

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10th April, 2015

+ CRL.A. 1364/2013 & Crl.M.B. No.10044/2014

SUNIL

..... Appellant

Through: Ms.Manika Tripathi, Advocate

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr.O.P.Saxena, APP along with SI Hawa Singh, PS Madhu Vihar.

+ CRL.A. 220/2014

ANIL

..... Appellant

Through: Ms. Rakhi Dubey, Advocate

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr.O.P.Saxena, APP along with SI Hawa Singh, PS Madhu Vihar.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The appellants – Sunil and Anil impugn the judgment dated 17.05.2013 and order on sentence dated 22.05.2013 passed by learned Additional Sessions Judge, (East), Karkardooma Courts, Delhi in Sessions Case No.5/12 arising out of FIR No.13/11 Police Station Madhu Vihar, Delhi under Sections 307/323/324/34 Indian Penal Code whereby the appellants were convicted for offence under Section 307/34 IPC and were sentenced to undergo rigorous imprisonment for a period of seven (7) years and fine of Rs.10,000/- each; in default of payment of fine, to further undergo simple imprisonment for a period of six (6) months. They were also granted benefit of Section 428 of Code of Criminal Procedure.

2. The prosecution case, as unfolded by the complainant – Rajbir @ Raju is that he is running a grocery shop near Allah Colony. Anil alongwith his brother used to reside as

tenant in the house of Birju in *Allah* Colony and used to purchase grocery items from his shop. He owed a sum of Rs.1800/- from him. On 13.01.2011, he demanded his dues from the younger brother of Anil who informed him that the payment will be made by his brother. On 14.01.2011, on receipt of a telephonic call from Anil at about 8 pm asking him to come in the park near Maitri Apartments to take his money, he reached the park where his brother Anil and one more boy whose name was not known to him were present and as soon as he reached there, Anil inflicted knife blows on his back as a result of which he fell down. Thereafter, Sunil and his other brother started hitting him with bricks. Anil gave several knife blows. All ran away after giving beatings to him. In this process his gold chain was also lost.

3. It is further the case of prosecution that on receipt of DD No.25A (Ex. PW2/B) regarding admission of one person at Max Balaji Hospital in injured condition, PW8 – Head Constable – Anil Vedwan alongwith PW6 – Constable Mangu Ram reached Max Balaji Hospital where they found one person, namely, Rajbir admitted. They collected his MLC Ex.PW1/A. Thereafter, statement of Rajbir @ Raju Ex.PW4/A was recorded on the basis of which steps were taken for getting the FIR registered and FIR under Section 323/324/34 IPC was registered. In the hospital, doctor handed over one parcel containing clothes of injured sealed with the seal of the hospital which was seized vide seizure memo Ex.PW6/A. Thereafter Constable Anil Vedwan alongwith Ajay Kumar, son of the injured, went to the spot and prepared the site plan Ex.PW7/A at his instance. The search for the accused persons was made but did not yield any fruitful results.

4. On 02.02.2011 accused – Anil and Sunil surrendered themselves before the Metropolitan Magistrate. After seeking permission from the Court, they were interrogated and arrested by SI Sandeep. During the course of interrogation, they made disclosure statement Ex.PW5/B and Ex.PW8/B. Their police remand was taken. Pursuant to the disclosure statement accused Anil got recovered one knife from the root of *Peepal* tree in the park of Joshi Colony. The same was seized vide memo Ex.PW5/E. The complainant – Rajbir produced the documents Ex.PW4/C regarding the balance amount

which was seized vide memo Ex.PW4/B. During the course of investigation, the clothes of injured and knife were sent to FSL from where results Ex. PX and PY were received. After completing investigation, charge-sheet was submitted against accused – Anil and Sunil under Sections 307/323/324/34 IPC.

