

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

RESERVED ON : 9th DECEMBER, 2013

DECIDED ON : 16th JANUARY, 2014

+ CRL.A. 397/2003

GULSHAN SHARMA & ORS. Appellants

**Through : Mr.R.K.Thakur, Advocate with
Mr.B.Mishra, Advocate.**

versus

STATE OF NCT OF DELHI Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Gulshan Sharma (A-1), Harish Sharma (A-2) and Kamni Sharma (A-3) challenge the legality and correctness of a judgment dated 03.03.2003 of learned Addl. Sessions Judge in Sessions Case No. 41/00 arising out of FIR No. 543/00 PS Rajouri Garden whereby they were convicted for committing offence punishable under Section 307/34 IPC. By an order on sentence dated 05.03.2003, they were awarded RI for five years with fine ₹ 5,000/-, each. The prosecution case as projected in the charge-sheet is as follows :

2. On 01.06.2000, Rajeev Taneja had gone at the residence of the accused persons to demand payment which A-1 had failed to pay being member of the committee. A-3 alone was present in the house. PW-11 (Rajeev Taneja) left the message with her and came back. A-1 and A-2 were resentful of Rajeev Taneja's visit to their house in their absence and at about 06.00 P.M., they went to his house and threatened his mother. At about 09.00 P.M. when both PW-11 (Rajeev Taneja) and his mother PW-2 (Sushma Taneja) were crossing in front of the house of the accused persons, A-1 to A-3 caught hold of Rajeev Taneja and gave beatings to him. At the instigation of A-3, A-1 took out a knife and inflicted injuries to him (Rajeev Taneja). On his raising alarm, Vinod Kumar Taneja, his brother arrived at the scene. The accused persons fled the spot. The police machinery was set in motion when Daily Diary (DD) No. 27 (Ex.PW-1/A) was recorded at 09.35 P.M. on getting information of a stabbing incident. The investigation was entrusted to SI Vinay Malik who with Const.Surinder went to the spot. Vinod took his injured brother to DDU Hospital and admitted him. Daily Diary (DD) No. 28 (Ex.PW-1/B) was recorded about his admission in the hospital. The Investigating Officer lodged First Information Report after recording Sushma Taneja's statement (Ex.PW-2/A). During the course of investigation, the accused

persons were arrested and crime weapon i.e. knife was recovered. Statements of the witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was filed against them under Sections 307/201/34 IPC. The accused persons were duly charged and brought to trial. The prosecution examined eighteen witnesses to establish their guilt. In 313 statements, the accused persons pleaded false implication and denied their complicity in the crime. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held all of them guilty for the offences mentioned previously. Being aggrieved, the appellants are in appeal. It is significant to note that the accused persons were acquitted of the charge under Section 201 IPC and the State did not prefer any appeal challenging the said acquittal.

3. I have heard the learned counsel for the parties and have examined the record. Appellants' 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 the interested witnesses without independent corroboration. The vital discrepancies and improvements in the statements of the prosecution witnesses were ignored without valid reasons. Ingredient of Section 307 IPC are not attracted and

proved. The prosecution was unable to examine the doctor who opined the nature of injuries as 'dangerous'. MLC (Ex.PW-7/A) does not record the nature of injuries. Appellants' counsel adopted an alternative argument to release them in case of dismissal of their appeal for the period already suffered in custody by them in this case. Learned Addl. Public Prosecutor urged that the Trial Court's judgment is based upon fair appraisal of the evidence and no interference is called for.

4. The occurrence took place at about 09.00 P.M. Daily Diary (DD) No. 27 (Ex.PW-1/A) was recorded at Police Post Raghubir Nagar at 09.35 P.M. on getting information of stabbing at B-196, Raghubir Nagar. Vinod Kumar Taneja took injured Rajeev Taneja to DDU Hospital soon after the occurrence. At 09.50 P.M. Daily Diary (DD) No.28 (Ex.PW-1/B) was recorded when duty Const.Kanwar Singh conveyed the information. The Investigating Officer, after recording statement of the victim's mother, sent rukka (Ex.PW-18/A) at 11.45 P.M. for registration of the First Information Report. Apparently, there was no delay in lodging the report with the police. In her statement (Ex.PW-2/A), Sushma Taneja at the first available opportunity implicated the accused persons for the injuries inflicted to her son Rajeev Taneja. She gave vivid detail of the occurrence and attributed specific role to each of the accused in causing

injuries and also assigned motive for that. Since the FIR was lodged without undue delay, there was least possibility of the complainant to concoct a false story in a short interval. While appearing as PW-2, she proved the version given to the police at the first instance without any variation and specifically deposed that at about 09.00 P.M. when she and her son were returning from AB – Block market and were crossing the road in front of the house of the accused persons, they (the accused persons) came out and caught hold of Rajeev Taneja and started beating him with fists and leg blows. A-3 pulled his hair and instigated A-1 to take revenge as he had tried to outrage her modesty. Thereafter, A-1 took out a knife from his pocket and stabbed her son on his back shoulder and thigh. In the cross-examination, she reiterated that A-1 took out a knife from the backside of the pant. No public person was present at the spot at the time of occurrence. She fairly admitted that there was no animosity towards the accused persons. The material facts proved by the complainant remained unchallenged in the cross-examination. The accused persons were unable to extract any material discrepancy or inconsistency in her version to disbelieve her. Her presence at the spot was not challenged in the cross-examination. The accused persons did not deny their presence at the spot. The role attributed to them was also not

questioned. Statement of the complainant has been corroborated in its entirety without any variation by PW-11 (Rajeev Taneja) who deposed that when they were crossing in front of the house, the accused persons standing outside their house started beating and abusing them with fist and blows. A-2 and A-3 pushed him down and A-1 pulled out a knife and stabbed him on left leg and chest. In the cross-examination, no material questions were put to challenge his testimony.

