

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

% *Judgment reserved on :23.9.2015*
Judgment delivered on :29.9.2015

+ CRL.A. 1367/2012
SACHIN @ TOTA

..... Appellant
Through Ms. Naomi Chandra, Advocate.

Versus

STATE

..... Respondent
Through Ms. Neelam Sharma, APP

CORAM:
HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 19.10.2010 and 02.11.2010 respectively wherein the appellant stands convicted under Section 307 of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.50,000/- and in default of payment of fine, to undergo SI for 6 months.

2 The nominal roll of the appellant reflects that as on date, he has undergone incarceration of 5 years & 9 months including the remission earned by him.

3 The version of the prosecution is that on 28.05.2005, four of the accused persons namely Sachin (the appellant), Sandeep, Sunny and Naresh in furtherance of the common intention stabbed Pawan Rana (PW-2) in his stomach with a knife. The eyewitness Pramod Rana (PW-1) had informed the police. PW-1 and PW-2 were friends and at that point of time, they were travelling in a bus and when the bus reached near Ashiyana Chowk, three boys pushed PW-1 and started quarreling and abusing him. On PW-1 raising an objection, one of them took out a knife and stabbed PW-2. PW-2 was moved to Sarvodya Hospital from where he was shifted to the Trauma Centre. He was discharged on 07.09.2005 i.e. after a period of 11 days.

4 Apart from the version of PW-1 and PW-2, the medical evidence of the victim was proved through Inspector Yashpal Singh (PW-8) who had produced the MLC of the victim. Ex.PW-8/J was the opinion given by the doctor on the alleged weapon which had been used, which as per the prosecution was a knife but as per this opinion this knife could not be connected to the injuries suffered by PW-2. The doctor was also not examined. The disclosure statement of the accused was proved as Ex.PW-8/C.

5 Admittedly the appellant was arrested on 01.07.2005. The incident had occurred on 28.6.2005. There was a gap of three days. It is also the version of the prosecution that the appellant was not known to either of the victim i.e. either to PW-2 or PW-1. It has also come on record that the TIP of the appellant was not conducted.

6 In this background, the most vehement submission of the learned counsel for the appellant is that the identity of the appellant is not established and the Trial Judge without delving into the argument (which had been propounded before the Trial Court) had gone on to convict the appellant. Submission being that even presuming that an unfortunate incident had taken place, if the TIP of the appellant had not been conducted and he having been arrested 3 days after the incident and the victim and the accused being unknown to one another, the absence of conduct of the TIP proceedings, vitiate the trial and the appellant is entitled to a benefit of doubt and a consequent acquittal on this ground alone.

7 Record does establish all the aforementioned submissions made by the learned counsel for the appellant. The Investigating Officer (Inspector Yashpal Singh) has been examined as PW-8. Record establishes that the

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appellant was apprehended and arrested only on 01.07.2005 i.e. after a gap of 3 days; the incident is dated 28.06.2005. Admittedly PW-1 and PW-2 (of whom PW-2 was the victim) did not know the appellant prior to the incident. It was only for a fleeting moment (that when the four persons attacked PW-2 after exchanging abuses) that the victim was able to see the appellant. The incident had occurred at 05:15 pm. PW-1 in his version had stated that he could not identify the person who had hit his friend (PW-2) with the knife. When the quarrel took place, he was sitting and his friend was standing. The incident had taken place in a moving bus before Ashiyana Chowk and there were several other passengers in the bus. PW-2 had also deposed that he was pushed out of the bus by the appellant because of the quarrel which had taken place with him; the accused started beating him; it is his version that the appellant (Sachin) had taken out a knife and hit him in his stomach. At the cost of repetition, all this happened within moments; the incident had taken place in the bus minutes before the Ashiyana Chowk bus stand and when the bus stopped at the bus stand, the accused managed to flee. Other passengers had also de-boarded the bus. The injured was then moved to the hospital.

8 PW-8 (Investigating Officer) in his cross-examination admitted that TIP proceedings were not conducted. In this background this Court is of the view that the identity of the accused was not established and although a specific argument had been propounded before the Trial Judge on this count, there has been no appreciation of this argument and no finding has been returned by the Trial Judge on this count.

9 In this context, a Bench of the Apex Court in (1992) 3 SCC 700 State of Maharashtra Vs. Sukdev Singh and Another had an occasion to consider such a situation and had noted the sanctity of a TIP which should be held prominently and especially so where the victim and the accused were strangers (as in this case) and not known to one another. The Apex Court quoting the observations of an earlier decision of the Supreme Court reported as (1979) 3 SCC 319 Kanan Vs. State of Kerala had noted herein as under:-

“It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observations. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only -once. If no T.I. parade is held then it will be wholly unsafe to rely on his testimony regarding the identification of an accused for the first

time in Court.”

10 Thus in the absence of the TIP, this Court is of the considered view that the conviction of the appellant calls for an interference as the identity of the appellant has not been fully established. He is entitled to a benefit of doubt and a consequent acquittal. He be released forthwith if not required in any other case.

11 Appeal disposed of.

INDERMEET KAUR, J

SEPTEMBER 29, 2015

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