5. After commitment of the case to the Court of Sessions, charge under Section 307/34 IPC was framed against both the accused/appellants to which they pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution in all examined 12 witnesses. All the incriminating evidence was put to the accused persons while recording their statements under Section 313 of Code of Criminal Procedure wherein they denied the case of prosecution. According to them, the complainant owed them Rs.25,000/- on account of work of whitewash done by them in his house. Instead of paying the amount, he got them falsely implicated in this case. Accused – Sunil also pleaded *alibi* by stating that after the alleged work of whitewash in October, he left Delhi and came back to Delhi from Bihar only on 20.01.2011. On coming to know that they have been named in this FIR, they themselves surrendered before the court.

7. After considering the evidence led by the prosecution and the defence taken by the accused/appellants, learned Additional Sessions Judge convicted both the appellants and sentenced them as stated hereinabove.

8. Feeling aggrieved and dissatisfied with their conviction, separate appeals have been preferred by both the convicts.

9. Assailing the findings of learned Trial Court, Ms Rakhi Dubey, learned counsel for the appellant – Anil submitted that as per the version given by the complainant, the accused persons were known to him from before and that being so why the names of the injured were not given when his MLC was prepared. Moreover, although the incident is

alleged to have taken place at about 20.30 hours, the FIR has been registered only at 0035 hours as such there was ample opportunity to falsely implicate the accused persons. Moreover, according to the complainant, Surjit, brother of Anil and Sunil had come to his shop for purchasing grocery items. However, on being told that first the dues have to be cleared, he left saying that the payment will be done by his brother but Surjit is not brother of the appellant – Anil. It was further submitted that the plea of injured that he was given 45 injuries does not find corroboration from the MLC which only makes a mention of multiple injuries. Similarly the version of complainant that he remained in hospital for 15/16 days is not corroborated by the medical evidence as according to the doctor he remained in hospital for about 7 days only. Moreover, the complainant has failed to give either his own telephone number or the number from which he received the alleged call on hearing of which he went to the park. No call detail record has been placed on record. The rough estimate submitted by the complainant is not a reliable piece of evidence. Under the circumstances, it was submitted that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt as such the impugned judgment and order on sentence be set aside.

10. Ms Manika Tripathi, learned counsel for the appellant – Sunil raised the same pleas as were raised by Ms Rakhi Dubey. In addition, it was submitted by her that if the complainant was unconscious then how he narrated the incident to his son. Further, the appellant – Sunil was not even present at the spot as he was away to his native village at Bihar and the tickets in support thereof have been placed on record. Since the appellant was not in Delhi, the question of his inflicting any injury on the person of injured does not arise. Alternatively, both the counsels submit that the appellants have clean antecedents. They have family to support and they remained in jail for quite substantial period as such a lenient view may be taken.

11. Rebutting the submissions of learned counsel for the appellants, the learned Additional Public Prosecutor for the State supported the findings of the learned Trial Court by submitting that the complainant sustained dangerous injuries and even assuming

the plea of the accused/appellants that the complainant owed them Rs.25,000/- towards their whitewash dues then why the complainant will implicate them while allowing the real culprits to go scot free. Moreover, the plea of *alibi* taken by the appellant – Sunil is not duly proved. Therefore, the impugned judgment does not suffer from any infirmity which calls for any interference, as such, the appeals are liable to be dismissed.

12. I have considered the rival submissions made by learned counsel for the parties and have perused the record.

13. The prosecution case is based on the ocular testimony of PW4 – Rajbir @ Raju who has substantiated the version given by him in his initial complaint made to the police which culminated in registration of instant FIR and became the bedrock of investigation. The witness reiterated that he was running a general merchant shop situated at 246/40, near Mosque, *Allah* Colony, Delhi for the last about 25 years. On 13.01.2011, one Surjit, younger brother of accused Anil, came to his shop in the evening and requested for some household articles. He informed him that brother of accused/appellant – Anil had already purchased goods worth Rs.1800/- by that time and first they should pay that amount and thereafter the goods would be given. Surjit told him that his brother Anil would make the payment and went away from his shop. On 14.01.2011 at about 8 pm when he was present at his shop accused/appellant – Anil called him on telephone and asked him to reach park in front of Maitri Apartments to collect his dues. He reached there at about 8.05 pm and found both the accused/appellants – Anil and Sunil and their younger brother – Surjit. As soon as he entered the park, accused/appellant – Anil stabbed him with a knife on his back due to which he fell down. Thereafter, all the three persons attacked him with knife on both his eyes, back with the bricks also. He was seriously injured. His gold chain also went missing during this incident. Due to the injuries received by him he has not been able to recover as yet. After assaulting and stabbing him, all the accused ran away from the spot. He became unconscious and when he regained consciousness he found himself at Max Balaji Hospital. His statement Ex.PW4/A was recorded by the police. He remained hospitalized for about 15/16 days. On 23.04.2011,

