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

+ **CRL. A. 368/2003**

Date of Decision: 07th August, 2013

RAM NARAYAN SHARMA @ LILOO Appellant
Through: Mr. B.R. Sharma, Advocate.

versus

STATE (GNCT) DELHI Respondent
Through: Ms. Fizani Husain, APP for the
State.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This appeal is arising out of the judgment dated 27th March, 2003 and order of conviction dated 28th March, 2003 in FIR No. 371/2000 under Sections 308/34 Indian Penal Code, 1860 ('IPC') registered at Police Station Kotla Mubarakpur vide which the appellant was convicted for offence under Section 324 IPC and was released on probation for a period of two years on furnishing a bond in the sum of Rs.5,000/- with one surety in the like amount. He was

also directed to deposit Rs.10,000/- by way of compensation to be paid to the injured.

2. Before coming to the grounds of the appeal, it will be in the fitness of things to have a narration of the brief history of the case.

3. On 12th October, 2000 on receipt of DD No. 24A regarding quarrel at Gurudwara road, SI Shiv Raj Singh (PW6) along with Constable Shripal reached the spot. Constable Ram Vilas (PW4) recorded DD No. 25A, Ex.PW3/B, which revealed that injured has been admitted to hospital. As such, SI Shiv Raj Singh along with Constable Ramvilas reached All India Institute of Medical Sciences where injured Surender Singh was found admitted. He recorded the statement of injured Surinder Ex.PW1/A, which culminated into registration of FIR. Blood stained clothes of injured were seized. Injuries on the person of Surender Singh were opined to be simple caused by sharp edged and blunt object. Accused persons were arrested. After completing investigation, charge sheet was submitted in the Court against Janak Raj Sharma, Ram Narain @ Liloo, Shivam Sharma and Nikhil Sharma.

4. On commitment of the case to the Court of Sessions, as offence under Sections 308/34 Indian Penal Code is exclusively triable by the Court of Session, charge for offence under Section 308/34 Indian Penal Code was framed against the accused persons to which they pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined seven witnesses. All the incriminating evidence was put to accused persons while recording their statements under Section 313 Criminal Procedure Code wherein they denied the case of the prosecution and alleged false implication in the case.

5. Vide impugned order dated 27th March, 2003, co-accused Janakraj, Shivam and Nikhil were acquitted while observing that no convincing evidence has come on record to connect them with the crime. As regards the present appellant, namely, Ram Narayan @ Liloo is concerned, it was held that offence under Section 308 IPC is not made out against him, however, offence u/s 324 IPC is made out, accordingly, he was convicted under Section 324 IPC and was sentenced separately, as stated above. This order is the subject matter of the present appeal.

6. I have heard Mr. B.R. Sharma, learned counsel for the appellant and have perused the written submissions filed by Ms. Fizani Husain, learned Additional Public Prosecutor for the State and have gone through the record.

7. The only submission made by learned counsel for the appellant challenging the impugned order is that the material prosecution witnesses did not support the case of the prosecution, as such they were declared hostile but the learned Sessions Judge has convicted the appellant.

8. Rebutting the submissions of learned counsel for the appellant, it was submitted by learned APP for the State that the injured has categorically deposed about the role of the present appellant and his testimony finds corroboration from PW2 Manoj Kumar. Further the ocular testimony of the witnesses find corroboration from the medical evidence as such the appellant was rightly convicted. The trial Court has already taken a lenient view by convicting the appellant under Section 324 IPC and releasing him on probation of two years. As such, it was submitted that there is no infirmity in the impugned order which calls for interference. Appeal is liable to be dismissed.

9. I have given my considered thoughts to the respective submissions of learned counsel for the parties and have perused the record.

