

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

DECIDED ON : 10th MARCH, 2014

+ CRL.A. 491/2011

RAM LADETH @ RAJESH Appellant

Through : Mr.Karamveer Singh, Advocate
with Mr.S.R.Rawat, Advocate.

Versus

THE STATE Respondent

Through : Mr.M.N.Dudeja, APP.

AND

+ CRL.A. 1303/2011

SHISHU BHAN SINGH @ BABLU Appellant

Through : Ms.Srilina Roy, Advocate.

versus

THE STATE (NCT OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Open Court)

1. Ram Ladeth @ Rajesh (A-1) and Shishu Bhan Singh @ Bablu (A-2) challenge the legality and correctness of a judgment dated 15.03.2011 of learned Addl. Sessions Judge in Sessions Case No. 213/09 arising out of FIR No. 40/09 PS Okhla Industrial Area by which they were held guilty under Section 324 IPC for inflicting injuries 'simple' in nature by sharp object to Guddi @ Sunita in furtherance of common intention along with one Shyam Babu Dubey @ Pandit (not arrested) on 03.02.2009 at around 10.50 P.M. near railway line, village Tehkhand. The police machinery swung into action on getting information about the stabbing incident at 11.45 P.M. vide Daily Diary (DD) No. 18A (Ex.PW-4/A). The investigation was assigned to ASI Chander Deep who with Const. Kamlesh Kumar went to the spot. No eye witness was available at the spot or the hospital where the victim had already been taken. The Investigating Officer lodged First Information Report after making endorsement (Ex.PW-7/B) over Daily Diary (DD) No. 18A (Ex.PW-4/A). On 05.02.2009, statement of the victim Guddi @ Sunita was recorded. She implicated her husband (A-1), A-2 and one Shyam Babu Dubey @ Pandit for causing injuries to her. During investigation, statements of the

witnesses conversant with the facts were recorded. Pursuant to A-2's disclosure statement, a knife was recovered. The exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was filed against the appellants; they were duly charged and brought to trial. In 313 statements, they denied complicity in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. It is relevant to note that the appellants were charged under Section 307 IPC but they were found guilty under Section 324/34 IPC and the State did not challenge their acquittal under Section 307 IPC.

2. I have heard the learned counsel for the parties and have examined the file. The victim Guddi @ Sunita appeared in person pursuant to the issuance of bailable warrants against her husband (A-1). She informed that both she and her husband (A-1) are living together and she does not want any action against him.

3. Conviction of the appellants is based upon the sole testimony of the complainant Guddi @ Sunita. In her statement to the police on 05.02.2009, she implicated her husband (A-1) as well. However, while appearing in the Court, she completely exonerated him and did not whisper a word showing his complicity in the crime. She was cross-

examined by learned Addl. Public Prosecutor after Court's permission. She denied that A-1 used to quarrel with her or suspect her to be a lady of bad character. She was confronted with her statement (Ex.PW-2/A). In Court, she deposed that on 03.02.2009, one Shyam Babu Dubey @ Pandit had called her on mobile to collect ₹ 6,500/- given by her as loan to A-2. At about 09.30 P.M., she and her husband (A-1) went to the jhuggi of Shyam Babu Dubey @ Pandit and took tea there. Thereafter, they proceeded to go to the house of A-2 and when they reached near railway line, Shyam Babu Dubey @ Pandit took her mobile. In the meantime, Shyam Babu Dubey @ Pandit caught hold of her. A-2 after coming from back pushed her and she fell down on the ground. Thereafter, A-2 inflicted knife blows on her throat and left thigh. Her husband fled the spot due to fear and she became unconscious. Earlier in her statement (Ex.PW-2/A), she had accused her husband (A-1) of exhorting (A-2) "mera pati kah raha tha ki ishe jaan se mar do ye bachni nahi chahiye." The major deviation from her earlier statement (Ex.PW-2/A) giving clean chit to A-1 makes her testimony doubtful. In Daily Diary (DD) No. 18A (Ex.PW-4/A) recorded at 11.45 P.M. Guddi @ Sunita was the informant. It records that 'somebody' had caused her stabbing injuries. She did not name A-1 or A-2 for inflicting injuries to her. It is unclear as to when and

where Guddi @ Sunita came to senses to record her statement on 05.02.2009. The prosecution did not examine the doctor who had declared her fit to make statement on 05.02.2009. MLC (Ex.PW-3/A) does not reveal if she was hospitalized for treatment or when she was discharged from the hospital. A-1 and A-2 had not absconded and were arrested on 05.02.2009 itself. Recovery of knife at A-2's instance is suspect as no independent public witness was associated. Seizure memo (Ex.PW-6/I) does not record if the recovered crime weapon had bloodstains on it. FSL report dated 30.09.2009 did not detect any blood of human origin on the knife. No mobile phone belonging to the complainant was recovered and its call details were not placed on record. It is unclear if Shyam Babu Dubey @ Pandit was declared Proclaimed Offender. There was variance between the ocular and medical evidence. The complainant disclosed that three stab wounds were inflicted on her thigh. However, in MLC (Ex.PW-3/A), no such injury was found on the thigh. The complainant did not give detail particulars as to when loan of ₹ 6,500/- was given to A-2. It has come on record that the complainant and her husband had taken A-2's child in adoption. The said child was sent back to her natural father (A-2) after three or four months. It appears that the relations between the parties were strained on that account. It is unbelievable that the complainant and

her husband would not be aware of the residential address of A-2 and would seek the assistance of third one - Shyam Babu Dubey @ Pandit to reach to his residence on that day. Had A-1 been present at the spot and injuries were caused to his view by A-2 to his wife as alleged, there was no occasion for him to flee the spot or not to lodge First Information Report with the police. His conduct is unreasonable and unnatural. Neither did he take the victim to the hospital nor did he inform the police. Contrary to that, the complainant implicated A-1 for sharing common intention with A-2 and Shyam Babu Dubey @ Pandit to cause injuries to her in an attempt to murder her. She even accused A-1 of suspecting her character. Subsequently, she gave clean chit to him in her deposition before the Court. She did not give plausible explanation to the mismatch between the version given to the police (Ex.PW-2/A) and the one before the Court. It appears that she has not presented true facts about the incident and cannot be considered as a truthful witness. Certain answers given by A-1 in 313 statements are not enough to base conviction in the absence of positive incriminating evidence against him. No crime weapon was recovered at his instance. The impugned judgment convicting A-1 and A-2 on the sole testimony of the complainant which is full of discrepancies and improvements cannot be sustained.

4. In the light of above discussion, the appeals are accepted. Conviction and sentence of A-1 and A-2 are set aside. Bail bonds and surety bonds of the appellants stand discharged. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MARCH 10, 2014/ tr