

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Reserved on: 15th May, 2019*
Decided on: 2nd July, 2019

+ **CRL.A. 985/2016**

KAWALJEET SINGH

..... Appellant
Represented by: Mr. Dinesh Malik with
Mr. Manish Malik and
Mr. Akash Saini,
Advocates

versus

STATE

..... Respondent
Represented by: Ms. Meenakshi Chauhan,
APP for the State with SI
Ramesh Kumar, PS
Nihal Vihar

+ **CRL.A. 1123/2016**

MONU

..... Appellant
Represented by: Mr. Dinesh Malik with
Mr. Manish Malik and
Mr. Akash Saini,
Advocates

versus

STATE

..... Respondent
Represented by: Ms. Meenakshi Chauhan,
APP for the State with SI
Ramesh Kumar, PS
Nihal Vihar

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the two appeals, Monu and Kawaljeet Singh challenge the impugned judgment dated 21st April 2016 convicting them for the offence

punishable under Sections 307/34 IPC in FIR No. 45/2012 registered at PS Nihal Vihar and the order on sentence dated 4th May 2016 directing them to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹5,000/- in default to undergo simple imprisonment for a period of 15 days.

2. Learned counsel for the appellants submits that the injured Rupinder in his cross-examination stated that on the intervening night of 9-10th March 2013 he was at the residence of complainant Baljinder and all of them consumed liquor heavily. Whereas in his MLC traces of alcohol have not been found. Rupinder and Mandeep Singh have both turned hostile on the point of identity of the accused persons. There being no evidence against the appellants, they be acquitted.

3. Per contra, Learned APP for the State submits that there are three injured persons namely Baljinder, Rupinder and Mandeep. The nature of injury of Mandeep is opined to be serious. There is no contradiction in the testimonies of the complainant and the other two injured persons. She further submits that the knife used in the commission of offence has also been recovered from Kawaljeet Singh.

4. Process of law was set into motion on 9th March 2012 at around 10:43 P.M. when information was received through wireless operator regarding stabbing of three boys with knife at Chander Vihar, Gali No. 3, Himgiri Enclave. Aforesaid information was recorded vide DD No. 55A and was assigned to ASI Bijender Singh. He along with Ct. Deewan Singh reached at the spot where he came to know that the three injured persons had been taken to Shanker Hospital, Vikaspuri. He along with Ct. Deewan Singh went to the hospital and collected the MLCs of Baljinder Singh @ Montu,

Rupender @ Ruby and Mandeep. He recorded the statement of Baljinder @ Montu wherein he stated that during Dussehra in the previous year on burning of the effigy of Ravana he had some altercation with one boy namely Monu who lives in the same locality and continued to have grudges against him. On 9th March 2012 at around 10:00 PM he along with his brother Mandeep Singh and his friend Ruby were standing on the street in front of his house when Monu came there and stated that "*Ajj tere doston ne mere aur Kawaljeet ke sath maar pitayi aur gali galoch kari hai, jisme tera bi hath hai*" to which he replied that neither he nor his friends were involved in any kind of quarrel. Thereafter, Monu left from there and after 15 minutes Monu along with his friend Kawaljeet again came there, started abusing them and said that "*Ab hum tujhe marenge tab toh vo log apko bachane ayenge hi.*" Monu held him and while his brother Mandeep and Ruby were trying to save him, Kawaljeet stabbed him on the left side of his back. When his brother tried to save him Monu asked Kawaljeet to kill his brother as well after which he stabbed his brother on his abdomen, back and waist. They stabbed Ruby on his back and near his ear. When they raised alarm Monu and Kawaljeet ran away from the spot. One public person informed the police about the incident on 100 number. They went to the hospital before the police arrived at the spot. Kawaljeet and Monu tried to kill Rupender, Mandeep and him. On the basis of the aforesaid statement (Ex.PW-1/A), FIR No. 45/2012 (Ex.PW-4/A) was registered for offence punishable under Sections 307/34 IPC at PS Nihal Vihar.

