. The Trial Court after considering the rival contentions of the parties concluded that the appellant was the author of the injuries. The findings are based upon proper appreciation of evidence and need no interference. The prosecution, however, could not establish commission of offence under Section 307 IPC. The injuries caused to the victim were not on vital organs. The crime weapon was an ordinary vegetable knife. There was no pre-plan or meditation to inflict injuries to the victim. Prior to the occurrence, the victim and the appellant familiar with each other were together playing cricket without any confrontation whatsoever. Only on their way back, a child aged 8 or 10 years unexpectedly came from the opposite direction and the appellant slapped him. The complainant's interference to rescue the child annoyed him and he in a sudden fit of rage inflicted injuries to the victim after fetching a knife from his house. To justify conviction under Section 307 IPC, it is

not essential that bodily injury capable of causing death should have been inflicted. It is sufficient to justify a conviction under Section 307 IPC if there is present an intent coupled with some overt act in execution thereof. The nature of weapon used, the intention expressed by the accused at the time of the act, the motive for commission of the offence, the nature and size of the injuries, the parts of the body of the victim selected for causing injuries and the severity of the blow or blows are vital factors that can be taken into consideration in coming to a finding whether in a particular case the accused can be convicted of an attempt of murder. The Section may apply even if no hurt is caused. The causing of hurt is merely an aggravating circumstance. 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 Section 307 IPC.

7. Apparently, the appellant had no intention to cause bodily injuries sufficient to cause death to the victim or had the knowledge that injuries inflicted by him could be fatal. The prosecution was nevertheless able to establish that injuries were caused voluntarily by the appellant with a sharp weapon and thus he can be held guilty for committing offence under Section 326 IPC. The conviction is altered from Section 307 to Section 326 IPC.

8. The appellant was sentenced to undergo RI for three years with fine ₹1,000/-. The appellant has suffered the agony of trial/appeal for about 14 years. He is a married man and has two children to look after but that itself is not a ground to grant the benefit of probation to him. Sunder Singh sustained multiple injuries on his body and remained admitted for 5/6 days in Holy Family Hospital and underwent an operation. The injuries were 'grievous' caused by sharp weapon. The muscles were found damaged and were to be repaired. Repeated multiple blows were inflicted with knife intentionally to the victim who in good gesture had attempted to save a child from the beatings at the hands of the appellant. In *Hazara Singh v. Raj Kumar & Ors.* 2013 CrI.L.J.2299 the Supreme Court observed:

“ It is unfortunate that the High Court failed to appreciate that the reduction of sentence merely on the ground of long pending trial is not justifiable...

It further observed:

“..... Mr. Jain said that the High Court has enhanced the fine and compensated the injured and, therefore, we should not enhance the sentence. Accepting such a submission would mean that if your pockets can afford, commit serious crime, offer to pay heavy fine and escape tentacles of law. Power of wealth need not extend to overawe court processes.”

9. In *Ankush Shivaji Gaikwad vs. State of Maharashtra* (2013) 6 SCC 770 it is emphasized that victim is not to be forgotten in criminal justice system and Section 357 Cr.P.C. should be read as imposing mandatory duty on the court to apply its mind to the question of awarding compensation in every case. Considering the facts and circumstances of the case the sentence order is modified to the extent that the substantive sentence under Section 326 IPC shall be two years. The appellant shall pay ₹50,000/- as compensation to the victim and shall deposit it with the Trial Court within 15 days to be released to the victim/complainant after due notice.

10. The appellant is directed to surrender and serve the remaining period of sentence. For this purpose, he shall appear before the Trial court on 06.11.2013. The Registry shall transmit the Trial Court records forthwith.

11. The appeal stands disposed of in the above terms.

(S.P.GARG)
JUDGE

October 24, 2013/sa