

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

RESERVED ON : 10th JULY, 2013

DECIDED ON : 12th AUGUST, 2013

+ CRL.A. 1384/2011

CHANDAN @ MANJIT Appellant

Through : Mr.Subhash Gosain, Advocate.

versus

STATE Respondent

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

SI Sandeep Kumar, P.S. Kalyanpuri.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Chandan @ Manjit (the appellant) challenges a judgment dated 26.08.2011 of learned Additional Sessions Judge in Sessions Case No. 17/2009 arising out of FIR No. 245/2007 PS Kalyanpuri by which he was convicted for committing offence punishable under Section 307 IPC. By an order dated 27.08.2011, he was sentenced to undergo RI for five years with fine ₹ 10,000/-.

2. Daily Diary (DD) No. 22A (Ex.PW-3/A) was recorded at 14.40 hours at PS Kalyanpuri on getting information that an individual has been injured near Electricity House, GDE Cremation Ground. The investigation was assigned to ASI Rajbir Singh who with Const. Yadram went to the spot. He came to know that the injured had been taken to Lal

Bahadur Shastri Hospital. He went there and collected the MLC of injured

Dara Singh who was unfit to make statement. On reaching the spot, Mohd.Iqbal met him and after recording his statement, he lodged First Information Report. During the course of investigation, statement of the injured Dara Singh was recorded and he disclosed that Chandan who was working with him at the dairy inflicted injuries with '*Sambal*' and attempted to murder him. The Investigating Officer also recorded the statements of the witnesses conversant with the facts. Chandan was arrested and at his instance, the crime weapon was recovered. After completion of investigation, a charge-sheet was submitted in the Court against him. He was duly charged and brought to trial. The prosecution examined ten witnesses to establish his guilt. In 313 statement, the appellant pleaded false implication. After hearing the counsel for the parties and on appreciation of the evidence, the Trial Court, by the impugned judgment, convicted him for the offence mentioned previously. Being aggrieved, he has preferred the appeal.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses. Injured's statement was recorded after a considerable delay of six days which remained unexplained. PW-7 (Mohd.Iqbal) is a planted witness and

was not present at the spot at the time of incident. It is unclear how he was aware of the minute details of the incident which were spoken after six days by the injured. The version given by the injured apparently is in consultation with the complainant- Mohd.Iqbal. The appellant had no motive to inflict injuries upon the victim. Recovery of the weapon is highly doubtful as no independent public witness was associated. PW-7 (Mohd.Iqbal) himself was a culprit who caused injuries to Dara Singh as he was repeatedly demanding his dues. He prevailed upon the complainant and the appellant was falsely implicated in the case. Learned APP urged that the injured categorically proved the role played by the appellant in causing injuries to him and there are no sound reasons to disbelieve him. There is no variance between the ocular and medical evidence.

4. I have considered the submissions of the parties and have examined the record. Injuries on the victim's body are not under challenge. The appellant has claimed that he is not the author of the injuries and these were caused by his employer. However, there is no evidence on record to substantiate this plea. The victim was taken to Lal Bahadur Shastri Hospital, Khichripur at 03.00 P.M. with the alleged history of assault. PW-1 (Const.Bhanu Pratap), duty constable informed

the police station and got the victim medically examined. PW-3 (Dr.Rajni) examined him and prepared his MLC (Ex.PW-3/A). He was referred to Sr.Surgery for detailed examination, management and opinion. PW-5 (Dr.Shishir Pritam Guria) was of the opinion that the nature of injuries suffered by the victim was grievous.

