

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

RESERVED ON : 3rd MARCH, 2016

DECIDED ON : 6th APRIL, 2016

+ CRL.A. 1381/2013 & CRL.M.A.No.10777/2015

SATISH @ SHASTRI Appellant

Through : Mr.Prakash Sinha, Advocate with
Mr.Yogesh Goel, Advocate.

versus

THE STATE Respondent

Through : Mr.Amit Gupta, APP.

+ CRL.A. 1358/2013

HIRA LAL @ LUCKY Appellant

Through : Mr.Prakash Sinha, Advocate with
Mr.Yogesh Goel, Advocate.

versus

THE STATE Respondent

Through : Mr.Amit Gupta, APP.

AND

+ CRL.A. 1385/2013

RAVINDER @ KALA Appellant

Through : Mr.Prakash Sinha, Advocate with
Mr.Yogesh Goel, Advocate.

versus

THE STATE Respondent

Through : Mr.Amit Gupta, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Aggrieved by a judgment dated 30.08.2013 of learned Addl. Sessions Judge in Sessions Case No.47/12 arising out of FIR No.114/09 PS Dwarka by which the appellants – Satish @ Shastri (A-1), Hira Lal @ Lucky (A-2) and Ravinder @ Kale (A-3) were convicted under Sections 307/34 IPC, they have filed the instant appeals to assail its correctness, propriety and legality. By an order dated 10.09.2013, A-1 was sentenced to undergo RI for seven years with fine ₹25,000/-; A-2 and A-3 were awarded RI for four years with fine ₹25,000/- each.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 23.02.2009 in between 05.30 to 06.00 p.m. in front of MCD Primary School, village Kakrola, the appellants in furtherance of common intention along with their associates inflicted injuries to the complainant – Sunil Kumar in an attempt to murder him. The incident was reported to the police at 06.15 p.m. vide Daily Diary (DD) No.20 (Ex.PW-12/A). The investigation was assigned to ASI Dharam Pal who after recording victim – Sunil Kumar's statement (Ex.PW-2/A) lodged First Information Report. The victim was taken initially to Ayushman

Hospital and later on referred to Max Hospital where he was medically treated and operated. Statements of the witnesses conversant with the facts were recorded. The appellants and their associates - Vinod @ Sonu and Vibhishan @ Sumit were arrested. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against all of them in the Court. In order to establish its case, the prosecution examined sixteen witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. They did not produce any evidence in defence. It is relevant to note that accused Vibhishan @ Sumit was discharged vide order dated 28.01.2010. After appreciating the rival contentions of the parties and scrutinizing the evidence produced by the prosecution, the Trial Court, by the impugned judgment acquitted Vinod @ Sonu of the charges. State did not challenge their acquittal / discharge. Being aggrieved and dissatisfied, the instant appeals have been preferred by the appellants.

3. I have heard the learned counsel for the parties and have examined the file minutely. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction upon the testimonies of the

Crl.A.1381/2013 & connected appeals.

interested witnesses only. Major discrepancies and infirmities emerging in the statements of the prosecution witnesses were ignored without cogent reasons. On the same set of evidence, Vinod @ Sonu was acquitted by the Trial Court. The Trial Court overlooked the fact that the complainant had oblique motive to falsely implicate A-1 as he belonged to rival political party. Counsel further urged that crime weapons were allegedly recovered from an 'open' place. Moreover, PW-1 (Dr.Kumud Rai) categorically informed that the injuries sustained by the victim were not possible with the 'knives' recovered in the instant case. Counsel pointed out certain interpolations in the MLC (Ex.PW-6/A) to suspect its authenticity. Learned Addl. Public Prosecutor urged that no sound reasons prevail to disbelieve the injured witness.

4. The occurrence took place on 23.02.2009 between 05.30 – 06.00 p.m. Daily Diary (DD) No.20 (Ex.PW-12/A) came into existence at 06.15 p.m. on getting information that a 'boy' has been stabbed. PCR arrived at the spot promptly and took the victim to Ayushman Hospital. MLC (Ex.PW-6/A) records the arrival time of the victim at the said hospital at 06.30 p.m. FIR was lodged promptly and rukka (Ex.PW-16/B) was sent at 09.10 p.m. after recording victim's statement (Ex.PW-2/A).

The complainant gave detailed account as to how and in what manner, he

was stabbed on his vital organs by A-1 and his associates numbering three or four. He gave their description and claimed to identify and recognise them if produced before him. Since the FIR was lodged without undue delay, there was least possibility of the complainant to manipulate or fabricate a false story in a short interval. A-1 was named in the FIR and specific role was assigned to him in the crime.

