

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

RESERVED ON : 16th DECEMBER, 2013

DECIDED ON : 22nd JANUARY, 2014

+ CRL.A. 768/2000

MADAN LAL Appellant

Through : Mr.Jitendra Sethi, Advocate with
Mr.Rajesh Kaushik & Mr.Hemendra
Jailia, Advocates.

versus

**THE STATE (GOVT. OF NATIONAL CAPITAL TERRITORY)
OF DELHI** Respondent

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

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

S.P.GARG, J.

1. Madan Lal (the appellant) questions the legality and correctness of a judgment dated 17.11.2000 of learned Addl. Sessions Judge in Sessions Case No. 499/96 arising out of FIR No. 214/85 PS Subzi Mandi by which he was held guilty for committing offence punishable under Section 307 IPC. By an order dated 23.11.2000, he was awarded RI for three years with fine ₹ 5,000/-.

2. Allegations against the appellant were that on 29.04.1985 at about 09.45 P.M. in front of house No. 10621, Gali No. 6, Andha Mugal,

he inflicted injuries to Tara Chand in an attempt to murder him. During the course of investigation, statements of the witnesses conversant with the facts were recorded. The appellant was arrested and pursuant to his disclosure statement, crime weapon i.e. churi 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 seventeen witnesses to establish his guilt. In 313 statement, the appellant denied his complicity in the crime and alleged false implication. DW-1 (Prem Wati) was examined in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted Madan Lal for the offence mentioned previously. Being aggrieved, he has preferred the appeal.

3. Learned counsel for the appellant 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 PW-8 (Brij Mohan) and PW-11 (Sona Devi) who were interested witnesses and whose presence at the spot could not be established. They did not offer any reasonable explanation for recording their statements under Sections 161 Cr.P.C. after a considerable delay. Vital contradictions and discrepancies in the

testimonies of the prosecution witnesses were not considered. PW-4 (Naipal Singh) opted not to support the prosecution case and turned completely hostile. PW-6 (Tara Chand)'s version cannot be accepted due to conflicting and inconsistent statements regarding his presence at the time of incident at the spot or in the function. Ingredient of Section 307 IPC are not attracted or proved. Learned Addl. Public Prosecutor urged that all the material witnesses have fully supported the prosecution and there are no sound reasons to disbelieve them.

4. The occurrence took place at about 09.45 P.M. on 29.04.1985. Tara Chand was taken to Hindu Rao Hospital by his son Brij Mohan and admitted there. Daily Diary (DD) No. 23 (Ex.PW-15/A) was recorded on getting information from Duty Const. Bijender Kumar at Hindu Rao Hospital about admission of Tara Chand by Brij Mohan in injured condition at about 10.30 P.M. The Investigation was assigned to ASI Raja Ram who with Const. H.C. Nisar Ahmad went to the spot. He lodged First Information Report after making endorsement (Ex.PW-2/A) over Ex.PW-15/A at 11.30 P.M. MLC (Ex.PW-5/A) records the arrival time of the patient at 10.30 P.M. PW-5 (Dr.Vikas) who medically examined Tara Chand proved the MLC (Ex.PW-5/A) prepared by him. It records that the injured was brought at Hindu Rao Hospital by his son Birj

Mohan; 'stabbed by Madan'. The history was given by the patient himself. The injured was conscious at the time of admission at Hindu Rao Hospital. PW-5 (Dr.Vikas), in the cross-examination claimed that Brij Mohan who had brought Tara Chand to the hospital was present at the time of medical examination. He admitted that the words 'history given by the patient himself' was written on the second line within brackets. PW-5 (Dr.Vikas) had no ulterior reasons to fabricate the MLC. Name of the assailant finds mentioned in the MLC (Ex.PW-5/A). Since injured Tara Chand was not fit to make statement, no adverse inference can be drawn for recording his statement on 30.04.1985 the next day of the incident.