5. ASI Bijender Singh seized the blood-stained clothes of Mandeep and Baljinder vide seizure memo Ex.PW-1/E. Thereafter he along with Ct. Deewan Singh, Ct. Bijender Singh and Baljinder went to the spot. He

prepared the site plan at the instance of Baljinder vide Ex.PW-8/A. Kawaljeet Singh @ Lucky who was identified by Baljinder was sent for medical examination at SGH, Mangolpuri. Thereafter he was arrested vide arrest memo Ex.PW-1/C, his disclosure statement was recorded vide Ex. PW-8/B and his personal search was conducted vide personal search memo Ex.PW-5/A. Kawaljeet led them to his house at B-15/1, Gali No. 6, Himgiri Enclave, Chander Vihar, Delhi from where one knife was recovered. Sketch of the knife was prepared vide Ex.PW-5/B and it was seized vide seizure memo Ex.PW-5/C.

6. On 14th March 2013, Monu was arrested at the instance of the complainant vide arrest memo Ex.PW-1/D, his disclosure statement was recorded vide Ex.PW-5/D and his personal search was done vide personal search memo Ex.PW-7/A.

7. On completion of investigation, charge sheet was filed. Charge was framed vide order dated 19th December 2012 for offences punishable under Sections 307/323/34 IPC.

8. Baljinder Singh (PW-1), complainant deposed in sync with his statement made before the police.

9. Rupender @ Ruby (PW-2), corroborated the statement of the complainant. In his cross examination he stated that on the intervening night of 9th - 10th March 2012, he and Baljinder were consuming liquor at Baljinder's residence. Mandeep, Baljinder and he got into a fight after consuming liquor.

10. Mandeep Singh (PW-3), brother of the complainant corroborated the statement of the complainant. In his cross-examination he stated that all of them were under the influence of alcohol. He had normal relations with the

Kawaljeet and Monu and had no prior history of any quarrel with them.

11. Dr. S.N. Kundra, Director Shankar Hospital, stated that on 9th March 2012 between 11:00 P.M.-11:30 P.M., Baljinder, Rupinder and Mandeep were brought to hospital and were examined vide MLCs Ex. PW-6/A, Ex. PW-6/B and Ex. PW-6/C respectively. Mandeep was admitted for observation while the other two persons were treated on OPD basis. On examination following injuries were found on Mandeep and the nature of injuries was opined to be serious:

- i. *CLW (L) lower peri umbilical region, 1½ inches muscle deep with sharp edge, no active bleeding.*
- ii. *CLW (L) auxiliary line likely-lower back, 1-inch muscle deep with sharp edge, no active bleeding.*

12. The following injury were found on Baljinder and the nature of injury was opined to be simple:

- i. *CLW (L) upper back, 2 inches muscle deep with sharp edge, no active bleeding*

13. The following injury was found on injured Ruby and the nature of injury was opined to be simple:

- i. *CLW (L) lower back, 1-inch muscle deep with sharp edge, no active bleeding.*

14. Monu in his statement recorded under Section 313 Cr.P.C. stated that he was falsely implicated at the instance of the complainant who had some quarrel with him one year back.

15. Kawaljeet in his statement recorded under Section 313 Cr.P.C. stated that the knife was never recovered from his house and the alleged knife was planted on him by the police officials.

16. As is evident from the statement of the prosecution witnesses as well as the statement of the accused under section 313 Cr.P.C. there was previous enmity between the two parties. The prosecution case stands proved by the testimony of the complainant Baljinder @ Montu whose version is corroborated by the injuries received by him. As far as the two other injured witnesses namely Rupinder and Mandeep are concerned, who appeared as PW-2 and PW-3 respectively in their examination-in-chief recorded on 6th May, 2013 and 2nd August, 2013 and again on 21st March, 2014, they corroborated the version of the prosecution. However, on recall for cross-examination on 8th October, 2015 and 5th October, 2015, the two witnesses turned hostile and did not support the case of the prosecution. Version of PW-2 and PW-3 recorded in their examination-in-chief is also corroborated by the version of the complainant as also the nature of injuries received by them. The plea of the appellants is of false implication however, considering the evidence of the prosecution it can be safely held that the prosecution has proved beyond reasonable doubt the offence committed by the appellants.

17. Consequently, the appeals are dismissed.

18. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

19. TCR be returned.

(MUKTA GUPTA)
JUDGE

JULY 02, 2019
‘vj/rk’