5. In his Court statement, the complainant / victim while appearing as PW-2 fully supported the prosecution and proved the version given by him to the police at first instance without any variation. He deposed that on 23.02.2009 at about 05.00 p.m. when he along with his cousin Joginder Kumar was coming from Kakrola Mor in Santro Car No.DL 4C 9512 and reached near Primary School, Kakrola, A-1 arrived there on his vehicle and stopped it in front of his car. A-1 along with his associates - Vinod @ Sonu, Ravinder @ Kale (A-3) and Heera Lal @ Lucky (A-2) came out of the car; opened its door and started stabbing him by a knife on his neck. Thereafter, he was dragged out of the car. A-2 and A-3 caught hold of his hands and A-1 and Vinod @ Sonu stabbed him with knife all over his body. Joginder Kumar ran away from the spot due to fear. After inflicting injuries on his various body parts, the assailants fled the spot. He further deposed that A-1 had told him 'tu meri biwi ka

pichha aise nahin chhodega'. A-1 suspected him to have objectionable affairs with his wife and an altercation had taken place between them previously also on that issue. The witness further stated that after about 15 or 20 minutes, he was taken to Ayushman Hospital, Dwarka in CAT ambulance and his statement (Ex.PW-2/A) recorded there. In the cross-examination, he disclosed that the occurrence had taken place at 05.00 p.m. He fairly admitted that Vinod @ Sonu was not named by him in his statement (Ex.PW-2/A). He further disclosed that names of the assailants were not revealed by him to the examining doctor as he had not asked for it. He was discharged from Max Hospital on 03.03.2009. He denied the suggestion that no such incident had happened and the accused persons were falsely implicated in this case.

6. On scanning the testimony of the victim in entirety, it stands established that the injuries were inflicted by the appellants in furtherance of their common intention by a sharp object to the complainant / victim. No ulterior motive has been assigned or proved prompting the complainant to falsely implicate all the appellants in the crime. A-2 and A-3 were even unacquainted with the complainant prior to the incident. In the absence of any prior animosity, the victim is not expected to let the real offenders go scot-free and to implicate innocent ones. Though A-2

and A-3 were not named in the FIR, their description was given and the victim claimed to identify and recognize them on being shown. During investigation, both A-2 and A-3 were apprehended and applications for conducting Test Identification Proceedings (Ex.PW13/A and Ex.PW13/C) were moved. However, for the reasons known to A-2 and A-3, they declined to participate in the Test Identification Proceedings. Adverse inference is to be drawn against them for not participating in the TIP Proceedings. PW-2, the victim, identified them in his Court statement. In the cross-examination, the accused persons did not deny their presence at the spot at the relevant time. They did not claim if all or anyone of them were / was present at some other specific place that time. Injuries sustained by the victim are not under challenge. The complainant had sustained 'grievous' injuries on various body parts and the injuries suffered by him cannot be taken as self-inflicted merely to rope in the appellants in the crime. Material facts proved by the victim remained unchallenged and uncontroverted in the cross-examination and his testimony inspires implicit confidence. The conviction can be founded upon the testimony of even a single witness if it proves in clear and precise term, the overt role assigned to the author (s) of crime.

7. PW-3 (Joginder) has corroborated PW-2's version on material aspects. He had accompanied the victim in the car and had fled the spot due to fear or witnessing the victim being stabbed. He went to A-1's house and informed his uncle Suraj about the stabbing incident. PW-4 (Suraj Bhan) on getting information immediately rushed to the spot and accompanied the victim to Ayushman Hospital. MLC (Ex.PW-6/A) reveals that he had brought the victim to the hospital in CAT ambulance. In the cross-examination, no suggestion was put if he was not present at the spot or had not accompanied the victim in the ambulance. PW-3 (Joginder) deposed that when their Car No.DL 4C 9512 reached near Primary School, Kakrola Mor; a Maruti (Alto) bearing registration No. DL 3531 came from the opposite direction and stopped in front of their car. A-1 along with three or four individuals came out of Alto and started stabbing Sunil by a knife. After he (Sunil) was dragged out of the vehicle, A-2 and A-3 caught hold of his hands and A-1 and Vinod @ Sonu inflicted knife injuries on his head, face, chest, neck and belly. Due to fear, he ran away from the spot and apprised Sunil's uncle Suraj Bhan about the incident. When they returned to the spot, CAT ambulance had already arrived and they took the victim to Ayushman Hospital. In the cross-examination, he disclosed himself to be a resident of village Barana,

Distt. Jhajhar (Haryana) and on that day, he had come to Delhi to see his paternal aunt. Police recorded his statement at about 09.00 or 09.30 p.m. at Ayushman Hospital. He took about ten minutes to reach A-1's house. He knew A-1 before the incident and had seen A-2, A-3 and Vinod @ Sonu for the first time on the day of occurrence at the crime spot. Apparently, despite searching cross-examination, no material discrepancy or infirmity could be extracted to disbelieve the witness's version. His presence at the spot with the victim was not challenged. Again, no motive was assigned to him to make a false statement.

