

\$~R-22.

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

+ CRL.A. 110/2005

% **Judgment dated 06.11.2013**

PRADEEP @ SANJAY

..... Appellant

Through : Ms.Sangeeta Chandra, Amicus Curiae.

versus

STATE

..... Respondent

Through : Mr.Firoz Khan Ghazi, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Notice issued to the appellant could not be served for one or other reason. On the last date of hearing i.e. 6.10.2010 this Court had observed that notice issued to the appellant had been received back undelivered on account of the fact that he has left the premises where he was residing as a tenant. Mr.Sanjeev Mahajan, Advocate, was appointed as an Amicus Curiae to assist this Court on behalf of the appellant.
2. Today, the matter has come up for hearing. Since Mr.Mahajan, Amicus Curiae, is not present on behalf of the appellant, Ms.Sangeeta Chandra, Advocate, who is present in Court, is appointed as an Amicus Curiae on behalf of the appellant. Matter was passed over once to enable Ms.Chandra to go through the file.
3. Present appeal is directed against the judgment dated 13.12.2004 and order on sentence dated 21.12.2004 passed by learned Additional Sessions Judge, Delhi, whereby the appellant has been convicted under Section 307 IPC and directed to undergo seven years of Rigorous Imprisonment with fine of Rs.5000/- and in default of payment of fine, RI for six months. It

was also directed that benefit of Section 428 Cr.P.C. would be given to the appellant.

4. The necessary facts, to be noticed for disposal of the present appeal, are as under:

“2. On 30.10.2002 on receipt of DD No.26A ASI Captan Singh reached at the spot, Rivoli Cinema, Cannaught Place where constable Ramesh Kumar met him and got recorded the statement that he was posted at Cannaught Place as constable. On 30.10.2002, while he was on patrolling duty at about 7.30 P.M at Baba Khadag Singh Marg, near Rivoli Cinema, Cannaught Place he saw two boys were abusing an old man at the top of their voice “Sale Teenso Rupaye Udhar De De Hamay”. On refusal by the oldman, one of boy, whose named revealed later as Pradeep S/o Raja Ram, took knife from his another associate saying “Sale Paise Nahi Deta To Tera Kam Tamam Kar Deta Hoon”. He stabbed with knife on the stomach of old man and thereafter, both the boys started running towards Hanuman Mandir. But he could overpower Pradeep but his another associate with knife succeeded to run away. The old man whose name revealed as laloo S/o Kalicharan was bleeding from his stomach. In the meantime, PCR van came and removed the injured to the hospital. Pradeep and his associate Raju had inflicted knife blow with the intention to commit the murder of the injured. The ASI leaving constable with accused Pradeep at the spot reached RML hospital where he found Laloo S/o Kalicharan admitted at MLC No.140060/02. The injured was declared unfit for statement. In view of the statement of Ct.Ramesh Kumar and MLC, he got registered a case U/s 307/34 of IPC through constable Ramesh Kumar. The further investigation was carried out by SI

Mohar Singh. During the investigation spot was inspected, site plan was prepared, statement of witnesses were recorded. The blood stained shirt was put in a pulanda which was seized. Finding sufficient proof, accused was arrested. He was interrogated and his disclosure statement was recorded. However, his co-accused Raju could not be arrested. The doctor opined the nature of injury as dangerous. After completion of the investigation, charge sheet was prepared and filed. Accused was committed for trial.

3. On 17.3.2003, a formal charge U/s 307 IPC was framed which was read over and explained to the accused to which he pleaded not guilty and claimed trial.

4. Prosecution was directed to lead its evidence. Prosecution examined PW Ct. Ramesh Kumar, PW 2 Pancham Singh, PW 3 ASI Captan Singh, PW4 Dr. Sanjeev Kumar, PW 5 Dr.Padma and PW 6 SI Mohar Singh.”

5. Learned counsel for the appellant submits that the impugned judgment passed by the trial court is bad in law and the same is based on conjectures and surmises. Counsel further submits that there is no sufficient material to hold the appellant guilty for the offence punishable under Sections 307/34 IPC and, thus, the findings of the trial court are not sustainable in the eyes of law. It is further contended that the appellant has been falsely implicated in this case on account of previous enmity, the appellant was not present at the spot and he did not cause any injury to the victim. It has been strongly argued before this court that no public witness was joined in the proceedings, all the witnesses are police personnel and there are material contradictions in the depositions of PW-1 and PW-3 and, thus, their versions cannot be believed. It has also been contended

that the weapon of offence has not been recovered and, thus, the prosecution has miserably failed to prove its case beyond any shadow of doubt.

