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

% *Judgment reserved on : 26.5.2014*
Judgment delivered on : 28.05.2014

+ CRL.A. 265/2006

MUKESH

..... Appellant

Through Mr. Vishal Raj Sehijpal, Adv.

Versus

STATE

..... Respondent

Through Ms. Fizani Hussain, APP along
with SI Parveen Kumar.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 27.3.2006 and 29.3.2006 respectively wherein the appellant had been convicted under Section 307 of the IPC and had been sentenced to undergo RI for 4 years and to pay a fine of Rs.500/- in default of payment of fine to undergo SI for 15 days. Nominal roll of

the appellant has been requisitioned. It reflects that as on the date when the appellant had been granted bail he has suffered incarceration for six months.

2 The version of the prosecution was unfolded in the statement of Smt.Kali, mother-in-law of injured Kayum (PW-3); Smt.Kali was not produced in Court. Her statement Ex.PW-6/B was recorded by the investigating officer ASI Kaptan Singh (PW-6); in this statement she had stated that her daughter Sunil married injured (PW-3) 3 to 4 years back but for the law few days she had started living with the appellant Mukesh which was the bone of contention between the injured and the appellant. Further averment being that on 18.9.2004 at about 7.00 p.m. when she was sitting at the road side near “Hanuman Setu” PW-3 came in an injured condition and told her that he had been stabbed by the appellant.

3 Statement of PW-3 was recorded on 30.9.2004 i.e. 12 days after the incident as he was not declared fit for statement prior to that date.

4 Medical record of the victim i.e. his MLC (Ex.PW-8/A) proved through Dr.R.S.Tolia (PW-8) shows that there were four incised wounds—

- (i) incised wound of size 2x1 cm obliquely placed 2 cm from mid line of the left chest between fifth and six ribs in the inter-coastal space;
- (ii) incised wound of size 2x1 cm vertically placed 7 cm from midline on right chest between 9 x 10 ribs inter-coastal space;
- (iii) incised wound of size 1x1 cm under left elbow at palmer aspect (Anterior);
- (iv) incised wound of size 2x1 cm under left elbow at posterior aspect.

5 This document further records that the patient was unfit for statement not only on 18.9.2004 but also on the subsequent dates; he was declared fit for statement only on 30.9.2004. His gastric lavage was also taken as the doctor has suspected poisoning; there was however no evidence to fortify this suspicion.

6 Version of PW-3 is corroborative of his medical report. He has deposed that on 18.9.2004 at about 6.30 p.m. when he was present near the 'akhara' the appellant came from the side of Lal Quila and gave two blows on his abdomen by a knife. He also stabbed him on his right side of chest. PW-3 further deposed that two months prior to this incident his wife had gone to live with the appellant; he did not know the reason why the appellant assaulted him; appellant suddenly came and stabbed

him on different parts of his body; the weapon resembled a 'talwar'.

7 In his cross-examination PW-3 stuck to his stand; he deposed that he knew the appellant since the last 6-7 years. He denied that the appellant was his friend; his mother-in-law had taken him to the hospital and she was present at a distance of about 100/200 paces when the incident had occurred; persons who had gathered had run away. He denied the suggestion that the accused had been falsely implicated because the appellant was having an affair with his wife.

8 In the statement of the appellant recorded under Section 313 Cr.P.C. he pleaded innocence; his submission being that he has been falsely implicated on account of money which PW-3 owed to the appellant and on his demand this case had been falsely set up against him.

9 On the basis of the evidence collected by the prosecution oral and documentary, the appellant had been convicted and sentenced as aforenoted.

10 On behalf of the appellant arguments have been addressed in detail; it is submitted that it is a clear case of false implication as the motive of the crime has emanated not only in the version of PW-3 but

also in the statement of Kali (Ex.PW-6/B) wherein it had been established that Sunil wife of PW-3 has started living with the appellant and this was a grudge which the victim had against the appellant and which was the reason for his false implication. Further submission being that in the MLC there is no reason as to why the name of the appellant has not emerged if he was in fact the assailant. The recovery of the knife which was made one day after the date of the incident is also liable to be disbelieved as it was made from the house of the brother of the appellant which would have no connection with the appellant. Benefit of doubt must accrue in favour of the appellant.

