

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

**Judgment reserved on: 23.02.2015**

**% Judgment delivered on: 07.04.2015**

**+ Crl.A. 1500/2014**

**JITENDER @ MOGLI**

**..... Petitioner**

**Through: Ms. Manika Tripathy Pandey &  
Mr.Ashutosh Kaushik, Advocates.**

**versus**

**STATE (G.N.C.T OF DELHI)**

**..... Respondent**

**Through: Mr. Lovkesh Sawhney, APP.**

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J.**

1. This appeal is directed against the judgment dated 09.06.2014 passed by the learned Additional Sessions Judge - 02 in S.C. No. 60/2012, arising out of FIR No. 321/2012, P.S.– Narela, convicting the Appellant for the offence under Section 307, Indian Penal Code ('IPC'), and the order on sentence dated 02.07.2014, sentencing him to undergo 5 years rigorous imprisonment (RI) and fine of Rs.10,000/- and in default, to undergo simple imprisonment (SI) for three months.

2. The brief facts of the case are that complainant Avinash (PW-2) lives with his parents and his elder brother Gulshan (PW-1) lives in a nearby house. Around five-six days prior to the date of the incident, the complainant (PW-2) along with his sister Rachna and his brother Gulshan

(PW-1) were sitting in front of the house of Gulshan (PW-1). At about 7:00 p.m., the appellant, who is the neighbour of the complainant's brother Gulshan (PW-1), came and started abusing Gulshan (PW-1). Gulshan (PW-1) asked the appellant as to why he was abusing him without any reason and asked the appellant to go home since he had taken liquor. The appellant upon hearing this started grappling with Gulshan (PW-1). It was then that the complainant (PW-2) intervened and in the meantime the appellant's mother also came, who caught hold of the appellant and started taking him home. The appellant, while leaving, threatened Gulshan (PW-1) that *"Aaj to tu bach gaya hai lakin mujhe moka milte he jangal ke ped ki terah teri gardan maine nahi kati to mera nam Jitender nahi. Mai admi ko ped ki terah se kat deta ho isliye log mujhe Mogli kehte hai."* After this incident, everybody went home.

3. On 20.06.2012 at about 5:30 p.m., the complainant Avinash (PW-2) was going to Gulshan (PW-1) and his sister's house to meet them, where he saw Gulshan (PW-1) sitting near the door of the 4 of Kaddu. He then saw the appellant approaching Gulshan (PW-1) with an iron pharsa in his hand – which is used for cutting trees, and attacking Gulshan (PW-1) with the same. The complainant (PW-2) ran towards Gulshan (PW-1) to save him and raised an alarm. Thereafter, the appellant ran away from the spot of the incident towards the railway line along with the pharsa. Gulshan (PW-1) received injuries on his neck and both the hands, and blood started oozing from the same. The complainant (PW-2) along with the son of his uncle then took Gulshan (PW-1) to SRHC Hospital on a motorcycle and got him

admitted there and from there he got his brother (PW-1) admitted in Ganga Ram Hospital.

4. The FIR bearing no. 321/12 was registered at P.S. Narela and thereafter, the investigation was carried on. During the course of investigation, the appellant was arrested. After completion of investigation, the final report under section 173, Cr.P.C. was prepared and filed in the Court of Metropolitan Magistrate, who after completing all formalities committed the case to the court of sessions for trial. On 01.10.2012, charge under section 307, IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

5. The prosecution examined 15 witnesses to prove their case. They were: PW-1 Gulshan (injured), PW-2 Avinash (complainant), PW-3 Shyam Sunder, PW-4 Ct. Kanwaljeet, PW-5 ASI Ishwar Singh – the Duty Officer, PW-6 Dr. Rishab Jain, PW-7 Dr. Mahesh Mangal, PW-8 Ranbir, PW-9 Ct. Jaswinder, PW-10 Ct. Dinesh, PW-11 Ct. Sandeep Kumar Yadav, PW-12 ASI Sajjan – the I.O. of the case, PW-13 Dr. Ashutosh Gupta, PW-14 Dr. S.S. Gambhir, and PW-15 Dr. Anubhav K. Gupta. When the evidence was put to the Appellant under Section 313 Cr.P.C he denied it entirely. When asked, whether he wished to say anything else, he stated that he is innocent, and that he had been falsely implicated in this case.

