

injured opined that he was unfit for statement. Some stab wounds were found on the body of the injured and on the basis of the said stab wounds, an FIR under Section 307 was registered. The statement of injured Kaku @ Sapan, S/o Raju was recorded by the Investigating Officer Inspector Rajinder Meena on the next day. He also recorded the statement of the wife and the brother of the injured. It transpired from their statements that the injured was attacked by the appellant Amit Chauhan, with a knife. The appellant was arrested on the same day. The case of the prosecution is that while in police custody, the appellant made a disclosure statement stating therein that the knife had been thrown by him outside the gate. Pursuant to the aforesaid statement, the appellant took the police officials to near his house and produced one vegetable cutting knife, which was seized after it had been sealed with the seal of RM.

2. The appellant was charge-sheeted under Section 307 of IPC. Since he pleaded not guilty to the charge, as many as 13 witnesses were examined by the prosecution. No witness, however, was examined in defence.

3. The injured came in the witness-box as PW-2 and inter alia stated that on 11.07.2009 he was present at gate No. 1 of Anuj Vihar and at

about 9 or 9.30 pm, the accused Amit Chauhan, who was previously know to him caused knife injuries on both his hands and thereafter on his stomach when he was talking to the father of the accused. He further stated that earlier on the same day, there was a quarrel between him and younger brother of the appellant and his father had enquired from him as to the reason of quarrel. According to him, he had told the father of the appellant that Sachin younger brother of the appellant was hurling abuses on him which had led to a quarrel taking place. He further stated that his brother Sandeep, wife and mother who reached the spot took him to hospital.

4. During cross-examination, he admitted that the father of the appellant had lodged a complaint against him with a military personnel alleging that he had snatched Rs 5000/- from Amit. He also admitted during cross-examination that his mother and wife had reached the placed of incident after 10-15 minutes of the reaching of his brother, who in turn had come after 10-15 minutes of the incident. Thus, according to him, the incident was not witnessed either by his brother, mother or wife.

5. The brother of the injured came in the witness-box as PW-3 and inter alia stated that in the night of 12/13.07.2009, at about 8.00/8.30

pm, when he was coming from market, he saw grappling between the appellant and the injured Sapan, and his father was also present there. He also stated that it was on the next day that he came to know that the injured had caused knife injuries to Sapan. He also claimed that next day when they went to Police Station, the police showed a knife and told him that by the said knife, the injuries were caused to the Sapan. He claimed that his signatures were also obtained on some documents, without explaining the nature of those documents to him. During cross-examination by the learned APP, he denied the suggestion that his brother had told him that he had been inflicted knife injuries by Amit. He also denied the suggestion of the learned Additional PP that in his presence the accused had got recovered a knife lying near the spot on 12th of July. Even as regards arrest of the appellant, he claimed that he was apprehended by the security and not at his pointing out. He also denied the suggestion that the sketch was prepared in his presence.

6. PW6 – Mrs. Annu is the wife of the injured. She stated that she did not witness the incident and did not know under what circumstances her husband had sustained the injuries. However, during cross examination by learned Additional Public Prosecutor, she admitted that Sapan had told her that Amit had caused injuries to him with a knife.

7. PW7 – Vijay Poddar, *inter alia*, stated that on 11.07.2009 at about 8 pm, a quarrel took place in his presence between the appellant and Sapan Kumar. According to him, when Sapan Kumar reached the gate of Anuj Vihar, accused Amit started giving beatings to him. Initially, he stated that the appellant took out a knife from his back pocket but later he stated that he could not come to know as to what object the accused had taken out from his pocket. According to him, after striking, the appellant ran away about 20 meters. He sent his guards after Sapan Kumar and directed them to catch hold of him and bring him to the gate, but Sapan Kumar fell on the ground, whereupon it was found that blood was oozing from his stomach. He further stated that his guards caught hold of Amit and when he checked him he was found in possession of a knife. The witness claimed that he then placed the knife on the table of the guard and thereafter called Delhi Police. The knife was handed over to Delhi Police, along with the appellant – Amit Kumar. He also stated during cross examination that there was no blood on the knife nor was any blood on the table on which the knife was put.