he gave the paper containing details of the goods given to accused Anil and the amount thereof which was taken in possession by the Investigating Officer vide seizure memo Ex.PW4/B.

14. It is trite law that the evidence of injured witness has greater evidentiary value and unless compelling reasons exist, his statement is not to be discarded lightly. In *Akhtar and Ors. Vs. State of Uttaranchal*¹ their Lordships held that credence to the testimony of injured eye witness is to be given since his presence at the scene of crime is seldom doubtful. The report reads as under:-

“18. In Krishan vs. State of Haryana² this Court has taken the view that if the prosecution case is supported by two injured eyewitnesses and if their (injured eyewitnesses) testimony is consistent before the police and the Court and corroborated by the medical evidence, their testimony cannot be discarded. Similarly, in Surender Singh Vs. State of Haryana³, this Court has opined that:-

“9. The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence, lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes.”

Substantially similar view was taken in *Mano Dutt and Anr. Vs. State of UP*⁴; *Abdul Sayeed v. State of Madhya Pradesh*⁵ and *Jarnail Singh v. State of Punjab*⁶; and *Balwan v. State of Haryana*.⁷; and *Md. Ishaque and Ors. v. State of West Bengal & Ors.*⁸

15. The witness was subjected to lengthy cross examination. However, nothing material could be elicited to discredit his testimony. His statement is consistent, cogent

¹ (2009) 13 SCC 722

² (2006) 12 SCC 459

³ (2006) 9 SCC 247

⁴ (2012) 2 SCC (Cri) 226

⁵ (2010) 10 SCC 259

⁶ (1984) 1 SCC 446

⁷ 2014 SC 3644

⁸ (2013) 14 SCC 581

and wholly reliable and the intrinsic worth of his evidence has not been found to be in any kind of doubt at all. I have carefully considered the lengthy cross-examination of the witness conducted by the defence and found that material particulars of the prosecution case disclosed in the first information report as well as in examination in chief is reaffirmed in cross examination. The witness has denied the suggestion that the accused persons worked as painter at his house and a sum of Rs.25,000/- was due from him or that accused used to demand the said amount which he was not paying and then got them implicated in this case falsely. Except for bare suggestions given to the witness, no evidence has been led by the accused/appellants to support their version that they did the work of white wash in the house of the complainant and Rs.25,000/- were due from him to them. Moreover, it does not appeal to reason that the injured will allow the real culprits to go scot free for implicating the accused persons falsely in this case.

16. The submission that there was delay in lodging the FIR resulting in manipulation as although the incident had taken place at 8.30 pm, however, the FIR could be lodged only at 0055 hours, it has come on record that after the injured was removed to Max Balaji Hospital by his son and was examined by the doctors and he was got freed from CT scan etc. then his statement was recorded by Head Constable Anil Vedwan. That being so, it cannot be said that there was any delay in lodging the FIR so as to falsely implicate the accused persons in this case.

