

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

RESERVED ON : 26th MARCH, 2014

DECIDED ON : 2nd MAY, 2014

+ CRL.A. 1322/2012 & CRL.M.B.No. 1594/2013

RAHUL MAKKAR

..... Appellant

Through : Mr.R.S.Mahla, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant – Rahul Makkar challenges the correctness and legality of a judgment dated 11.09.2012 of learned Addl. Sessions Judge in Sessions Case No. 7/11 arising out of FIR No. 265/10 PS Geeta Colony by which he was held guilty under Section 307 IPC. By an order dated 14.09.2012, he was awarded RI for four years with fine ₹ 5,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 05.10.2010 at about 08.00 P.M. in front of house No. 12/99, Geeta Colony, the appellant and his father – Satish Makkar in

furtherance of common intention inflicted injuries to Rakesh Kumar and Amandeep Singh by a sharp edged weapon in an attempt to murder. Daily Diary (DD) No. 27A (Ex.PW-8/C) was recorded at PS Geeta Colony at 20.17 hours regarding the incident and the investigation was assigned to ASI Satyapal Singh. The victims were taken to Dr.Hedgewar Hospital. From there, Amandeep Singh was taken to Kailash Hospital for better treatment. The Investigating Officer lodged First Information Report after making an endorsement (Ex.PW-11/A) on the written complaint (Ex.PW-1/A) given by the complainant – Rakesh Kumar. During investigation, statements of the witnesses conversant with the facts were recorded. On 06.10.2010, the appellant was arrested and pursuant to his disclosure statement, the crime weapon i.e. knife was recovered from the flower pot lying outside his house. After completion of investigation, a charge-sheet was submitted against both Rahul Makkar and his father (Satish Makkar); they were duly charged and brought to trial. The prosecution examined twelve witnesses. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. DW-1 (Vidhya Bhushan) and DW-2 (Tilak Raj) were examined in defence. After considering the rival contentions of the parties and on appreciation / evaluation of the evidence, the Trial Court, by the impugned judgment, acquitted Satish Makkar of

the charges and convicted the appellant under Section 307 IPC. It is pertinent to note that State did not challenge the acquittal (of Satish Makkar).

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error in relying upon the testimonies of the interested witnesses without independent corroboration. PW-3 (Pawan Chaudhary), brother-in-law of the complainant – Rakesh Kumar did not support the prosecution and turned hostile. The recovery of the knife is suspect as no blood was found on it and no independent public witness was associated at the time of alleged recovery. The prosecution witnesses have made vital improvements as in their initial statement, the complainant had not disclosed use of 'knife'. The appellant was arrested on the next day of the incident and he did not attempt to abscond. DW-2 (Tilak Raj) has specifically deposed that the victims and their associates assaulted the appellant and gave beatings to him. The police did not medically examine the appellant. Learned Addl. Public Prosecutor urged that there are no sound reasons to disbelieve the statements of the injured witnesses who have categorically assigned specific role to the appellant in inflicting injuries by a knife to them.

4. The occurrence took place at around 08.00 P.M. on 05.10.2010. Information to the police was conveyed in promptitude and it led to recording of Daily Diary (DD) No. 27A (Ex.PW-8/C) at 20.17 hours at PS Geeta Colony. From the spot, the victims were taken to Dr.Hedgewar Arogya Sansthan, Karkardooma. Victim – Rakesh Kumar was medically examined vide MLC Ex.PW-4/B. It records the arrival time of the patient at 10.20 P.M. PW-4 (Dr.Rajesh Kumar) proved the MLC which is in the hands of Dr.Kuldeep. Another victim Amandeep Singh was medically examined vide MLC Ex.PW-4/A by Dr.Kuldeep. The arrival time of the patient recorded therein as 09.20 P.M. brought by his father. Number of injuries were found on the body of the victim as described in the MLC (Ex.PW-4/A). PW-6 (Dr.Sachin Harit) examined Amandeep Singh at 09.20 P.M. at Dr.Hedgewar Hospital and found following injuries on the body :

1. *CLW over occipit of size at around 10 cms x 2 cms x .8 cms with active bleeding.*
2. *CLW over left ear of size 1.8 cms x .8 cms.*
3. *Nasal bleeding positive.*
4. *CLW over right shoulder of size 4 cms x .3 x .3.*

Since the victim's condition was critical, he was taken to Kailash Hospital where he remained under treatment for s couple of days.

