

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

RESERVED ON : 29th JULY, 2013

DECIDED ON : 16th SEPTEMBER, 2013

+ CRL.A. 524/2012

SHIVA @ UAN

..... Appellant

**Through : Mr.Ravi Chaturvedi, Advocate with
Mr. Harish Khinehi, Advocate.**

versus

STATE

..... Respondent

Through : Mr.M.N.Dudeja, APP.

AND

+ CRL.A. 1355/2012

VICKY

..... Appellant

**Through : Mr.Ravi Chaturvedi, Advocate with
Mr. Harish Khinehi, Advocate.**

versus

STATE

..... Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Shiva @ Uan (A-1), Kallu @ Veeru (since expired) and

Vicky (A-2) were sent for trial in case FIR No. 121/2009 PS Pahar Ganj

on the allegations that on 10.05.2009 at 10.15 P.M. at Sadar Thana Road

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near corner of Street No.8, Muttani Dhanda, Pahar Ganj, they in furtherance of common intention caused injuries to Vicky and Monu in an attempt to murder them. Kallu @ Veeru expired during pendency of trial and proceedings against him were dropped. A-1 and A-2 were held guilty for committing offence punishable under Section 307/34 IPC by a judgment dated 22.12.2011 in Sessions Case No. 119/2009. By an order dated 23.12.2011, they were sentenced to undergo RI for seven years with fine ₹ 25,000/- each.

2. Daily Diary (DD) No. 2A (Ex.PW-9/A) was recorded at PS Pahar Ganj at 12.55 A.M. by PW-11 (HC Suresh Kumar) on getting information that Monu and Vicky were admitted in Lady Harding Medical College (LHMC) by Suraj. The investigation was assigned to HC Sailesh who with Const.Lalit went to the spot. The Investigating Officer lodged First Information Report after recording Vicky's statement (Ex.PW-9/B). During the course of investigation, the accused persons were arrested and interrogated. The exhibits were sent to Forensic Science Laboratory (FSL) for examination. Statements of the witnesses conversant with the facts were recorded. On completion of investigation, a charge-sheet was submitted against the three assailants. They were duly charged and brought to trial. The prosecution examined fifteen witnesses. In their 313

statements the appellants pleaded false implication. Smt.Urmila appeared in their defence as DW-1.

3. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. PW-4 (Suraj) resiled from his previous statement and did not implicate the appellants. The prosecution did not examine the complainant/ victim - Vicky and adverse inference is to drawn against it. Vital discrepancies emerging in the statement of the prosecution witnesses were ignored without valid reasons. Learned APP urged that PW-5 (Monu)'s testimony is sufficient to establish the appellants' guilt and there are no sound reasons to discard his version.

4. Injuries on the bodies of Monu and Vicky are not under challenge. Ram Naresh, Duty Constable, LHMC, lodged DD No. 2A (Ex.PW-9/A) stating that one Suraj had admitted Monu and Vicky in the hospital. PW-12 (Dr.Divish Saxena) medically examined both Monu and Vicky vide MLCs Ex.PW-12/A and Ex.PW-12/B. The nature of injuries sustained by Monu were opined 'grievous' caused by a sharp weapon. Vicky sustained injuries 'simple' in nature caused by sharp object. His testimony remained unchallenged.

5. PW-9 (HC Shailesh Kumar), the Investigating Officer recorded Vicky's statement (Ex.PW-9/B) in the hospital and sent rukka (Ex.PW-9/C) promptly at 02.10 A.M. for lodging First Information Report. Contents of the FIR reveal that all the three accused persons were named as assailants. Vicky gave graphic details as to how and under what circumstances the three assailants had inflicted injuries with knives on their bodies. Star witness to establish the complicity of the appellants in the crime is PW-5 (Monu), the victim. In his Court statement he deposed that on 10.05.2009, he lived with his brother-in-law Vicky. At about 08.00 P.M., he and his jija Vicky went to Aggarwal Sweets, Pahar Ganj to purchase cake and sweets to celebrate the birthday of his nephew. When they were crossing corner of street No.8, Sadar Thana Road, A-1, A-2 and Kallu met and threatened to see them. They all had knives. A-1 hit victim Vicky with knife on his leg. When he attempted to save his jija, A-1 fled the spot. A-2 and Kallu hit him with knife on his stomach with an intention to kill him. Vicky's brother Suraj who was standing nearby took them to LHMC. In the cross-examination, he explained that the incident continued for about one hour. He volunteered to add that it started at about 09.30 or 10.00 P.M. He denied the suggestion that the accused persons were not author of the injuries caused to him. Apparently, the appellants

could not elicit any material discrepancies in the cross-examination to disbelieve his version or to impeach his testimony. Material and relevant facts proved by him remained unchallenged. No ulterior motive was assigned to him for falsely implicating the accused persons in the incident. He was fair enough to attribute specific role qua each accused and the part played by them individually in causing injuries to them. His statement is in consonance with the version narrated to the police at the first instance by injured Vicky and there are no material variations. There are no good reasons to disbelieve the injured witness whose testimony stands on a higher pedestal. Mere contradictions/improvements on trivial matters cannot render an injured witness's deposition untrustworthy. The law on this aspect has been detailed in the judgment '*State of Uttar Pradesh vs. Naresh and ors.*', (2011) 4 SCC 324 as under :

“27. 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.)”

