

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

% *Judgment reserved on :26.03.2014.*  
*Judgment delivered on : 02.04.2014*

+ CRL.A. 103/2006  
SONU @ ATTEY ..... Appellant  
Through Ms. Manika Tripathy Pandey and  
Mr. Ashutosh Kaushik, Advs.

versus

STATE NCT OF DELHI ..... Respondent  
Through Ms. Kusum Dhalla, APP

CORAM:  
HON'BLE MS. JUSTICE INDERMEET KAUR

**INDERMEET KAUR, J.**

1 This appeal is directed against the impugned judgment and order of sentence dated 17.11.2005 wherein the appellant Sonu @ Attey along with the two other persons namely Sanjeev @ Suar and Kaley have been convicted under Sections 307/324/341/506/34 of the IPC and has been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo SI for 6 months for the offence under Section 307/34 of the IPC; for the offence under Sections 324/506/34, he has been sentenced to undergo RI for a period

of 1 year; for the offence under Section 341/34 IPC, he has been sentenced to undergo SI for 1 month.

2      Record shows that on 29.06.2001 at 09:00 pm when Hemant (PW-4) along with his friend Deepak (PW-3) had gone to Trilok Puri for purchasing shoes and were standing outside the shoe shop, they were accosted by three boys. The appellant Sonu told PW-4 that he was the 'dada' of the area and started misbehaving with him. When PW-3 intervened, the appellant Sonu brandished a knife and threatened both PW-3 and PW-4. Thereafter, he attempted to give a knife blow on his stomach which was warded off; Sonu gave knife blow on the back of PW-3. They had also given beatings to them. Meanwhile Ajay (PW-6) also reached the spot. He tried to save PW-3 and PW-4. Appellant Sonu gave knife blow on his stomach. The injured Ajay, Hemant and Deepak were all removed to the hospital. PW-6 received sharp injuries. He was examined by Dr. R.N. Das (PW-7) who has proved his MLC (Ex.PW-7/A). Injured had also been referred to the GTB hospital for surgery; one incised wound of 4 cm X 1 cm over the right iliac fossa with his gut protruding out of the arm which required a surgery for management. Dr.

Ashish Gupta (PW-8) had identified the signatures of Dr. Mritunjay  
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under whose care the patient was treated. The opinion on the injuries was 'dangerous'. His surgical record has been proved as Ex.PW-8/B. PW-6 remained in the hospital for about one week. PW-3 and PW-4 were also injured. They have also been medically examined. Injuries received by them were 'simple. They were proved as Ex.PW-7/D and Ex.PW-7/E.

3 The Investigating Officer SI Kishore Pandey (PW-12) had prepared the site plan (Ex.PW-12/C). He had also arrested the appellant vide memo Ex.PW-12/D and recorded his disclosure statement Ex.PW-12/F. However, no recovery was effected pursuant to the disclosure statement. The knife was admittedly not recovered.

4 This is the gist of the version of the prosecution.

5 In the statement of the appellant recorded under Section 313 of the Cr.PC., he has pleaded innocence; submission being that he has been falsely implicated. No evidence was led in defence.

6 On the basis of the aforementioned evidence both oral and documentary, the appellant was convicted and sentenced accordingly.

7 On behalf of the appellant, arguments have been addressed in detail. It is stated that the case of the prosecution suffers from inherent

contradictions as PW-1 has not been able to identify accused Sonu and has wrongly identified Vijay as Sonu. Injuries received by Ajay were undoubtedly 'dangerous' but the injuries received by Hemant and Deepak were 'simple'. The version of Rajwati (PW-2), is contrary to the version of PW-3; PW-3 had stated that he had gone home before he had gone to the hospital wherein PW-2 stated that she was an eye-witness which is not the case of the prosecution. On all counts, the appellant is entitled to a benefit of doubt and a consequent acquittal.

8 Arguments have been refuted by the learned APP for the State. It is stated that the impugned judgment does not call for any interference. The victim (PW-6) had remained in the hospital for almost a week and he had also suffered injury over the right iliac fossa with his gut protruding out which is also evident from Ex.PW-7/A & Ex.PW-8/B. On no count, does the impugned judgment call for any interference.