6. Mr.Ghazi, learned counsel for the State, submits that the appellant was caught at the spot by PW-1, Ct. Ramesh Kumar, however, nothing on record has been proved to show that there was any quarrel or enmity between PW-1 and the appellant herein. It is further submitted that it is not a general rule that the evidence of police witness cannot be relied upon. Mr.Ghazi further submits that PW-1 was on duty at the relevant time and the evidence of the police person, if reliable and trustworthy, can always form the basis of conviction. It is also submitted that PW-4, Dr.Sanjeev Kumar, and PW-5, Dr.Padma, have proved the injury caused to the victim as dangerous and therefore a case under Section 307 IPC is made out against the appellant.
7. I have heard learned counsel for the parties, considered their rival contentions and also carefully examined the evidence placed on recorded. In this case, the appellant was nabbed at the spot by PW-1, Ct. Ramesh Kumar, on 30.10.2002. PW-1 has testified that on 30.10.2002 he was posted at Police Station Connaught Place and was on patrolling duty. He deposed that when he reached Baba Khadak Singh Marg near Rivoli Cinema at about 7.30 p.m. he saw two boys were demanding Rs.300/- from an old man in a loud voice for consuming liquor. When the old man declined to give Rs.300/-, one of the boys took a knife from his associate and gave a knife blow on the abdomen of the old man. PW-1 identified the boy, who had given knife blow, in Court. Thereafter the boys ran from the spot. PW-1 chased them and apprehended the appellant while the other person managed to escape with the knife. PW-1 further deposed that in the mean time the injured was taken to RML Hospital by the PCR van.

ASI Captan Singh reached the spot. PW-1 narrated the entire facts of the case to ASI Captan Singh. ASI Captan Singh allowed him to retain the custody of the appellant and himself went to RML Hospital. After some time ASI Captan Singh returned to the spot and handed over rukka to PW-1 and sent him to the police station for registration of the case. After registration of the case, he came back to the spot with a copy of the FIR and original rukka. Investigation of the case was handed over to SI Mohar Singh. Personal search of the appellant was conducted vide memo, Exhibit PW-1/A, and statement of PW-1 was recorded as PW-1/B. Arrest memo of appellant was also prepared as Exhibit PW-1/C. During cross-examination, PW-1 deposed that no person from the public came forward to give statement. There is nothing in the cross-examination, which would shake the testimony of this witness. On careful reading of the evidence of PW-1 I find the same to be trustworthy and truthful.

8. It has also been argued before this Court that there is discrepancy and contradiction in the evidence of PW-1, Ct.Ramesh Kumar, and PW-3, ASI Captan Singh. The evidence of PW-3 reads as under:

“PW3 ASI CaptanSingh Spl.Cell Chanakya Puri, N.Delhi.
On S.A.

On 30.10.02 I was posted at P.S. Connaught Place. On that day after receiving DD no.26A I went to the place of incident i.e. Baba Khadag Singh Marg near Rivoli Cinema Connaught Place, where Ct.Ramesh Kumar met me along with one person whose name revealed later on as Pardeep accused present in the court today. Pardeep was in the custody of Ct. Ramesh Kumar. I came to know there that injured was removed to R.M.L. hospital by P.C.R. After that I went to R.M.L. Hospital and collected the M.L.C. of injured Laloo and Dr. Declared injured unfit for statement. After that I came back at the spot. I recorded the statement of Ct.Ramesh Kumar which is Ex.PW1/B and prepared rukka Ex.PW3/A and sent Ct. Ramesh with the rukka to the P.S. for registration of the case. I took the accused in my custody from Ct. Ramesh Kumar. After some time Ct. Ramesh along with S.I. Mohar Singh reached at the

spot along with rukka and copy of FIR and further investigation was handed over to S.I. Mohar Singh. IO recorded my statement U/s 161 Cr.P.C.

xxxxxx by accused.

NIL, opp. given.”