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

“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. (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.]

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:

“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.”

7. It is true that PW-4 (Suraj) did not prefer to support the prosecution and completely turned hostile. It appears that PW-4 (Suraj) for some reasons has not presented true facts and has opted to exonerate the assailants, though he was close relative of injured Vicky. His name

finds mentioned in DD No. 2A (Ex.PW-9/A); statement of the informant/complainant (Ex.PW-9/B); MLCs (Ex.PW-12/A and Ex.PW-12/B). The genuineness of these documents have not been denied. Though PW-4 did not implicate the accused, nevertheless he corroborated Monu's version that he sustained injuries on his stomach. It is a settled legal preposition that the evidence of a 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 of the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

8. I find no substance to draw adverse inference against prosecution for their failure to examine and produce injured Vicky. Efforts were made to procure his presence in the Court. However, the process issued was returned unexecuted and he was untraceable. Non-examination of Vicky does not dilute the prosecution version proved by Monu. Section 134 Evidence Act clearly shows that no specific number of witnesses is required to prove a fact. It is not the number of witnesses that matters but it is the substance. In '*Prithipal Singh etc. vs. State of Punjab and Anr.*', 2012 (1) SCC 10, the Supreme Court held :

“26. This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.”

9. There is no variance between the ocular and medical evidence. In their 313 statements, the appellants did not give plausible explanation to the incriminating circumstances proved against them. Minor contradictions and discrepancies highlighted by counsel are not of such magnitude to discard the prosecution case in its entirety. The prosecution was able to establish that the appellants were the authors of injuries to Monu and Vicky. I am not convinced that the appellants and Kallu had attempted to murder Monu and Vicky. There was no previous enmity or dispute between the parties. In the cross-examination PW-5 (Monu) admitted that the accused persons had no prior dispute with them.

The prosecution could not establish the appellants' motive to inflict injuries to the victims. The appellants had never extended threat to the victims to kill them. The victims never apprehended threat to life at their hands. On the day of incident, the victims had gone to purchase sweets to celebrate birthday. The appellants did not anticipate their arrival at the spot. Suraj (Vicky's brother) whose presence nearby was spoken by PW-5 did not intervene in the incident which occurred suddenly at the spur of the moment. No weapon of offence was recovered from the appellants or at their instance. Though the injuries were opined to have been caused by 'sharp' object but it cannot be inferred with certainty that these were caused by knives or with 'deadly' weapons. Vicky in his statement (Ex.PW-9/B) did not assign specific role to each accused in inflicting injuries to them. He gave general statement that all accused had attacked them with knives. PW-5 (Monu) was specific that injuries to him were caused by Vicky and Kallu on his stomach and Vicky was injured with knife by A-1 on his leg. PW-5 (Monu) was not specific as to who i.e. Vicky or Kallu or both caused injuries with knife on his stomach. No repeated blows with knife were struck on the body of the victims. They were conscious and oriented when taken to hospital. They were fit to make statement and were not admitted in the hospital for treatment. It

appears that they were discharged from the hospital soon after their medical examination. The medical evidence did not show that the injury was dangerous being situated on a vital part or was sufficient in the ordinary course of nature to cause death. 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. Taking into consideration all these facts and circumstances, in my view, conviction under Section 307 IPC cannot be sustained and it cannot be concluded that the appellants had attempted to murder Vicky and Monu. It

was a case of quarrel in which injuries were caused by the accused persons voluntarily to Monu and Vicky. The prosecution, thus, has established commission of offence under Section 324 IPC by accused (A-1) Shiva @ Uan and 326 IPC by accused (A-2) Vicky. They are accordingly held guilty for the said offences.

10. A-1's nominal roll reveals that as on 15.05.2012, his custody period was three years and four days. He also earned remission for two months and five days. The custody period has since increased to more than four years. He is not a previously convicted in any criminal case. His overall jail conduct is satisfactory. A-1's substantive sentence is modified and he is directed to undergo the period already spent by him in this case for committing offence under Section 324 IPC. A-2's nominal roll discloses that he has remained in custody for two years, ten months and five days as on 12.11.2012. He also earned remission for three months and twenty three days. The period has increased to about four years. His substantive sentence is modified and reduced to undergo RI for five years for committing offence under Section 326 IPC. Other terms and conditions of the sentence order are left undisturbed. A-1 and A-2 shall deposit the fine and failing to pay the fine, the appellants shall undergo SI

for three months each. Victim Monu will be compensated as per sentence order on realization of fine.

11. The appeals stand disposed of in the above terms. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

SEPTEMBER 16, 2013/*tr*