

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

RESERVED ON : 13th MAY, 2014

DECIDED ON : 4th JULY, 2014

+ CRL.A.No. 1215/2011

PARAMJIT SINGH

..... Appellant

Through : Mr.Avadh Kaushik, Advocate.

Versus

STATE (NCT OF DELHI)

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant – Paramjit Singh challenges the legality and correctness of a judgment dated 02.09.2011 of learned Addl. Sessions Judge in Sessions Case No. 21/08 arising out of FIR No. 530/05 PS Prashant Vihar by which he was convicted under Sections 307/34 IPC. By an order dated 07.09.2011, he was awarded RI for three years with fine ₹ 5,000/-.

2. Briefly stated, the prosecution case as unfolded in the charge-sheet during trial was that on 14.06.2005 at about 11.00 P.M. in DDA Shopping Complex, Near Petrol Pump, Sector 16, the appellant and his associate Padam Thapa (Proclaimed Offender) sharing common intention inflicted injuries to Murari Lal in an attempt to murder him. The victim was taken to Dr.Baba Saheb Ambedkar Hospital (in short 'BSA Hospital') and was medically examined. The accused persons were arrested. Statements of the witnesses conversant with the facts were recorded to substantiate the charges. After completion of investigation, a charge-sheet was submitted against the appellant and Padam Thapa; they were duly charged and brought to trial. In 313 statement, the appellant pleaded false implication and denied his presence at the spot. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, he has preferred the appeal. It is relevant to note that Padam Thapa absconded during trial and was declared Proclaimed Offender.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and erred in relying upon the testimonies of the witnesses who were closely associated with the victim. No independent public witness was joined at any stage of the investigation. The main culprit Padam Thapa has since been declared

Proclaimed Offender. The prosecution was unable to bring on record any cogent evidence to infer that the appellant shared common intention with him (Padam Thapa) to inflict injuries to the victim. The rope allegedly put around the victim could not be recovered. No injury by it was found on his body. Learned Add. Public Prosecutor urged that there are no cogent reasons to disbelieve the credible and reliable testimony of the victim which has been corroborated by independent public witnesses.

4. Soon after the incident at around 11.00 P.M., the police machinery was set in motion and Daily Diary (DD) No.46 (Ex.PW-7/A) was recorded in promptitude at 11.25 P.M. on getting information about the stabbing incident at the liquor shop. The victim was taken to BSA Hospital immediately and was medically examined by MLC (Ex.PW-4/A) where the arrival time of the patient recorded is 11.35 P.M. The victim was brought with the alleged history of 'assault'. Since the victim Murari Lal was unable to make statement, the Investigating Officer lodged First Information Report after recording complainant – Baldev Singh's statement (Ex.PW-2/A). Rukka (Ex.PW-9/A) was sent at 03.40 A.M. Apparently there was no delay in lodging the First Information Report. In the complaint (Ex.PW-2/A), Baldev Singh gave vivid description of the incident and narrated as to how and under what circumstances, the injuries

were inflicted to Murari Lal by the assailants sharing common intention. While appearing as PW-1, the victim – Murari Lal gave detailed account of the incident. He deposed that initially an altercation had taken place with the assailants over change of quarter-bottle whisky, the seal of which was found broken. However, due to intervention of the manager - B.Sumana, the bottle was changed. The victim further disclosed that at around 11.00 P.M. when he and his other colleagues - Baldev Singh, Satish Kumar and B.Sumana had come out of the liquor shop to go to their respective houses, the assailants came armed with daggers. When he tried to make them understand, Padam Thapa stabbed him and the appellant who had a plastic ‘rope’ put it around his neck. He was taken to BSA Hospital and was medically examined. His blood stained shirt (Ex.P1) was seized. In the cross-examination, he disclosed that Padam Thapa who was acquainted with him used to visit the liquor shop frequently and had come alone to take quarter-bottle of whisky. He recalled that at the time of incident, both the accused came together and took out the daggers. While resisting the attack, he caught hold the dagger from Padam Thapa and suffered injuries on his head. The appellant (Paramjit Singh), first of all hit him with a plastic rope on his face and then put then it around his neck. He fell down after sustaining injuries by

a dagger. He denied the suggestion that the appellant was not present at the spot.

5. On scrutinizing the testimony of the victim, it reveals that no material discrepancies could be elicited to shatter his deposition. The victim was not acquainted with the appellant and had no ulterior motive to identify him as one of the assailants. Specific role was attributed to each of the assailants in causing injuries. The victim had no hesitation to recognize the present appellant who had accompanied the main culprit who stabbed him by a dagger on the vital body part. During investigation, for no valid reasons, the appellant declined to participate in Test Identification Parade.

