

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

RESERVED ON : 29th JANUARY, 2014

DECIDED ON : 10th FEBRUARY, 2014

+ CRL.A. 1014/2012

RASHID @ RAJU MENTAL

..... Appellant

Through : Ms.Saahila Lamba, Advocate.

VERSUS

THE STATE OF THE NCT OF DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. This appeal has been preferred by Rashid @ Raju Mental to challenge the legality of a judgment dated 26.05.2012 in Sessions Case No. 67/11 arising out of FIR No. 324/09 PS Govind Puri by which he was held perpetrator of the crime under Section 307 IPC and 25/54/59 Arms Act. By an order dated 28.05.2012, he was awarded RI for ten years with fine ₹ 10,000/- under Section 307 IPC and RI for two years with fine ₹ 5,000/- under Sections 25/54/59 Arms Act.

2. Allegations against the appellant were that on 19.08.2009 at about 08.30 P.M. in a park near Gali No. 25, near Masjid, Tughlakabad

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Extension, he inflicted injuries to Asfaq Ahmad by a knife. The police swung into action after getting information about the stabbing incident inside the park and Daily Diary (DD) No. 30A (Ex.PW-6/A) was entered at 09.49 P.M. at PS Govind Puri. The investigation was assigned to SI Sahi Ram who with Const. Manoj went to the park and found complainant – Asfaq Ahmad lying injured there. He was taken in a TSR to Trauma Centre, AIIMS and admitted there. The Investigating Officer lodged First Information Report after recording complainant – Asfaq Ahmad's statement (Ex.PW-2/A). On 21.08.2009, the appellant was arrested and from his possession a butandar knife (Ex.P1) was recovered. The exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was submitted; the accused was duly charged and brought to trial. The prosecution examined eight witnesses to substantiate the charges. In 313 statement, he pleaded false implication and denied complicity in the crime. However, he did not examine any witness in defence. After considering the rival contentions of the parties and appreciating the evidence on record, the Trial Court, by the impugned judgment, held the appellant guilty.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell

into grave error in relying upon the testimony of the complainant without independent corroboration. The appellant had no intention to inflict fatal injuries. Only a single blow was given on the body of the injured. Ingredient of Section 307 IPC were not attracted and proved. Learned Addl. Public Prosecutor urged that the injuries were inflicted by the complainant with the avowed object and intention to kill.

4. The occurrence took place on 19.08.2009 at about 08.30 P.M. Daily Diary (DD) No. 30A (Ex.PW-6/A) was recorded regarding the said incident at 09.49 P.M. at PS Govind Puri. Soon thereafter, PW-8 (SI Sahi Ram) went to the spot and took the injured / victim to the Trauma Centre, AIIMS. The MLC (Ex.PW-4/C) records the arrival time of the patient at 23.15 hours. It records that the patient was found lying in a park. The injuries were opined 'dangerous' by sharp weapon. Certainly, there is delay in lodging the report on 20.08.2009 at 10.45 P.M. However, reasonable explanation given by the prosecution witnesses that the victim was not in a fit condition to make statement soon after his arrival at the Trauma Centre and was crying in pain inspires confidence. When he was declared fit to make statement, next day, detailed statement implicating the appellant was recorded. In the statement (Ex.PW-2/A), the complainant gave vivid description of the occurrence and named the

appellant for inflicting injuries by a knife on his abdomen. In the Court statement, the complainant proved the version given to the police at the first instance and assigned specific motive to the appellant for inflicting injuries to him. The appellant, who considered himself to be the boss of the area ordered the complainant to stand up from the bench on which he was sitting. When the complainant did not obey his command, an altercation took place. The accused took out a knife and inflicted blow on the abdomen. In the cross-examination, the complainant disclosed that he knew the appellant prior to the incident being resident of Tughlakabad Extension. Though, he had no familiarity with the appellant, he had seen him in locality. He denied the suggestion that injuries were caused to him at some other place and the appellant was falsely implicated at the instance of the police. Despite searching cross-examination, no material discrepancy could be extracted or elicited to disbelieve the injured witness. No ulterior motive was assigned to him for falsely deposing against the appellant. In the absence of prior enmity, the victim who had sustained 'dangerous' injuries on vital organ was not imagined to spare the real offender and to rope in an innocent one. The appellant left the victim alone in the secluded area after causing injuries but for immediate medical aide given to him. There is nothing on record to show, if any

public person was available at the spot to be examined as an eye witness. The fact that the victim was taken to Trauma Centre after the police came to know about the occurrence shows that no independent public witness was available at the place of incident. The occurrence took place on a trivial issue when the appellant who was under the influence of liquor got annoyed and the victim did not obey him to spare him the bench on which he was sitting. Recovery of the weapon (Ex.P1) from his possession further connects him with the crime. The appellant had no earthly reason to keep a 'deadly' weapon in his possession for no specific purpose.

5. In '*Mano Dutt and Anr. Vs. State of U.P.*', 2012 (4) SCC 79, the Supreme Court held :

"Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more res integra, as has been consistently stated by this Court in uniform language."

6. Statement of the complainant is not in conflict with medical evidence. PW-3 (Dr.Chinmay Singh) proved the signatures of Dr.Arundeeep Arora on X-ray report (Ex.PW-3/A). PW-4 (Dr.Tejaswi)

identified the signatures of Dr.Subhash Chandra on MLC (Ex.PW-4/C) containing sketch of weapon of offence (Ex.PW-4/B) and subsequent opinion (Ex.PW-4/A). PW-5 (Rajkumar) identified signatures of Dr.Sabeer Khan on MLC (Ex.PW-4/C) which records that a penetrating wound of 3 x 1 c.m. was found present over left hypochondrium. The nature of injuries sustained by the victim was 'dangerous' by sharp weapon. The victim remained admitted in the hospital for about eight days. The injuries were on the vital organ i.e. abdomen. Knowledge can be imputed to the appellant that the injuries intentionally inflicted to the victim on the vital organ with a sharp weapon like knife over a trivial issue without any provocation by unarmed victim could have resulted in his death. The judgment is based upon fair appraisal of the evidence and needs no interference.

7. By an order dated 28.05.2012, the appellant was sentenced to undergo RI for ten years with fine ₹ 10,000/- under Section 307 IPC and RI for two years with fine ₹ 5,000/- under Sections 25/54/59 Arms Act. Nominal roll dated 22.08.2012 reveals that he has already undergone one year, eight months and twenty days incarceration as on 21.08.2012. It is informed that the appellant is the only son of his aged parents belongs to poor strata of society. Considering the facts and circumstances of the case,

the sentence order is modified and the substantive sentence of the appellant is reduced to RI for seven years under Section 307 IPC. Other terms and conditions of the sentence order are left undisturbed except that the default sentence for non-payment of fine under Section 307 IPC would be two months and under Sections 25/54/59 Arms Act one month.

8. Appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

FEBRUARY 10, 2014/*tr*