10. PW1 Surender Kumar is the injured. He came to depose before the Court on 23rd March, 2002 and it has come in his deposition that about a year back, at about 7 p.m., he along with his friend Manoj was going for purchasing milk at Gurudwara Road, Kotla Mubarakpur. He was purchasing milk from dairy and some quarrel was going on between Manoj, his friend, and other persons. When he tried to intervene, he was hit with a bottle on head and then he broke the bottle and hit on right arm and right thigh. Blood ooze out from his arm and thigh. He caught hold of the person who had attacked him and was taking him to police station, but some of his friends advised him to go first to hospital for treatment, as such since he started moving towards the hospital, the attacker was released. Soon thereafter, somebody hit him with *fawda* on his head and he became unconscious. He identified Shivam, Nikhil and Ram Narayan who attacked him and further deposed that he was attacked by bottle by Ram Narayan @Liloo whereas Shivam and Nikhil were grappling

with him, however, he could not identify the fourth accused Janakraj. His statement was recorded by the police which is Ex.PW1/A which bears his signature at point A. Since the witness did not support the case of the prosecution in all material particulars, he was cross-examined by learned Additional Public Prosecutor and in his cross-examination, he admitted that the quarrel took place in front of Gurudwara Road Kotla Mubarakpur. He denied that accused Ram Narayan @ Liloo started abusing him or that accused Janakraj caught hold of him. He denied that accused Ram Narayan had broken the bottle before attacking him or that accused Nikhil and Shivam caused injuries with bricks on his person. He was confronted with his earlier statements Ex.PW1/A and Ex.PW1/B where these facts were so recorded. In cross-examination by learned defence counsel, he admitted that he had not given names of Shivam and Nikhil either in his earlier statement Ex. PW1/A or in his statement under Section 161 Cr.P.C. He denied the suggestion that accused Ram Narayan @ Liloo did not attack him with bottle on his person.

11. PW2 Manoj Kumar is the friend of PW1 Surender Kumar and this witness has deposed that on 13th October, 2000 at about 8:30 p.m.

he along with his friend Surender Kumar was strolling in the area. Accused Janakraj and Ram Narayan called Surender and started abusing him. Accused Janakraj slapped on the face of Surender whereas Ram Narayan started beating him. Shivam hit with a *fawda* on the person of Surender due to which he fell down. Nikhil attacked on the arm of Surender with bottle. Thereafter, he ran away from the spot and got some persons from the village at the spot and took Surender to hospital. Since this witness also did not support the case of the prosecution in all material particulars, he was also cross-examined by learned APP for the State and in cross-examination he admitted that accused Ram Narayan @ Liloo abused Surender who objected to the same. He also admitted that accused Janakraj had caught hold of Surender, Ram Narayan after breaking the bottle attacked on the person of Surender on his head and right arm but did not attack on the right leg in his presence. He, however, admitted that in his statement before the police he had stated that Ram Narayan had attacked on the right thigh of Surender. He admitted that accused Shivam and Nikhil gave beatings to Surender. In cross-examination by learned defence counsel he admitted that he had not given the

names of Shivam and Nikhil although they were known to him prior to the occurrence and they are sons of the other accused. He denied that the accused persons had not caused any injury on the person of Surender.

12. It is now to be seen as to what is the effect of PW1-Surender Singh and PW2-Manoj Kumar not supporting the case of the prosecution in its entirety and they being declared hostile.

13. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Code of Criminal Procedure, the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it

supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled cannon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution.

14. Dealing with the legal position with regard to a hostile witness in the light of Section 154 of the Evidence Act, 1872 in *Prithi v. State of Haryana (2010) 8 SCC 5363* it was held as under:

“Section 154 of the Evidence Act, 1872 enables the court in its discretion to permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Some High Courts had earlier taken the view that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part, but must be excluded altogether. However this view has not found acceptance in later decisions. As a matter of fact, the decisions of this Court are to the contrary. In *Khujji @ Surendra Tiwari v. State of M.P. (1991) 3 SCC 627*, a three-Judge Bench of this Court relying upon earlier decisions of this Court in *Bhagwan Singh v. State of Haryana (1976) 1 SCC 389*, *Sri Rabindra Kumar Dey v. State of Orissa (1976) 4 SCC 233* and *Syad Akbar v. State of Karnataka (1980) 1 SCC 30* reiterated the legal position that: (*Khujji case*, SCC p. 635, para 6)

6. ...the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof.”

