

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

RESERVED ON : JULY 07, 2014

DECIDED ON : AUGUST 22, 2014

+ CRL.A. 1042/2011

SAJID KHAN

..... Appellant

Through : Mr.K.Singhal, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

+ CRL.A. 1044/2011

KHALID

..... Appellant

Through : Mr.K.Singhal, Advocate.

versus

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

AND

+ CRL.A. 1043/2011

ATIF

..... Appellant

Through : Mr.K.Singhal, Advocate.

versus

STATE

.... Respondent

Through : Mr.Lovkesh Sawhney, APP.

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

S.P.GARG, J.

1. Sajid Khan (A-1), Khalid (A-2) and Atif (A-3) impugn a judgment dated 19.05.2011 of learned Additional Sessions Judge in Sessions Case No.78/09 arising out of FIR No.19/09 registered at Police Station Chandni Mahal by which they were held guilty for committing offence punishable under Section 307/34 IPC. By an order dated 21.05.2011 they were sentenced to undergo Rigorous Imprisonment for ten years with fine ₹3,000/- each. Shorn of the details, the prosecution case is as under:-

2. On the night intervening 3/4.03.2009 at about 02.35 am Daily Diary (DD) No.2 (Ex.PW-15/A) was recorded at Police Station Chandni Mahal regarding a quarrel at House No.2820, Turkman Gate. The investigation was assigned to SI Prashant Kumar who with Ct.Sri Pal went to the spot. They came to know that the injured had already been taken to Lok Nayak Jai Prakash Narayan hospital (in short 'LNJP'). On reaching LNJP hospital, SI Prashant Kumar collected the MLC of the victim Kasif who was declared unfit to make statement. The investigating officer lodged First Information Report after recording statement of victim's

brother (Mohd.Danish) (Ex.PW-5/A). The complainant disclosed that when he and his brother Kasif were returning to their house, the appellants and their brother Anas (facing trial before Juvenile Justice Board) met them and they caught hold of Kasif. When he intervened to save his brother Kasif, (A-2) threatened to kill him by a knife. Thereafter, Kasif was caught hold by A-1 and Anas. A-3 attacked him with a 'pointed object' as a result of which Kasif started bleeding profusely from his right ear. On seeing Kasif bleeding, the assailants fled the spot with crime weapons.

3. During investigating, the Investigating Officer prepared site plan (Ex.PW-14/DA). A-1 and A-2 were arrested and knife was recovered at the instance of A-2. On 09.03.2009, A-3 was arrested and pursuant to his disclosure statement a 'pointed object' (sua) was recovered at his instance. On 01.05.2009, Kasif succumbed to the injuries in the hospital. Section 302/34 was added in the FIR. Post-mortem of the body was conducted and statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet under Section 302/34 IPC was filed against the appellants; they were duly charged and brought to trial. The prosecution examined eighteen witnesses to substantiate the charges. In 313 statements, the appellants pleaded false

implication and denied their complicity in the crime. They examined ASI Krishan (DW-1), SI Prem Singh (DW-2), Parvez Alam (DW-3) and Mohd.Yusuf (DW-4) in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted the appellants for committing offences under Section 307/34 IPC. It is pertinent to note that the State did not challenge appellants' acquittal under Section 302 IPC.

4. I have heard the learned counsel for the parties and have examined the record. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The Trial Court erred in convicting all the appellants on the sole testimony of PW-5 (Mohd.Danish) whose presence at the spot was highly doubtful. No independent public witness was associated at any stage of the investigation. The injuries inflicted to the victim were not sufficient to base conviction under Section 307 IPC. Victims's death was due to medical negligence and he expired after four and a half months from the date of incident in the hospital. No overt act was attributed to A-1. In the absence of prior animosity, the appellants who lived in the neighbourhood of the victim were not expected to inflict fatal injuries. The prosecution witnesses have given divergent version on material facts

regarding the place of incident and the circumstances in which they happened to be present at the spot after attending 'dawat' at the residence of their Bua. The victim and his family members were facing trial on the complaint lodged by the accused under Section 308 IPC. Learned Additional Public Prosecutor urged that the testimony of PW-5 (Mohd.Danish) implicates all the appellants and there are no sound reasons to disbelieve him.

