

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

RESERVED ON : 14th August, 2013

DECIDED ON : 21st August, 2013

+ CRL.A.398/2012

JOHNY @ VIKRAM

..... Appellant

Through : Mr.Ajay Verma, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Johny @ Vikram (the appellant) impugns a judgment dated 26.08.2011 of learned Additional Sessions Judge in Sessions Case No.18/2010 arising out of FIR No.112/2010 registered at Police Station Vasant Kunj (N) by which he was convicted under Section 307 IPC. By an order dated 30.08.2011, he was sentenced to undergo Rigorous Imprisonment for seven years with fine ₹5,000/-.

2. Allegations against the appellant were that on 28.03.2010 at about 11.30 P.M. at Kusumpur Pahari he caused injuries to Tinku and Monu with knife with an attempt to murder them. During the course of

investigation statements of witnesses conversant with the facts were recorded. The MLCs of the injured persons were collected. Exhibits were sent to Forensic Science Laboratory for examination. The accused was arrested. After completion of investigation, a charge-sheet was filed against Johny @ Vikram in the court. The prosecution examined 11 witnesses to establish the guilt. In his 313 statement, the appellant pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment held the appellant guilty for committing offence under Section 307 IPC and sentenced him as mentioned previously. Being aggrieved, the appellant has preferred the present appeal.

3. The appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. No independent public witness was associated at any stage of investigation. It was a quarrel among young people and the appellant had no intention to cause injuries with an attempt to murder the victims. At the most, it is a case for committing offence under Section 326 IPC. The appellant being a young man deserves lenient view. Learned APP urged that there are no sound reasons to discard the cogent testimonies of the injured witnesses who sustained dangerous injuries on their vital organs with knife.

4. I have considered the submissions of the parties and have examined the Trial Court record. Injuries on the bodies of Monu and Tinku are not under challenge. The appellant has claimed that he was not the author of the injuries and was falsely implicated due to an altercation which had taken place earlier on Holi festival. The appellant, however, did not produce any evidence to establish if any such altercation had taken place on Holi or the victims had threatened to falsely implicate him. The victims have claimed that the appellant had threatened them to kill and caused injuries to them. PW-10, Dr.Sweta, Trauma Center, AIIMS, had medically examined Monu on 28.03.2010. She noticed following injuries on his body in the MLC Ex.PW 10/A.

- (1) Stab wound, 3 X 2 cm, elliptical longitudinal on back of left side of chest 10 cms below left scapula open pneumothorax.
- (2) Stab wound 4 X 2 cms in seventh left inter costal space with omental prolapse.

She was of the opinion that the injuries were dangerous in nature. In the cross-examination, she revealed that the sharp-edged weapon was used to inflict injuries. The patient was discharged after 11 days.

5. PW-11 (Dr.Dheeraj), Trauma Centre, AIIMS, New Delhi, medically examined Tinku on 28.03.2010 at 02.50 A.M. and observed the under mentioned injuries on his body:-

- (1) Incised looking lacerated wound on anterior part of right shoulder of 5 X 2 Cms.
- (2) Elliptical penetrating wound in left lumbar region posteriorly 3 X 2 Cms with omental prolapse.
- (3) 3 X 2 Cms elliptical penetrating injury in left anterior chest parasternal area in 6th intercostals space.

The injuries were caused with a sharp-edged weapon. The patient remained in ICU for three days and was not fit to make statement during that period. Injuries No.2 and 3 were having potential to endanger the life of the patient and were 'dangerous' in nature. The MLC is (Ex.PW11/A).

There are no valid reasons to disbelieve the medical evidence whereby the Tinku and Monu sustained dangerous injuries on their bodies with sharp weapons. Nothing was suggested that the injuries were self-inflicted or accidental in nature.

6. Daily Diary (DD) No. 8A (Ex.PW7/A) was recorded at 03.45 A.M. at police station Vasant Kunj (North) on getting information from

Duty H.C. Jageshwar about admission of Tinku and Monu by Sanjeev after getting injuries with knife. The investigation was assigned to SI Mahender Singh who with Constable Sombeer went to Trauma Center, (AIIMS). Tinku and Monu were unfit to make statement. The Investigating Officer lodged First Information Report by making endorsement Ex.PW9/A on DD No.8A (Ex.PW7/A). PW-4 (Monu), in his court statement deposed that at about 11/11.30 p.m. he went to Tinku's house and asked him to accompany him to take gutkha from Munna's shop. When they were coming back after taking gutkha, Johny came there and kept his hand on his shoulder. He took him ahead of Tinku and started abusing him without any reason and also slapped him. He also got enraged and abused Johny. When he was looking back towards Tinku, Johny stabbed him at his back with knife. Tinku rushed to intervene on hearing his cries. Johny stabbed Tinku also and gave knife blows to him. In the cross-examination, material facts deposed by the witness remained unchallenged. No ulterior motive was assigned to him for falsely implicating him. He did not deny his presence at the spot. PW-3(Tinku), another injured, fully supported the prosecution and corroborated PW-4's testimony on all relevant facts. He also named Johny @ Vikram for inflicting injuries with knife to him and Monu. The appellant could not

elicit any discrepancy in the cross-examination to discard his version. Both PW-3 and PW-4 were categorical that injuries to them with a knife were caused by Johny @ Vikram. They narrated the incident in detail and assigned specific role played by the accused in causing injuries to them. There is no variation between the ocular and medical evidence. PW-1 (Satpal) and PW-2 (Ramesh) who did not witness the occurrence nevertheless deposed that after getting information about the incident, they rushed to the spot and took Monu and Tinku to the hospital. They disclosed to them that Johny was the author of the injuries. Their evidence becomes relevant under Section 6 of the Indian Evidence Act.

7. Minor contradictions/improvements on trivial matters cannot render an injured witness's deposition untrustworthy. The law on this aspect has been detailed in the latest judgment *State of Uttar Pradesh vs. Naresh and ors.* (2011) 4 SCC 324 as under :

“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. (Vide *Jarnail Singh v. State of Punjab*, *Balraje v. State of Maharashtra* and *Abdul Sayeed v. State of M.P.*)”

8. Similarly in another case *Abdul Sayed vs. State of Madhya Pradesh* (2010) 10 SCC 259, Supreme Court observed that :

“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*.]

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.”

The law on the point can be summarized 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.”

9. I find no substance in the appellant's contention that it was a case under Section 326 IPC. Apparently, the appellant was already armed with a deadly weapon i.e. knife prior to the incident. He had no plausible

reasons to be in possession of knife at odd hours. He initiated the quarrel with PW-4 by abusing him at the first instance. When PW-4 retaliated and also abused him, Johny @ Vikram inflicted two dangerous injuries on his vital organs. When PW-3 (Tinku) intervened to save PW-4, the appellant did not spare him and caused dangerous injuries on his vital parts of the body. PW-4 and PW-3 were unarmed and did not cause any injury to the appellant. The injuries have been opined as dangerous and they were declared unfit to make statement. PW-11 (Dr.Dheeraj) was certain that injuries caused by sharp edged weapon had potential to endanger the life of the victim. They were in the hospital for sufficient long duration for treatment. After inflicting injuries, the appellant fled the spot. To justify conviction under Section 307 IPC it is not essential that bodily injury capable of causing death should have been inflicted. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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. It is sufficient by law, 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 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 determine if an accused can be convicted of an attempt murder.

10. The Trial Court has dealt with all the relevant contentions and I find no valid reasons to interfere in the impugned judgment which is based on fair appraisal of the evidence. The appeal filed by the appellant is unmerited and is dismissed. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

AUGUST 21, 2013

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