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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 4th February, 2015

Crl. A. No. 927/2013

PAPPU

..... Appellant

Through: Ms. Vikas Padora, Advocate

versus

STATE (GOVT OF NCT) OF DELHI

..... Respondent

**Through: Mr. O.P. Saxena, APP along with SI
MP Saini, PS Mahindra Park**

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By this appeal filed under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), the appellant seeks to challenge the impugned judgment dated 6th April, 2013 and order on sentence dated 8th April, 2013 in Sessions Case No.26/10 arising out of FIR 58/10 u/s 307 IPC registered with PS Mahendra Park, Delhi whereby he was convicted under Section 307 IPC and was sentenced to undergo rigorous imprisonment for seven years and further directed to pay a fine of Rs.5000/- in default to undergo simple

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imprisonment for a period of one month. Benefit under Section 428 Cr.P.C. was also given to the appellant.

2. Prosecution case as disclosed in para 1 of the impugned judgment is as follows:

"On 08.03.2010, information was received at Police Station Mahendra Park regarding stabbing of three persons at Azadpur Mandi. The said information was reduced into writing vide Ex.PW8/A i.e. DD No.3A and the same was handed over to PW16 SI Ranvir Singh for investigation. The PW16 SI Ranvir Singh proceeded to the place of incident i.e. at Chowk of B-Block, in front of shop number B-2/36, New Subzi Mandi, Azadpur, Delhi along with PW3 Ct. Kuldeep where he came to know that the injured have gone to Sunder Lal Jain Hospital with their acquaintance. No eye witness was found at the spot and so PW16 SI Ranvir Singh and PW3 Ct. Kuldeep went to Sunder Lal Jain Hospital and obtained MLCs of injured i.e. MCL No.7325/10 of injured Rohtash, MLC No.7326/10 of injured Satish and MLC No.7327/10 of injured Kulwant Singh, whereupon the concerned doctor had mentioned "alleged history of assault with stab injuries". All the three injured were found admitted in hospital and under treatment in operation theatre. Subsequently, injured Satish Kumar came out of the operation theatre and after he was declared fit for statement, his statement Ex.PW7/A was recorded by the Investigating Officer, wherein he stated that he was working as driver on truck number HR 47B 0030 and that his younger brother Rohtash was working as second driver on the said truck, while Kulwant Singh was working as their helper on the truck. On 06.03.2010, complainant came to D-1341, Azadpur Mandi from Kolkata with vegetables in this truck. He unloaded vegetables at godown number D-1341 and proceeded to his company BKTC at 47, Transport Centre, Subzi Mandi. At about 12.30 at night, when they reached in front of B-236, Subzi Mandi, their truck got stuck in traffic jam. Complainant, his younger brother Rohtash and helper Kulwant stopped their truck and got down to find out reason for the said traffic jam. In the meanwhile, one person, who was under influence of alcohol, came there and started abusing them and told them to remove their truck and threatened that in case, they did not remove their truck, then he would kill them. On this, complainant told the said persons not to abuse them and also questioned him how he could threaten to kill them and further told him that he would remove truck as soon as trucks in front of his truck started moving. On hearing this, the drunken person took out a knife and gave a blow with it

on the abdomen of the complainant, when Rohtash, younger brother of complainant came to save him, said person gave blow on his abdomen as well. When, their helper Kulwant tried to catch hold of hand of that person, he gave several blows to Kulwant also. Complainant as well as his brother and their helper fell down at the spot. Hearing the noises, public persons collected at the spot and apprehended said person i.e. accused Pappu and also gave him beatings. Complainant gave a call to his friend Ranvir who took them all to Sunder Lal Jain Hospital. Accused was also taken to hospital in a PCR van. The complainant prayed that action be taken against the accused Pappu, who had caused injuries to him, his brother Rohtash and his helper Kulwant. "