17. The submission that PW4 and PW7 had not disclosed the names of the assailants to the doctor where the injured was taken after the incident and for this reason they should be disbelieved has no force and needs to be rejected. As has been noticed already, the incident had taken place at about 8.30 pm and immediately thereafter the injured was rushed to Max Balaji Hospital by PW7 giving the history of being beaten by three boys and hitting by knives and stones. It has not been elicited by the defence counsel from PW3 – Dr. Umar Zahoor Shah whether he had specifically asked the names of the assailants from the son of the injured or the injured himself. If such a question had been put to the doctor and despite his asking the witness failed to disclose the names of the

assailants the position might have been different. As far as the witnesses are concerned they were not expected first of all to narrate the entire incident to the doctor. Anxiety of anybody would have been to get the injured treated immediately by some doctor. Since the injuries sustained by PW4 were dangerous the doctor would have asked the son of the injured, whose name was mentioned in the MLC to be the person who had brought the injured to the hospital, to confirm only whether the injuries were actually stab injuries or not since in case of stab injuries the case becomes Medico Legal Case of which the police needs to be informed. The doctor is not concerned about the details of the incident or names of the assailants. His job is to ensure that immediate medical aid is given to the injured and not to start interrogating the injured or the person bringing him to the hospital.

18. In “*Bhargavan vs State of Kerala*”⁹, it was observed by the Supreme Court that:-

“20. So far as non-disclosure of names to the doctor, same is really of no consequence. As rightly noted by the Courts below, his primary duty is to treat the patient and not to find out by whom the injury was caused. The plea in this regard is clearly unacceptable. The question was examined by this Court in *Pattipati Venkaiah v. State of Andhra Pradesh*¹⁰ and similar view was taken.”

(emphasis laid)

And this is what the Supreme Court had observed in “*Pattipati Venkaiah vs State of Andhra Pradesh*”¹¹ –

“16. Another argument advanced before us was that although PWs 1 and 2 were supposed to be eye-witnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only stated to be rejected. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the Doctor. It is well settled that Doctors before whom dead bodies are produced or injured persons are

⁹ AIR 2004 SC 2317

¹⁰ 1985(4) SCC 80

¹¹ (supra)

brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible.”

(emphasis supplied)

Similar view was taken by a Division Bench of this Court in *Durga Prasad @ Bablu v. State*¹².

19. Moreover, the testimony of injured finds corroboration from PW7 – Ajay Kumar, his son, who has also deposed that on 14.01.2011 he reached the *Kiryana* shop of his father at about 8.30 pm. He did not find his father in the shop and therefore he made inquiries from the neighbourhood and came to know that on receipt of a telephonic call his father left the shop. Then he went in search of his father towards Maitri Apartments. When he reached near the park situated near Maitri Apartments, he heard cries of his father and on hearing the same he went inside the park and saw three persons, namely, Anil, Sunil and Surjit giving beatings to his father and he was lying on the ground. The accused were having knives in their hands and on seeing him all ran away from there. His father was bleeding all over his body as such he removed him to Max Balaji Hospital and got him admitted there. His father informed him about the incident. The factum of removal of injured to hospital by this witness finds corroboration from the MLC of the injured wherein it is recorded that injured was brought to hospital by Ajay Kumar, son of the patient, with alleged history of being beaten by three boys and hitting by knives and stones.

20. Further, the ocular testimony of the injured finds corroboration from the medical evidence. When the injured was brought to the hospital he was examined by PW3 – Dr. Umar Zahoor Shah and he prepared his MLC Ex.PW1/A. According to him, the patient came with complaints of pain in abdomen radiating into back. Multiple lacerated wounds around face right eye (lacerated sclera), lacerated wound over nose bridge, multiple laceration over the back, lacerated wound around occipital region measuring 2x3 cm. In