8. Ocular testimonies of PW-2 (Sunil) and PW-3 (Joginder) have been corroborated by medical evidence and there is no conflict between the two. PW-6 (Dr.Raj Kumar) from Ayushman Hospital who medically examined Sunil deposed that he was brought there with the alleged history of assault by a knife by known persons. He noted number of injuries detailed in the MLC (Ex.PW-6/A) on the victim's body. Nature of wounds sustained by him was opined 'grievous'. In the cross-examination, he elaborated and clarified that the patient was admitted at about 06.40 p.m. on 23.02.2009 when he was conscious but drowsy. He had given alleged history informing that he was able to recognize the assailants. PW-6 (Dr.Raj Kumar) claimed that the name of the assailants

as Satish etc. disclosed by the victim subsequently were recorded clarifying that initially the victim had not disclosed the names of the assailants but later on had informed that he was stabbed by Satish Kumar and his four associates. He further stated that the injuries suffered by the patient were inflicted by a 'sharp' edged weapon. This independent witness from Ayushman Hospital having no animosity with the appellants has no ulterior reasons to make a false statement or to manipulate the contents of the MLC (Ex.PW-6/A). PW-1 (Dr.Kumud Rai) from Max Hospital where Sunil was referred was medically treated and operated on reference, proved the detailed report (Ex.PW-1/A). He was not cross-examined and the facts stated by him remained unchallenged. The victim was discharged on 03.03.2009. He further informed that the victim had suffered 'fracture' of left parietal bone. PW-9 (Dr.Shailender Jain) had declared the patient fit to make statement vide endorsement (Ex.PW-9/A) at around 07.30 p.m.

9. The prosecution has proved A-1's motive to inflict grievous injuries on victim's vital organs as he suspected him to have illicit relations with his wife. A quarrel or altercation had taken place between the two previously also. Apparently, to teach a lesson to the complainant, A-1 with the assistance of his associates A-2 and A-3 inflicted injuries to

the victim finding a suitable opportunity when he was coming in his car towards the village.

10. Trivial discrepancies and infirmities highlighted by the appellants are inconsequential as they do not affect the core of the prosecution case. Non-recovery of the crime weapons used in inflicting injuries is not fatal. As per the prosecution, after the arrest, A-1 and Vinod @ Sonu pursuant to their disclosure statement knives (Ex.P3 & Ex.P4) identified by the complainant were recovered. PW-6 (Dr.Raj Kumar) was, however, of the opinion that all the injuries sustained by the victim were highly unlikely to have been caused with the knives (Ex.P3 & Ex.P4). It appears that A-1 and his associate misled the investigating agency about the use of correct weapons. If the assailants had recovered a wrong crime weapon deliberately, the Investigating Agency cannot be faulted for that. It has come on record that injuries were inflicted by a 'sharp' object; its non-recovery is not fatal. It is true that on the same set of evidence Vinod @ Sonu was given benefit of doubt and was acquitted of the charge but it does not help the appellants as the victim had not named Vinod @ Sonu despite having prior familiarity in the FIR. The Trial Court was of the view that the witness had exaggerated his version.

So far as the appellants are concerned they were duly identified and

recognised by the victim and PW-3 (Joginder). A-2 and A-3 had declined to participate in the Test Identification Proceedings. The complainant was fair enough to exonerate Vibhishan @ Sumit and did not opt to identify him in TIP proceedings leading to his discharge by an order dated 28.01.2010.

11. In 313 Cr.P.C. statements, the appellants did not furnish plausible explanation to the incriminating circumstances proved against them; they did not produce any evidence in defence to falsify the positive testimonies of the prosecution witnesses. A-1 in his 313 Cr.P.C. statement took the plea of strained relations with the complainant as they belonged to rival political parties. However, no such suggestion was put to the complainant in the cross-examination to confront him about it. The complainant had sustained thirteen injuries on various body parts and was medically treated at two different hospitals for sufficient period. It reflects that the assailants had intended by all means to make an attempt to commit murder. Repeated stab blows were inflicted intentionally on the vital regions of the victim. Appellants' conviction under Sections 307/34 IPC based upon fair appreciation of the evidence deserves no intervention. The conviction is affirmed.

12. Considering the specific role played by the appellants, the Trial Court has awarded different sentences to A-1, and A-2 and A-3. Sentence order reveals that A-1 also suffered conviction in case FIR No.207/2004 PS Uttam Nagar under Section 307 IPC in Sessions Case No.302/2006 and was sentenced to undergo RI for three years with fine ₹5,000/-. Under these circumstances, Sentence Order requires no modification except that the default sentence for non-payment of fine would be two months instead of six months.

13. The appeals stand disposed of in the above terms. Pending application also stands disposed of.

14. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

APRIL 06, 2016 / tr