3. On the basis of this statement made by the complainant, case FIR Ex.PW2/A i.e. FIR No.58/10 under Section 307 IPC was registered at Police Station Mahendra Park against accused Pappu. The investigation were commenced by PW16 SI Ranvir Singh and during the course of the said investigation, he prepared the site plan of the place of incident at the pointing out of the complainant. Accused was arrested on 09.03.2010 upon discharge from BJRM Hospital. The disclosure statement of accused was recorded and at his instance, pointing out memo of the place of incident was also prepared. During the course of investigation, the accused got recovered one knife, which he had used in commission of offence in the present case. The said knife was seized and was sent to FSL along with the clothes of the injured persons. Opinion regarding the knife was also taken from the concerned doctor. After completing investigation, the charge sheet

was filed in the court of concerned Ld. Metropolitan Magistrate.

4. After committal of the case, charge u/s 307 IPC was framed against the accused to which he pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined 16 witnesses. All the incriminating evidence was put to the accused while recording his statement u/s 313 Cr.PC. wherein he denied the case of prosecution, claimed innocence and alleged false implication at the instance of Ranbir Singh, Commission agent who was having a grudge against him. He however, did not prefer to lead any defence evidence.

5. After considering the rival submissions made by learned counsel for the parties and the evidence adduced by the prosecution, vide impugned judgment dated 6th April, 2013, learned Additional Sessions Judge convicted the appellant holding that prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt and thereafter sentenced him as mentioned hereinabove. Feeling dissatisfied, present appeal has been preferred.

6. It is submitted by learned counsel for the appellant that the appellant has been falsely implicated in the instant case at the instance of Ranbir Singh. As per the prosecution case, PW-5 Rohtash was

working as second driver on truck bearing Registration No. HR 47 B 0030, however, this fact is belied by PW9- Vijay Dora, owner of the truck who deposed that although at one point of time, Rohtash was working as a driver on the said truck, however, on the relevant date, he was not working as driver. Furthermore, as per the prosecution version, Kulwant Singh sustained more injuries than Satish Kumar and Rohtash, however, Kulwant has not been examined by the prosecution. Discrepancies have appeared in the testimonies of PW Satish and Rohtash. The concerned doctor who examined the injured persons has not been examined instead some other doctor was examined. As such, the MLC's of the injured persons were not duly proved. It is also the case of prosecution that knife was recovered at the instance of accused. If the case of prosecution that accused was apprehended at the spot and was handed over to the police then there was no occasion for the accused to conceal the knife and then get it recovered subsequently. As such, the knife was planted upon the accused. The accused sustained more injuries and was discharged from the hospital on the next day. Under the circumstances, the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt. As such, accused is entitled to be acquitted.

Alternatively, it was submitted that at the most Section 324 IPC is made out. Accused is also in custody for the last more than 4 ½ years. As such, he be released on the period already undergone.

7. Rebutting the submission of learned counsel for the appellants, it was submitted by the learned Additional Public Prosecutor for the State that the impugned judgment does not suffer from any infirmity. The case of the prosecution stands proved from the testimony of the injured Satish and Rohtash. One of the injured Kulwant Singh could not be examined by the prosecution being not traceable. However, that itself is not sufficient to discard the testimony of two other injured persons. Moreover, the ocular testimony of the injured persons find corroboration from the medical evidence as well as scientific evidence. It was suggested to the prosecution witnesses that no injury was caused by the accused but they sustained injuries from screw driver. However, no such suggestion was given to the doctor who appeared in the witness box. The injured persons had no animosity to implicate the accused in a false case. Even there is no chance of false implication at the behest of police officials as the accused is having criminal antecedents and is involved in as many as

eight cases. Under the circumstances it was submitted that the appeal being devoid of merits, be dismissed.

8. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

9. It is revealed from the testimony of PW5 Rohtash and PW7 Satish Kumar that Satish Kumar was working as driver on Truck No. HR 47 B 0030 on which PW5 Rohtash was working as second driver and Kulwant as helper. They used to deliver the vegetables through the said truck in Subzimandi Azadpur. On 6th March, 2010, they brought vegetables from Calcutta and unloaded the truck at Subzimandi Azadpur. At about 12:00-12:30 AM in the midnight of 7th March, 2010 they were going to their office situated at BKTC, 47, Transport Centre at Azadpur Mandi and there was a jam on the road. They all got down from the truck to see the reason of traffic jam. In the meantime, accused who was under the influence of liquor came there and started abusing them as to why they have stopped the vehicle there and asked them to remove the same. He further told them that he was the *Dada* of the area. When they objected, he took out a knife and stabbed Satish in his abdomen. When Rohtash tried to

save his brother, he stabbed him also on his abdomen and when helper Kuldeep tried to catch the accused, he was also given multiple injuries on his abdomen, elbow and thumb. Blood started oozing out from their injuries. When they raised alarm, accused started running and during that process, he fell down. Public persons caught hold of him and gave him beatings. Satish made a telephonic call at 100 number and also called Ranbir Singh, Commission Agent. Ranbir Singh came there and removed them to Sunder Lal Jain hospital at Ashok Vihar. Their blood stained clothes were taken into possession by doctors in the hospital. Both the witnesses identified the knife Ex.P1 with which the accused inflicted injuries on their person. They also identified their blood stained clothes which were seized by doctor at the hospital.

10. It is trite law that the evidence of an injured witness has greater evidentiary value and unless compelling reasons exist, his statement is not to be discarded lightly. 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.

11. Minor contradictions/improvements cannot render an injured witness's deposition untrustworthy. The law on this aspect has been detailed in the judgment '*State of Uttar Pradesh vs. Naresh and ors.*', (2011) 4 SCC 324 as under:

"27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh v. State of Punjab*, *Balraje v. State of Maharashtra* and *Abdul Sayeed v. State of M.P.*)."

12. Similarly in another case '*Abdul Sayed vs. State of Madhya Pradesh*', (2010) 10 SCC 259, Hon'ble Supreme Court observed that:

"The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar*, *Malkhan Singh v. State of U.P.*, *Machhi Singh v. State of Punjab*, *Appabhai v. State of Gujarat*, *Bonkya v. State of Maharashtra*, *Bhag Singh, Mohar v. State of U.P.* (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan*, *Vishnu v. State of Rajasthan*, *Annareddy Sambasiva Reddy v. State of A.P.* and *Balraje v. State of Maharashtra*.]

13. In *State of Madhya Pradesh v. Man Singh*, (2003) 10 SCC 414, it was held that:

"The evidence of injured witnesses have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report. That does not wash away the effect of evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to evidence of the injured witnesses are clearly inconsequential. Though, it is fairly conceded by learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render prosecution version brittle."

14. This settled position was reiterated in *Mano Dutt & Anr. v. State of UP*, (2012) 2 SCC (Crl.) 226 where Hon'ble Supreme Court referred to the earlier decisions and observed as under:-

"31. We may merely refer to the case of Abdul Sayeed v. State of Madhya Pradesh [(2010) 10 SCC 259], where this Court held as under:

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

[Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan,

Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab*, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana*). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

15. Testing on the anvil of this legal proposition, the testimony of the injured witnesses have to be scrutinised carefully. A perusal of their testimony goes to show that their presence at the spot has not been disputed by the accused. Moreover, the factum of their sustaining injuries in the incident is an inbuilt assurance regarding their presence at the spot. Both these witnesses were subjected to gruelling cross-examination but nothing material could be elicited to discredit their testimony.

16. Learned counsel for the appellant pointed out certain discrepancies in their testimony. However, human memory is bound to lapse with passage of time. It is a settled legal position that the Courts are not to get skewed by minor contradictions or insignificant discrepancies when otherwise testimony of a witness is cogent, credible and trustworthy on the material aspects of the case. No witness even the most genuine one would be in a position to give the exact account of the scene of crime minutely or to describe what preceded the incident and what exactly happened post incident. Some minor discrepancies, variations and improvements are bound to occur due to multiple factors governing the human behaviour and the background of a particular witness under examination and, therefore,

unless such discrepancies and improvements affect the core of the prosecution case, no undue importance should be given to such minor discrepancies, variations and improvements which usually creep in the testimony of any witness, due to multiple factors.

