

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

**RESERVED ON : 21st January, 2014
DECIDED ON : 29th January, 2014**

+ CRL.A. 705/2012

SANJU @ SONU

..... Appellant

Through : Mr.Ravinder Narayan, Advocate.

VERSUS

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant (Sanju @ Sonu) challenges her conviction under Section 307 IPC by a judgment dated 17.05.2012 in Sessions Case No.47/2011 arising out of FIR No.193/2005 registered at Police Station, Gokulpuri. By an order on sentence dated 21.05.2012, she was awarded rigorous imprisonment for seven years with fine ₹2,000/-.

2. Allegations against the appellant were that on 08.04.2005 at about 11.00 A.M. at Mona's house, Mukund Vihar, Karawal Nagar, she

administered liquor after mixing acid in it in a Limca bottle to her husband Chetan and when he became unconscious after consuming it, she threw acid on his face in an attempt to murder him. The police machinery was set into motion when Daily Diary (DD) No.15A (Ex.PW8/A) was recorded at Police Station Gokulpuri at 1.20 P.M. on getting information about a 'boy' lying unconscious near Panchayat Ghar, Primary School, Village Chauhan Pur, Delhi. The investigation was assigned to ASI Ravi Karan who with Const.Rajesh went to the spot and came to know that the victim had already been taken by PCR to Guru Teg Bahadur hospital. The victim was unfit to make statement. The Investigating Officer lodged First Information Report after making endorsement (Ex.PW-8/B) on DD No.15/A (Ex.PW-8/A). During the course of investigation, statements of witnesses conversant with the facts were recorded. The accused was apprehended and arrested. After completion of investigation a charge-sheet was filed, she was duly charged and brought to trial. The prosecution examined 12 witnesses. In 313 statement, she alleged false implication but did not examine any witness in defence. The trial resulted in her conviction.

3. I have heard the learned counsel for the parties and have examined the trial court record. Appellant's conviction is based upon the

sole testimony of the complainant-Chetan Singh. It is an admitted position that on 26.12.2003 a marriage between the appellant and the complainant took place at Arya Samaj Mandir, Jamuna Bazar, Delhi. On 17.02.2004, they organized social marriage with the consent of their parents and started living at the matrimonial home. However, the relations became strained between the parties. Soon after that on 20.02.2004 a quarrel took place between the two when allegedly Dr.Tyagi with whom the appellant was employed as a Nurse prior to the marriage came to the matrimonial home and wanted to take her with him. Police was informed at 100 and Sanju @ Sonu was sent with her parents. On 25.02.2004, she was brought back to the matrimonial home. After one or two days again quarrel took place between the two and both started living separate on rented accommodation at Shiv Vihar. The relations between the two did not improve. The complainant alleged that one day when he had gone to attend work, the appellant brought four boys and took all the articles to Mukhiya Market. It has further come on record that the complainant had filed petition for divorce on the ground of cruelty under Section 13 (1) (ia) of Hindu Marriage Act. Apparently, relations between the parties were not cordial and they were not on speaking terms.

4. Complainant alleged that on 07.04.2005 Sanju @ Sonu made a telephone call on his mobile and asked him to visit her in her house on the pretext that she was not feeling well but he declined to go there. On 08.04.2005, she again insisted him to come to her home. When he went there, he found her well. She asked him to go to her friend Mona's house to celebrate her birthday there. The appellant served him wine in which she had mixed some poisonous substance. On consuming the liquor, he became unconscious and thereafter acid was thrown on his face by her. His mobile phone was snatched. He attempted to run away from the spot but fell down and became unconscious. In the cross-examination, the complainant took somersault and resiled completely from the version narrated by him in his deposition on 16.09.2008. He stated that on 08.04.2005 Sanju had not gone to Mona's house. He alone had gone there on Mona's invitation on her birthday. He further admitted that there were many persons present and he had taken cold drink in the birthday party. His statement under Section 161 Cr.P.C. was not recorded implicating Sanju. To the Court question, which of the version given by him in the statement recorded on 16.09.2008 and 13.01.2011 was correct, he replied that whatever was stated by him on 16.09.2008 was correct. Again he was recalled for cross-examination on 21.04.2011. He admitted that he and

Sanju had filed divorce petition by mutual consent and the Family Court had granted divorce.

