

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

% Reserved on: 2nd May, 2017
Decided on: 31st May, 2017

+ CRL.A. 36/2016

ARUN SAHANI

..... Appellant

Represented by: Mr. F.K. Jha, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP for the
State with SI Sandeep Singh, PS
Adarsh Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Convicted for offences punishable under Sections 326 IPC and 27 of the Arms Act, 1959, Arun Sahani challenges the impugned judgment dated 16th November, 2015 and the order on sentence dated 24th November, 2015 directing him to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹50,000/- for offence punishable under Section 326 IPC and rigorous imprisonment for a period of one year and to pay a fine of ₹10,000/- for offence punishable under Section 27 of the Arms Act.

2. Assailing the conviction, learned counsel contends that Arun Sahani has been convicted on the uncorroborated testimony of Akhilesh. No mens rea has been proved by the prosecution. No public witness was joined though the place where the alleged incident took place is frequented by general public. The defence of the appellant that he was falsely implicated has been ignored by the learned Trial Court. Learned counsel for Arun Sahani further prays that in the alternative, the appellant be released on

humanitarian grounds on the period already undergone. The appellant has already undergone nearly half of the incarceration. The appellant has no previous criminal record. There was no enmity between the appellant and PW-2 Devanand (injured herein).

3. Learned APP for the State on the other hand submits that the impugned judgment suffers from no illegality. The weapon of offence, that is, knife was recovered at the instance of the appellant and blood stains on the knife matched with the blood of the victim.

4. Process of law was set into motion on 16th June, 2012 around 9:00 P.M. when a PCR call was received stating that "*Shed No. 9, Azaadpur, Sabzi Mandi, AB Block ke beech mein chaku mar diya hai*". The aforesaid information was recorded as DD No. 68B and assigned to PW-15 SI Anil Kumar who along with PW-8 Constable Vikas went to the spot. On reaching the spot, he was informed that the injured has been taken to BJRM Hospital. Thereafter, they went to the hospital and found Devanand (injured) admitted in the hospital. Since Devanand was unfit for statement and referred to LNJP Hospital, he did not record his statement. Thereafter, he along with Constable Vikas came back to the spot to look for an eye witness but he could not find anyone. On 17th June, 2012 around 5:00 A.M., SI Anil Kumar along with PW-13 Constable Sohan Vir went to LNJP Hospital and recorded the statement of Devanand wherein he stated that he was a permanent resident of Bihar and used to work as a labourer in MRJ firm situated at C-88 Transport Centre, Azadpur. Arun Sahani, who was from his village, also used to work in the same firm. On 16th June, 2012, around 8:00 P.M., when he was in his shed, Arun started quarrelling with co-worker Akhilesh on the issue of payment of labour. When he tried to intervene, Arun stated "*saale*

door hoja nahi tujhe maar dunga " and started quarrelling with him. When he tried to convince him, Arun took out a knife from right side pocket of his pants and gave him a blow on his abdomen with an intent to kill him. As a result of the blow, blood started oozing out. He telephonically called his acquaintance Manu Sahni who reached there and dialed 100 number. The PCR van shifted him to BJRM Hospital. On the basis of the aforesaid statement Ex. PW- 2/A, FIR No. 141/2012 was registered at PS Adarsh Nagar under Section 307 IPC. Subsequently, on the identification of Manu, Arun was arrested vide arrest memo Ex. PW-13/E. Arun disclosed that the knife used in committing the offence was thrown by him in the bushes at the backside of Shed No.9. Knife was recovered at the instance of Arun which was stained with blood.

5. Devanand deposed in sync with his statement made to the police. During his cross-examination, he stated that prior to the incident, he never quarreled with Arun.

6. PW-5 Akhilesh Sahni stated that on 16th June, 2012 at about 8:00 P.M., he was present at the place of incident and Arun, who was under the influence of liquor, started quarreling with him on the issue of money and abused him. He tried to convince him not to do so, but he continued abusing and quarreling with him. Devanand tried to intervene and make Arun understand but he started quarrelling with Devanand also and abused him as well. In the meantime, Arun took out the knife from the right side of his pant pocket and stabbed Devanand in the abdomen with an intention to kill him. Arun left the spot. On 17th June, 2012, police arrested Arun and brought him to police station. At that time, he was present in the police station and he identified Arun immediately as the assailant who had knife stabbed in the

abdomen of Devanand. In his cross-examination, he stated that prior to the incident, he did not have dispute with Arun. During his work, he had never seen anybody quarrelling with Arun.

