

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

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Date of Decision: 24.01.2014

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Crl. Appeal No.182/2013

VICKY @ VIKAS

....Appellant

Through: Mr R.S. Mishra, Adv.

Versus

STATE NCT OF DELHI

....Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

On 07.7.2008, at about 12.30 AM, the injured Monu was brought to Babu Jagjivan Ram Memorial Ram Hospital with history of physical assault. The information in this regard was given by the duty Constable to Police Station Jahangir Puri and ASI Mangat Ram was deputed to investigate the case. The Investigating Officer reached the aforesaid hospital and recorded the statement of the injured who was fit for statement. In his statement, the injured Monu stated that on that day at about 12.00 midnight when he was returning home and reached near the park of Jahangir Puri, Vicky @ Vikas @ Kalia, son of Munilal, resident of J-1061 Jahangir Puri, who as previously known to him was standing

near the park with two companions. When he (the injured) was passing, Vicky said to him that he was not walking properly and he would set him right. Thereafter, while passing him, Vicky simultaneously asked his companions to hold the injured. He was thereupon held by the companions of Vicky and a blow with a sharp edged weapon was given by Vicky on his head, but was able to save himself by tilting his head. He, however, could not save himself from the second blow given by Vicky and received injuries on his head. On alarm being raised by him, Prahlad reached there and seeing him the assailants ran away and he was brought to hospital by Prahlad in a rickshaw.

2. The appellant was charged under Section 307 IPC for attempt to commit murder of Monu. Since he pleaded not guilty to the charge as many as six (6) witnesses were examined by the prosecution in support of its case. No witness was examined in defence.

3. In his examination-in-chief recorded on 24.1.2011, the injured, Monu, stated that on the night intervening 6/7 July, 2008, when he was returning to his house and reached near the park of J-Block, the appellant, Vicky, who was residing in Gali No. 1000 in Jahangir Puri was found standing with his associates. Vicky asked him why he was annoyed with him and was not responding. When the injured stated that

he was moving rightly, Vicky started abusing him and exhorted his associates to catch hold of him. He uttered simultaneously that they would kill him. Thereupon both the associates of Vicky held him and Vicky gave blow with a sharp-edged weapon, but he was able to save himself by tilting his head to his left. Vicky again assaulted him with the same weapon, giving injury on his head. On listening to his cries, Prahlad reached there and on seeing him, the appellant ran away from the spot. Prahlad then took the appellant to the hospital in a rickshaw.

However, when the injured was cross-examined on 28.4.2012 he made a somersault and stated that there was darkness in the park and, therefore, he could not see the assailant. He, however, reiterated that when alarm was raised by him, Prahlad had reached there and taken him to hospital, though he claimed that up to main road he was taken on foot and from there a rickshaw was hired in which they went to the hospital. He was cross-examined by the learned Additional PP considering the contradiction between the statement made by him on 24.1.2011 and the statement made on 28.4.2012 and he was asked to which of the statements made by him was correct. The witness thereupon stated that the statement made on 28.4.2012 was correct.

4. Prahlad came in the witness box as PW4 and supported the case of the prosecution in toto. He stated that in the night intervening 6/7 July, 2008, while he was wandering in a park after taking his dinner, he reached the corner of the park on hearing the cries of Monu. He found that Monu had been held by two persons and the appellant Vicky was assaulting him with a sharp-edged weapon. According to this witness, on seeing him, the assailants ran away from the spot and he took the injured to Babu Jagjiwan Ram Hospital. The witness correctly identified the appellant accused at the time when he was examined.

5. PW6, S.I. Mangat Ram is the Investigating Officer of this case. According to him he reached the hospital on 7.7.2008 on receipt of copy of DD No.7B and recorded the statement of Monu, Ex.PW2/A. He further stated that by the time he returned to the hospital after visiting the spot, the injured had already been discharged.

6. In his statement under Section 313 Cr.P.C, the appellant denied the allegations against him and claimed that he was innocent and was falsely implicated in the case on account of his involvement in a previous case.

7. The learned counsel for the appellant submits that since the injured himself did not identify the appellant, the prosecution has failed to establish that the injury to the injured was caused by none other than the appellant and, therefore, benefit of doubt needs to be given to him. I, however, find no merit in this contention. Though the injured, Monu, made a somersault at the time he was cross-examined on 28.4.2012, he had in his examination-in-chief clearly stated that the appellant was previously known to him and the knife blow to him was given by the appellant. The name of the appellant as well as the name of his father and his address was also given in the FIR. Even in his cross-examination the injured did not say that the appellant was not previously known to him. In any case, the injured even at the time of his cross-examination maintained that PW-4 Prahlad had witnessed the incident and had taken him to hospital in a rickshaw. Therefore, presence of PW-4 Prahlad at the time the incident took place cannot be disputed. It would also be appropriate to note there that the name of Prahlad finds mention in the FIR itself. The injured told the Investigating Officer while lodging FIR that it was Prahlad who had brought him to the hospital in a rickshaw.