17. The Hon'ble Supreme Court in various authorities has time and again held that unless there are vital improvements, they cannot by itself affect the credibility of a witness and unless contradictions are on material dimension they should not be used to jettison the evidence in its entirety and trivial discrepancies ought not to obliterate the otherwise acceptable testimony of a witness. It was observed in *Dhanvir and Ors. vs. The State*, 85 (2000) DLT 711, that human memory is not a mere computer where memory can be fed or restored for all times to come and later on when retrieved it would be verbatim the same. A human being, when he describes some incident in a natural course, some variation is bound to take place and so long as the variations are natural and minor they ought to be ignored.

18. In the recent case of *Gangabhavani vs. Rayapati Venkat Reddy and Ors.*, (2013) 15 SCC 298, Hon'ble Supreme Court observed that:

"CONTRADICTIONS IN EVIDENCE:

13. In *State of U.P. v. Naresh*: (2011) 4 SCC 324, this Court after considering a large number of its earlier judgments held:

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

*A similar view has been reiterated by this Court in *Tehsildar Singh and Anr. v. State of U.P.* : AIR 1959 SC 1012; *Pudhu Raja and Anr. v. State, Rep. by Inspector of Police* : JT 2012 (9) SC 252; and *Lal Bahadur v. State (NCT of Delhi)* : (2013) 4 SCC 557).*

14. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to

form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence”.

19. The minor discrepancies pointed out by the learned counsel for the appellant does not go to the root of the matter and shake the absolute version of the witnesses, and therefore, cannot be attached any undue importance. On material aspects both the witnesses have corroborated each other. There is no reason to discard their testimony with whom the accused is not alleging any animosity, ill will or grudge.

20. As regards non examination of Kulwant Singh who also sustained injuries in the instant case, it has come on record that despite efforts made by the Investigating Officer of the case to serve him, he could not be produced in the Court being not traceable. In *Bikram Singh and Ors. vs. State of UP*, 1994 SCC (cri) 1411 and *Amar Singh vs. Balwinder Singh and Ors.*, (2003) 2 SCC 518, substantially similar plea was taken as some of the witnesses including injured witnesses were not examined by the prosecution and, therefore, it was urged that an adverse inference has to be drawn. Repelling the contention, it was observed by Hon'ble Supreme Court in *Amar Singh*(supra) that it is true that the witnesses essential to the

unfolding of the narrative on which the prosecution is based must be called by the prosecution, whether effect of their testimony is for or against the case of the prosecution. However, that does not mean that everyone who has witnessed the occurrence, whatever their number be, must be examined as a witness. In both these cases, certain witnesses were given up by the prosecution on the ground that they had been won over by the accused. It was observed that Section 134 of the Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact. Reference was made to a very illustrative judgment rendered as far back as in *Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614 where it was held:-

"The contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognised in S.134, which by laying down that "no particular number of witnesses shall, in any case, be required for the proof of any fact" has enshrined the well recognised maxim that "Evidence has to be weighed and not counted." It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished.."

The abovequoted principle was later reiterated in **Ramratan vs. State of Rajasthan**, AIR 1962 SC 424.

21. The present case stand on a much better footing as Kulwant could not be examined by the prosecution being not traceable. Under the circumstances, failure to examine him cannot be made a ground to reject the evidence of other eye witnesses who also sustained injuries in the course of same incident in which Kulwant sustained injuries. Rather various suggestions given to PWs Satish and Rohtash reflects that presence of Kulwant Singh at the spot and his sustaining injuries was not even disputed by the accused, inasmuch as, it was suggested to PW5 Rohtash that complainant Satish had quarrelled with some other truck driver due to which stampede took place and he along with Kulwant sustained injuries from the screw driver carried by them. Similarly, it was suggested to PW7 Satish Kumar that Satish and Rohtash sustained injuries from screw driver which was in the hand of Kulwant and Kulwant sustained injuries as he struck against the body of the truck during the stampede, meaning thereby that presence of the Kulwant and his sustaining injuries at the spot is not even disputed by the accused.