5. The occurrence in which Kasif sustained grievous injuries took place in the night intervening 3/4.03.2009 at around 02.15 am. Soon thereafter, he was taken to LNJP hospital and was medically examined. MLC (Ex.PW-11/A) reveals that the victim was brought at the hospital at 02.50 am by his brother Danish, with the alleged history of physical assault at Bulbula Khana Pahari Bhojla, Turkman Gate at around 02.15 am on 04.03.2009. PW-11 (Dr.Vikas Sharma) proved the MLC (Ex.PW-11/A) prepared by Dr.Raj under his supervision. The patient was declared unfit to make statement. Number of endorsements on the MLC reflect that the patient remained unfit to make statement before he succumbed to the injuries. Crucial document is PCR form (Ex.DW-2/A) which was filed up on getting information about the occurrence from one Mohd.Asgar at 2:38:58 hours. At 03:01: 54 hours, information was conveyed to PCR that

Atif (A-3), Khalid (A-2) and Sajid Khan (A-1) had stabbed Kasif and his family members had taken him to LNJP hospital. FIR was lodged after recording statement of Mohd.Danish (Ex.PW-5/A) and rukka was sent at 07.30 a.m. on 04.03.2009. In the complaint Danish gave vivid description of the occurrence and disclosed as to how and under what circumstances all the appellants and their brother Anas (facing trial before Juvenile Justice Board) had stabbed his brother Kasif. He attributed specific and definite role to each of the assailants. Since the FIR was lodged in promptitude, there was least possibility of the complainant to falsely name the appellants for the serious injuries inflicted to his brother Kasif.

6. While appearing as PW-5, Danish proved the version given to the police at first instance without any manor variation. He deposed that on the night intervening 03/04.05.2009, at about 02.15 a.m. he and his brother Kasif were returning from the house of their aunt at Pandit Kuncha, Lal Kua after attending a 'dawat'. When they reached in the gali and were 15-16 steps away from their house, the appellants and their brother Anas caught hold of Kasif. They started uttering "Sale tujhe aaj sabak sikhate hai, tu apne aap ko bahut banta hai". The witness further revealed that he tried to save his brother but was pushed back. Thereafter, A-2 took out a knife from his pocket and told him "jyada shor sharaba

kiya to tera kaam tamam kar denge”. Thereafter, A-1 and Anas caught hold Kasif and A-3 pierced the ‘sharp thing’ in the ear of his brother as a result of which he started bleeding profusely. The assailants fled the spot. He and his father took Kasif to LNJP hospital where they were informed that the injuries were serious and required major surgery. The police arrived at the hospital and recorded his statement (Ex.PW-5/A). The witness identified knife (Ex.P-1) and ‘sua’ (Ex.P-2) as crime weapons. In the cross-examination, he denied the suggestion that his brother Kasif had come in an injured condition in a rickshaw and thereafter he and his father took him to the hospital from their house. He denied that his brother was given injuries with knife and ‘sua’ on many places of the body. He volunteered to add that the victim was injured only at one place. The police recorded his statement in the hospital.

7. On scrutinizing the testimony of PW-5, it reveals that despite in-depth cross-examination, no material discrepancies could be elicited to disbelieve the version narrated by the witness whose brother sustained fatal injury on vital organ. No ulterior motive was assigned to this witness to make false statement to implicate the appellant and to let the real offenders go scot free. Relationship of the witness with the victim is not a factor to discredit his testimony. Presence of this witness with the injured