15. In *Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624*, Hon’ble Supreme Court again reiterated that testimony of a

hostile witness is useful to the extent to which it supports the prosecution case. When a witness is declared hostile and cross-examined with the permission of the court, his evidence remains admissible and there is no legal bar to have a conviction upon his testimony, if corroborated by other reliable evidence.

16. In ***Ramesh Harijan v. State of Uttar Pradesh (2012) 5 SCC 777*** it was reiterated that the evidence of such witnesses could not be treated as effaced or washed off the record altogether but the same could be accepted to extent that their version was found to be dependable on a careful scrutiny thereof. A similar view has been reiterated by Hon'ble Supreme Court in ***Balu Sonba Shinde v. State of Maharashtra (2002) 7 SCC 543***, ***Ganga Kanojia and Anr. V. State of Punjab (2006) 13 SCC 516***, ***Radha Mohan Singh @ Lal Saheb v. State of U.P. AIR 2006 SC 951***, ***Sarvesh Narain Shukla v. Daroga Singh and Ors. AIR 2008 SC 320*** and ***C. Muniappan and Ors. v. State of Tamil Nadu AIR 2010 SC 3718***.

17. This being the legal position, even if PW1 and PW2 in all material particulars, have not supported the case of the prosecution,

the Court can rely upon that part of their testimony which supports the case of the prosecution, corroborated by once reliable evidence.

18. It is true that in his initial statement Ex.PW1/A, the injured did not implicate Shivam and Nikhil, but that by itself, cannot be a ground to disbelieve his testimony in toto particularly when his testimony find corroboration not only from PW2 Manoj Kuamr but also from the injuries sustained by him.

19. As noted by the Hon'ble Supreme Court in *Sorabh vs. State of M.P. (1972), 3 SCC 751*, one hardly comes across a witness whose evidence does not contain a grain of untruth or who does not resort to exaggeration, embroidery or embellishment. It is for the Court to separate the grain from the chaff and then believe that part of the evidence which is found to be true and correct. Some exaggeration or embellishment may be attributed to over anxiety leading to the witness giving an exaggerated account of the incident witnessed by him or sometimes it can be a deliberate attempt to cover embellishment. If the core part of the testimony of a witness inspires confidence and can be safely acted upon, his testimony need not be rejected even if some other part of his testimony is not proved to be

correct. It was held by the Hon'ble Supreme Court in ***Ganga Dhar v. State of Orissa AIR 2002 SC 3633*** that even if major portion of the evidence is found deficient, the conviction can be based on the residual evidence, if it is otherwise sufficient to prove the guilt attributed to him. Even if a part of the testimony of a witness appears to be untrue or false, that by itself does not destroy his testimony from beginning till end. It is only where the Court does not find it possible to separate truth from falsehood on account of grain and chaff being inextricably mixed up that the Court has to discard the entire testimony of the witness in toto.

20. In ***State of Uttar Pradesh vs. Shankar AIR 1981 SC 897***, it was held by Hon'ble Supreme Court that the mere fact that the witness had not told the truth in regard to a peripheral matter would not justify a rejection of his evidence. It was reminded that time and again the Court had pointed out that in this country, it is rare to come across the testimony of a witness which does not have a fringe or embroidery of untruth although his evidence may be true in the main.

21. In ***Bhagwan vs. State of Maharashtra AIR 1974 SC 21***, the Hon'ble Supreme Court held that the maxim "falsus in uno falsus in