9 Arguments have been heard. Record has been perused.

10 Charge had been framed against the accused persons under Section 341 of the IPC for having wrongful restraint of Hemant and Deepak; for the offence under Section 324/34 of the IPC for having caused simple hurt to Hemant and Deepak as also under Section 307/34

of the IPC for having caused an injury to Ajay with an intention and knowledge that by his act, he could have caused death of the injuries. An additional charge under Section 506/34 had also been framed against the accused for having criminally intimidated the victim. As noted supra, accused persons had been convicted under all the aforementioned provisions of law and sentenced accordingly.

11 PW-6 as on oath deposed that on the fateful day when he had gone to purchase shoes at Trilok Puri, his friends PW-3 and PW-4 met him there; the accused persons whom he had seen prior thereto i.e. Suar, Kale and Attey accosted them; Attey had a knife with him. He stabbed PW-6 in his abdomen; PW-3 and PW-4 were also injured. His brother Rakesh (PW1) had taken him to Lal Bahadur Shastri Hospital from where he was shifted to Guru Teg Bahadur Hospital. In his cross-examination he stuck to his stand; he did not deviate and in fact no argument has been addressed on this score.

12 As per the MLC of PW-6 (Ex.PW-7/A) and endorsed by PW-8, the injuries suffered were opined to be 'dangerous'; he had undergone a surgery and his surgical record had been proved as Ex.PW-8/B. He has suffered an incised wound of 4cm X 1 cm in the right intestine as a

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result of which his gut protruding for which had to undergo the aforementioned surgery. Opinion on his surgery was described as 'dangerous'.

13 PW-3 and PW-4 had also sustained injuries. Their MLCs were proved as Ex.PW-7/E and Ex.PW-7/D. Both the PWs had received simple injuries. This documentary evidence i.e. injuries received by PW-3 and PW-4 finds clear mention in the oral testimony of PW-3 and PW-4.

14 Deepak (PW-3) had on oath deposed that he along with Hemant (PW-4) had gone to 'Shukra Bazar' to purchase shoes; as they reached the shop, three persons namely Suar, Kale and Attey @ Sonu came there. They were known to him; they demanded money from him; they started snatching it at the point of knife; a knife blow was given to PW-4 which just touched his stomach; when PW-3 tried to intervene, he suffered a knife blow. Public persons also gathered there. Ajay (PW-6), his friend had also reached the spot. He also suffered an injury in his abdomen. They were removed to the hospital. In his cross-examination, PW-3 stated that from the shop he was taken to the hospital by his mother; this version has been highlighted by the learned defence counsel

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to address an argument that this admission of PW-3 that he had first gone to his house and then to the hospital is contrary to the version of his mother.

15 The mother of PW-3 is Rajwati (PW-2). She has deposed that on the fateful day i.e. at 7-8 pm, she was present in the bakery shop; she heard the noise of quarrel; she rushed to the spot. She saw her son lying on the ground. He had an injury on his back; Hemant (PW-4) had also suffered injuries. On inquiry, she was told that Suar, Kale and Attey @ Sonu had quarreled with them. She boarded a rickshaw and took PW-3 and PW-4 to her house and narrated the incident to her husband from where they were taken to LBS hospital. This version of PW-2 is in full conformity with the version of PW-3. Both of them have stated that they had first gone to their house from where they were taken to the hospital. This argument of the learned defence counsel is totally bereft of merit.

16 Hemant (PW-4) has also supported the versions of PW-3 as also of PW-6. He has deposed on the same lines. He reiterated that he had gone with his friend i.e. PW-3 to purchase shoes. PW-6 had joined them; the accused persons had quarreled with them; they started snatching their money; they were armed with knives; Attey @ Sonu had

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inflicted a knife injury upon his stomach but it was a minor injury; the knife injury was also inflicted by Attey @ Sonu on the stomach of Ajay (PW-6); they were removed to the hospital. His statement (Ex.PW-4/A) was recorded. In cross-examination, he admitted that public persons had gathered there. The quarrel lasted for 10-15 minutes.

