

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

RESERVED ON : 2nd DECEMBER, 2013

DECIDED ON : 18th FEBRUARY, 2014

+ CRL.A. 794/2002

BHUWAN CHAND Appellant
Through : Mr. R.K. Singla, Advocate.

VERSUS

NCT OF DELHI Respondent
Through : Mr.Lovkesh Sawhney, APP.

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

S.P.GARG, J.

1. Bhuwan Chand (the appellant) questions the legality and correctness of a judgment dated 27.09.2002 of learned Addl. Sessions Judge in Sessions Case No. 4/2000 arising out of FIR No. 47/2000 PS K.M.Pur by which he was held guilty for committing offence punishable under Section 307 IPC. By an order dated 03.10.2002, he was awarded RI for three years with fine ₹ 500/-.

2. The accusations, filtering out unnecessary details, which led to the trial of the appellant were that on 12.02.2000 at 09.30 P.M. near bus stop Kashmiri Market, East Kidwai Nagar, he voluntarily inflicted

injuries to Kumud Kumar with a sharp edged weapon in an attempt to murder him. Daily Diary (DD) No. 18A (Ex.PW-11/A) was recorded at 10.06 P.M. on 12.02.2000 at PS K.M.Pur on getting information about a quarrel at bus stand near Kidwai Nagar Kashmiri Market. This DD was entrusted to SI Banwari Lal who with Const. Narender Kumar went to the spot. At 10.15 P.M. another Daily Diary (DD) No. 19A (Ex.PW-11/B) was recorded after getting information that some boys were stabbing an individual. The said DD was also sent to SI Banwari Lal. The Investigating Officer lodged First Information Report after recording victim Kumud Kumar's statement (Ex.PW-3/A). He disclosed that Bhuwan Chand to whom he knew earlier inflicted injuries on his head with a 'darati' (meant to cut meat). His friend Hemant Joshi who intervened to rescue him sustained injuries on his right hand. During the course of investigation, statements of the witnesses conversant with the facts were recorded. The appellant was arrested and pursuant to the disclosure statement, jacket which he was wearing at the time of the incident was recovered. After completion of investigation, a charge-sheet was filed against the appellant in the Court. The prosecution examined eleven witnesses to establish his guilt. In his 313 statement, the appellant denied his complicity in the crime and alleged false implication. He denied his

presence at the spot. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the appellant for the offence mentioned previously. Being aggrieved and dissatisfied, 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 in relying upon the testimonies of interested witnesses without independent corroboration. The Trial Court ignored vital discrepancies, contradictions and inconsistencies in the testimonies of material prosecution witnesses which were in conflict with medical evidence. Both PW-3 and PW-8 were not clear as to what kind of weapon was used in causing injuries to the victim. The prosecution was unable to establish the appellant's motive to kill the complainant with whom he had no prior animosity. The prosecution was unable to recover the weapon of offence. Recovery of the jacket itself is suspect. Ingredient of Section 307 IPC are not attracted or proved. The appellant had no previous criminal record. The victim and his associate Hemant Joshi were under the influence of liquor. Learned Addl. Public Prosecutor urged that there are no sound reasons to discard the testimony of the injured who sustained grievous injuries on vital organs.

4. The occurrence took place at about 09.30 P.M. on 12.02.2000. Daily Diary (DD) No. 18A (Ex.PW-11/A) was recorded regarding the incident of quarrel at 10.06 P.M. and the investigation was assigned to SI Banwari Lal who with Const. Narender rushed to the spot. The injured persons had already been taken to hospital. Statement of the victim Kumud Kumar was recorded after seeking permission from the concerned doctor vide application (Ex.PW-11/E). The Investigating Officer sent the rukka for lodging the First Information Report at 11.15 P.M. There was no delay in lodging the report with the police. In the statement made to the police at the earliest opportunity, the complainant implicated Bhuwan Chand for inflicting injuries to him. He gave vivid description of the entire incident and disclosed as to how and under what circumstances multiple blows with a meat cutting weapon were inflicted on his head. He also disclosed that the assault was made due to an old enmity. Since the First Information Report was lodged in promptitude soon after the occurrence, there was least possibility of the complainant to concoct a false story to implicate the appellant. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of '*Jai Prakash Singh vs. State of Bihar & Anr.*', 2012 CRI.L.J. 2101, the Supreme Court held :