8. PW10 – Head Constable Harkesh stated that on 12.07.2009, when they reached underpass of NH-8, near Anuj Vihar the appellant was seen coming from the side of Village Jharera and he was apprehended

on being identified by Sandeep. He also deposed regarding the appellant getting recovered the knife from the right side of the main gate of Anuj Vihar, towards inside the gate. In his cross examination, he stated that the place where the knife was recovered was about 15-20 feet inside the gate.

PW12 – Inspector Rajender Meena is the Investigating Officer of this case. He, inter alia, stated that he went to the spot along with ASI Bhoop Singh and Constable Dharamdev in the early morning of 12.07.2009 and found blood on the spot. The earth control was dug out and seized by him. He also claimed that the accused was arrested on 12.07.2009 when he was seen coming from Village Jharera and was identified by Sandeep. He also deposed with respect to recovery of a knife at the instance of the appellant from the place inside the Anuj Vihar Gate, in inside earth.

PW5 – Dr. Vijay Bansal examined the injured in the hospital and found 2 cm x 2cm stab wound with omentum visible through the wound. He also found lacerated wound measuring 1 cm x 1 cm over right elbow measuring 2 cm x 2 cm on left arm and 1.5 cm x .5 cm on the left elbow. Discharge summary is Ex.PW5/B.

9. In his statement under Section 313 Cr.PC, the appellant denied the allegations against him and claimed that he was apprehended from the house by some army personnel. He also stated that Sapan had enmity with him since he had lodged a complaint against Sapan to the authorities alleging that he had snatched money from his brother Sandeep on 11.07.2009.

10. The following circumstances emerge from a careful analysis of the evidence produced by the prosecution:

- (i) The appellant had lodged a complaint against the injured Sapan stating therein that he (complainant) had snatched money from his younger brother. This complaint was made on 11.07.2009;
- (ii) The complainant as well as the appellant were present at the Gate of Anuj Vihar at about 8 of 8.30 pm on 11.07.2009;
- (iii) There was a quarrel between the appellant and the complainant – Sapan, near the gate of Anuj Vihar at about 8/8.30 pm on 11.07.2009. A grappling had taken place between the appellant and the complainant during the said quarrel;

- (iv) The appellant took out some sharp object which may or may not be a knife, from his back pocket and caused injuries to the complainant using the said sharp object.

11. In order to succeed the prosecution was required to prove (i) that the death of Sapan 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.

12. A perusal of the MLC of the complainant Ex.PW5/A would show that he had a stab wound measuring 2 cm x 2 cm and the omentum was visible through the wound meaning thereby that the said injury was caused on the abdomen. Three lacerated wounds, one on the arm and two on the elbow of the complainant Kaku were also found on his body when he was examined in the hospital. The nature of injuries was opined to be grievous and it has come in the deposition of Dr. Vijay Bansal that had the injured not been given immediate medical treatment, the injuries could have resulted in his death.

In my view, the facts and circumstances of the case do not make out a case of attempt to murder. As noted earlier, only one stab wound measuring 2 cm x 2 cm was found on the body of the complainant. The depth of the injury is not indicated in the MLC, which gives an indication that the wound was not quite deep, meaning thereby that not much force was used in giving the said blow. The injured was fit for making statement on 12.07.2009 itself despite having received injuries in the night of 11.07.2009. What is more important is that the stab wound was caused to the complainant, during the course of a quarrel

