

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

RESERVED ON : APRIL 30, 2015

DECIDED ON : JULY 03, 2015

+ CRL.A.1586/2013 & CrI.M.B.10080/2014

DEEPAK Appellant

Through : Ms.Saahila Lamba, Advocate.

versus

STATE Respondent

Through : Mr.Navin K.Jha, APP.

SI Janak Singh, PS M.F.Colony.

+ CRL.A. 746/2012

NARESH Appellant

Through : Mr.Amlish Rai, Advocate.

versus

STATE Respondent

Through : Mr.Navin K.Jha, APP.

SI Janak Singh, PS M.F.Colony.

+ CRL.A. 835/2012

SURESH Appellant

Through : Mr.R.C.Tiwari with Mr.Sumar

Sharma, Mr.Rahul, Advocates.

versus

STATE

..... Respondent

Through : Mr.Navin K.Jha, APP.

+

CRL.A.1332/2012 & CrI.M.A.14209/2014

DEVENDER @ TITU

..... Appellant

Through : Ms.Rakhi Dubey, Advocate.

versus

STATE & ORS.

..... Respondents

Through : Mr.Navin K.Jha, APP for State

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Appellants Deepak (A-1), Naresh (A-2) and Suresh (A-3) impugn a judgment dated 01.05.2012 of learned Additional Sessions Judge in Sessions Case No.62/2010 arising out of FIR No.181/2008 registered at Police Station New Friends Colony by which they were held guilty for committing offence punishable under Sections 307/34 IPC. By an order dated 14.05.2012, they were sentenced to undergo RI for five years with fine ₹25,000/- each.

2. Briefly stated the prosecution case as reflected in the charge-sheet was that on 26.02.2008 at about 11:00 p.m. at Pradeep Hotel,

Khizrabad, New Delhi, the appellants in furtherance of their common intention inflicted injuries to Devender Singh @ Titu with an intention to commit murder. DD No.25A (Ex.PW2/C) came into existence at 1:45 on the night intervening 26/27.02.2008, on the basis of information received from Holy Family hospital regarding admission of Titu in injured condition in a quarrel. The victim was admitted in the said hospital by his friend Harish (Vicky). HC Mahender Singh along with HC Vinod Kumar went to Holy Family hospital and procured Titu's MLC. Titu Kumar was not found present in the causality/hospital. At 04:22 night, vide DD No.28A (Ex.PW2/E) information about admission of Titu Kumar at AIIMS Trauma Centre after being shifted from Holy Family hospital was recorded. Titu was admitted there by his father. Vide DD No.27A (Ex.PW2/D) recorded at 04:10 a.m. at Police Station New Friends Colony, Titu's father informed that his son who was stabbed was not being treated at Trauma Centre, Safdarjung hospital. On getting DD No.28A (Ex.PW2/E), HC Mahender Singh went to AIIMS where the victim was declared unfit to make statement. On 27.02.2008 at around 11:30 a.m. the victim was fit to make statement. The Investigating Officer recorded his statement (Ex.PW-1/A) and lodged First Information Report after making endorsement (Ex.PW-3/A) over it. Thereafter, the IO along with Harish

went to the spot. The subsequent investigation was taken over by SI Kailash Chand Meena (PW-8). During investigation, statements of witnesses conversant with the facts were recorded. The accused persons were arrested. After completion of investigation, a charge-sheet under Section 307/34 IPC was filed against the appellants in the Court. To bring home their guilt, the prosecution examined eight witnesses. In their 313 statement, the accused persons denied their complicity in the crime and pleaded false implication. DW-1 (Hari Kumar), DW-2 (Anil) and DW-3 (Babu Narain Singh) were examined in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeals. It is pertinent to mention that victim Devender @ Titu has also filed CrI.A.No.1332/2012 for enhancement of sentence and payment of compensation to him.

3. I have heard the learned counsel for the parties and have examined the file minutely. Learned counsel for the appellants urged that the trial court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimony of the complainant who has given divergent and conflicting versions. Being under the influence of liquor, he was unable to remember the sequence of events. Considerable delay in lodging the FIR has remained unexplained.

Weapon of offence could not be recovered. The prosecution did not produce the examining doctor. Non-examination of material witness Harish who had allegedly taken the victim to the hospital is fatal. Learned APP urged that the complainant has fully supported the prosecution and no valid reasons exist to discard his testimony as he had suffered injuries 'dangerous' in nature.

