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

+ **CRL.A. 488/2003**

Date of Decision: 21st August, 2013

1. DEEPAK KAUSHIK
2. ANURAG
3. NITIN JAIN

..... Appellants

Through: Mr. Dinesh Kumar Gupta,
Advocate.

versus

GOVT OF NCT OF 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. Challenge in this appeal is to the judgment dated 11.03.2003 and order on sentence dated 13.03.2003 arising out of Session Case No.11/2002 bearing FIR No.166/2000 P.S. Model Town u/s 308/325/34 IPC vide which the appellants were convicted u/s 325/323/34 IPC and were released on probation of good conduct on entering into a bond in the sum of Rs.10,000/- with one surety in the like amount for a period of three years. They were further directed to

deposit a sum of Rs.5,000/- each as compensation to the two injured and another sum of Rs.5,000/- each as cost of the proceedings.

2. Succinctly stated, case of prosecution is that on 16.03.2000, information was received at P.S Model Town that a quarrel had taken place in Aryabhat Polytechnic, G.T. Karnal Road. D.D.No.10A was recorded on this information and was entrusted to Insp. Sudhir Kumar for investigation. SI Sudhir Kumar along with Const. Joginder Raj went to the spot where they learnt that the injured had been removed to Hindu Rao Hospital. Thereupon they went to Hindu Rao Hospital. Rakesh, son of Ram Niwas and Anoop, son of Ram Avtar were found to be admitted in injured condition. Both were declared fit for statement. SI Sudhir Kumar recorded the statement of Rakesh Yadav which became bed rock of investigation and FIR was registered.

3. During the course of investigation, the appellants were formally arrested. After completing investigation, charge-sheet u/s 308/325/34 IPC was submitted against them.

4. Charge for offence u/s 308/34 IPC was framed against the accused 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 the accused persons while recording their statement u/s 313 Cr.P.C wherein they denied the allegations made against them and claimed that they were innocent.

They further claimed that they had not demanded any DTC bus pass from the injured and had not inflicted any injury on their person. According to them, they had not attended the Polytechnic on the date of occurrence. However, they did not prefer to lead any evidence in defence.

5. After hearing learned counsel for the parties, vide impugned order dated 11.03.2003, learned Additional Session Judge convicted the appellants for offence u/s 325/323/34 IPC and sentenced as stated above. Feeling aggrieved by the same, present appeal has been preferred.

6. I have heard Mr. Dinesh Kumar Gupta, Advocate for the appellant and Ms. Fizani Hussain, learned Additional Public Prosecutor for the State and have also perused the record.

7. It was submitted by learned counsel for the appellant that except for examining the injured there is no other independent witness. Although, it has come on record that there were many other students available but none were examined. Reliance was placed on ***Deepak Kumar Vs. Ravi Virmani and Another***, (2002) 2 SCC 737.

It was further submitted that the weapon of offence has not been seized. Moreover the blood stained soil was not seized. The concerned doctor who examined the injured has not been produced. Instead some other doctor was examined who merely identified the

signature of the doctor who prepared the MLC. Even the X-Ray of one of the injured has not been placed on record. It was submitted that in fact it was an election rivalry. The appellants have been falsely implicated in this case in order to keep them away from election. The injuries were self-inflicted. Moreover, if such an incident had taken place, the school authorities would have taken action against the appellants but no such action was taken. Under the circumstances, it was submitted that prosecution has failed to bring home the guilt of the appellants beyond shadow of doubt. As such they are entitled to be acquitted.

8. Rebutting the submission of learned counsel for the appellant, it was submitted by learned Additional Public Prosecutor that the injured are the best persons to depose about the incident and there is no reason to disbelieve their testimony. Even if no other independent witness has been examined that *ipso facto* is no ground to ignore the testimony of the injured. The weapon of offence could not be seized as all the appellants were released on anticipatory bail, as such, there was no occasion to have custodial interrogation of the appellants for recovery of weapon of offence. Non-seizure of blood stained soil does not cause any dent on the prosecution version. For non-examination of the doctor, the Court has already taken a liberal view by convicting the appellants only u/s 325/323 IPC. Moreover, a

lenient view has already been taken by releasing the appellants on probation, as such the impugned order does not suffer from any infirmity which calls for interference. As such, the appeal deserves to be dismissed.

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

10. The material witnesses are PW-2 Anoop Yadav and PW-3 Rakesh Yadav. PW-2 Anoop Yadav has unfolded that on 16.03.2000, he was studying in M/s Aryabhat Polytechnic, G.T. Karnal Road. At about 12.15 p.m, he along with his cousin Rakesh Yadav was playing volleyball in the ground of Polytechnic. Accused Deepak, Anoop Raj Aggarwal and Nitin Jain came there and demanded DTC passes from him as well as from his cousin. They refused to hand over the same to them. Accused Deepak was having a cricket bat whereas the other two accused were having cricket wickets with them. On their refusal to hand over the DTC passes, they started beating them with cricket bat and cricket wickets. He sustained an injury on his right forearm which had received a fracture. He also received injury on his head and right arm which had to be stitched. They were removed to Bara Hindu Rao Hospital by their friends. His cousin Rakesh Yadav also

received injuries on his head. Police came to the hospital and recorded his statement.