22. As regards the submission of learned counsel for the appellant that as per the testimony of PW9 Vijay Dora, at the relevant time

Rohtash was not working as a driver on his truck does not lead to the conclusion that PW5 Rohtash was not present along with PW7 Satish and injured Kulwant at the place on the date of incident because the controversy in the case does not centre around the fact as to who were working as driver/second driver/helper on the truck but was whether any such incident had taken place or not and whether injured persons sustained injuries in the incident which stand proved from the ocular testimony of PW Satish and Rohtash whose testimony is reliable, trustworthy and inspires confidence. Under the circumstances, from the ocular testimony of Satish Kumar and Rohtash it is established beyond reasonable doubt that it was the accused who inflicted injuries on their persons.

23. Further the ocular testimony of both these witnesses also find corroboration from other surrounding circumstances. It has come in the statement of PW7-Satish that after sustaining injuries he informed police at 100 number and also made a call to Ranbir, Commission Agent who reached the spot and removed the injured to Sunderlal Jain Hospital. PW4-Ranbir has corroborated his version by deposing that on receipt of a telephonic call from Satish regarding someone stabbing him and his brother Rohtash at B Block Chowk, Sabji

Mandi, he reached the spot and found Satish, Rohtash and their helper lying on the ground near the vehicle and they were having injuries on their persons and blood was oozing out from their injuries. He removed them to Sunder Lal Jain Hospital in a TSR and got them admitted there. Factum of admission of injured in hospital by this witness find corroboration from their MLC where in column of "brought by" name of Ranbir is mentioned.

24. Further the ocular testimony of these witnesses find corroboration from medical evidence which shows that when the injured persons were removed to the hospital, they were examined by Dr. Nihal who prepared MLC of Kulwant Ex. PW1/A, that of Rohtash Ex. PW1/B and Satish Ex. 1/C. Since Dr. Nihal had left the services of the hospital, PW1-Dr. Alam appeared and proved the MLC of all the injured persons prepared by Dr. Nihal. PW10-Dr. Anuj opined the nature of injuries sustained by Kulwant Singh as "grievous" that of Rohtash as "dangerous" while that of Satish Kumar as "simple".

25. It is further the case of prosecution as deposed by PW16 SI Ranbir Singh that accused made a disclosure statement Ex.PW6/C and led the police party in front of shop No. B-236, New Sabzi Mandi, Azadpur, Delhi and pointed out the place vide pointing out memo

Ex.PW6/D where he stabbed three persons. He also led the police party in front of shop No. B-256, New Subzi Mandi, Azadpur, Delhi from where he got recovered one buttondar knife from beneath the *takhat*. It was seized vide memo Ex. PW6/F. Both the witnesses have identified knife Ex.P1 to be the same knife with which injuries were caused to them. Moreover, the sealed parcel of knife was produced before PW15- Dr. V.K. Jha along with MLCs of injured and the doctor gave his opinion Ex.PW15/B that injuries mentioned in the MLC could have been caused by this knife or similar such knife.

26. Recovery of this knife at the instance of accused has been challenged by learned counsel for accused on the ground that once the accused was apprehended at the spot then there was no occasion for him to conceal the knife. It has, however, come in the testimony of PW16 SI Ranbir Singh that distance between the shop B-236, i.e., the place of incident and shop No. B-256 in front of which the accused got recovered the knife hidden under the *takhat*, was about 20 mtrs. As such, it was not such a long distance that the accused could not have thrown the knife over there which he ultimately got recovered. Moreover, at best, it can be taken that recovery of knife at the instance of accused is doubtful and, therefore, it may be taken that it was a

case of non-recovery of weapon of offence. In the face of clinching evidence coming on record, non-recovery of weapon of offence is not fatal as held in *Ambika Prasad v. State, 1997*, CrI.J. 2853.