4. In statement (Ex.PW1/A) given to the police at first instance, the complainant/victim gave detailed account as to how and under what circumstances, a quarrel had taken place with the appellants and they had inflicted injuries to him by a knife. He further disclosed that initially he was admitted at Holy Family hospital in injured condition by his friend Harish @ Vicky. While appearing as PW-1, Devender Singh proved the version given to the police without major variations. He testified that on 26.02.2008 at about 11:00 p.m. when he along with his friend Harish @ Vicky was taking food in Pradeep Hotel, Khizrabad, Deepak, Naresh, Suresh and Chaju arrived there to take revenge of a previous quarrel which had taken place between them a short-while before the incident. Assigning definite role, he stated that Deepak inflicted a knife blow on his left ear. When he attempted to flee the spot, Naresh caught hold of him and Deepak stabbed him on his back. Suresh and Chaju gave him

beatings by steel rod; legs and fists. Thereafter, he was taken to Holy Family hospital by his friend Harish where after first aid, he was referred to Trauma Centre, AIIMS and his statement (Ex.PW-1/A) was recorded. In the cross-examination, he deposed that the accused persons were known to him for the last about 8/10 years and were his friends. A quarrel had taken place around 10:30 p.m. when he was abused by them. He denied the suggestion that injuries sustained by him were due to fall on the ground. He further denied that he and Harish had gone to beat the accused persons and were armed with 'ustaras' and 'knife'.

5. On scrutinizing the testimony of the injured witness, it reveals that material facts stated by him in examination-in-chief have remained unchallenged and uncontroverted in the cross-examination. No ulterior motive was assigned to the victim for falsely implicating them for the serious injuries sustained by him in the incident when there was no previous animosity. The victim was not expected to let the real offenders go scot free and to implicate his friends. The accused persons did not deny their presence at the spot. Nothing has come on record to show if the victim and Harish had gone to give beatings to the accused persons with 'ustaras' and knife, as alleged. No such knife or ustara was recovered during investigation from the possession of the victims or at the

spot. The accused persons did not elaborate as to why the victim and his friend Harish would plan to attack them with deadly weapons. Nothing has surfaced if any of the accused persons sustained injuries in the incident. Had the victim and his friend Harish been armed with 'ustaras' and knife, they must have used it at the time of occurrence in self-defence to ward off the injuries. On the contrary, inconsistent defence has been led by the appellants to set up plea of 'alibi'. In their defence, the appellants examined DW-1 (Hari Kumar), DW-2 (Anil) and DW-3 (Babu Narain Singh) who testified that on 26.02.2008 none of the accused was present at the spot. DW-1 (Hari Kumar) claimed that on 26.02.2008 Naresh accompanied him to a marriage reception to Meetha Pur at about 08:30 p.m. and they returned at 01:00 a.m. DW-2 (Anil) disclosed that Suresh, Deepak and others were present till 12:30/01:00 in the night at his house due to birthday celebration of his son Shivam. This defence was not believed by the Trial Court rightly. No suggestion was put to PW-1 in the cross-examination if none of these accused persons was present at the spot or they had gone to attend the marriage reception or birthday function, as claimed. They are interested witnesses to support the accused persons being their close relatives. The defence deserves outright rejection.

6. Injuries suffered by the victims are not under challenge. The appellants, however, claimed that injuries were caused due to fall on the ground. They did not explain as to how and where the victim had sustained injuries due to fall. Nothing was inquired from PW-4 (Dr.Arvind Kumar) if injuries found on the victim's body could be possible by fall. In the complaint (Ex.PW-1/A), lodged promptly after the incident, the accused persons were implicated by name specifically and definite role was attributed to each of them in causing injuries to the victim. Since the FIR was lodged without any delay, there was least possibility of the victim to concoct a false story in such a short period. Soon after the incident, the victim was rushed to Holy Family hospital by his friend Harish @ Vicky where he was medically examined vide MLC (Ex.PW-4/B) on 27.02.2008 at 0036 hours. The matter was reported to the police at 01:40 a.m. Subsequently he was taken to AIIMS Trauma Centre by his father and was medically examined there. PW-4 (Dr.Arvind Kumar) from Trauma Centre, AIIMS appeared and deposed that on 05.07.2009, the Investigating Officer had produced various documents including discharge summary, FIR, Medico Legal Report to seek medical opinion. He opined the nature of injuries as 'dangerous' vide Ex.PW-4/A and put initials on the document (Ex.PW-4/B) examined by him. The

witness was not cross-examined and his testimony remained unchallenged. The appellant did not challenge the expert opinion about the nature of injuries.