6. Appellant examined DW-1 Pawan in support of his defence.

7. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal is filed.

8. Learned counsel for the appellant submits that the depositions of the complainant (PW-2) and Gulshan (PW-1) are contradictory to each other qua the previous incident which allegedly occurred 5-6 days before the date of alleged incident. The complainant (PW-2) states that “*A quarrel had taken place between my brother and the accused 8-10 prior to the incident. I do not know what was the cause of quarrel. I was present at the time of the quarrel, which had taken prior to the incident. The quarrel had taken place because at that time both were drunk. They both were abusing each other in the previous incident. At that time, my sister was also present there and no neighbour (sic) was present.*” Further, Gulshan (PW-1) in his examination-in-chief deposed that a few days prior to the incident, the appellant quarreled with and even threatened him. However, during his cross-examination, he stated that “*There was no quarrel between me and the accused prior to the incident.*”.

9. Another submission of the learned counsel is that there is inconsistency regarding who all were present during the earlier incident. As per the statement of Gulshan (PW-1), nobody was present on the day when the appellant quarreled with him, and he also did not call anybody when the appellant was abusing him. However, as per the version of the complainant (PW-2), he along with his sister were present there.

10. Learned counsel submits that there is contradiction regarding the fact as to who carried the injured to the hospital. The complainant (PW-2) deposed that “*I alongwith my cousin Shyam Sunder took my brother Gulshan on motorcycle to SRHC Hospital, Narela.*” while Ranbir (PW-8)

*stated “I along with brother of Gulshan removed injured Gulshan to SRHC Hospital on motorcycle driven by brother of Gulshan.”*

11. Learned counsel submits that the statement of the injured (PW-1) was not recorded on 20.06.2012 i.e. the day of the incident but was recorded only on 23.06.2012. He submits that the injured was conscious on 20.06.2012, yet the statement of Gulshan (PW-1) was not recorded. Thus, there is no plausible explanation provided for the delay in recording of the statement of the injured.

12. Learned counsel for the appellant submits that as per the medical examination, no blood stain has been found on the weapon i.e. Pharsa (Ex. PW-2/D) which was allegedly used by him to injure Gulshan (PW-1). Further, no finger prints were taken by the police from the weapon allegedly used by the appellant.

13. On the other hand, learned APP for the State submits that the submission of the appellant that there is a delay of 3 days in recording of the statement of Gulshan (PW-1) has no merit, as it is evident from the MLC (Ex. PW-6/A) that on 20.06.2012, at about 6:15 p.m., Gulshan (PW-1) was unfit for giving statement.

14. Learned counsel submits that the independent eye-witness to the incident Ranbir (PW-8) identified the appellant in the court. Ranbir (PW-8) in his examination-in-chief stated that he saw the appellant, carrying a pharsa, who reached near Gulshan (PW-1) and started giving him blows. Further, Ranbir (PW-8) is an independent witness and he has corroborated

the version of the complainant (PW-2) as well as Gulshan (PW-1), that the complainant (PW-2) was present at the spot of the incident.

15. He submits that once the offence committed by the appellant stands established through direct ocular evidence, the motive of the appellant in committing the offence need not be established. It is submitted that motive would be significant in a case involving circumstantial evidence, but where direct ocular evidence is available, which is worth relying upon, motive loses its significance.

16. Mr. Lovkesh Sawhney submits that the minor contradiction in the testimonies of complainant (PW-2) and Gulshan (PW-1) about the incident which took place a few days prior to the day of the offence is immaterial, as the commission of the actual offence by the appellant has been established by the testimony of the complainant (PW-2) and Gulshan (PW-1) and the independent eye-witness Ranbir (PW-8).