5. Injuries sustained by Tara Chand are not under challenge. Suggestions have been put that Tara Chand suffered injuries due to attack by his rivals in the trade and that Madan Lal was implicated on account of the incident occurred on 27.04.1985. Another suggestion was put that Madan Lal was falsely implicated as he was suspected to be the informer of the police against him and when some quarrel took place with the other party, he (Madan Lal) was involved in the case. It has come on record that Tara Chand sustained injuries 'dangerous' in nature by sharp object. PW-5 (Dr.Vikas) noted the following injury on his body in the MLC (Ex.PW-5/A) :

“One incised wound at the left iliac fossa with the length of gut exposed”

6. The Crime weapon i.e. knife (Ex.P1) was shown and he was of the opinion that injury could be possible with that knife (Ex.P1). PW-7 (Dr.V.P.Singh) deposed that on operation two perforations in intestine and an injury in mesentery were detected and repaired. The patient was discharged on 09.05.1985. He was of the opinion that the nature of injuries was ‘dangerous’. In the cross-examination, he clarified that the operation was conducted under his supervision on the same night in his presence by Dr.Dhawan. There were no post-operative complications till the discharge of the patient. He fairly admitted that he did not measure depth of the injury but explained that it was not required and the wound was peritoneum deep. Since Tara Chand had sustained injuries ‘dangerous’ in nature on vital organ, he was not expected to let the real culprit go scot free and to falsely rope in the appellant with whom he had no animosity before 27.04.1985.

7. In his Court statement Tara Chand appearing as PW-6 deposed that on 27.04.1985 in a marriage function a quarrel had taken place when Naipal Singh casually came into contact with Shanti (mother of the accused) and was slapped. The matter was pacified by his son-in-

law Pardeep. On 29.04.1985 a party was arranged on the eve of marriage of Premo's daughter by the bridegroom side at Andha Mugal, Partap Nagar. At about 09.00 / 09.30 P.M. when he was present with his wife and son Brij Mohan in front of his house on a cot, Madan Lal arrived there and enquired about Pardeep. When he asked Madan Lal as to why he was in search of Pardeep, the accused told him that he would not spare him (Pardeep) that day. When he told Madan Lal that he would not allow it to happen, the accused took out a 'chhoora' from the back of his wearing 'tehmat' (lungi) and stabbed on the left-side of abdomen as a result of which his intestines came out. The assailant Madan Lal fled the spot and he became unconscious and taken to Hindu Rao Hospital. In the cross-examination, he was questioned about his involvement in criminal cases. He disclosed that he had made statements to the police on 30.04.1985 and 24.10.1985. He claimed that at the time of occurrence, he was sitting in front of his house on a 'charpai'. His wife and son were sitting on the other 'charpai' next to him. He denied the suggestion that at 09.30 P.M. his wife and son had already left to attend the reception at the 'pandal' and he was in his house for selling intoxicants. On scanning the entire testimony of the injured witness, it reveals that despite lengthy and searching cross-examination, the appellant was unable to extract or elicit

any material discrepancies or contradictions to disbelieve his version. The material facts deposed in the examination-in-chief remained unchallenged and uncontroverted. The role assigned to the appellant in inflicting injuries to him was not questioned or challenged in the cross-examination. The accused did not deny his presence at the time of incident at the spot. There are no good reasons to disbelieve Tara Chand who was the victim of suffering 'dangerous' injuries. PW-8 (Brij Mohan) corroborated his version in its entirety and implicated Madan Lal for inflicting injuries to his father Tara Chand. He further revealed that Madan Lal had arrived at the spot after searching Pardeep to whom he wanted to inflict injuries. When he was asked by Tara Chand as to how he could cause harm to his son-in-law Pardeep, the accused stabbed him with a knife / churi on the abdomen as a result of which Tara Chand fell down and his intestines came out. He took his father to Hindu Rao Hospital. In the cross-examination, he disclosed that he made statement in the hospital at about 10.45 P.M. the same day. His statement was recorded on 30.04.1985. He had not gone to inform his relatives and remained in the hospital till the arrival of the police. It is true that in the rukka (Ex.PW-15/A), the Investigating Officer recorded that no eye witness was available at the hospital and lodged First Information Report after making endorsement

over DD No.23 (Ex.PW-15/A). The Trial Court has dealt with this aspect minutely and found the conduct of the Investigating Officer faulty in not recording statement of Brij Mohan who had taken his father to Hindu Rao Hospital soon after the occurrence and whose name appeared in the MLC (Ex.PW-5/A) collected by the Investigating Officer. For lapses on the part of the investigation not to lodge First Information Report after recording Brij Mohan's statement, the testimony of PW-6 (Tara Chand) cannot be discredited. PW-11 (Sona Devi) whose presence at the spot was natural and probable has also implicated the accused.

