

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

RESERVED ON : 4th September, 2013

DECIDED ON : 17th September, 2013

+ CRL.A. 221/2003

KAMAL JAISWAL & ORS. Appellants

Through : Mr.Manish Aggarwal, Advocate
with Ms.Parul Sharma, Advocate.

VERSUS

STATE OF NCT OF DELHI Respondent

Through : Mr.Navin K.Jha, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Kamal Jaiswal (A-1), Arun Punia (A-2), Shekar Verma (A-3) and Sushil Kumar @ Shalu (A-4) impugn a judgment dated 24.03.2003 and sentence order dated 27.03.2003 in Sessions Case No.102/2002 arising out of FIR No.142/2000 registered at Police Station Bhajan Pura by which they were convicted under Sections 307/427/34 IPC and sentenced to undergo RI for two years with fine ₹10,000/- each under Section 307/34 IPC and RI for six months with fine ₹5,000/- each under Section 427/34 IPC.

2. Allegations against the appellants were that on 28.05.2000 at about 10.30 P.M. at Milan Restaurant, C-6, DDA Market, Yamuna Vihar they inflicted injuries to Kapil Arora with swords and knives in an attempt to murder him. They also caused loss to the victim's property by smashing the furniture and other articles in the restaurant. The police machinery was set into motion when information was conveyed at 11.05 P.M. that an individual has been stabbed with a sword and Daily Diary (DD) No.66 B (Ex.PW10/A) was recorded. The investigation was assigned to SI Rajesh Dangwal who with Ct.Jagat went to the spot. The First Information Report was lodged after recording victim-Kapil Arora's statement (Ex.PW-6/A) on 29.05.2000 at 12.45 A.M. During the course of investigation, statements of witnesses conversant with the facts were recorded. The appellants were arrested. After completion of investigation a charge-sheet was submitted against them in the court. They were duly charged and brought to trial. The prosecution examined 10 witnesses to establish its case. In their 313 statements, the appellants pleaded false implication but did not adduce evidence in defence. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court held all the appellants perpetrators of the crime for the offences mentioned previously and sentenced them. It is relevant to note that

during pendency of the appeal, Sushil Kumar (A-4) expired and the proceedings were dropped as abated by an order dated 24.05.2013.

3. PW-6 (Kapil Arora) is the victim/injured. The First Information Report was lodged on his statement (Ex.PW-6/A) recorded on 29.05.2000 in the hospital without inordinate delay. Kapil Arora gave graphic detail as to how the accused persons came at about 10.30 P.M. on 28.05.2000 at his restaurant and on his declining permission to consume liquor inside the restaurant, they got annoyed and started causing damage to the articles/furniture. When he attempted to restrain them, they assaulted him with swords and knives. The police had already received intimation about the quarrel at 11.05 P.M. when DD No.66 B (Ex.PW10/A) was recorded. MLC (Ex.PW-8/A) was prepared where the victim/patient was examined at 11.20 P.M. The victim disclosed to the examining doctor that he was stabbed about 40 minutes prior to his arrival in the GTB hospital. The injuries were 'simple' caused by sharp object. While appearing in the court, PW-6 (Kapil Arora) proved the version given to the police at the first instance without any major improvements or variations. He attributed specific role to all the appellants for inflicting injuries on his body on his refusal to allow them to consume liquor in the restaurant. In the cross-examination the injuries sustained by the witness

were not challenged. No material contradictions/discrepancies emerged regarding the version narrated by the complainant/injured. It was not suggested that the injuries were self-inflicted or accidental in nature or the appellants were not its author. The appellants did not deny their presence inside the restaurant, at the time of occurrence. No ulterior motive was proved to prompt the complainant to falsely implicate the appellants for the injuries sustained by him and to let the real culprits go scot free. The appellants had prior acquaintance with him and they all lived in the same locality. There was no previous animosity among them. The appellants got enraged when PW-6 (Kapil Arora) did not permit them to consume liquor in the restaurant. Testimony of PW-6 is in consonance with medical evidence and there is no inconsistency between the two. The testimony of a stamped witness has its own relevance and efficacy. It is accorded a special status in law. This is a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of crime and because the witness will not want to let the actual assailant to go unpunished merely to falsely involve a third party for the commission of the offence. 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. It is true that PW-3 (Ct.Preet Singh) and PW-5 (Ct.Jagat Singh) have given inconsistent version to whom the investigation was assigned. However, this lapse does not dilute the credibility of injured’s statement. Counsel pointed out that victim had criminal antecedents and was involved in a number of criminal cases. The contention has no merit as these are not enough to discard the testimony of the complainant. It does not give licence to the appellants to take law into their hands to cause injuries even to a person of criminal background. Non-recovery of weapon of offence is inconsequential as PW-2 (Dr.Zulfikar) was of the opinion (Ex.PW-2/A on MLC Mark A) that the injuries were caused with a ‘sharp’ weapon.

5. The appellants were convicted under Section 307/34 IPC. Admittedly, they had gone to Milan Restaurant at about 10.30 P.M. with an intention to consume liquor. When PW-6 (Kapil) did not allow them, a quarrel ensued and in a rage, they caused injuries to him. Kapil Arora was taken to GTB hospital and was medically examined. The injuries were ascertained 'simple' in nature. He was discharged from the hospital the next day. The injuries were not sufficient in the ordinary course of nature to cause death. The appellants did not inflict repeated forceful blows with weapons on vital organs of the body. The victim and the assailants were known to each other and they lived in the same locality. No previous animosity surfaced between the parties. The weapons used could not be recovered during investigation to ascertain if these were 'deadly' ones. At no stage prior to the occurrence any threat was extended by the appellants to eliminate him. No attempt to cause physical assault or harm was made earlier. I am conscious that to justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge or under circumstances mentioned in Section 307 IPC. It is sufficient by law, if there is present an intent coupled with some overt act in execution thereof.

It depends upon the facts and circumstances of each case whether accused had the intention to cause death or knew in the circumstances that his act was going to cause death. 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 the size of the injuries, the parts of the body of the victim selected for causing the injuries and the severity of the blow or blows are important factors to be taken into consideration in arriving findings under Section 307 IPC. In the instant case there was no obstruction to the appellants to inflict blows with swords and knives repeatedly to cause dangerous injuries to the complainant. From the facts and circumstances of the case it is not prudent to hold that an attempt to murder the victim was made. The prosecution was able to establish that the appellants in furtherance of their common intention voluntarily caused simple injuries with sharp object on a trivial issue at the spot. The appellants are liable to be punished under Section 324/427/34 IPC.

6. Under Section 307 IPC the appellants were sentenced to undergo RI for two years with fine ₹10,000/- each. A-4 (Sushil Kumar) has passed away. A-1 (Kamal Jaiswal) remained in custody for some period prior to his release on bail during trial. The appellants have suffered agony of trial/appeal for about 13 years. It is significant to note

that during trial, the complainant and the appellants settled the disputes and filed a compromise deed in the court. Since Section 307 IPC was not compoundable, the compromise was not taken into consideration. However, the sentence order specifically records settlement among the victim and the appellants and for that reason lenient view was taken and the appellants were sentenced to undergo RI for two years each only. Since the offence has been altered to Section 324/34 IPC and the matter has already been settled by the complainant/victim with the appellants, I am not inclined to award any further substantive sentence to the appellants. The fine imposed by the Trial Court shall be released to the victim as compensation.

7. The appeal stands disposed of in the above terms. The Registry shall transmit the Trial Court records forthwith.

(S.P.GARG)
JUDGE

17th September, 2013
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