PW-2 (Baldev Singh), the complainant, while proving the contents of the complaint (Ex.PW-2/A), supported the prosecution and deposed that hot words were exchanged when Murari Lal refused to change the quarter bottle of whisky as its seal was broken. Due to the intervention of the in-charge - B.Sumana, Muraril Lal gave another quarter bottle of whisky. At about 11.00 P.M., the said assailant along with another person came there and inflicted injuries to the victim. The witness was, however, unable to identify the assailants. He resiled from the previous statement and was cross-examined by learned Addl. Public

Prosecutor after seeking Court's permission and recognized the appellant as the assailant who had hit the victim by a plastic rope and then put it around his neck. He reasoned that earlier he could not identify the appellant as at that time he supported 'beard'. He further disclosed that the other assailant had hit the victim by a knife on his abdomen. PW-3 (Satish) and PW-5 (B.Sumana) have corroborated their version in its entirety. PW-3 (Satish) also deposed about the presence of the appellant with a rubber pipe of about 2 ft. at the spot. He also deposed that the appellant hit the victim with rope on the arms and legs. PW-5 (B.Sumana) deposed about the presence of the appellant with co-accused. Despite indepth cross-examination, no material inconsistencies or infirmities could be extracted.

6. Statements of these eye witnesses are in consonance with medical evidence and there is no variance between the two. PW-4 (Dr.Bhawna Jain) medically examined the victim on 14.06.2005 at 11.35 P.M. by an MLC (Ex.PW-4/A). PW-10 (Dr.Jitender Kumar) proved the report (Ex.PW-10/A) prepared by Dr.O.P.Gupta where the nature of injuries were described 'grievous'. Their statements remained unchallenged in the cross-examination.

7. The initial confrontation had taken place with Padam Thapa who was regular visitor to the liquor shop over exchange of broken seal of liquor bottle purchased by him. However, due to the intervention of the in-charge, the victim changed the bottle and the matter was pacified. However, at about 11.00 P.M. when the victim along with his colleagues was about to go to his house, both the assailants including the present appellant came and challenged him. Padam Thapa nurtured grievance and accused the victim for not changing the liquor bottle and stabbed him by a knife on his abdomen. The role assigned to the present appellant is that he had a plastic rope with which he gave beatings on the victim's face and thereafter, put it around his neck to facilitate Padam Thapa to stab him on his abdomen. All the prosecution witnesses have in clear terms testified about the presence of the appellant with Padam Thapa with whom they were acquainted. The present appellant was not known to them before but was identified by some of the witnesses in the Court to be the assailant who had accompanied Padam Thapa. The victim had no prior animosity with the appellant to falsely rope him in the crime. The appellant claimed that he was not present at the spot. However, nothing emerged as to where else he was at that time. It was heavily for the appellant to establish beyond reasonable doubt the plea of alibi. For the first time, in 313

statement he came out with the plea that after coming from Azadpur Mandi to his house at Sector 16, Rohini, he proceeded on foot due to non-available of a bus, at about 11.30 or 11.40 P.M., when two police officials took him on motorcycle and falsely implicated him. This defence does not inspire confidence and it was not revealed as to from which particular place, he was coming at odd hours. No altercation has taken place with the appellant earlier and he had no reasons to accompany the co-accused Padam Thapa who was armed with a knife / dagger to cause injuries to the victim though the matter had already been resolved / pacified. The prosecution witnesses have not only spoken of the presence of the present appellant with the co-accused but have also attributed specific overt act whereby he gave beatings to the victim with the plastic rope and put it around his neck to facilitate Padam Thapa to stab him. Both the convicts had come and left together at the spot. From these circumstances, it can safely be inferred that they shared common intention to inflict injuries to the victim. Since the injuries were caused on the vital organ by a sharp weapon, the findings of the Trial Court convicting the appellant under Sections 307/34 IPC cannot be faulted. Minor discrepancies and contradictions highlighted by the appellant's counsel do not shake the

basic structure of the prosecution case. The victim had no extraneous considerations to falsely implicate the appellant.

8. The appellant was sentenced to undergo RI for three years with ₹ 5,000/-. Nominal roll dated 15.10.2012 demonstrates that he suffered physical incarceration for three months and six days as on 12.10.2012. On 28.09.2011, substantive sentence and as extended on 16.03.2012 was suspended till the next date of hearing. It is unclear whether the appellant surrendered in the jail after dismissal of Crl.M.B.No.1700/2011 on 19.10.2012 or served the sentence awarded to him as he put appearance before this Court pursuant to issuance of the bailable warrants. Nominal roll further shows that he is a first time offender and is not involved in any other criminal activity. Sentence order dated 07.09.2011, reveals that he had a family consisting of his old widow mother and a handicapped brother and was the sole bread earner of the family. He has suffered the agony of trial / appeal for about nine years. Considering the mitigating circumstances and specifically the role assigned to him in the occurrence, the sentence order is modified to the extent that he shall undergo RI for two years instead of RI for three years. Other terms and conditions of the sentence order are left undisturbed.

9. The Trial Court shall verify if the appellant has undergone two years physical incarceration in this case, and if not, he will be directed to surrender and serve the remaining period of unexpired substantive sentence (if any).

10. The appeal stands disposed of in the above terms. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information.

(S.P.GARG)
JUDGE

JULY 04, 2014 / *tr*