9. It may be noticed that this witness was not cross-examined. A careful analysis of the evidence of PW-1 and PW-3 would show that the place of incident and the date of the incident has been correctly stated. PW-3 has also corroborated the evidence of PW-1 that he reached the spot and Pradeep (appellant herein) was in custody of PW-1, Ct.Ramesh Kumar.
10. PW-1 has also deposed on similar lines. Both witnesses have deposed that the injured was removed to RML Hospital by the PCR and the injured was unfit to make the statement. Thus, it cannot be said that there are no contradictions between the evidence of PW-1 and PW-3.
11. As per the evidence of PW-4, Dr.Sanjeev Kumar of RML Hospital he has testified that on 30.10.2002 the victim, who was brought to the hospital and he was examined by Dr.Padma. As per the MLC the nature of injury was dangerous. The opinion was exhibited as Exhibit PW4/A and PW-4 identified his signatures at point A. PW-4 was also not cross-examined by the counsel for the accused.
12. PW-5, Dr.Padma of RML Hospital, has deposed that on 30.10.2002 patient, Lallu Yadav, vagabond, was brought to the hospital at about 8.00 p.m. by ASI Gopal Lal with the alleged history of assault and after examination of the patient she found the following injury on his person:

“Incised wound 2cm long with active bleeding on the right hypochondrical region. Depth cannot be measured due to the active bleeding.

Patient was referred to surgery for opinion and

management.....”

13. It may be noticed that before the testimony of the victim could be recorded he died.
14. Testimony of PW-6, SI Mohar Singh, would show that the investigation of the case was handed over to him. Evidence of PW-6 also stands corroborated with the evidence of PW-1. PW-6 has testified that the appellant, Pradeep, was present at the spot of the incident. PW-6 recorded the statement of ASI Captan Singh, registered a case on the complaint of Ct.Ramesh Kumar and prepared the site plan. He further deposed that he interrogated the appellant, conducted his personal search and recorded the disclosure statement but the weapon of evidence could not be effected as according to the appellant the co-accused had run away with the weapon of offence. Although the statement of the victim was recorded, however, the same is not admissible in evidence, but the MLC, Exhibit PW-4/A, clearly shows that the victim was brought to the hospital. PW-4, Dr.Sanjeev Kumar, and PW-5, Dr.Padma, have given description of the injuries received by the victim. MLC together with the evidence of both the Doctors and PW-1 leaves no room for doubt that the victim was stabbed on 30.10.2002 at 7.30 P.M. in his abdomen, as described by PW-1, who was present at the spot. The evidence of PW-4 and PW-5 makes it clear that the injury suffered by the victim was dangerous. There is nothing on record to show that PW-1 was inimical to the appellant and there was no reason for him to falsely implicate the appellant.
15. I am unable to agree with the argument of counsel for the appellant that evidence of PW-3, ASI Captan Singh, and PW-6, SI Mohar Singh is unreliable as they are police officers. I see no reason to disbelieve the

evidence of PW-3 and PW-4 and merely because they are Police officers their evidence is not to be discarded. I find the evidence of PW-3 and P-4 to be trustworthy and reliable.

16. It is settled law that no infirmity can be attached to the testimony of Police Officials merely because they belong to the Police force. However, the rule of prudence requires careful scrutiny of their evidence and in case the Court is convinced that what has been stated by a Police witness is otherwise reliable and trustworthy and the Court is convinced that what was stated by a Police witness has a ring of truth, conviction can be based on such evidence.
17. In the case of ***Girja Prasad v. State of Madhya Pradesh***, AIR 2007 Supreme Court 3106, it has been held that “*there is no rule of law, which lays down that no conviction can be regarded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy*”.
18. Further in the case of ***Govindaraju alias Govinda v. State By Sriramapuram Police Station***, reported at (2012) 4 SCC 722, it is was held as under:

“30. It cannot be stated as a rule that a police officer can or cannot be a sole eyewitness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness.

31. This Court in the case of *Girja Prasad* (supra) while particularly referring to the evidence of a police officer, said that it is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour

of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.

32. Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. The courts have also expressed the view that no infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction.

33. Rather than referring to various judgments of this Court on this issue, suffices it to note that even in the case of *Girja Prasad* (supra), this Court noticed the judgment of the Court in the case of *Aher Raja Khima v. State of Saurashtra* AIR, 1956 SC 217, a judgment pronounced more than half a century ago noticing the principle that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor. This principle has been referred to in a plethora of other cases as well. Some of the cases dealing with the aforesaid principle are being referred hereunder.

34. [In Tahir v. State \(Delhi\)](#) [(1996) 3 SCC 338], dealing with a similar question, the Court held as under:-

“6. ... In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result

of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.”

35. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record.”

19. The evidence of PW-1 is duly supported by the medical evidence. The appellant was nabbed at the spot, which is duly corroborated by the evidence of PW-3, ASI Captan Singh, and PW-6, SI Mohar Singh.
20. Accordingly, there is no merit in the appeal and the same stands dismissed being without any merit.
21. *Amicus curiae* shall be paid a fee of Rs.7500/-.

NOVEMBER 06, 2013
msr

G.S.SISTANI, J