17 These oral versions of PW-6, PW-3 and PW-4 coupled with the corroborative testimony of PW-2 as also the documentary evidence which has been proved on record i.e. the MLC of PW-6 (Ex.PW-7/A) and his surgical record (Ex.PW-8/B) as also the injuries sustained by PW-3 and PW-4 which is evident from their MLCs Ex.PW-7/D and Ex.PW-7/E clearly establish that the accused persons had quarreled with the victims and caused injuries to them while trying to snatch the money from PW-3 and PW-4. The fact that the accused persons were known to the victims has come in the versions of all the witnesses i.e. PW-3, PW-4 and PW-6.

18 There is one appellant before this Court namely Sonu. He was the person who was armed with a knife and caused dangerous injuries to PW-6 as also simple injuries upon the persons of PW-3 and PW-4. He has also been convicted for the offence of criminal intimidation. Co-Crl. Appeal No. 103/2006

accused convicted along with the present appellant are not before this Court; it has been informed to the Court that they have probably suffered their sentences.

19 Learned defence counsel has pointed out that appellant Sonu had also suffered injuries and this is clear from the version of the Investigating Officer. The Investigating Officer SI Rajender Pal has been examined as PW-14. He was the second Investigating Officer. He had filed the challan. He admitted that in the challan he has stated that he collected the MLC of the appellant but he did not take any opinion on the injuries suffered by him; he denied the suggestion that he had not investigated the case properly. SI Kishor Pandey (PW-12), the first Investigating Officer has also admitted that Sonu had received injuries and he has proved his MLC as Ex.PW-12/DA. There was CLW of 1 cm X 0.4 cm X 8/c deep over nasal bridge; fresh bleeding was noted; multiple abrasion over right elbow, know and foot and left knee and foot were also noted; X-ray of the nasal bone was ordered. There is however no further record of the X-ray report of the appellant. Even in the statement under Section 313 of the Cr.PC, the appellant has stated that he was admitted to Lal Bahadur Shashtri Hospital and he had suffered

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injuries. These injuries have remained un-explained by the Investigating Officer.

20 In this context, the following observations of the Supreme Court in MANU/SC/1913/2005 Bishna @ Bhiswadeb Mahato and Ors. Vs. State of West Bengal are relevant:

*“The fact as regard failure to explain injuries on accused vary from case to case. Whereas non-explanation of injuries suffered by the accused probabilises the defence version that the prosecution side attacked first, in a given situation it may also be possible to hold that the explanation given by the accused about his injury is not satisfactory and the statements of the prosecution witnesses fully explain the same and, thus, it is possible to hold that the accused had committed a crime for which he was charged. Where injuries were sustained by both sides and when both the parties suppressed the genesis in the incident, or where coming out with the partial truth, the prosecution may fail. But, no law in general terms can be laid down to the effect that each and every case where prosecution fails to explain injuries on the person of the accused, the same should be rejected without any further probe.”*

21 It is also an admitted fact that the knife which was the weapon of offence was not recovered. Sonu @ Attey was arrested on 30.06.2001 vide memo Ex.PW-12/D and his disclosure statement (Ex.PW-12/F) was recorded on the same day but no recovery could be effected.

22 However, the oral versions of the aforementioned PWs who have

described the incident detailing that Sonu was armed with a knife cannot be overlooked; their versions are coherent and cogent and even in the absence of the recovery of knife, the oral versions of the aforementioned witnesses coupled with these MLCs shows that a dangerous injury had been suffered by PW-6. Thus the non-recovery of the knife and the non-explanation of the simple injuries on the appellant would not advance any argument of the learned defence counsel.

23 The conviction of the appellant, in this background, under the aforementioned provisions of law i.e. under Sections 307/324/506 calls for no interference.

24 Record shows that the appellant has been sentenced to undergo a maximum period of 5 years for the offence under Section 307 of the IPC. As on 21.03.2006 i.e. when he was released on bail, he has undergone a period of almost about 4 years. His presence has also been noted on 18.03.2014. He is young in years aged 32 years. No useful purpose would be served in sending him back for incarceration as a long trauma of trial i.e. from the year 2001 up to date which is almost 13 years as also the fact that he is the bread-earner of his family and having responsibility towards his family, the sentence of 4 years already

suffered by him is the sentence imposed upon him. Accordingly, while maintaining the conviction, the sentence already undergone by the appellant is the sentence imposed upon him.

25 Appeal disposed off in the above terms.

**INDERMEET KAUR, J**

**APRIL 02, 2014**

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