5. Star witness to establish the appellant's complicity is PW-8 (Dara Singh) who was injured in the incident. He testified that in the morning, he had apprised his employer that Chadan was in the habit of shirking work. Chadan threatened him to teach lesson for lodging complaint against him. After taking lunch, when he was taking rest on a cot underneath a peepal tree, Chadan came there and sat on the cot with him. When he started drowsiness, he (the accused) took out a '*Sambal*' and hit him on his head. He tried to save himself with his right hand. The accused again gave '*Sambal*' blow on his right hand and head and fled the spot. He started bleeding and became unconscious. He regained senses on 19.04.2007 and his statement was recorded by the police. In the cross-examination, he denied the suggestion that he had committed rape upon Chadan's sister. The incident took place at about 02.00 P.M. No public person was present when he was assaulted by the accused. He was taken to hospital by one Ballu Bhai who informed Mohd. Iqbal about the

assault. He was hit with iron rod on his head, nose, eyes and hands. The accused had given five blows on his body. Two were on his head and three were on his head and nose. He denied that there was money dispute with Anwar and Mohd. Iqbal or that he was assaulted by them.

6. Overall testimony of this witness reveals that no material discrepancies have emerged in his cross-examination to disbelieve his version. PW-8 (Dara Singh) sustained grievous injuries on his body and was unfit to make statement. He became unconscious at the spot after he suffered multiple injuries on his vital organs. The accused was known to him as both were from the same village. The victim had got employment for him. The victim was not expected to spare the real culprit and to falsely implicate the accused with whom he had no prior animosity. The immediate provocation for the accused to inflict injuries upon the victim was that he had lodged complaint with his employer for avoiding work and it was resented by him. PW-8 (Dara Singh) gave graphic details as to how and under what circumstances, the accused caused injuries to him. PW-7 (Mohd. Iqbal) has corroborated his version that in the morning when he went to the dairy of his brother on 15.04.2007, Dara Singh had complained to him about Chandan for not doing his work properly. He had told Dara Singh that they would employ someone else and would

remove Chandan from the job. Chandan was scolded by him. At about 02.30 / 03.00 P.M., he received a phone call about injuries sustained by Dara Singh. He fairly admitted that he was not informed that time as to who had caused injuries to Dara Singh. No ulterior motive was assigned in the cross-examination to this witness to favour Dara Singh.

7. There is no conflict between the ocular and medical evidence. The prosecution has established the motive of the accused to cause injuries. After the arrest, the weapon of offence, iron rod (Ex.P1) was recovered vide seizure memo Ex.PW-2/E. In his 313 statement, the accused did not give plausible explanation to the incriminating evidence appearing against him. He did not examine any witness in defence to show that he was not the author of the injuries and these were caused by Anwar and Iqbal. He also did not examine any witness including her sister to prove if the victim had ever sexually assaulted her. Non-examination of independent public witness is not fatal in the case as the victim categorically stated that none else was present at that time. Minor inconsistencies, contradictions highlighted by counsel do not go to the root of the case to throw the prosecution version in its entirety. Merely because the individual who took the victim to the hospital was not

associated in the investigation, cogent and reliable testimony of the injured cannot be discredited.

8. The testimony of a stamped witness has its own relevance and efficacy. The fact that the witness had sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. The testimony of the injured witness is accorded a special status in law. This is a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of crime and because the witness will not want to let the actual assailant to go unpunished merely to falsely involve a third party for the commission of the offence. In the case of ‘*State of Uttar Pradesh vs. Naresh and Ors.*’, (2011) 4 SCC 324, the Supreme Court held:

“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.”

9. In the case of ‘Abdul Sayed Vs.State of Madhya Pradesh’, (2010) 10 SCC 259, the Supreme Court held :

“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".

10. The appellant apparently had attempted to murder Dara Singh. He had repeatedly hit him on his vital organs with a heavy iron object i.e. ‘Sambal’. The injuries on his body were opined grievous in nature. The appellant fled the spot after inflicting injuries. Conviction under Section 307 IPC cannot be faulted as the appellant was aware that the injuries inflicted by him could cause his death. As per MLC (Ex.PW-3/A), PW-8 sustained following injuries :

- (1) Incised wound over middle of Rt. Side forehead with depressed bone felt from wound 8 cm X 1 cm X bone deep.
- (2) Incised wound over Rt. Frontal region 6 cm X 1 cm X bone deep with active bleeding.
- (3) V shaped lacerated wound over Rt.malar region 0.5 cm X 0.5 cm.

11. 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.

12. In the light of above discussion, the appeal filed by the appellant is unmerited and is dismissed. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

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