which appears to have ensued when the complainant confronted the appellant for making a complaint against him, alleging snatching of money from younger brother of the appellant. Thus, there was no preplanning or pre-meditation and what happened was happened in a spur of moment, during the course of grappling which the appellant had with the complainant. As noted earlier, only one stab wound that too measuring only 2 cm x 2 cm was given to the complainant, despite the fact that the appellant was armed with a sharp edged weapon. Had the intention of the appellant been to cause murder of the complainant, he would not have stopped by giving one blow wound and would have inflicted multiple blows using the said sharp edged object, particularly, when the injured was unarmed and therefore defenceless. Moreover, the blow would have been given with substantial force. In the facts and circumstances of the case, it cannot be said that the stab wound to the complainant was caused with such intention or knowledge and under such circumstances that if by that act, the appellant had caused death, he would be guilty of a murder. In my view, in the facts and circumstances of the case, the appellant would be guilty of the offence punishable under Section 324 of IPC for injuring the complainant with a sharp weapon, which possibly could be a vegetable knife.

13. Though there are substantial discrepancies in the case of the prosecution, they, in my view, can be safely attributed to over-zealousness on the part of the Investigating Officer and do not create a serious doubt with respect to the appellant being responsible for the stab wound and other injuries found on the person of the complainant. For instance, though the case of the prosecution is that the appellant was arrested on being pointed out by Sandeep, brother of the complainant while coming from the side of Village Jharera on 12.07.2009, Sandeep vehemently denied that the appellant was identified by him while coming from the side of Village Jharera on 12.07.2009 and was arrested in his presence. There could be no reason for Sandeep to depose falsely he being none other than the brother of the complainant. In fact, PW7 – Vijay Poddar, who is an absolutely an independent witness of the incident clearly stated that he had handed over the knife to the police along with the appellant – Amit. He also clearly stated that the knife was found by his guards when they checked the appellant and that knife was also handed over by him to Delhi Police. The deposition of this witness, who was not at all cross examined by the learned Additional Public Prosecutor, clearly belies the story set up by the prosecution with respect to the arrest of the appellant and recovery of knife at his

instance. In fact, even Sandeep claimed that the appellant was apprehended by security, therefore confirming the deposition of PW7.

14. The case of the prosecution is that the knife was recovered on the next day from inside the gate of Anuj Vihar at a distance of about 15-20 feet from the place of occurrence. As noted earlier, the Investigating Officer had visited the place of occurrence before the knife is alleged to have been recovered. Had the knife been lying near the gate, the Investigating Officer could not have missed it. Though it has come in the deposition of a witness that the IO had dug up the earth to take out the knife, that part of deposition cannot be believed since the appellant had no chance to conceal the knife by digging it in the earth immediately after the incident. Had he done so, the witnesses would have noticed him doing so and would have informed the police in this regard.

15. As noted earlier, according to Sandeep, brother of the injured, the knife was shown to him in the police station on 12.07.2009 and he was told by the police officials that the knife they shown to him was the knife used for causing injuries to his brother. The deposition of Sandeep also belies the case of the prosecution that the knife after its recovery was sealed with the seal of RM. Therefore, the story set up by the

prosecution with respect to the circumstances in which the appellant was arrested and with respect to the recovery of knife cannot be believed and is liable to be outrightly rejected. However, this is also a settled legal proposition that the benefit of negligence in the investigation does not automatically accrue to the benefit of the accused and the court in such circumstances is to examine the case of the prosecution *de hors* such defects in the investigation and if the evidence, after excluding such defects in investigation is found to be credit-worthy, the conviction can be based upon such evidence, to the extent it is found to be reliable and credit-worthy.

16. For the reasons stated hereinabove, the appellant is convicted under Section 324 of IPC and is sentenced to undergo RI for three (3) years. In the facts and circumstances of the case, I do not deem it appropriate to impose any fine on the appellant.

17. I have considered the request of learned Additional Public Prosecutor for grant of compensation to the injured. However, considering the fact that the appellant has already spent about four years in custody and is not in a position even to pay the fees of his counsel, it would not be appropriate to pass any order for payment of compensation, he not being in a position to make any such payment.

The appeal stands disposed of accordingly.

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

Trial court record be sent back with a copy of this order.

MARCH 10, 2014/*rd*

V.K. JAIN, J.