17. Learned counsel submits that although Shyam Sunder (PW-3) became hostile during the course of the trial, he supported the case of the prosecution to the extent that the complainant (PW-2) was present at the place of the incident and that he saw blood oozing out of Gulshan (PW-1).

18. Learned APP submits that as per the testimony of Dr. Ashutosh Gupta (PW-13) the injuries inflicted on Gulshan (PW-1) were possible with the weapon i.e. pharsa (Ex. PW-2/D), which was used by the appellant. The injuries were opined to be 'dangerous' in nature. Further, Dr. S.S. Gambhir (PW-14) has deposed that the injured (PW-1) remained admitted in hospital for 11 days.

19. Learned counsel submits that the weapon used by the appellant i.e. the Pharsa (Ex. PW-2/D), as well as the clothes of the accused (Ex. PW-2/C) were recovered by the police.

20. I have heard learned counsels, perused the record and considered the submissions and evidence recorded in the case.

21. As far as the contention of the appellant regarding the contradiction of Gulshan (PW-1) and the complainant (PW-2) qua the incident – which occurred a few days prior to the day the offence is concerned, in my view, the same is immaterial. This is for the reason that the said earlier incident was the precursor to the commission of the offence. If the commission of the offence by the accused is established beyond all reasonable doubt on the basis of the testimonies of the eye-witness, which are also sufficiently corroborated, the prior incident loses its significance. As argued by the learned APP, the evidence relating to the earlier incident may have been relevant to determine the motive for commission of the offence by the accused. However, motive pales into insignificance when the evidence with regard to commission of the offence by the accused is direct, and not just circumstantial. In the present case, there is primary evidence to establish that the incident took place and the appellant gave blows to Gulshan (PW-1) with the pharsa (Ex. PW-2/D). In ***Molu vs. State of Haryana***, (1976) 4 SCC 362, the Supreme Court held as follows:

*“11. ...It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes however, the motive is shrouded in the mystery and*

*it is very difficult to locate the same. If however the evidence of eye-witnesses is credit worthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant.”*

(Emphasis Supplied)

22. In the present case, the injured (PW-1), the complainant (PW-2) and Ranbir (PW-8) are eye-witnesses of the incident and have deposed that the appellant gave blows to Gulshan (PW-1) with the pharsa (Ex. PW-2/D). Clearly, there is direct evidence with respect to the incident and therefore, motive assumes a secondary role. As the testimony of eye-witnesses is found to be corroborated and reliable, hence the adequacy of motive is not relevant.

23. I am unable to agree with the argument of the appellant that there was no plausible reason for delay in recording the FIR with respect to the offence. As per the MLC (Ex. PW-6/A), on 20.06.2012, Gulshan (PW-1) was unfit to give his statement. Subsequently, on 21.06.2012, Gulshan (PW-1) underwent a surgery, which is evident from the deposition of Dr. Mahesh Mangal (PW-7), Plastic Surgeon, Sir Ganga Ram Hospital. Further, ASI Sajjan (PW-12) in his examination-in-chief stated that on 22.06.2012, when he went to Sir Ganga Ram Hospital, Gulshan (PW-1) was again found unfit for statement. In view of the aforesaid position, the appellant cannot seek to draw any advantage for the time lag in recording the statement of the injured Gulshan (PW-1). In fact, it cannot be said that there was any delay, as delay would imply that the statement could be recorded earlier, but was not so

recorded. In any event, the prosecution has been able to reasonably explain the so-called delay in recording the statement of Gulshan (PW-1).

