

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

Judgment Reserved on: September 20, 2016

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Judgment Delivered on: October 18, 2016

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CRL.A. 1573/2011 & CrI.M.B. 2270/2011

GAURI SHANKAR

..... Appellant

Represented by: Ms. Rakhi Dubey, Advocate.

Versus

STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Convicted for offences punishable under Sections 307/174A IPC Gauri Shankar challenges the impugned judgment dated June 02, 2011 and the order on sentence dated June 06, 2011 directing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹500/- for the offence punishable under Section 307 IPC and rigorous imprisonment for a period of two years and to pay a fine of ₹500/- for the offence punishable under Section 174A IPC.

2. Assailing the conviction, learned counsel for the appellant contends that there are material contradictions in the statement of PW-1, Kusum on whose testimony the conviction was based. There was no recovery of alleged weapon/knife by the prosecution. The mother of PW-1 though a relevant witness, was not examined. It is thus prayed that the appellant be acquitted or in the alternative, the appellant be released on the period already undergone. Reliance is placed upon the decision of this Court reported as MANU/DE/1608/2011 *Jitender @ Kukki and Ors. v. State (Govt. of N.C.T.*

of Delhi).

3. Learned APP for the State on the other hand contends that the appellant had inflicted grievous injuries on the vital parts of PW-1 wife of the appellant, who was living separately since last 10 years on the basis of whose statement the prosecution has proved its case beyond reasonable grounds. It is stated that considering the nature of injuries inflicted, no leniency be granted in the quantum of sentence.

4. Process of law was set into motion on receipt of DD No. 22 at 7:50 P.M. on February 2, 2006 at PS Keshav Puram informing that a lady named Kusum w/o Shankar r/o A-358, J.J. Colony, Wazirpur with knife injury has been admitted to BRJM Hospital which was assigned to SI Satnarayan PW-6. He along with Ct. Narender PW-4 went to BJRM Hospital and recorded the statement of Kusum, after she was declared fit for statement by the doctor, vide Ex. PW-1/A on which FIR No.73/2006 under Section 307 IPC was registered.

5. In the complaint, Kusum, PW-1 stated that she was staying with her mother for past five years and worked as a maid in the houses in Tri Nagar. Her husband Gauri Shankar the appellant herein did not do any work. She had been married to him for the last 14 years and from the said wedlock, she had one boy and two girls. The appellant, who was not living with her since past five years, lived in the jhuggies near Kalyanpuri. The appellant used to fight with PW-1, as a result of which she left him and started living with her mother. Whenever the appellant used to come, he used to beat her. On February 2, 2006 around 6:00 P.M. while Kusum was returning from work with her mother when she reached near the stairs of the bridge of the canal, Gauri Shankar came from the side, held her and attacked her with a knife on

her hands, stomach and other body parts. Gauri Shankar had attacked her due to their personal differences.

6. Kusum deposed in sync with her statement on the basis of which FIR was registered except that she was married to Gauri Shankar for about 18-19 years and she left the appellant about 10 years ago. During her cross examination, she denied the suggestion that she had illicit relations with many men and out of them, somebody attacked her.

7. PW-4 Dr. Seema, Medical Officer, BJRM Hospital had examined Kusum and observed the following injuries on physical examination:

- i. Punctured incised wound in left lower abdomen*
- ii. Incised wounds on both side of breast just near to the nipple*
- iii. Incised wound on left eye brow and left arm*

8. Dr. Seema prepared the MLC Ex. PW-3/A and referred the patient to Dr. S.K. Sharma, Senior Resident Surgery who carried out further examination of Kusum and opined that the injuries sustained by Kusum as sharp injuries and further referred the patient to Hindu Rao Hospital. Dr. Seema identified the handwriting of Dr. S.K. Sharma who had left the services. However the prosecution did not prove any further opinion on the MLC from Hindu Rao Hospital. As per Dr. S.K. Sharma, the injury to the abdomen resulted in the omentum protruding. Thus as per the opinion exhibited on record, the injuries can be held simple and sharp only even though Dr. Seema during her cross examination stated that the injuries of Kusum cannot generally occur due to fall or accidentally.

9. Though learned counsel for the appellant contended that there are material contradictions in the statement of Kusum but as noted above the only contradiction is in the number of years Kusum deserted the appellant.

Further the evidence of Kusum is corroborated by the injuries received by her. Sonkali, mother of Kusum could not be examined in Court though cited as witness as she had passed away on 27th April, 2008 whereas charge against appellant was framed on 16th November, 2010. Even in the absence of evidence of Sonkali the mother of Kusum and an eye-witness, the prosecution has proved its case beyond reasonable doubt against the appellant on the basis of evidence of Kusum and medical evidence.

10. Considering the facts and circumstances of the case and the nature of injuries proved and the fact that the appellant has already undergone nearly 7 years 6 months imprisonment (including remissions), upholding the conviction of the appellant for offence punishable under Section 307 and 174A IPC, it is directed that the appellant be released on the period already undergone.

11. Appeal and application are accordingly disposed of.

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

13. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 18, 2016
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