

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

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Reserved on: 27th February, 2018
Decided on: 13th September, 2018

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CRL.A. 578/2016

KHURSHID @ MENTAL

....Appellant

Represented by: Mr. Ankur Sood, Ms. Romila
Mandal, Mr. Uday Bedi,
Advocates.

versus

STATE

.....Respondent

Represented by: Mr. Ashok. Kr. Garg, APP for
the State with ASI Dharamveer
Singh, PS Welcome.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Khurshid @ Mental challenges the impugned judgment dated 27th April, 2016 convicting him for the offence punishable under Section 307 IPC in FIR No. 354/2014 registered at PS Welcome and the order on sentence dated 14th May, 2016 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for a period of 60 days for the offence punishable under Section 307 IPC.

2. Learned counsel for the appellant contends that neither any public witness has been examined nor any CCTV footage has been produced. The four prosecution witnesses in the present case are the injured and his family members and there are glaring contradictions and improvements in their testimonies. Furthermore, even as per the prosecution case, since there was no premeditation, essential element of Section 307 IPC is not made out.

3. Per contra, learned APP for the State submits that the name of the appellant is mentioned in the FIR itself even though not mentioned in the PCR call or MLC. The nature of the injuries was dangerous. Furthermore, the testimony of the injured is corroborated by the MLC. Hence the appeal be dismissed.

4. Process of law was set into motion on 25th June, 2014 at 11:00 A.M. when information was received from Ct. Mahesh who was posted as Duty Constable at GTB Hospital stating that one injured namely Asad r/o H.No. 13-3/104, Gali No. 5, Kabir Nagar, Near Takshila School, New Delhi was brought to the GTB Hospital. Aforesaid information was recorded vide DD No. 26B (Ex. PW-2/A) and was assigned to SI Brij Mohan. SI Brij Mohan along with Ct. Sanjeev went to the spot and thereafter reached GTB Hospital. He collected the MLC of injured Asad and after he was declared fit for statement, SI Brij Mohan recorded the statement of Asad. Asad stated that he used to drive auto bearing number DL 1RK 6898. About 2-3 months back, he had a fight with Khurshid @ Mental and since then Khurshid @ Mental used to abuse him whenever he used to cross by. On 25th June, 2014 around 10:50 A.M., when he was returning home after offering his prayers and reached Gali No. 5, Khurshid @ Mental came in front of him and while threatening to kill him, stabbed him with a knife. Khurshid @ Mental stabbed twice in his abdomen and while he was trying to save himself, he also got injuries on his hands. In the meantime, his mother Rizwana, father Mazhar Khan and his younger brother Amir reached there. He further stated that Khurshid @ Mental attacked him with a knife with an intention to kill, thus legal action be taken against him.

5. On the basis of the aforesaid statement (Ex.PW-1/A), FIR

No.354/2014 (Ex.PW-4/A) was registered for the offence punishable under Section 307 IPC at PS Welcome. Search for Khurshid @ Mental was conducted in Kabir Nagar and surrounding localities, however, he could not be traced. On 3rd July, 2014, site plan (Ex.PW-1/B) was prepared at the instance of Asad. Khurshid @ Mental was arrested on 11th July, 2014 vide arrest memo Ex. PW-9/B and his personal search was conducted vide search memo Ex. PW-9/C. On completion of investigation, charge sheet was filed. Charge was framed vide order dated 19th December, 2014.

6. Asad was examined as PW-1 in Court. He deposed in sync with his statement recorded before the police.

7. Rizwana (PW-6), mother of Asad, stated that on 25th June, 2014 at about 10:00-10:30 A.M., she heard cries of public persons that "*Khurshid ne chaaku maar diya..Khurshid ne chaaku maar diya.. Khurshid ne chaaku maar diya*". Thereafter, she along with her husband and son immediately came outside and saw Khurshid running away on the road going towards Kardampuri after stabbing Asad. She stated that she had not seen the incident of stabbing, however, Asad told her that Khurshid had stabbed him.

8. Mazhar Khan (PW-8) and Amir (PW-11) corroborated the testimony of Rizwana (PW-6).

9. Dr. Aakash Sharma (PW-7) stated that on 25th June, 2014 he was posted at GTB Hospital as Junior Resident. On that day, he medically examined Asad and prepared the MLC vide Ex.PW-7/A. Asad was referred to surgery department for further management. He opined that the injuries were caused by sharp weapon. He found the following injuries:

- i. *Incised wound of size 2 X 1 cm on lower abdomen, below umbilicus.*
- ii. *Incised wound of size 2 X 1 cm on left wrist.*

- iii. Incised (linear superficial) wound of size 2X 1 cm on right temporal region.*
- iv. Two incised wounds of size 0.2 X 0.5 cm and 1 X 0.5 cm on right elbow.*

10. Dr. Vivek Ranjan Chaubey (PW-5), Senior Resident, Surgery Unit-3, GTB Hospital stated that on 28th July, 2014 he perused the medical record of Asad and gave his opinion with respect to nature of injuries as grievous on the MLC (Ex. PW-5/A). He stated that three perforations were there on the small bowel and there was laceration on the liver. All the injuries were dangerous in nature which could have proved fatal for want of sufficient treatment.

