

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

RESERVED ON : 2nd DECEMBER, 2013

DECIDED ON : 11th FEBRUARY, 2014

+ CRL.A. 580/2001

TODAR MAL Appellant

Through : Mr. K.B.Andley, Sr.Advocate with
Mr.Mohd. Shamikh & Mr.M.L.Yadav,
Advocates.

VERSUS

STATE OF DELHI Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Todar Mal (the appellant) impugns a judgment dated 28.07.2001 of learned Addl. Sessions Judge in Sessions Case No. 76/2001 arising out of FIR No. 87/97 PS Seelam Pur whereby he was convicted for committing offence punishable under Section 307 IPC and by an order on sentence of the same date, he was awarded RI for two years with fine ₹ 2,000/-.

2. Allegations against the appellant were that on 29.01.1997 at about 03.30 P.M. in front of house No. 31/2, gali No.2, Maujpur, he along with his associate in furtherance of common intention inflicted injuries to

Chander Kumar in an attempt to murder him. The police machinery was set in motion after recording Daily Diary (DD) No. 13A (Ex.PW-5/A) at PS Seelam Pur at 03.50 P.M. on getting information from PCR that an individual has been stabbed. The investigation was assigned to SI Ajay Kumar who went to the spot and came to know that the victim had already been taken to DDU Hospital by PCR. SI Ajay Kumar lodged First Information Report after recording Chander Kumar's statement (Ex.PW-1/A). During the course of investigation, the appellant was apprehended and the crime weapon was recovered pursuant to his disclosure statement. Statements of the witnesses conversant with the facts were recorded and after completion of investigation, a charge-sheet was submitted against the appellant in the Court; he was duly charged and brought to trial. The prosecution examined eight witnesses to establish his guilt. In 313 statement, the appellant pleaded false implication and claimed that the injuries were self inflicted to falsely implicate him as he had not agreed to the suggestion of the complainant to exonerate him in a previous case instituted at his instance vide FIR No. 383/95 under Section 307/34 at PS Seelam Pur. He examined DW-1 (Umesh Sharma) in defence. After considering the rival contentions of the parties and appreciating the evidence, the Trial Court, by the impugned, held the appellant perpetrator

of the crime and convicted him for the offence mentioned previously. Being aggrieved, the appellant has filed the present appeal.

3. I have heard the learned counsel for the parties and have examined the record minutely. The occurrence took place at around 03.30 P.M. on 29.01.1997 and Daily Diary (DD) No. 13A (Ex.PW-5/A) was recorded soon thereafter, at 03.50 P.M. at PS Seelam Pur. The Investigating Officer recorded victim's statement at DDU Hospital and lodged First Information Report by making endorsement (Ex.PW-8/A) over Ex.PW-1/A at 05.30 P.M. There was no delay in lodging the First Information Report. In the first statement given at the earliest opportunity, the complainant Chander Kumar implicated the appellant for the injuries inflicted to him by an 'ustra' with the aid of his companion whose name he did not know. The complainant gave detailed account of the incident and assigned specific motive for causing injuries to him. In his Court statement as PW-1, the complainant fully supported the version given to the police at the first instance without any variation and deposed that on 29.01.1997 at about 03 or 03.30 P.M. when he was present outside his house, Todar Mal and his associate arrived there. Todar Mal asked his associate to catch hold of him. Thereafter, Todar Mal took out an 'ustra' and inflicted blow on his neck. He turned back to save himself and ran

from the spot. He was again caught hold near his house and Todar Mal inflicted 'ustra' blow on his chest as a result of which he fell down and became unconscious. His statement (Ex.PW-1/A) was recorded after he came to senses in the hospital. The appellant was given an opportunity to cross-examine the witness but for reasons known to him, he opted not to cross-examine. Similarly, PW-2 (Satish), complainant's brother, who took the injured to the hospital and informed the police was not cross-examined despite an opportunity given. The statements of both PW-1 (Chander Kumar) and PW-2 (Satish) have remained unchallenged and uncontroverted in the cross-examination. Record reveals that subsequently an application under Section 311 Cr.P.C. moved to recall both these witnesses was dismissed. The appellant did not challenge the said order and it attained finality. There are no sound reasons to disbelieve and discard the statement of PW-1 (Chander Kumar) who sustained injuries on vital organs by a sharp weapon. There is nothing to suggest that the injuries were self inflicted. It is true that earlier the appellant – Todar Mal had lodged complaint against the victim Chander Kumar and case vide FIR No. 383/95 under Section 307/34 IPC was registered at PS Seelam Pur on 15.06.1995 against him. Todar Mal had sustained injuries in the said occurrence and had implicated Chander Kumar and his associate