11. PW-3 Rakesh gave confirmation to the facts unfolded by PW-2 Anoop Yadav and has deposed that on 16.03.2000 at about 12.15. p.m, he along with his cousin Anoop Yadav and some boys were playing volleyball. The three accused along with one more boy, namely, Vishwas came and demanded DTC pass from them. Nitin Jain was armed with a danda. On their refusal to give DTC pass, Nitin Jain gave a danda blow on his head. He sat down on the ground after receiving the said blow. Thereafter also, he was inflicted injuries on his head, hand and arms. Accused also gave beatings to his brother Anoop Yadav who also received injuries on his right ear, head and a fracture in his right forearm. Thereafter the accused fled away from the side of railway line where the wall was lying broken. They were removed to P.S. Model Town by Rahul Kumar in his car. Since they were bleeding profusely they were asked to go to Hindu Rao Hospital, as such they went to Hindu Rao Hospital where they were medically examined. Police came to the hospital and recorded his statement Ex.PW-3/A which bears his signature at Point A.

12. Both these witnesses sustained injuries in the incident. It is settled law that testimony of an injured witness stands on a higher pedestal than any other witness, inasmuch as, he sustains injuries in

the incident. As such, there is an inbuilt assurance regarding his presence at the scene of the crime and it is unlikely that he will allow the real culprit to go scot free and would falsely implicate any other persons. In *Abdul Sayeed v. State of Madhya Pradesh [(2010) 10 SCC 259]*, the Supreme Court held as under:

“28. 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.*, *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*.]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab*, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

“28. *Darshan Singh* (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time

when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana*). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

13. To the similar effect is the judgment reported in *Mano Dutt and Anr. Vs. State of UP*, (2012) 2 SCC (Cri) 226.

14. Both the injured were subjected to lengthy cross examination. Despite that nothing material could be elicited to discredit their testimony. There can be no dispute about their presence at the spot as they were the victims and had sustained injuries. Despite lengthy cross examination, they stood the test of cross examination and nothing could be elicited to show that the incident had not taken place in the manner projected by them or that they had not received injuries at the hands of the accused. The FIR in this case was recorded without any undue delay. According to the injured, the incident had taken place at about 12.15. p.m. Both the injured were examined at the hospital at about 12.45/1.00 p.m. The Investigating Officer had come to know about the incident and had initially gone to the spot from where he came to know that injured had been removed to hospital. Therefore, he went to hospital and recorded the statement of injured Rakesh Yadav and thereafter got the case registered against the accused at about 3.05 p.m. This reflects that there was no delay in lodging the FIR which rules out the possibility of their false implication. That being so, there is absolutely no reason as to why the victims would allow the real culprits to go scot free and to falsely name the accused in this case.

15. Moreover, ocular testimony of both these witnesses find corroboration from medical evidence. Prosecution had produced PW4 Dr. Sanjay Kumar and PW6 Dr. V.P. Singh from Hindu Rao Hospital in order to prove MLCs Ex.PW6/A and Ex.PW6/B in respect of PW Anoop Yadav and PW Rakesh Yadav. As per MLC Ex. PW-6/A of Anoop Yadav who was examined at Hindu Rao Hospital on 16.03.2000 at 1 p.m by Dr. A.K.Pathak, following injuries were found on his person:

1. CLW 1" x ½" on right ear.
2. CLW 2" x ¼" on right side scalp.
3. CLW left side scalp.
4. Contusion right side elbow 2" x 1"

Rakesh Yadav had only one injury on his person i.e. CLW 3"x 1"on the right side of the scalp.

16. The injury on the person of Anoop Yadav was described as grievous whereas on the person of Rakesh Yadav as simple. In both the cases the weapon used was blunt. As such from the medical evidence it stands proved that on 15.03.2000, at about 12 noon, Rakesh Yadav and Anoop Yadav sustained injuries with blunt object on their head and other parts of the body.

17. Learned counsel for the appellants has pointed out the discrepancy regarding the weapon of offence used in the commission of crime inasmuch as PW-2 Anoop Yadav has claimed that the

accused were carrying cricket bat and cricket wickets whereas PW-3 Rakesh deposed that the accused were carrying cricket bats and dandas. This is not such a major contradiction which may affect the veracity of the statement of the witnesses.

18. The other contradictions pointed out by the learned defence counsel is with regard to the number of persons who were present there along with the injured at the time of incident. This again is not such a contradiction which would negate the prosecution story.