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant’s version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

5. Injuries sustained by the victim Kumud Kumar are not under challenge. He was taken to the hospital from the spot and admitted in AIIMS. MLC (Ex.PW-6/A) records the alleged history of ‘assault by a person known to the patient tonight by a sharp weapon (used for making keema)’. Multiple lacerated wounds numbering eight of various dimensions were found on the scalp. PW-6 (Dr.Atul Kumar Aggarwal) who medically examined the victim proved MLC (Ex.PW-6/A). The nature of injuries was opined as ‘grievous’ caused by sharp, heavy weapon. In the cross-examination, he reiterated that he found eight injuries on the person of the injured. These were lacerated wounds with

sharp margins. He explained that lacerated wounds could be caused by a sharp edged weapon if it is a heavy one with blunt side. Appellant's contention that he was not the author of the injuries and the complainant sustained the injuries in a quarrel with unknown assailants when he was under the influence of liquor has no substance or basis.

6. To infer the guilt of the appellant, crucial testimony is that of PW-3 (Kumud Kumar). He deposed that on 12.02.2000 at about 09.30 P.M. when he along with his friend Hemant Joshi was going to his house and passing through the bus stand, Kashmiri Market, East Kidwai Nagar, Bhuwan Chand came from back side while abusing them. When he turned to see Bhuwan Chand, he hit him with a 'darati' (an iron instrument used for cutting meat) on his head continuously for ten times. He received 'grave' injuries on his head and started bleeding. When his friend Hemant Joshi intervened to rescue him, he also received injuries on his hand. He was shifted to the hospital by his friend Hemant Joshi. His statement (Ex.PW-3/A) was recorded in the hospital. In the cross-examination, he fairly admitted that he, his friends Hemant Joshi and Mahinder Verma had consumed liquor in the market. He, however, explained that it was a small quantity. They had already saw off Mahinder Verma and at the time of occurrence, he was not present. He further stated that the weapon with

which he was hit was in the right hand of the appellant and it was a straight 'darati' around one and a half feet long with a handle usually meant to cut meat and chicken. He was taken to hospital by Hemant Joshi in a three wheeler scooter. The police had arrived in the hospital in the night itself. He got 44 stitches. From AIIMS, he was taken to Safdarjang Hospital. He denied that he had a quarrel and fight with someone else at the bus stop and did not know the name of the assailant. He denied the suggestion that Bhuwan Chand was implicated falsely because he had failed to provide him a liquor party to celebrate his brother's wedding.

7. On scrutinising the testimony of the complainant, it transpires that he has proved the version given to the police at the first instance without major variation. The accused was specifically named for causing injuries with a sharp heavy weapon meant to cut meat. Despite lengthy and searching cross-examination, no material discrepancies / inconsistencies emerged to disbelieve the injured witness. No ulterior motive was assigned to the complainant for falsely implicating the accused who was acquainted with him prior to the occurrence and with whom he had no prior animosity. No suggestion was put to the witness that the appellant was not present at the spot at the time of occurrence. In the absence of any prior ill-will injured is not expected to spare the real