Jagpat Narain. On the day of incidence, on 29.01.1997, the trial of the said case was pending before the Sessions Court. It appears that Chander Kumar was convicted in the said proceedings and was sentenced to undergo RI for five years with fine ₹ 1,000/-. Chander Kumar challenged the conviction in Crl.A.No. 87/02, the photocopy of which has been placed on record by the appellant's counsel. The complainant Chander Kumar remained in custody in the said proceedings for one year and two months. However, by an order dated 23.07.2010, the appeal was allowed as Chander Kumar was declared juvenile being below eighteen years of age at the time of commission of offence and directed to appear before Juvenile Justice Board on 16.08.2010. It is also true that Chander Kumar was convicted under Section 324 IPC in case FIR No. 434/97 PS Seelam Pur and by an order dated 27.04.2000 was released on probation. Institution of both these criminal cases against the complainant Chander Kumar shows that he is a man of violent nature and is involved in inflicting injuries to the appellant and Om Prakash in two separate cases. But that itself is not sufficient to discredit the unchallenged testimony of PW-1 (Chander Kumar) and to discard it in its entirety. The appellant who had sustained injuries at the hands of the complainant Chander Kumar in the scuffle did not wait for the outcome of the case registered at his

instance in which Chander Kumar was facing trial and opted to take revenge by inflicting injuries himself with the aid of his associate on 29.01.1997.

4. Ocular testimony of PW-1 (Chander Kumar) and PW-2 (Satish) is in consonance with medical evidence. Soon after the occurrence Chander Kumar was taken to DDU Hospital by his brother PW-2 (Satish) whose name finds mention in MLC (Ex.PW-6/A). It records the arrival time of the patient at the hospital at 04.15 P.M. Three stab injuries on the chest and neck described in detail in Ex.PW-6/A were found on the body of the victim. Nature of injuries was opined 'simple' caused by sharp weapon. The complainant remained admitted in the hospital for 3 or 4 days. Recovery of the crime weapon 'ustara' (Ex.P3) and scooter (Ex.P4) used in the crime lend credence to the prosecution case. The impugned judgment based upon fair appraisal of the evidence warrants no interference. Apparently, Todar Mal was the author of the injuries caused to the victim Chander Kumar.

5. Repeated stab blows on vital organs were caused. The complainant who was not armed with any weapon at the time of incident was taken by surprise. The appellant and his associate assaulted him with a sharp weapon when he was present in front of his house. When he

attempted to flee to save himself, the appellant did not spare him, chased him and again inflicted injuries. The appellant had previous animosity against the complainant and nurtured grievance for causing hurt to him earlier for which he had lodged report against him. In these circumstances, it can safely be inferred that the injuries were inflicted with the avowed object and intention to cause death to attract and prove offence under Section 307 IPC.

6. Appellant's counsel adopted alternative argument to take lenient view as the appellant has suffered agony of trial for about sixteen years. He has three children and old parents to look after. He is not involved in any other criminal case and has clean antecedents. In the instant case, the victim sustained 'simple' injuries with sharp object on his body. In the proceedings under Section 307 IPC instituted at the appellant's instance in the case FIR No. 383/95, he remained in jail for one year and two months before he was declared 'juvenile'. Undoubtedly, the appellant has suffered ordeal of trial for about 15 / 16 years; was a victim at the hands of the complainant when attempt was made to murder him in the proceedings under Section 307 IPC; has clean antecedents and is not involved in any other criminal case; nature of injuries was 'simple' and the complainant himself was involved in two criminal cases.

Considering these mitigating circumstances, sentence order is modified and the substantive sentence of RI for two years is reduced to RI for one year. Other terms and conditions of the sentence order are left undisturbed. The appellant shall however, pay compensation ₹ 20,000/- to the complainant and shall deposit it within fifteen days before the Trial Court. The Trial Court shall issue notice to the complainant to receive the compensation.

7. The appeal stands disposed of in the above terms. The appellant is directed to surrender before the Trial Court on 18.02.2014 to serve the remaining period of sentence. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

FEBRUARY 11, 2014/*tr*