omnibus” is not to be blindly invoked in appearing evidence adduced in our Courts where witness seldom tell the whole truth but often resort to exaggeration embellishment and padding up to support of however, true in the gain. It is the function of the Court to disengage the truth from falsehood and to accept what it finds to be true and reject the rest. It is only where truth and falsehood are inextricably mixed up polluting the beyond and refinement the entire fabric of the narration given by witness that the Court might be justified in rejecting his evidence in toto. The same view was taken in ***Laxman vs. State of Maharashtra AIR 1974 SC 308***, where the Hon’ble Court held that the witness cannot be branded as liars in toto and their testimony rejected outright even if parts of their statement are demonstrably incorrect or doubtful. It was observed that an astute Judge can separate the grain of acceptable truth from the chaff of exaggeration and improbabilities, which cannot be safely or prudently accepted and acted upon. In ***Rai Singh vs. State of Haryana AIR 1971 SC 2505***, the Hon’ble Supreme Court held that in each case the Court has to appraise the evidence to see to what extent it is worthy of acceptance and merely because in one respect the court considers it

unsafe to rely on the testimony of a witness it does not necessarily follow as a matter of law, that it must be discarded in all other respects as well. The Court has to sift the evidence with care in each case and on full consideration of all the relevant material circumstances to come to a decision, which part of the testimony of the witness to accept, and which to reject.

22. In *Bholu vs. State of Haryana AIR 1976 SC 2499*, the Hon'ble Supreme Court reiterated that the Court should make every effort to disengage the truth from the falsehood and to sift the grain from the chaff rather than take the easy course of rejecting the entire prosecution case merely because there are some embellishments.

23. So far as the present appellant is concerned, in the initial statement itself made by injured Surender Ex.PW1/A which becomes bedrock of investigation, he had categorically stated that the appellant abused him and when he asked him not to do so then he broke the bottle and hit the same on his head and other parts of the body. Same role was ascribed by him when he entered the witness box. The mere fact that as regards the role of other accused person, it was not believed by the learned Additional Sessions Judge and as such they

were acquitted is not sufficient to discard his testimony. The appellant has not alleged any animosity, ill will or grudge against PW1 Surender Singh for which reason he would falsely name him. It is not in dispute that he sustained injuries in the incident. The appellant has neither disputed the incident nor sustaining of injuries by the witnesses. That being so, it is highly improbable that he would get involved the appellant with whom he had no axe to grind. Moreover, his testimony find corroboration from PW2 Manoj Kumar who also in cross-examination by APP for the State has admitted that the appellant abused Surender and on his raising objection to the same the appellant brought a bottle and attacked the person of Surender on his head and right arm.

24. The ocular testimony of both the witnesses find corroboration from the medical evidence, inasmuch as, the injured was taken to All India Institute of Medical Sciences Hospital where he was examined by Dr. Shajal Khaldar who prepared his MLC Ex.PW7/A. PW7 who was acquainted with the handwriting and signatures of Dr. Shajal Khaldar and according to him as per MLC Surender Kumar had sustained following injuries;

- (i) CLW over right lower abdomen;
- (ii) CLW over right parieto-occipital region;
- (iii) Incised wound over right arm;
- (iv) Superficial venous injury actively bleeding;

and opined that injuries were caused by sharp edged object.

25. During the course of investigation blood stained shirt and pyjama of injured were also seized by the Investigating Officer of the case vide memo Ex.PW6/C.

26. Under the circumstances, keeping in view the statement of the injured which find due corroboration from PW2 Manoj who confirmed the presence of the appellant at the spot at the time of incident corroborated by MLC, learned Additional Sessions Judge rightly convicted the appellant. Since the injuries on the person of the injured were found to be simple, as such learned Sessions Judge observed that offence under Section 308 IPC is not made out. Instead offence under Section 324 IPC was proved. No infirmity can be found with regard to the findings of the learned Additional Session Judge.

27. As regards, the quantum of sentence, the learned Additional Session Judge has already take a liberal view by releasing the appellant on probation for a period of two years which has expired

long back. That being so, there is no merit in the present appeal. The same is accordingly dismissed.

28. Learned Additional Sessions Judge has also awarded a sum of Rs.10,000/- as compensation to be paid to the injured after the expiry of period of appeal. The amount was already deposited with learned Trial Court. As such, a copy of the order along with trial Court record be sent back with the directions to issue notice to the injured for receiving the amount of compensation.

**SUNITA GUPTA
(JUDGE)**

AUGUST 07, 2013

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