24. The case of the prosecution has been established by the evidence of Gulshan (PW-1) as well as the complainant (PW-2). Gulshan (PW-1) is the injured. The relevant extract of the testimony of Gulshan (PW-1) is as follows:

*“On 20.06.2012 between 5-6 p.m I was sitting on the slab in front of the door of the house of Kundu near my house. Accused Jitender @ Mogali came there carrying an iron pharsa in his hand and immediately after coming to me started giving blow from that pharsa repeatedly on my person as a result of which I suffered injuries on my neck and on my both hands. My brother Avinash came there and rescued me from the accused.”*

25. The testimony of an injured witness must be given due weightage. His testimony is generally considered to be very reliable and it is unlikely that he would spare 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. Thus, the testimony of an injured witness should be relied upon unless there are grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. (See *Uttar Pradesh vs. Naresh*, (2011) 4 SCC 324). Thus, Gulshan (PW-1) being the sufferer injured, would not state an incorrect version of the occurrence or to involve the appellant falsely, and protect the real offender. The statement of the victim (PW-1) has been fully corroborated by his brother i.e. the complainant (PW-2) on all material

points. The relevant portion of the deposition of the complainant (PW-2) is as below:

*“I was at some distance from the house, when I had seen my brother was sitting on a slab and the accused Jitender, present in the court today (correctly identified by the witness), came there running with pharsa and gave blows to my brother Gulshan. I raised a noise and rushed to save my brother, but I could not save my brother as I was at some distance away from my brother. The accused after injuring my brother ran away from there. My brother had received injuries on his neck and both hands and he was bleeding.”*

26. Thus, it is evident that the testimonies of Gulshan (PW-1) & the complainant (PW-2) are categorical as to who caused the injury and how the injuries were caused. It stands established that the appellant came near Gulshan (PW-1) with a pharsa (Ex. PW-2/D) in his hand, and gave blows to Gulshan (PW-1) on his neck and both hands. No material contradiction has been pointed out by the learned counsel for the appellant in the testimony of Gulshan (PW-1), or, for that matter the complainant (PW-2).

27. Further, the evidence of Shyam Sunder (PW-3) does not require to be rejected completely because he turned hostile during trial. He supports the case of the prosecution to the extent that he stated that he saw Gulshan (PW-1) lying in an injured condition; that the complainant (PW-2) was lifting Gulshan (PW-1), his brother, and; that blood was oozing from the neck of Gulshan (PW-1). To the extent the statement of Shyam Sunder (PW-3) is corroborated by other evidence, it can be relied upon by the prosecution.

28. The story of the prosecution as well as Gulshan (PW-1) and complainant (PW-2) stands corroborated by Ranbir (PW-8), who claims to

have witnessed the incident. He deposed that the appellant, carrying the weapon, reached Gulshan (PW-1), and started giving blows to Gulshan (PW-1). He even deposed that the complainant (PW-2) reached the spot of the incident. Further, Ranbir (PW-8) had also correctly identified the appellant and the weapon used by him in the court. The evidence of injured Gulshan (PW-1), complainant (PW-2) and that of eye witness Ranbir (PW-8) coupled with medical evidence on record clearly proves that the appellant has caused injuries on Gulshan (PW-1). Even the presence of the complainant (PW-2) at the place of incident has been established by the statements of the eye witness Ranbir (PW-8) and Shyam Sunder (PW-3).

29. Further, the recovery of the weapon of offence (Ex. PW-2/D) as well as the blood stained clothes of the appellant (Ex. PW-2/C) were effected by Ct. Dinesh (PW-10) at the instance of the disclosure statement of the appellant.

30. After the occurrence of the incident, Gulshan (PW-1) was removed from the place of incident to the hospital. The submission of the appellant is that there is inconsistency as to who all carried Gulshan (PW-1) to the hospital. The complainant (PW-2) had deposed that Gulshan (PW-1) was removed by him and his cousin Shyam Sunder (PW-3). Further, the MLC (Ex. PW-6/A) clearly shows that Gulshan (PW-1) was brought to the hospital by Shyam Sunder (PW-3), Avinash (PW-2) and Vinod. Therefore, there can be no doubt that the complainant (PW-2) took his brother Gulshan (PW-1) to the hospital. Further, Ct. Dinesh (PW-10) has corroborated the fact that the injured (PW-1) had been brought by the complainant (PW-2) to Sir Ganga Ram Hospital.