27. It was suggested to PW5 Rohtash and PW7 Satish that a stampede had taken place in which PW5 and PW7 sustained injuries from the screw driver which was in the hand of Kulwant and Kulwant himself sustained injuries as he struck against the body of the truck during the stampede. However, no such suggestion was given to PW16 Dr. V.K. Jha to clarify if the injuries sustained by the injured as reflected in their MLCs could have been caused by any other weapon like screw driver etc. As such, the factum of injuries sustained by PW5 Rohtash, PW7-Satish and Kulwant resulting from the knife blows given by the accused cannot be disbelieved.

28. Further, the blood stained clothes of the injured persons were taken in possession in the hospital. The same were sent to FSL. PW14-Ms. Shashi Bala, Sr. Scientific Officer examined the exhibits and proved her report Ex. PW14/A and Ex. PW14/B and stated that as per biological report, blood was detected on Ex. PW1a-one shirt, PW1b one damp T Shirt, 1c One pant, 2a T shirt, 2b banian, 2c pant, 2d underwear, 2e cloth piece of cloth and 3a one shirt and as per the

serological report, blood of B group was detected on Ex.2a, 2b, 2c and 3a. The blood on the clothes of injured further corroborates the version of the injured persons regarding sustaining injuries in the incident. Although no blood was detected on knife but that itself is not sufficient to cast any doubt on the prosecution version.

29. It was also urged that finger prints of accused on the knife was not taken by the Investigating Officer of the case. The failure of the Investigating Officer in taking finger prints of the accused from the knife cannot completely throw out the prosecution case when the same is fully established from the testimony of eye-witness whose presence on the spot cannot be doubted as they all received injuries in the incident. In *Karnel Singh v. State of MP*, 1995 Cri LJ 4173, it was held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. In *Paras Yadav and Ors. v. State of Bihar*, 1999 Cri LJ 1122 while commenting upon certain omissions of the investigating agency, it was held that it may be that such lapse is committed designedly or because of negligence

and hence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. Similar view was taken in *Ram Bihari Yadav v. State of Bihar*, 1998 Cri LJ 2515 where it was observed that in such cases the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials, otherwise, the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice. In our opinion the circumstances relied upon by learned counsel for the accused for submitting that the investigation was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eye-witnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief.

30. Lastly, a feeble attempt was made by learned counsel for the appellant by submitting that appellant was falsely implicated in this

case at the instance of Ranbir Singh. The same deserves outright rejection as Ranbir Singh was the best person to disclose if he was on inimical terms with accused for which reason he would in connivance with injured would falsely implicate him in this case. Record reveals that Ranbir Singh was examined as PW4, however, despite opportunity given, this witness was not cross-examined by accused with the result he has not elicited what enmity he was having with Ranbir Singh for which reason he would get him falsely implicated in this case. Moreover, in his statement recorded under Section 313 Cr.P.C. a vague and bald plea has been taken without giving any specific details of enmity with Ranbir Singh for which reason he may have been falsely implicated.

31. The entire evidence was minutely scrutinized by the learned Trial Court and the appellant was rightly convicted under Section 307 IPC. The impugned judgment dated 6th April, 2013 does not call for any interference. Even regarding the quantum of sentence, it was submitted by the learned Additional Public Prosecutor for the State that the appellant is involved in eight other cases. Moreover, without any provocation, the accused inflicted injuries on vital parts of the body of all the injured persons. Moreover, he was not satisfied by

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causing injuries on the person of Satish only. When brother of Satish, Rohtash came to his rescue, he inflicted knife blow on his abdomen resulting in dangerous injuries and thereafter when Kulwant Singh intervened, he also inflicted multiple injuries upon him resulting in grievous injuries. Under the circumstances, the sentence awarded to the appellant cannot be said to be excessive which may call for any interference. That being so, the appeal is bereft of any merits, the same is accordingly dismissed.

Trial Court record be sent back along with copy of the judgment.

Sunita Gupta
(SUNITA GUPTA)
JUDGE

FEBRUARY 04, 2015

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