5. Both PW-2 (Sushma Taneja) and PW-11 (Rajeev Taneja) had no previous enmity with the accused persons to falsely implicate them in the incident. They lived in the same vicinity as neighbours. A-1 and A-2 were members of the committee being run by PW-2 (Sushma Taneja). The problem arose when PW-11 (Rajeev Taneja) went to A-1's house to demand unpaid dues in his absence and left the message with his wife (A-3) which annoyed the accused persons. In the absence of prior enmity or animosity, the injured witness is not expected to let the real culprit go scot free and to falsely implicate an innocent one. There are no sound reasons to disbelieve their ocular testimony which is in consonance with medical evidence. MLC (Ex.PW-7/A) was prepared when Rajeev Taneja was taken to DDU Hospital at 09.55 P.M. on 01.06.2000 by his brother Vinod Kumar Taneja. PW-7 (Dr.K.K.Kumra), CMO, DDU Hospital, identified

the handwriting and signatures of Dr.Amar Kumar on the MLC (Ex.PW-7/A). He deposed that the injuries sustained by the victim were caused by sharp weapon and were 'dangerous' in nature. His testimony remained unchallenged in the cross-examination. The police was able to recover the crime weapon i.e. knife (Ex.P1) used in the incident. As per Forensic Science Laboratory report, human blood AB group which was of the victim was detected on it. The prosecution was able to prove that the accused persons were the author of the injuries caused to Rajeev Taneja.

6. A-1 is the actual assailant who inflicted repeated injuries with a sharp edged weapon on the body of the victim Rajeev Taneja. The prosecution was, however, unable to prove that A-2 and A-3 shared common intention to inflict injuries to Rajeev Taneja with an intention to murder him. Victim's appearance with his mother at 09.00 P.M. in front of their house was sudden and without anticipation. A-2 and A-3 were not armed with any weapon. They had given beatings at the first instance to Rajeev Taneja and had not caused any injuries with any weapon. Subsequently, it was A-1 who took out a knife and caused multiple injuries to the victim. No role whatsoever was attributed to A-2 in the causing of the injuries by A-1. The prosecution was not able to establish beyond reasonable doubt that at the instigation of A-3, A-1 took out the

knife to cause injuries to the victim. Nothing has come on record to show if A-2 and A-3 were aware about the possession of knife with A-1 prior to the occurrence. A-2 and A-3 did not facilitate A-1 in causing injuries with knife. It cannot be said with certainty that A-2 and A-3 shared common intention with A-1 when he inflicted injuries with a knife to the victim. In the absence of proof of a pre-arranged plan or prior concert among the three, the mere fact that all were together by itself is not sufficient to make A-2 and A-3 liable for the acts of A-1. Common intention must precede the act constituting the offence. Of course, all the accused persons at the first instance intended to beat Rajeev Taneja as they were annoyed for his visit to their house in the absence of male members to demand money and for that Rajeev Taneja was beaten with fists and blows at the time of initial confrontation by all the accused persons. A-2 and A-3 cannot be vicariously held liable for the injuries caused with knife by A-1 to the victim. They are only liable for the individual role played by them in beating the victim by fists and blows at the first instance. Since they have remained in custody for long duration, no further sentence is required to be awarded to them for the beatings given to the victim.

7. A-1 inflicted repeated multiple stab blows on the vital organs of the victim with a sharp weapon. The injuries were opined 'dangerous'

in nature. As per MLC (Ex.PW-7/A), the following injuries were found on his body :

- 1. CLW 3 x 5 c.m. over the left side of the chest. 4 c.m. lateral to left nipple.*
- 2. CLW 3 x 3 c.m. over the lateral aspect of left thigh to mid thigh level.*
- 3. CLW 2 x 1 c.m. over the interior aspect of left thigh at the upper 1/3rd part of thigh.*
- 4. CLW 2 x 1 c.m. over the posterior aspect of left shoulder joint.*

The victim remained admitted in the hospital for sufficient long duration. Application (Ex.PW-13/A) was moved by the Investigating Officer on 14.08.2000 to obtain the result. The doctor by an endorsement on the application Ex.PW-13/A informed that the patient was still admitted in the hospital and type of injury will be given at the time of discharge. Apparently, the victim remained admitted in the hospital for more than two months. At the time he was taken to the hospital, he was unconscious. The victim was unarmed at the time of incident and A-1 inflicted 'dangerous' injuries with a deadly weapon on the vital organs without any provocation. From the facts and circumstances, it can be inferred that A-1 attempted to commit murder of the victim by causing injuries and was liable for his individual act under Section 307 IPC. The findings of the Trial Court on that score warrant no interference. A-1 has

been awarded RI for five years with fine ₹ 5,000/- which cannot be termed excessive or unreasonable.

8. In the light of above discussion, appeal preferred by A-1 (Gulshan Sharma) is dismissed being unmerited. His conviction and sentence are sustained. A-1 is directed to surrender before the Trial Court on 21st January, 2014 to serve out the remaining period of sentence. The period already undergone by A-2 (Harish Sharma) and A-3 (Kamni Sharma) in this case is treated as their substantive sentence for the beatings given to the victim and no further sentence is required to be awarded to them.

9. Appeal stands disposed of in the above terms. Trial Court record be sent back immediately.

(S.P.GARG)
JUDGE

JANUARY 16, 2014/*tr*