8. Ocular testimonies of PW-6 (Tara Chand) and PW-8 (Brij Mohan) coupled with medical evidence which is not at variance prove the guilt of the appellant without reasonable doubt. Apparently, Madan Lal was the author of the injuries. Merely because PW-4 (Naipal Singh) for the reasons known to him did not opt to support the prosecution regarding incident dated 27.04.1985, it does not affect the prosecution case particularly when suggestion was put by the appellant that his implication was due to incident dated 27.04.1985. Recovery of knife (Ex.P1) was not accepted and believed by the Trial Court. Non-recovery of weapon of offence is not fatal as injuries were inflicted with a 'sharp weapon'. The Trial Court has dealt with all the relevant contentions of the appellant

elaborately and the findings are based upon fair appraisal of the evidence and no deviation is called for. Minor discrepancies, contradictions and improvements highlighted by the appellant's counsel are insignificant and do not affect the core of the prosecution case regarding infliction of injury with a sharp object on the abdomen of the victim.

9. The appellant was convicted for committing the offence under Section 307 IPC. Record reveals that prior to 27.04.1985 there was no animosity between the appellant and the victim. On that day, both the parties had participated in the marriage. Unfortunately, in the said function, confrontation took place when Naipal Singh was suspected to have outraged the modesty of appellant's mother – Shanti. The matter was pacified due to the intervention of the relatives. On 29.04.1985, Madan Lal had arrived at the spot in search of Pardeep. It is unclear as to what was the immediate provocation for Madan Lal to search Pardeep that day. Apparently, when he arrived at the spot to enquire about Pardeep from his father-in-law – Tara Chand, he had no intention whatsoever to inflict injuries to him (Tara Chand). Only when confrontation took place with Tara Chand, in a fit of rage, on the spur of the moment the appellant whipped out a knife; inflicted a solitary knife blow on the abdomen and fled the spot. He did not cause any harm to PW-11 (Sona Devi) or PW-8

(Brij Mohan). No repeated blows with sharp weapon were caused to the victim. The crime weapon could not be recovered to ascertain its dimensions. The parties had cordial relations prior to 27.04.1985 and participated in the functions. In my considered view, no inference can be drawn that injury inflicted was with the avowed object or intention to cause death. The determinative question is intention or knowledge, as the case may be, and not nature of injury. The appellant voluntarily inflicted 'dangerous' injuries with a sharp weapon on the vital organ and was liable for conviction under Section 326 IPC. The conviction is accordingly altered from Section 307 IPC to Section 326 IPC.

10. The appellant was awarded RI for three years with fine ₹ 5,000/-. It is stated that the appellant has suffered ordeal of trial / appeal for about 28 years. Nominal roll reveals that he suffered incarceration for two months and five days as on 06.07.1985 and is not a previous convict. Some medical documents have been placed on record to show him suffering from some ailments. It is true that the appellant has suffered agony of trial / appeal for about 28 years and is not a previous convict. At the same time, the injury inflicted on the vital organ of the victim was deliberate and intentional without any provocation by an unarmed victim present outside his house. The victim had to undergo operation as his

intestines had come out and remained admitted in the hospital for about more than nine days. Even for the incident dated 27.04.1985, he was not at fault. Considering all these circumstances, sentence order is modified and the substantive sentence of the appellant is reduced to two years. Other terms and conditions of the sentence order are left undisturbed. However, the appellant shall pay compensation of ₹ 25,000/- to the victim and deposit it within fifteen days before the Trial Court. Compensation amount will be released to the complainant after due notice. Madan Lal shall surrender before the Trial Court on 29th January, 2014 to serve the remaining period of substantive sentence.

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

(S.P.GARG)
JUDGE

JANUARY 22, 2014/*tr*