¹² Manu/DE/1881/2009

cross examination, he clarified that the injuries mentioned in the MLC may have been caused by sharp-edged weapon as well as by blunt object. The blunt object in this case may be a stone, some iron rod, bat, etc. The blood stained clothes of the patient were seized and handed over to the police. The patient was referred for further treatment. He was examined by PW1 – Dr V.K. Jain and the patient remained under his treatment. He also deposed that the patient had multiple injuries over the face and right orbit fracture on right orbital and nasal bone. On the basis of x-ray and CT scan of the injured he found that multiple stab injuries were present over his back out of which two injuries were penetrating into his liver. He opined the injuries as dangerous. In his cross examination he deposed that the patient remained hospitalized for about 7/8 days. The submission of learned counsel for the appellants that there is variation in the testimony of the injured and the medical evidence as according to the injured he sustained 45 injuries and remained hospitalized for about 15/16 days whereas the report of the doctors nowhere mentioned about 45 injuries and according to Dr V.K. Jain, the patient remained hospitalized for 7/8 days only. This discrepancy is hardly of any consequence inasmuch as in view of the dangerous injuries inflicted on the person of injured it was improbable for him to give number of blows given to him and it is only by way of estimation that he may have given the number of injuries as 45. But the fact remains that ever as per the expert opinion there were multiple stab injuries over his person. For the same reason, whether the patient remained hospitalized for 7/8 days or 15/16 days is not of much consequence.

21. It has further come on record that after surrender of accused persons after seeking permission of the Court, they were interrogated and their disclosure statements were recorded. Pursuant to the disclosure statement made by accused – Anil, one knife was recovered from the roots of *Peepal* tree in the park of Joshi Colony. This recovery of knife effected at the instance of accused – Anil is admissible in evidence under Section 27 of the Evidence Act. The recovered knife and the seized clothes of the patient were sent to FSL and as per FSL report Ex. PX given by Dr. Rajinder Kumar, Assistant Director, Forensic Sciences Laboratory, blood was detected on the clothes of the injured as well as on the knife recovered at the instance of accused/appellant – Anil. As per the

report Ex.PY, the species of origin of blood was human. However, on knife, the blood group was opined as 'A' whereas on the clothes of the injured no blood group could be opined by remarking "*no reaction*". The blood sample of the injured was not taken by the Investigating Officer of the case so as to match the same with the blood group opined on the knife, but that at best is a lapse on the part of the Investigating Officer for which the prosecution is not to suffer. The ocular testimony of the injured finds corroboration from medical evidence as well as scientific evidence.

22. Accused/appellant – Sunil took the plea of *alibi* by stating that after *Diwali* he had gone back to his native village and returned back to Delhi only on 20.01.2011 while travelling on ticket bearing number 47258211. This ticket was rightly not relied upon by learned Additional Sessions Judge by observing that this ticket is an ordinary ticket of travel from Gaya to Delhi and does not prove that the accused travelled by this ticket. The ticket even does not prove that a male of his age has travelled on this ticket or not. The accused could have examined any person of his village to prove that he was in his village at the relevant time. As observed by Hon'ble Supreme Court in *State of Maharashtra v. Narsingrao Gangaram Pimple*¹³ a plea of *alibi* must be proved with certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. The accused had failed to prove the plea of *alibi*. Moreover, a false plea of *alibi* taken by accused is another incriminating piece of evidence against him. Under the circumstances, the appellants were rightly convicted by learned Trial Court for offence under Section 307/34 IPC and this finding does not call for any interference.

23. Coming to the quantum of sentence, needless to say multiple injuries were caused to the complainant on his face, eyes and back. Two of the injuries had penetrated his liver. One of his eyes has also been damaged. However, keeping in view the fact that the antecedents of the appellants are clear and they are not reported to be involved in any other case and they have the responsibility of maintaining their families and as per the

¹³ (1984) 1 SCC 446

nominal roll their overall conduct has been satisfactory and out of seven years rigorous imprisonment awarded to them, they have undergone a period of four years, one month and eleven days besides earning remission of seven months and twenty days as on 13.03.2015 as such the substantive sentence is modified to five years rigorous imprisonment. However, the fine of Rs.10,000/- is enhanced to Rs.50,000/- each; in default of payment of fine to undergo nine months simple imprisonment. The fine, if realized, be paid to the victim – Rajbir @ Raju as compensation.

With this modification, both the appeals stand disposed of.

Trial Court record be returned alongwith a copy of this judgment.

A copy of this judgment be sent to Superintendent, Jail for information to the appellants.

(SUNITA GUPTA)
JUDGE

APRIL 10, 2015/*rd*