31. In view of the aforesaid discussion, this court is of the view that minor contradictions as to who carried the injured Gulshan (PW-1) to the hospital is not enough to throw away the entire version of the prosecution about the actual commission of the offence. The core of the case of the prosecution is intact. Such minor and immaterial contradictions/ inaccuracies naturally creep in in the normal course due to several reasons well recognized in law. I may refer to the judgment of the Supreme Court in *State of A.P. vs. Janardhana Rao*, (2005) 1 SCC 360 in this regard.

32. Clearly, the appellant gave Pharsa blows to Gulshan (PW-1) due to which he sustained injuries on his neck and both hands. The injuries on the body of Gulshan (PW-1) were opined dangerous in nature by Dr. Rishab Jain (PW-6). As per the MLC (Ex. PW-6/A) , there were 3 injuries on the injured Gulshan (PW-1), which are as follows:

- (i) Injury No. 1: One Lacerated wound on the left side of neck about 10×5×5 Cm.
- (ii) Injury No. 2: Lacerated wound over right elbow about 2×1 Cm., right forearm hand 2×2 cm.
- (iii) Injury No. 3: Lacerated wound over left elbow and hand.

33. Further, Dr. Rishab Jain (PW-6) was not cross-examined and his testimony has gone unchallenged.

34. With regard to the weapon with which injury was caused to Gulshan (PW-1), the Application for Subsequent opinion (Ex. PW-12/D) is of relevance. The relevant extract is being reproduced below:

*“Injuries mentioned in the MLC sheet are possible with the weapon shown to CMO Dr. Shreesh on 06.07.2012 at 11:15AM weapon brought by I/o ASI Sajjan Singh P/s Narela in sealed (SSY) state.”*

35. Further, Dr. Ashutosh Gupta also supported the subsequent opinion and opined that the injury mentioned in the MLC are possible with the weapon i.e. pharsa (Ex. PW-2/D).

36. In respect of the fact that no blood stains were found on the pharsa (Ex. PW-2/D), the learned trial court has correctly observed that since the pharsa (Ex. PW-2/D) was kept in an iron box used for storing wheat, there is a chance that blood stains got removed due to the same.

37. In ***Hari Singh vs. Sukhbir Singh***, (1988) 4 SCC 551, the Supreme Court has discussed as to what the court has to see in order to bring home the offence under Section 307 IPC. The relevant extract of the judgment is as under:-

*“Under Section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of “attempt to murder”. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.”*

38. In the present case, Gulshan (PW-1) underwent multiple surgeries by the ortho. Surgeon and plastic surgeon on 21.06.2012 and 26.06.2012. Further, injured Gulshan (PW-1) was discharged from the hospital only on 01.07.2012 i.e. after 11 days. The nature of injury has been opined as 'dangerous' with a sharp object i.e. a pharsa (Ex. PW-2/D). The evidence on record establishes that there was intention to commit murder i.e. the appellant came towards Gulshan (PW-1) with a pharsa hidden behind him and gave him blow on his vital part i.e. the neck. The appellant was carrying the pharsa (Ex. PW-2/D) in his hand, which shows that there was prior pre-meditation to cause the death of the injured. The appellant fled the spot after inflicting injuries. The injury sustained, the manner of assault and the weapon used, makes out a case under Section 307, IPC. The evidence on record clearly establishes that appellant has caused injuries with an intention of causing death of the injured (PW-1).

39. The Court is, therefore, unable to find any error having been committed by the trial court in holding the appellant guilty of the offences under Section 307, IPC and in sentencing him in the manner noted above.

40. For all the aforesaid reasons, I find no merit in this appeal and the same is, accordingly, dismissed.

**(VIPIN SANGHI)**  
**JUDGE**

**APRIL 07, 2015**