culprit and to falsely implicate an innocent one. PW-8 (Hemant Joshi) is another crucial witness who has corroborated PW-3 (Kumud Kumar)'s statement in its entirety. He also implicated Bhuwan Chand for causing injuries with a sharp edged iron weapon (gandasha) used for cutting mutton. When he tried to intervene and caught hold of the assailant, he sustained injuries on his hand. He shifted Kumud Kumar to the hospital. In the cross-examination, he also admitted that they had consumed liquor prior to the incident at Kumud Kumar's house and Kashmiri Market. The appellant was known to him prior to the occurrence. He had taken Kumud Kumar in a three wheeler scooter to AIIMS after the incident and stayed there throughout the night. From there, they were referred to Safdarjang Hospital at around 12 or 12.30 P.M. Kumud Kumar was unconscious and he regained consciousness after he was brought to Safdarjang Hospital at around 03 or 04.00 P.M. He further revealed that accused Bhuwan Chand was accompanied by a boy named Chandu known to him. Again, the appellant was unable to elicit any material inconsistency in the version narrated by the witness implicating him for the injuries caused to Kumud Kumar. No ulterior move was assigned to the witness to depose against the appellant with whom he had prior acquaintance. Presence of the witness at the spot stands established as he himself had sustained injuries

during the occurrence. He was also medically examined at the hospital by PW-4 (Dr.Dinesh Khanna) vide MLC (Ex.PW-4/A). The nature of injuries was opined 'simple' caused by blunt object. He further deposed that the injuries were possible by blunt as well as sharp weapon. Presence of PW-8 (Hemant Joshi) was not challenged in the cross-examination.

8. Minor contradictions, omissions, inconsistencies and improvements highlighted by the appellant's counsel are not material to discard the testimonies of PW-3 (Kumud Kumar) and PW-8 (Hemant Joshi) in their entirety. Such discrepancies are bound to occur with the passage of time. These do not affect the basic structure of the prosecution case. Non-recovery of weapon of offence is not fatal to the prosecution case as the expert witnesses have categorically deposed that injuries were caused by a sharp heavy weapon. Non-examination of independent witnesses from locality again is not fatal to the prosecution case as the occurrence took place at about 09.30 P.M. all of a sudden during winter-days. Public witnesses hesitate to join investigation for various reasons. The accused did not give plausible explanation to the incriminating circumstances proved against him. He did not produce any witness to establish the plea of alibi set up for the first time in 313 statement. Recovery of blood stained jacket (Ex.P2) further confirms his presence at

the spot. The appellant did not explain as to how and under what circumstances blood happened to be there on the jacket (Ex.P2) which belonged to him. It is true that the prosecution could not establish the clear underlying motive of the appellant to inflict injuries to the victim. But absence of any evidence in this regard cannot have any such impact so as to discard the other reliable evidence available on record which unerringly establishes the guilt of the appellant. Motive is not a sine qua non to prove the case of the prosecution. In the complaint (Ex.PW-3/A), the complainant alleged old rivalry / enmity with the accused. The complainant was not cross-examined to ascertain as to what was the said old enmity between the two. In my considered view, the appellant was the author of the injuries inflicted to the complainant and PW-8 (Hemant Joshi).

9. It is also true that there is a minor variance between ocular and medical evidence regarding the actual nature of the crime weapon used in the incident. The prosecution witnesses including the injured have described the weapon used as 'sharp' meant to cut meat. However, as per MLC (Ex.PW-6/A), only lacerated wounds were found on the head of the victim which could not have been caused by a sharp weapon. PW-6 (Dr.Atul Kumar Aggarwal) was, however, certain that the weapon used

was a heavy one and lacerated wounds could be caused by a sharp edged weapon provided it was a heavy one with blunt side. The Trial Court, after considering the appellant's contention was of the view that the weapon used (meant for cutting meat) might not have the sharp edge or the appellant might have used its blunt side. As the injuries were inflicted in quick succession, it was not possible for the victim to ascertain as to which side of the crime weapon i.e. sharp or blunt was used. Since, the crime weapon was not recovered and it could not be shown to the doctor who medically examined, opinion given by the doctor does not discredit the ocular version. The fact remains that 'grievous' injuries with a heavy weapon were inflicted to the victim. For seeking subsequent opinion by the Investigating Officer that the injuries inflicted to the victim could be possible with broken glass pieces, no adverse inference can be drawn as pursuant to his disclosure statement, the appellant disclosed of causing injuries to the victim with a broken glass. To rule out any such possibility, the Investigating Officer sought subsequent opinion which was rendered by PW-7 (Dr.Sudhir Gupta) who opined that the injuries could be produced by broken glass pieces. It is settled legal preposition that where the ocular evidence is cogent, credible and trustworthy, minor variance, if any, with the medical evidence is not of any consequence. It would be