5. Complainant's statement has not been corroborated by any other independent witness. PW-2 (Manorama) at whose residence the birthday party had taken place turned hostile and expressed her ignorance about the case. She was declared hostile and was cross-examined by learned Additional Public Prosecutor after seeking Court's permission. She denied statement Mark PW-2/A dated 28.04.2005 recorded by her to the police. Despite cross-examination nothing material could be elicited to benefit the prosecution. PW-3 (Desh Raj) also resiled from the statement under Section 161 Cr.P.C. and did not opt to support the prosecution. He deposed that on the day of incident, he was on duty. After 7/8 days police officials brought complainant Chetan in the street and he told the police that he did not know anything about the occurrence. Cross-examination by Additional Public Prosecutor did not yield any result. PW-4 (Raj Kumar), complainant's uncle, disclosed that on 08.04.2005 at about 01.00 P.M. he found complainant lying in semi-conscious state in the gali. On enquiry from him, he was told that Sanju and one Tyagi had forced him to drink whisky mixed with acid. He was confronted with statement (Ex.PW-4/DA) where it was not mentioned that

accused Sanju had mixed acid in his whisky. PW-4 (Raj Kumar) did not disclose as to from where he got the information about Chetan lying unconscious in the gali. He did not take the victim to hospital and MLC (Ex.PW-11/A) does not record his name. Moreover, he is not a witness to the occurrence. Injuries on the body of the complainant were found 'simple' in nature. It is unclear as to when he was discharged from the hospital. MLC records that the patient was conscious and oriented at the time of his admission. However, he did not disclose the name of the assailant or the circumstances in which the incident took place.

6. During the pendency of the trial both the complainant and the appellant appear to have settled their matrimonial dispute. The complainant had already filed a petition for divorce which was pending. After settlement, they both filed petition (Ex.PW-1/DA) for dissolution of marriage by a decree of divorce by mutual consent on 27.11.2008. In the said petition, affidavits were filed by the complainant and it was stated that the parties were living separate since 14.04.2004. It was further mentioned that FIR No.193/05 registered at Police Station Gokulpuri under Section 307 IPC was due to misunderstanding. Parties were granted divorce by mutual consent. It is further informed that they had moved this Court for quashing of the FIR which did not take place.

7. The investigation carried out is highly faulty and defective. The Investigating Officer did not collect call details of the mobile phones of the complainant or the appellant. No genuine/sincere efforts were made to find out if any birthday party was organized at the residence of Mona on a particular day and what were its timings. It was also not ascertained as to who else had participated in the said birthday celebration. None of them was interrogated and examined to find out as to under what circumstances, the poisonous substance was administered to the complainant. The Investigating Officer did not collect cogent evidence if the complainant had visited the said house along with the appellant with whom he had strained relations. The police also did not examine Mr. Tyagi whose name find mention in the deposition of PW-4 (Raj Kumar). The contractor who had conversation with the complainant at the relevant time was also not examined. There is no credible evidence to find out at what time the complainant along with the appellant had gone to Mona's house. The FIR was not registered on the complainant's statement. The appellant did not abscond and was apprehended only on 21.06.2005. Nothing incriminating was recovered at her instance. The Investigating Officer did not collect the required information as to from where the poisonous substance was arranged/obtained or if there was

connivance of Mona in the occurrence. Apparently, the appellant had not gone with any poisonous substance with her at the time of birthday celebration at Mona's residence. It was imperative for the Investigating Officer to find out as to from where Limca or the acid was arranged and by whom. Mona had not invited the complainant to attend her birthday celebrations. Since the relations between the parties were hostile, it was not believable that the complainant would accompany the appellant at odd hours to her friend's residence and would consume wine despite resistance and indication by Mona not to consume it. The appellant had not anticipated the arrival of the complainant on her request to preplan the mixing of poisonous substance in Limca. Considering all the deficiencies in the prosecution case, the uncorroborated testimony of the complainant who opted to resile from the statement at first instance is not enough to base conviction under Section 307 IPC and the appellant deserves benefit of doubt.

8. In the light of the above discussion, the appellant's appeal is accepted; the conviction and sentence are set aside. The appellant will be set at liberty forthwith, if not required in any other case.

9. Trial Court record along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

JANUARY 29, 2014

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