

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

RESERVED ON : April 01, 2014

DECIDED ON : April 25, 2014

+ CRL.A. 372/2011 & CrI.M.B.No.599/2014

NASIRUDDIN @ GUDDU

..... Appellant

**Through : Mr.Rajesh Kumar, Advocate with
appellant produced in judicial
custody.**

versus

STATE

..... Respondent

**Through : Mr.Lovkesh Sawhney, APP for the
State.**

SI Kanhaiya Lal, PS Maurya Enclave.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Nasiruddin @ Guddu impugns a judgment dated 28.09.2010 of learned Additional Sessions Judge-II (North-West) in Sessions Case No.1076/2009 arising out of FIR No.100/2008 registered at Police Station Maurya Enclave by which he was convicted under Section 307/34 IPC. By an order dated 08.10.2010, he was sentenced to undergo RI for ten years with fine ₹5,000/-.

2. Briefly stated the prosecution case, as emerged in the charge-sheet, was that on 18.11.2008 at about 10.00 p.m. near Prembadi Pul, Singhalpur Nehar, Delhi, he and his associate Akhilesh (since proclaimed offender) in furtherance of common intention inflicted injuries to Sunny Kumar and Nand Kishore by a knife in an attempt to murder. The police machinery was set into motion when an information about the incident was conveyed by PW-12 (HC Jogender), posted as duty officer at BJRM hospital and DD No.3A (Ex.PW-4/A) was recorded at 12.30 night at police station Maurya Enclave. It records that Sunny Kumar was admitted by PCR in injured condition. The investigation was assigned to HC Bharat Lal who with Ct.Surendera Pratap went to the spot. The Investigating Officer lodged First Information Report after recording Sunny Kumar's statement (Ex.PW-1/A). Statements of witnesses conversant with the facts were recorded. On 14.03.2009, the appellant was arrested at the pointing out of the complainant-Sunny Kumar. Efforts were made to find out Akhilesh but to no effect and he was declared proclaimed offender. After completion of investigation, a charge-sheet was submitted against the appellant; he was duly charged; and brought to trial. The prosecution produced 14 witnesses to establish the charge. In 313 statement, the appellant denied his involvement in the

crime and pleaded false implication. He did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the record. The occurrence took place at round 10.00 pm on a trivial issue when the appellant and his associate Akhilesh demanded a match box from the victims and on their refusal, picked up a quarrel with them. When they objected to it, they both were inflicted injuries. The victim-Sunny Kumar was taken to BJRM hospital by PCR and was medically examined by MLC (Ex.PW-2/A). Nature of injuries were opined as 'grievous'. The MLC records the arrival time of the patient at around 12.20 am brought by PCR official HC Surender. It records the alleged history of 'physical assault'. Multiple injuries were found on the vital organ of the patient. In his statement made to the police at the first available opportunity, the complainant disclosed the detailed account as to how and under what circumstances, he had a confrontation with the appellant and his associate and on their refusal to give match box on demand, they were beaten and injuries were caused on their bodies. When their neighbour Maqbool Ali arrived at the spot; he informed PCR and the assailants fled the spot. The complainant claimed to identify the

assailants and described their proximate age. While appearing as PW-1, Sunny Kumar proved the version given to the police at the first instance without any variation or improvement. He identified the appellant-Nasiruddin @ Guddu and attributed a specific role to him in the incident. He deposed that when they expressed their inability to give match box, they were abused and manhandled by the appellant and his associate. Thereafter, Akhilesh took out a knife from his pocket and attacked Nand Kishore on chin as a result of which he fell down in the canal. Thereafter, the appellant caught hold of him from behind and his associate gave knife blows on his back and chest. The accused also attempted to hit him on abdomen but he saved the attack by putting hands over it. They were also given beatings with leg and fist blows. In the cross-examination, he denied the suggestion that a quarrel had taken place only with Akhilesh and not with Nasiruddin. The witness volunteered to add that initially the absconding accused had hurled abuses upon him and thereafter Nasiruddin @ Guddu also started supporting him. He fairly admitted that at the time of occurrence, he was not aware of the name of the assailants. Apparently, despite searching cross-examination, no material discrepancy could be elicited or extracted to disbelieve the version given by the injured witness. No ulterior motive was assigned to

the witness for falsely implicating the accused with whom he had no prior acquaintance or animosity. The complainant, who had sustained 'grievous' injuries by sharp object on his vital organs was not expected to spare the real assailant and to falsely implicate an innocent one. Statement of the complainant is in consonance with medical evidence. PW-2 (Dr.Neeraj Choudhary) proved the MLC (Ex.PW-2/A) by which Dr. Vadhesh medically examined the patient. PW-5 (Dr.Sanjay Kumar) stated that on examination by Dr. Samir, SR (Ortho.), stab wound on chest was found. The patient was having difficulty in breathing and blood was oozing out. The patient was referred to Hindu Rao hospital for treatment. He also proved Nand Kishore's MLC (Ex.PW-5/B). The nature of injury was 'simple' as given PW-6 (Dr.Mohd.Shakeel). These witnesses were not cross-examined. The opinions regarding nature of injuries given by them have remained unassailed. PW-8 (Maqbool Ali) corroborated the complainant's version and deposed that on 18.11.2008 at about 10.30 pm when he was going towards Nahar, Prem Bari, he saw Sunny in injured condition. He called PCR van who took Sunny to BJRM hospital. He was not cross-examined by the appellant. PW-9 (Nand Kishore) also supported the complainant to the extent that two individuals had caused injuries to him and Sunny by a knife. He was, however, unable to identify

the appellant as one of the assailants as it was dark that time. The statement of hostile witness can be considered to the extent it supports the prosecution version. Efforts were made to find the culprits but they were untraceable. After three and a half months of the incident, the complainant identified the appellant and informed the police. Thereafter, the appellant was arrested in this case though his associate Akhilesh remained untraceable and was declared proclaimed offender. Material facts proved on record by the complainant in his ocular testimony coupled with medical evidence remained unchallenged. In the cross-examination, the appellant did not give plausible explanation to the incriminating circumstances. In 313 statement, he did not specify a particular date when he was lifted from his house and was implicated in this case. The impugned judgment is based upon fair appraisal of the evidence and needs no interference.

4. The appellant was awarded RI for ten years with fine ₹5,000/-. Nominal roll dated 19.03.2014 reveals that he had remained in custody for about four years, eleven months and twelve days. He also earned remission for one year, four months and four days. He was granted interim bail twice and there are no allegations if he misused the liberty or indulged in any criminal activity. Sentence order records that

the convict was a young boy of 21 years. He was illiterate and was a car mechanic by profession. During the pendency of the appeal, he lost his father and was granted interim bail to perform certain rituals. The role attributed to the appellant is that he felicitated his co-associate Akhilesh in committing the crime while catching hold of the victim from behind. The appellant was not armed with any 'deadly' weapon at the time of incident which had taken place all of a sudden in a spur of moment on a trivial issue. Considering these mitigating circumstances, the sentence order is modified and the substantive sentence of the appellant to undergo RI for ten years is reduced/altered to RI for seven years. Other terms and condition of the sentence are left undisturbed.

5. The appeal stands disposed of in the above terms. Crl.M.B.599/2014 also stands disposed of. Trial Court record be sent back forthwith along with the copy of this order.

(S.P.GARG)
JUDGE

April 25, 2014/sa