The patient was referred to surgery Department for further management. The encircled portion in red ink on MLC (Ex.PW-4/A) was in his hand. In the cross-examination, he disclosed that the patient must have remained with him for about 15 - 20 minutes. PW-12 (Dr.Sarika Chandra), CCMO, Kailash Hospital, deposed that patient Amandeep Singh was brought from an outside hospital with the history of assault. She proved the copies of the admission slip (Ex.PW-12/A) and registration form (Ex.PW-12/B). Nature of injuries was opined 'grievous' vide report Ex.PW-12/C. Apparently, both Rakesh Kumar and Amandeep Singh sustained injuries in the incident. The appellant has not disputed or challenged the injuries suffered by them. Specific suggestion was put in the cross-examination of PW-1 (Rakesh Kumar) and PW-5 (Amandeep Singh) that a scuffle had arisen and the appellant was attacked by Rakesh Kumar, Pawan, Jaspreet and Amandeep Singh, and in the said scuffle, the victims sustained injuries. This defence pleaded by the appellant does not inspire confidence. He did not elaborate as to on what account the scuffle had originated. The appellant who had alleged been assaulted by number of assailants did not sustain any injury and did not get himself medically examined. He even did not bother to report the incident to the police. It is highly unbelievable that in a scuffle both Rakesh Kumar and Amandeep

Singh would sustain injuries by a knife while allegedly assaulting the appellant. No such question was put to PW-4 (Dr.Rajesh Kumar), PW-6 (Dr.Sachin Harit) and PW-12 (Dr.Sarika Chandra), if injuries sustained by the victims were possible in the said manner. The defence deserves outright rejection. Rather it lends-credence to the prosecution's version that on 05.10.2010 at about 08.00 P.M., a quarrel had taken place with the appellant and he initially inflicted injury to Rakesh Kumar. When his friend Amandeep Singh who had gone to Rakesh Kumar's house to enquire of his well being intervened, the appellant caused multiple injuries by a sharp weapon on his body. The complainant Rakesh Kumar in his complaint (Ex.PW-1/A) given to the Investigating Officer soon after the incident gave vivid description of the incident and named the appellant for causing injuries to both of them on various body parts. He was fair enough not to assign any role to his father Satish Makkar in causing injuries. While appearing as PW-1, Rakesh Kumar proved the police version given at the first instance without any deviation. He assigned specific motive to the complainant to pick up the quarrel on a trivial issue. No material discrepancy could be elicited in the cross-examination to suspect the version narrated by him. PW-5 (Amandeep Singh) corroborated Rakesh Kumar's version in its entirety without any variation. He also implicated

Rahul Makkar for causing injuries by a knife when he intervened to save his friend Rakesh Makkar at the hands of the appellant. Again, his testimony on material facts remained unchallenged.

5. Statements of both PW-1 (Rakesh Kumar) and PW-5 (Amandeep Singh) are in consonance with medical evidence and there is no major variance between the two. It is true that initially the complainant did not disclose the use of 'knife' in inflicting injuries. However, he was certain that the appellant was armed with a 'sharp' object. Non-recovery of the crime weapon is not fatal to the prosecution case. There is substance in the appellant's plea that the recovery of the knife was suspect. No blood was detected on the knife and it was not sent to Forensic Science Laboratory. The recovery of the knife from a flower pot lying in the street outside the house cannot be considered as incriminating as the place was accessible to the public at large. It is also true that PW-3 (Pawan Chaudhary) has not supported the prosecution in its entirety and was cross-examined by learned Addl. Public Prosecutor after seeking Court's permission. At the same time, he has also not given clean chit to the appellant. Exclusion of his evidence will not dilute the reliable and clinching evidence of the victims who had no ulterior consideration to falsely implicate the appellant with whom they had no grudge and lived in

the same vicinity. Minor contradictions, improvements and discrepancies highlighted by the appellant's counsel do not affect the core of the prosecution case to discard the testimony of the injured witnesses in its entirety. The findings of the trial court on conviction are based upon fair appraisal of the evidence and warrants no interference.

6. The appellant was awarded RI for four years with fine ₹ 5,000/-. Sentence order dated 14.09.2012 reveals that he was aged about twenty five years on the day of incident and was the sole bread earner of the family comprising of aged parents and younger sister. Nominal roll dated 22.11.2013 shows that he has remained in custody for one year, six months and eleven days besides remission for four months and nine days as on 22.11.2013. It further shows that he is not involved in any other criminal case and is a first offender. His overall jail conduct is satisfactory. During trial he was on bail and there is nothing to infer that he indulged in any such activity or misused the liberty. Both the parties lived in the same vicinity and there is no past history of hostile relations. The incident had taken place on a trivial issue without any pre-planning or meditation. The initial confrontation took place with Rakesh Kumar who suffered superficial injuries. When Amandeep Singh with whom the appellant had no animosity intervened, he suffered injuries on his body.

The injuries caused were lacerated wounds by blunt object. Considering these facts and circumstance, sentence order is modified and the substantive sentence awarded to the appellant to undergo RI for four years under Section 307 IPC is reduced to RI for three years. Other terms and conditions of the sentence order are left undisturbed. The appellant shall, however, deposit ₹40,000/- (Rupees forty thousand) as compensation in the Trial Court within fifteen days besides depositing unpaid fine (if any) and the compensation amount will be released to the victim – Amandeep Singh after due notice.

7. The appeal stands disposed of in the above terms. Pending application also stands disposed of. 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

MAY 02, 2014 / tr