

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

RESERVED ON : 14th JANUARY, 2013

DECIDED ON : 17th JANUARY, 2013

+ CRL.A. 874/2010

RAM SNEHI DASS Appellant
Through : Mr.A.J.Bhambhani, Advocate with
Ms.Nisha Bhambhani, Ms.Bhavita Modi
& Ms.Lakshita Sethi, Advocates.

versus

STATE (GOVT. OF NCT) OF DELHI Respondent
Through : Mr.M.N.Dudeja, APP.
ASI Bhupinder Singh, PS Hauz Quazi.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The Appellant impugns the judgment dated 25.02.2010 and order on sentence dated 06.03.2010 in Sessions Case No.178/2008 by which he was convicted under Section 307 IPC and sentenced to undergo RI for seven years with fine of ₹15,000/- and in default SI for six months.

2. Learned counsel for the appellant while assailing the findings of the Trial Court urged that the Trial Court did not appreciate the evidence in its true and proper perspective. PW-9 (Ajay Paswan), victim's brother was admittedly not present at the spot and had no occasion to

witness the occurrence. Testimony of PW-4 (Sanjay Paswan), the victim cannot be relied to convict the appellant as he being under the influence of alcohol was unable to recognise the assailant at 01.30 A.M. No other independent public witness present on the other side of the pavement was associated at the time of investigation. Recovery of weapon is not an incriminating circumstance as it was recovered prior to recording the disclosure statement of the accused. It was not shown to the doctor to ascertain if the injuries on the victim's body were possible with the said weapon. The prosecution failed to establish accused's motive to inflict injuries. In 313 Cr.P.C. statement, the accused categorically imputed motive to the injured to make false statement as he failed to return ₹3,000/- taken from him.

3. Learned APP supporting the impugned judgment urged that it did not call for interference. The testimony of PW-4 (Sanjay Paswan), an injured witness was corroborated with medical evidence.

4. I have considered the submissions of the parties and have examined the Trial Court record. Injuries sustained by PW-4 (Sanjay Paswan) are not in controversy. The appellant has claimed that he was not the author of the injuries.

5. PW-4 (Sanjay Paswan) is the victim/ injured in the incident. In his deposition before the Court, he stated that on the night intervening 30/31.08.2001 when he was sleeping at the corner of Sita Ram Bazaar and Chawri Bazaar, at about 01.30 A.M. (Night), the accused came there all of a sudden and inflicted knife blows to him as a result of which he sustained injuries on his abdomen and arms. His brother Ajay Paswan reached there and took him to JPN Hospital. He further elaborated that the accused had given five stab blows to him on his abdomen and one stab blow on his left arm. In the cross-examination, he asserted that his brother Ajay reached the spot after fifteen minutes of the incident when someone called him. He denied that injuries were caused to him by some other person. No suggestion was put to him that the accused was not present at the spot. No motive was assigned for making false statement. The accused did not put any question to the injured as to when he had taken ₹3,000/- from him and when the said amount was to be returned. It has come on record that the accused and the injured were familiar with each other. The victim knew him for the last about 5/6 years as he belonged to his village. The MLC Ex.PW-6/A reveals that the appellant had smell of alcohol but does not show that he was under the influence of alcohol and was unable to recognise the assailant. No material discrepancy has been elicited in the

cross-examination. Name of the accused as assailant appeared in the rukka recorded soon after the incident. There was no inordinate delay in lodging the First Information Report with the police. Being an injured, testimony of PW-4 inspires confidence and he is not expected to let the real culprit go scot free.

6. The evidence of an injured witness cannot be disbelieved without assigning cogent reasons. Mere contradictions/improvements on trivial matters could not render injured'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 Supreme Court Cases 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.)”

7. Similarly in another case *Abdul Sayed vs. State of Madhya Pradesh* (2010) 10 Supreme Court Cases 259, Supreme Court laid down :

“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: (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.”

8. PW-9 (Ajay Paswan) reached the spot, after the injuries were inflicted and admitted the injured at JPN Hospital. MLC Ex.PW-6/A reveals that the victim was taken to the hospital at 02.00 A.M. and PW-9's name finds mention in it. The prosecution claimed that PW-9 witnessed the occurrence and the rukka was prepared on his statement Ex.PW-9/A. It stands established that PW-2 was not an eye witness. Even if his deposition in this regard is ignored, it would not affect the otherwise trustworthy and cogent testimony of PW-4.

9. Weapon of offence i.e. knife was recovered at the spot and as per FSL report, human blood was detected on it. Since it was not recovered at the instance of the accused and was not shown to PW-6 Dr.Nalini Pandey during examination, it cannot be said with certainty that

knife Ex.P1 was used in the incident. However, non recovery of the weapon of offence is not fatal. No adverse inference can be drawn against the prosecution for not associating independent public witness. The occurrence had taken place at odd hour i.e. 01.30 A.M. The prosecution did not claim if at any stage, any independent public person had witnessed the occurrence.

10. MLC Ex.PW6/A was proved by PW-6 Dr.Nalini Pandey. As per this MLC, on examination, the patient was found to have sustained multiple clear lacerated wounds approximately 3x1 cms each 5 in number present over the anterior abdomen. One clear lacerated wound 3x1 cm over left forearm was present. There was no inconsistency between the ocular and medical evidence.

11. The accused did not produce any evidence in defence to prove that the victim had borrowed ₹3,000/- from him and was nurturing grudge against him. It is unbelievable that the victim would falsely implicate his friend to misappropriate ₹3,000/- and let the real culprit go unpunished.

12. The accused inflicted five stab injuries with deadly weapon on the vital organ repeatedly at 01.30 A.M. The injuries were grievous in

nature caused by a sharp edged weapon. Inference can be drawn that the accused attempted to murder the deceased.

13. In the light of above discussion, the appeal filed by the appellant lacks merit and is dismissed. The conviction and sentence are maintained. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

JANUARY 17, 2013

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