erroneous to accord undue primacy to the hypothetical answers of medical witness to exclude the eye witness account. In '*State of Madhya Pradesh vs. Sardar*', 2001 (6) SCC 433, the accused allegedly caused injury by an axe, but according to medical evidence, no incise injury was found, the Supreme Court held that it could not be a ground for giving benefit of doubt because it would depend whether the blunt side or sharp edge side of the axe was used.

10. Admitted position is that the appellant and the victim were known to each other prior to the occurrence. They had no previous history of hostile relations. The incident took place without pre-meditation. The prosecution was unable to furnish the exact motive of the appellant to inflict injuries. The appellant had not anticipated the arrival of the victim Kumud Kumar and his companion Hemant Joshi at the spot. After seeing off their friend Mahinder Verma, complainant and Hemant Joshi were going to their house, when the appellant happened to meet them. The weapon used in the crime was not recovered. The prosecution did not verify or investigate as to from where the crime weapon was procured or arranged. The injuries inflicted on the body were lacerated wounds and nature of injuries was 'grievous'. The victim was fully conscious and well oriented when taken to the hospital. There was no history of loss of

consciousness, vomiting, seizure, ENT bleeding. The patient had smell of alcohol. MLC does not reveal if he was hospitalized for treatment for any duration. It is unclear if the weapon used in the crime was a sharp edged weapon as no incise wound was found on the body of the victim. From these circumstances, it cannot be inferred or deduced that the appellant had inflicted injuries with an intention to commit murder. At the same time, it also reveals that the multiple injuries numbering 8 were inflicted in quick succession on the vital organ i.e. head of the victim. He had got 44 stitches. In the opinion of PW-6 (Dr.Atul Kumar Aggarwal), the crime weapon used was a heavy one. The victim was unarmed and had consumed liquor which must have hampered his power to resist the attack. The appellant not only inflicted injuries to Kumud Kumar but also did not spare his associate Hemant Joshi who intervened to rescue him. The appellant did not offer any motive forcing him to inflict multiple wounds on the head of the victim without immediate grave provocation. After inflicting injuries, the appellant fled the spot and did not care to provide medical aid to the victim. Knowledge can be imputed / attributed to the appellant that the injuries so caused to the victims multiple in number on vital organ might have resulted in his death. It can safely be inferred that the accused inflicted injuries with the avowed object / intention to commit

culpable homicide. The appellant is accordingly held liable / responsible for committing offence under Section 308 IPC. Conviction under Section 307 IPC is altered to Section 308 IPC.

11. The counsel urged to take lenient view as the appellant has clean antecedents. The appellant was awarded RI for three years with fine ₹ 500/- after considering the mitigating circumstances by the Trial Court. He has suffered the ordeal of trial / appeal for about 13 years. He is not a previous convict and has clean antecedents. It is informed that he is a computer engineer by profession and is doing a private job. The conviction has been altered to Section 308 IPC. Considering these circumstances, sentence order is modified and the substantive sentence of the appellant is reduced to RI for one year. Other terms and conditions of the sentence order are left undisturbed. The appellant shall, however, deposit ₹ 30,000/- as compensation on or before 25th February, 2014 in the Trial Court and this amount shall be released to the complainant / victim – Kumud Kumar after due notice. He shall also deposit the unpaid fine (if any).

12. The appellant shall surrender to serve the remaining period of substantive sentence awarded to him before the Trial Court on or before 25 February, 2014.

13. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

FEBRUARY 18, 2014/*tr*