8. As noted earlier, Prahlad has fully supported the case of the prosecution and has expressly identified the appellant Vicky who was present in the dock at the time the witness was examined. Therefore, the identity of the appellant as the person who caused injuries to Monu stands established from the deposition of Prahlad even if the deposition of the injured is excluded from consideration.

9. In order to succeed the prosecution was required to prove (i) that the death of Monu was attempted, (ii) that his death was attempted to be caused by or in consequence of the act of the appellant and (iii) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injuries as the appellant knew to be likely to cause death or were sufficient in the ordinary course of nature to cause death. Although the nature of injury may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. The intention of the assailants can be gathered from the motive for the crime, nature of weapon used, number of blows

given by him, severity of blow and the parts of the body where the injuries are inflicted and other surrounding circumstances, if any. The language of the section makes it clear that even if mere hurt is caused by an act which is done with such intention or knowledge and under such circumstances, that if by that act death is caused, the offender would be guilty of murder, this section will apply. This section itself provides a punishment of 10 years for doing an act which amounts to an attempt to murder even though the act causes no hurt to anyone, but the offender is liable to the heavier punishment of imprisonment for life, if the injury is actually inflicted. If the intention of the accused to inflict injuries sufficient enough to cause death is established from the nature of the injuries and other circumstantial evidence, it cannot be said that there was no evidence that the injuries caused were known to be accused to be likely to cause death.

10. The question which comes up for consideration is as to whether considering the facts of this case, in the light of the law on the subject, the offence under Section 307 of IPC is made out against the appellant on account of the injury caused by him to the injured Monu or not. Though the doctor who examined the injured has not been produced in the witness box and the MLC has been exhibited in the deposition of the

Investigating Officer, even if the I take the said document into consideration, I find that there was only one injury on the parietal region of the injured Monu. The size of the injury was 10 cm X 0.5 cm and it was skull deep. The MLC further shows that the X-Ray report was examined by the Radiologist Dr. Shipra Rampal. She opined that there was no bony injury to the injured Monu. The nature of the injury was stated to be simple.

11. It has come in the deposition of the injured that when he was passing through the place where the appellant was standing along with his companions/associates, there was an altercation between him and the appellant who had objected to the manner in which the witness was walking. Considering natural course of human conduct, the injured must have retaliated when the appellant objected to the manner in which he was walking. It appears that an altercation took place between the appellant and the injured which resulted in the appellant causing injury to the injured Monu with a sharp-edged weapon. Neither the deposition of the injured nor the deposition of PW4 Prahlad reveals as to what was the weapon used by the appellant for causing injuries to Monu though the MLC indicates that it was a sharp-edged weapon. A perusal of the MLC would show that the depth of the injury is not indicated in the

document, which gives an impression that the injury was superficial in nature and was not much deep. The width of the wound was only 0.5 cms. The nature of the injury found on the parietal region of the injured indicates that the blow to the injured was not given with substantial force. Had the appellant applied substantial force while giving blow to the appellant, the injury would have been quite deep. Moreover, only one blow was given despite the fact that the injured had been held by two associates of the appellant, at the time injury was caused to him. Had the intention of the appellant been to commit murder of Monu, he would not have stopped at giving one injury and would in all probability have given more than one injuries, particularly when he was armed with a weapon and the injured had been rendered helpless on account of the two companions of the appellant holding him. Therefore, in the facts and circumstance of the case it would be difficult to say that the appellant intended to commit the murder of Monu, who, as noted earlier, was discharged from the hospital on the same day or he intended to cause such injury, which he knew to be likely to cause death or were sufficient, in the ordinary course, to cause death.

12. From the facts & circumstances of the case, charge under Section 324 IPC is proved against the appellant who caused simple injury to

Monu using a sharp-edged weapon. The appellant is, therefore, convicted under Section 324 IPC and is sentenced to undergo imprisonment for 1½ years and pay a fine of Rs.25,000/- or to undergo SI for three months, in default of payment of fine. Out of the amount of fine of Rs.25,000/-, Rs.20,000/- be paid to the injured.

The appeal stands disposed of.

A copy of this order be sent to the concerned Jail Superintendent for information and necessary action.

Trial Court record be sent back along with a copy of this judgment.

JANUARY 24, 2014
BG/b'nesh

V.K. JAIN, J.