at the time of occurrence was natural and probable as both had returned together after attending 'dawat' at the residence of their Bua (aunt). The occurrence had taken place near the residence of the appellants who did not give plausible explanation for their presence in the street at odd hours. Specific role was assigned to each of the appellants in the crime by this witness. He was fair enough not to attribute any role to A-2 in inflicting injuries to the deceased though he was armed with a knife. Merely because the witness did not raise an alarm, it does not make him an unreliable witness. His immediate priority was to take care of the victim. The occurrence had taken place at night time when raising of alarm would not have served any purpose. The witness immediately went to his house to inform his father and they both took him to LNJP hospital without wasting any time. The fact that the name of this witness finds mention in the MLC shows that he was available at the spot. There are no sound reasons to disbelieve the testimony of this witness in the absence of any material discrepancy or infirmity. All the appellants were named by him at the first instance in his statement (Ex.PW-5/A) recorded at the hospital soon after the incident. PW-6 (Abrar Ahmed), victim's father, corroborates his testimony on vital aspects. On the night intervening 3 /4.03.2009 at about 02.00 am, he was sleeping in his house. In the

meantime, his son Danish came and informed that A-1, A-2, A-3 and Anas had assaulted/attacked Kasif in the gali in front of their house. He accompanied him to the spot and saw Kasif bleeding profusely from his left ear. The assailants had fled the spot. He and his son took Kasif to LNJP hospital and his statement was recorded there. Again this witness had no ulterior motive to falsely implicate the accused persons.

8. The testimony of PWs 5 and 6 is in consonance with the medical evidence. PW-13 (Dr.Jyoti Garg) identified the handwriting of Dr.Shri Devi on various endorsements/notes on MLC (Ex.PW-11/A). PW-1 (Dr.Amit Sharma) conducted post-mortem on the body of the deceased and found three injuries. As per his opinion (Ex.PW-1/A), injury No.2 was sufficient to cause death. There is no conflict between the ocular and medical evidence.

9. It has come on record that a quarrel had taken place earlier between the parties. It is the case of the appellants that due to complaint lodged by them against the accused and his family members, they were falsely implicated. It is true that FIR No.144/08 under Section 308/34 IPC at Police Station Chandni Mahal was registered against the complainant and his family members for giving beatings to Atif (A-3) and Khalid (A-2). However, the instant incident had taken place after a long gap in

March 2009. It can be a motive for the appellants to teach a lesson to the victim for inflicting injuries to them. The assailants had clean and strong motive to inflict injuries to the victim due to previous incident of quarrel.

10. In 313 statements, the appellants did not give plausible explanation to the incriminating circumstances appearing against them. They did not produce on record any evidence to show their presence at some place other than the spot. The information conveyed to Police Control Room (Ex.DW-2/A) lends credence to the story presented by the prosecution about the quarrel in which the names of the appellants emerged soon after the incident. It appears that to mislead the investigating agency, a complaint was lodged with the Police Control Room (PCR) alleging house-trespass by some individuals who were armed with churries. The defence version has been discussed in detail and out-rightly rejected for sound reasons by the Trial Court. Since the injuries inflicted were grievous in nature and sufficient to cause death in the ordinary process of nature, conviction under Section 307/34 IPC recorded by the Trial Court cannot be faulted. The findings of the Trial Court are sustained and upheld.

11. Regarding sentence order, the appellants were awarded Rigorous Imprisonment for ten years with fine ₹3,000/- each. So far as

A-3 is concerned, considering the role attributed to him whereby he inflicted fatal blow on the vital organ of the victim, he deserves no leniency. A-1 and A-2 were convicted for sharing common intention with co-convict A-3. They are not previous convicts and have clean antecedents. They have undergone more than six years incarceration. Though A-2 was armed with a knife, he did not cause any harm either to the victim or to the complainant. The role assigned to A-1 is that he caught hold the victim. He was not armed with any weapon. Considering the role played by them in the incident, the sentence order is modified and Rigorous Imprisonment for ten years is reduced/alterd to RI for seven years each. However, A-1 and A-2 shall deposit ₹20,000/- each within fifteen days in the Trial Court to be paid as compensation to the victim's parents after due notice.

12. In the light of the above discussion, the appeal filed by Atif (A-3) is dismissed as unmerited. While maintaining conviction qua A-1 and A-2 under Section 307/34 IPC, the sentence order is modified in the above terms. Their appeals are disposed of accordingly.

13. A-2 is directed to surrender before the Trial Court on 29.08.2014 to serve the remaining period of sentence.

14. Trial Court record along with the copy of this order be sent back forthwith.

(S.P.GARG)
JUDGE

AUGUST 22, 2014
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