7. PW-6 Manu Sahni stated that on the day of incident, he had received a telephone call regarding stabbing of Devanand, who asked him to take him to the hospital. Devanand was known to him as he was working in Sabzi Mandi. When he reached the spot, he saw that the intestine of Devanand was protruding out from his stomach.

8. PW-10 Dr. Anish Gupta, Sr. Resident, Cardio Thoracic vascular surgery, AIIMS stated that on 16th June, 2012, Devanand was referred from BRJM hospital at 11:34 P.M. He was stabbed in his lower abdomen. His small bowel was eviscerating out then he was taken for emergency exploratory laparotomy. His small bowel as well as other abdominal viscera was grossly normal. The eviscerated bowl was reduced back and abdomen was closed over intra abdominal drain. He along with Dr. Kamal Kishore and Dr. Kartik operated Devanand. He exhibited the operation notes as Ex. PW-10/A and opined that the injury was dangerous as per the admission slip Ex. PW-10/B prepared by Dr. Kamal Kishor.

9. PW-14 Dr. Kamal Kishor Gautam, Specialist at Rao Tula Ram Hospital, Delhi stated that in 2012 he was posted as Senior Resident in the department of general surgery at Lok Nayak Hospital. On 17th June, 2012, Devanand was brought with stabbed injuries on lower abdomen and evisceration of small bowel as no senior resident surgery was available at BJRM Hospital. He was under his direct supervision and he carried out the operation. He conducted emergency exploratory laparotomy with reduction of eviscerated bowel under general anastasia on 17th June, 2012. He also

reiterated copies of the medical documents running into 26 pages already exhibited as Ex.PW11/A. He opined that the injury was of grievous nature as there was evisceration of small bowel and if treatment had not been provided at relevant time, Devanand would have died. The injury was opined to be threatening to life.

10. PW-9 Dr. Bhim Singh, Associate Professor, Department of Forensic Medicine, Subharti Medical College Meerut, stated that on 27th July, 2012, he received an application from SI Anil Kumar along with MLC and sealed packet for subsequent opinion on weapon of offence. The sealed packet contained a knife made up of steel and he had prepared a diagram of the knife. He gave his opinion that injury mentioned in MLC could be possible by the said weapon of offence vide Ex. PW-9/B.

11. Contention of learned counsel for the appellant that he has been convicted on the uncorroborated testimony of Akhilesh Sahni deserves to be rejected. Injured Devanand stepped into the witness box and deposed about the injury caused by the appellant to him which was duly corroborated by Akhilesh Sahni with whom the fight actually started with by Arun Sahani who was thus eye-witness of the occurrence. Evidence of the injured witness Devanand besides being corroborated by natural witness of the occurrence Akhilesh Sahni is duly corroborated by the medical evidence of Dr. Anish Gupta and Dr. Kamal Kishor Gautam.

12. Nature of injury is also one of the parameters to ascertain the mens rea. During the quarrel, the appellant took out the knife and stabbed and while stabbing he caused the injury with the requisite intention and thus it cannot be held that he had no mens rea to cause the injury. Not only the version of Devanand is corroborated by Akhilesh Sahni and the medical

evidence, it is also corroborated by the recovery of weapon of offence at the instance of the appellant and the opinion of Dr. Bhim Singh, who stated that the injury as mentioned in the MLC was possible by the said weapon of offence, further corroborated by the FSL report Ex.PX which opined that the DNA from the blood stains on the knife recovered at the instance of the appellant matched with the DNA from the blood sample of Devanand.

13. In view of the overwhelming evidence on record and the nature of injury caused, this Court finds no illegality in the impugned judgment of conviction and the order on sentence.

14. Appeal is dismissed.

15. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

16. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 31, 2017
‘v mittal’