11. Khurshid in his statement under Section 313 Cr.P.C. stated that Romi, elder brother of Asad, had parked his auto in front of construction site of Momin Builder, at Gali No. 5, Kabir Nagar, Delhi around 3-4 months prior to alleged incident. Khurshid stopped him from parking his auto and he asked for ₹5,000/- for removing his auto from that place, but he declined for the same. They had verbal altercation at that time but some elders intervened and pacified the matter. Thereafter, he was falsely implicated.

12. Contention of learned counsel for the appellant is that the prosecution withheld the material evidence of CCTV camera. In this regard Mazhar Khan, father of Asad the injured was cross-examined. In his cross-examination he clarified that there were around 31 houses in the main gali of gali No.5, three houses in the sub-gali and there was only one sub-gali in gali No.5. Further there was no shop in gali No.5 and the house of

Shahnawaz was not in their gali but in the other gali. He further stated that CCTV camera was installed only in the house of Hari Kishan/Darshan which was at the corner of the gali and he was not sure about the location of any other camera or that any other camera was installed on the date of incident as well. Thus the CCTV camera not being installed at the place of incident the footage thereof could not be collected.

13. Learned counsel for the appellant further contends that there are contradictions in the testimony of the four material witnesses. As noted above Rizwana, Mazhar Khan and Amir, parents and brother of Asad were not the eye witnesses to the incident and reached the spot after hearing the noise from inside their house. No doubt Rizwana stated that she heard the cries from the public stating "*Khurshid ne chaaku maar diya..Khurshid ne chaaku maar diya.. Khurshid ne chaaku maar diya*" however, Mazhar Khan says that he heard the cries "*Asad ko chakku maar diya...Asad to chakku maar diya*". Though in their examination-in-chief Mazhar Khan and Amir stated that when they reached the spot Khrushid was still inflicting injuries however, Rizwana is categorical that she heard the noise "*Khurshid ne chaku mar diya*". However, the fact remains that soon after the assault on Asad his parents and Amir reached the spot and took him to the hospital which fact is fortified by the MLC of Asad wherein it is noted that Asad was brought by Amir and Amir's mobile number is also recorded. Further details of Asad were also recorded.

14. Asad is an injured witness and the MLC of Asad proves the dangerous nature of injuries inflicted on him. In his statement recorded on the same day after nearly 1½ hours of incident Asad has clearly named the appellant and despite extensive cross-examination nothing material has been elicited.

The explanation of Khurshid in his statement under Section 313 Cr.P.C. has been denied by Asad and he has stated that prior to the incident quarrel had taken place between Asad and Khrushid around two-three months ago over the issue of snatching his money after stopping his auto for which he made a complaint to the police resulting in the enmity between the two of them.

15. Asad in his testimony states that he could hear the noise of his parents coming towards him and before they could attempt to apprehend Khurshid, he fled away from the place and due to the bleeding from the injuries he fell down on the road. He clarified that he was conscious when he reached the hospital and told the name of Khurshid in the alleged history though the same was not record.

16. Contention of learned counsel for the appellant that since there was no premeditation ingredients of Section 307 IPC are not made out also deserves to be rejected. Intention can be formed even on the spur of the moment and as noted above when Khrushid saw Asad near his house who was returning after offering Namaz he inflicted injuries by the weapon of offence, that is, knife which he already possessed. Whether Khurshid possessed or formed the intention or knowledge that by his act death could have been caused is required to be deciphered from the nature of injuries caused and the weapon of offence used. As noted above Dr. Vivek Ranjan Chaubey clarified that the nature of injury was grievous and there were three perforations in the small bowel and laceration on the liver. Thus the injuries were inflicted on the vital parts and the same were penetrating in nature.

17. Considering the cogent and convincing testimony of Asad, this Court finds no ground to set aside the impugned judgment of conviction or order on sentence in view of the nature of injuries.

18. Appeal is accordingly dismissed. Appellant will undergo the remaining sentence.

19. Copy of this order be sent to Superintendent, Central Jail Rohini for updation of the Jail record and intimation to the appellant.

20. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2018
‘vn’