7. The prosecution has also established appellant's motive to inflict injuries as according to the complainant, a quarrel had taken place about half an hour before. To take revenge, the appellant came at the hotel when he and his friend Harish were taking food. The appellants did not deny if no such quarrel had taken place. There are no sound reasons to disbelieve the injured whose testimony stands on high pedestal. Mere consumption of alcohol as reflected in the MLC (Ex.PW-4/B) does not make victim's version suspect or unreliable. His involvement in some criminal cases and he being a Bad Character of the area does not permit the appellants to take law in their own hands and inflict dangerous injuries on his body. Certainly, investigation conducted is not upto the mark/standard. It appears that registration of the case under Section 324/34 IPC did not put the police machinery on alert and no proper/effective investigation was carried out considering it to be a case of 'simple' hurt. Only when the injuries were found 'dangerous', and Section 307 IPC was added, the police came into motion but by that time it was too late. No serious efforts were made to recover the crime

weapon. Non-recovery of weapon in the instant case is not fatal as in the opinion of the expert, the injuries were caused by a 'sharp' weapon. The clothes which the victim was wearing at the time of incident were not seized and sent for examination to Forensic Science Laboratory. The investigating officer did not cite the doctor who had examined and treated the patient at AIIMS Trauma Centre as witness. Even Dr.Arvind Kumar (PW-4) and Insp.Dheeraj Singh (PW-7) were added as witnesses subsequently and were permitted to be summoned by the Trial Court by an order dated 30.09.2011. Despite all such lapses on the part of the Investigating Agency, the otherwise cogent and reliable testimony of the witness/injured cannot be discredited. The investigating agency was even unable to find out the whereabouts of Harish who had taken the victim to Holy Family hospital. Process issued to procure his presence was received back unserved with the report he was unavailable at the given address and his whereabouts were not known. In his court statement, the complainant also named one Chaju to be one of the assailants. However, during investigation his role in the incident was not ascertained. Nevertheless, there is no bar to base conviction on the sole testimony of the injured if it inspires confidence. All the accused persons who had arrived at the spot together played active role in inflicting injuries to the

victim. They all can be held guilty with the aid of Section 34 IPC. It is well-settled that common intention can develop at the spur of the moment. The impugned judgment convicting the appellants under Section 307/34 IPC cannot be faulted and is affirmed.

8. By order dated 14.05.2012, the appellants were sentenced to undergo RI for five years with fine ₹25,000/- each. The victim has filed Crl.A.No.1332/2012 for enhancement of sentence and for payment of compensation. It is true that due to injuries, the victim sustained 90% disability and was issued Disability Certificate (Ex.PW-1/B). He spent about two months for treatment in the hospital. At the time of his Court statement on 2.8.2011, he was unable to sit even on wheel chair. He was brought by his father Yaduvir Singh on a bed-sheet and a bench was arranged to bring him inside the court in the absence of stretcher. Due to extensive damage to spinal cord, the victim was forced to spend life on bed. The Trial Court has taken into consideration all the relevant, aggravating and mitigating circumstances while awarding the sentence. The appellants and the victim were friends for the last 8/10 years. The instant incident was result of a quarrel occurred about half an hour before. Cause/genesis of the previous quarrel which prompted the appellants to

inflict 'dangerous' injuries to the victim their friend since long is missing. No such serious quarrel had taken place earlier amongst them.

9. Considering these circumstances, no case is made out for enhancement of the sentence as claimed by the victim in Crl.A.No.1332/2012.

10. The main role attributed in inflicting injuries has been assigned to Deepak and Naresh. The sentence awarded to them by the trial court is reasonable and needs no interference. Appellant-Suresh, however, deserves leniency due to the role assigned to him in the occurrence. He was not armed with any knife. He had not facilitated or instigated Deepak and Naresh to cause injuries by knife to the victim. Considering his participation in the occurrence, his sentence i.e.RI for five years is reduced to RI for three years.

11. In the light of the above discussion the appeal filed by victim Devender @ Titu (Crl.A.No.1332/2012) is dismissed.

12. While maintaining conviction of appellants (A-1 to A-3), Sentence Order is modified to the extent A-3's sentence shall be RI for three years instead of five years. Other terms and condition of the Sentence Order are left undisturbed except that default sentence for non-payment of fine of ₹25,000/- by the appellants (A-1 to A-3) shall be SI for Crl.A.Nos.1586/13, 746/12, 835/12 & 1332/12

two months each instead of SI for six months each. The appellants (A-1, A-2 and A-3) shall deposit compensation amount of ₹30,000/-, ₹20,000/- and ₹20,000/- respectively within one month before the Trial Court payable to the victim after notice.

13. Appeals filed by A-1 to A-3 stand disposed of in the above terms.

14. The appellant A-2 (Naresh) and A-3 (Suresh) shall surrender before the Trial Court on 10.07.2015 to serve out the remaining period of substantive sentence (if any). Trial Court record (if any) along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

JULY 03, 2015/sa