19. As regards the submission that there is no independent witness despite the fact that the incident had taken place in the play ground and many students must be available, it had come in the statement of SI Sudhir Kumar that he made inquiries on the spot but the students present there had refused to make statement. It is common experience that there is general apathy on the part of the public persons to come to the rescue of the injured or to participate in police proceedings. Under these circumstances, even if there is no independent witness, that is hardly of any significance. Substantially, similar plea was taken in *Appabhai and Anr. Vs. State of Gujarat*, AIR 1998 SC 696, where it was held as under:-

“11. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that

civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused.”

20. Therefore, *Deepak Kumar*(supra) relied upon by learned counsel for the appellant has no application to the case in hand, inasmuch as in that case, although the independent witnesses were available at the place of occurrence but no explanation was given for their non-examination but as stated above in the instant case, the Investigating Officer has given the explanation that the students were not ready to make a statement.

21. The submission of learned counsel for the appellants that the injuries were self-inflicted is devoid of any substance inasmuch as this submission was made for the first time during the course of arguments and even no suggestion was given to the prosecution witnesses that the injuries were self inflicted nor any question was put to the doctor to ascertain whether the injuries can be self inflicted.

Rather both the witnesses have given a detailed version as to how they sustained injuries at the hands of accused persons.

22. As regards the submission that had any such incident taken place, school authorities would have taken action against the accused, it has come in cross-examination of PW3 Rakesh Yadav that he had made an oral complaint to the principal and he had pasted a notice not to allow accused Anoop Raj Aggarwal inside the polytechnic.

23. It has been alleged by learned counsel for the appellants that the injured had a motive to falsely implicate the accused persons inasmuch as they had a political rivalry; injured and the accused belong to rival factions and they were fighting election in Aryabhat Polytechnic; in order to keep the appellants away from election, this strategy was adopted by the injured by roping them in this false case. This submission again is devoid of substance inasmuch as both the injured have denied the suggestion that they have named the accused due to political enmity. Both PW-2 Anoop Yadav and PW3 Rakesh Yadav denied knowledge that there were two rival groups fighting election in Aryabhat Polytechnic, one from Delhi and one from Trans-yamuna or that due to political rivalry, they have falsely named the accused. Although, such a suggestion was given to the injured but the statement of the appellants recorded u/s 313 Cr.P.C is conspicuously silent regarding this fact. Rather the plea taken by

them was that the prosecution witnesses were the aspirants of political position in the college-student association and they wanted to influence their friends to vote in their favour, to which they refused, therefore, they were falsely implicated in this case. As such no plea was taken that due to political rivalry they were falsely implicated in this case. Moreover no evidence was led by the appellants to substantiate that in order to keep them away from election, the appellants were roped in this false case, as such the appellants have failed to assign any motive for which reason they would be named in this case.

24. As regards non-recovery of weapon of offence, at the outset, it may be mentioned that it is a matter of record that the appellants were released on anticipatory bail. That being so, the weapon of offence could not have been recovered. Even otherwise, the non-recovery of weapon of offence is not fatal. In *Mahender vs. State*, 2010 VII AD(Delhi) 645 it was held that non-recovery of weapon of offence during investigation is not such an important factor as to neutralise the direct evidence of complicity of accused in the murder of deceased.

25. Under the circumstances, it was rightly observed by learned Additional Session Judge that the prosecution had succeeded in establishing that the accused persons in furtherance of their common

intention caused injuries on the person of Rakesh Yadav and Anoop Yadav with blunt object.

26. The question as to whether a case u/s 308/34 IPC is made out against the appellants, it was observed that the injuries were not such that the injured had to remain in hospital for quite some time. In fact both the injured were declared fit for statement and they were discharged on the same day. The manner in which the incident took place also does not suggest that the accused had an intention or knowledge of inflicting injuries which would attract Section 308 IPC. As such offence u/s 308 IPC was not proved. However, Anoop Yadav had suffered fracture of the upper ulna and injuries on the person of Rakesh Yadav were simple in nature, as such offence u/s 325/323/34 IPC was made out. The impugned order does not suffer from any infirmity which calls for interference.

27. As regards quantum of sentence, learned Additional Session Judge had already taken a lenient view by releasing the appellants on probation of good conduct, keeping in view their young age. They were also directed to deposit a sum of Rs.5,000/- each as compensation to injured and another sum of Rs.5,000/- each as cost of the proceedings. No interference is warranted even in this regard. Under the circumstances, there is no merit in the appeal. Same is accordingly dismissed. The appellants are directed to deposit the

aforesaid amount, if not already deposited before the Trial Court within a period of 15 days from today. On deposit of this amount, it is impressed upon the learned Trial Court to issue notice to the injured to receive the compensation amount.

28. Copy of the order along with the Trial Court record be sent back for necessary compliance.

**SUNITA GUPTA
(JUDGE)**

AUGUST 21, 2013
as