11 Learned Public Prosecutor has refuted the arguments. It is pointed out that on no count does the impugned judgment suffer from any infirmity. Testimony of PW-3 has been fully corroborated by the medical evidence. The knife had also been recovered; the blood stained shirt of the appellant which was recovered pursuant to his disclosure statement clinches the evidence to the hilt. The impugned judgment calls for no interference.

12 Arguments have been heard and record perused.

13 PW-3 was the star witness of the prosecution. He has on oath

reiterated the averments made in his compliant. He has delineated and described the incident in detail; candidly explaining to the Court that although the appellant was known to him since the last 6-7 years but he was not a friend. He admitted that his wife had started living with the appellant for the last one or two months prior to the incident. Relevant would it be to note that in the cross-examination a suggestion has been given to PW-3 by learned defence counsel that the victim has falsely implicated the appellant because of the reason that the wife of the victim had started living with the appellant and because of the affair between the wife of the victim and the appellant. This line of defence has however changed at the time when the statement of the accused under Section 313 Cr.P.C. was recorded. At this point of time a different line of defence has emanated. In this statement, appellant stated that there was a money transaction between the injured and the appellant and when the appellant had made his demand from victim the victim had set up this false case against him. The appellant was blowing hot and cold; he did not know his real defence and the answer as to why he has been implicated in this case. This was for the reason that this was a false plea and that is why one did not match the other.

14 PW-3 was a cogent and coherence witness. The alleged reason for falsely implicating the appellant falls flat in view of the contrary stands adopted by the appellant.

15 PW-3 had disclosed this incident to his mother-in-law Kali who has not been examined but the record shows that in spite of best efforts by the Investigating Officer to contact Kali she could not be traced and that is why her statement was proved in the version of the Investigating Officer as Ex.PW-6/B. Section 32 of the Indian Evidence Act permits the Court to read in evidence the evidence of a person who cannot be found. As noted supra Kali not having been traced out despite all efforts to trace her; her statement becomes a relevant fact under Section 32 of the Indian Evidence Act. Her statement Ex.PW-6/B was to the effect that on the fateful day when she was sitting outside the road near “Hanuman Setu” PW-3 her son-in-law came in an injured condition and told her that he had been stabbed by the appellant with a knife.

16 The appellant was arrested vide memo Ex.PW-2/B from his house at Usmanpur. His disclosure statement Ex.PW-2/D was recorded on the same day i.e. on 19.9.2004. The appellant had led the police party to the jhuggi of his brother from where he had got recovered a knife/ Kirpan

which was taken into possession vide memo Ex.PW-2/F. The blood stained shirt of the appellant was also produced by him which was taken into possession and sent to the FSL.

17 The FSL vide its report Ex.PW-6/F had reported that the shirt of the appellant had human blood stains and so also the recovered weapon which has also human blood. The MLC Ex.PW-8/A of the victim noted the injury of the victim to be grievous; so much so the victim was not even fit to make statement after 12 days of the incident.

18 However, even as per the version of PW-3 this quarrel had erupted suddenly and was not premeditated. It was only when PW-3 was present near the Akhara that the appellant came behind him and stabbed him; nature of injuries although grievous but were not on any vital part of the body. Offence under Section 307 of the IPC is not made out. Incident is also more than 1 decade old. Accordingly the accused is convicted for the offence under Section 325 of the IPC. The sentence is modified and the 4 years RI is reduced to RI for 1 year. Sentence of fine remains unaltered. As noted supra, the appellant has already suffered incarceration of about six months. He be taken into custody to serve remaining sentence. Bail bond cancelled. Surety discharged.

19 Appeal is disposed of in the above terms.

INDERMEET KAUR, J

MAY 28, 2014

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