

*** IN THE HIGH COURT OF DELHI AT NEW DELHI
RESERVED ON : 24th AUGUST, 2016
DECIDED ON : 29th AUGUST, 2016**

+ CRL.A.1485/2014

NANHE @ LANKA

..... Appellant

**Through : Ms.Naomi Chandra, Advocate.
versus**

STATE (GNCT OF DELHI)

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 20.08.2014 of learned Addl. Sessions Judge in Sessions Case No.26/2014 arising out of FIR No. 13/2013 PS Sultan Puri by which the appellant – Nanhe @ Lanka was held guilty for committing offence punishable under Section 307 IPC. By an order dated 08.09.2014, he was sentenced to undergo RI for seven years with fine ₹5,000/-.

2. Briefly stated, the prosecution case as depicted in the charge-sheet was that on 06.01.2013 at about 02.15 p.m. in front of gate Indra Park, E-7 block, near Jalebi Chowk, Sultan Puri, Delhi, the appellant inflicted injuries to master Aditya in an attempt to commit murder. The police machinery came into motion on getting information about the incident at 3.58 p.m. vide Daily Diary (DD) No.31A (Ex.PW-1/A). The investigation was assigned to HC Ramavtar. The investigating Officer after recording Sumit Kumar's statement (Ex-PW-3/A) lodged First Information Report.

The victim was taken for medical examination. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant. In order to establish its case, the prosecution examined fourteen witnesses and relied on various documents. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. It ignored the material discrepancy whereby presence of the complainant was doubtful at the spot. The appellant was under the influence of liquor and had no intention to inflict injuries to commit murder.

4. Material testimony to infer the appellant's guilt is that of PW-7 (Aditya), aged around 11 years. The learned Presiding Officer put various questions to the child witness before recording his statement to ascertain if he was able to give rationale answers to the questions put to him. After recording satisfaction that the child was a competent witness, his statement was recorded on oath. In his Court statement, the injured child implicated the appellant and assigned a definite and specific role to him in the crime. He disclosed that on 06.01.2013 at about 11/12 noon, he was present at the corner on the road and had gone to play cricket in the park. Pointing out towards the accused, the witness stated that he demanded money from him and on his refusal, the accused took out a knife and stabbed him on his

abdomen. He further disclosed that the accused used to roam in the park where they used to play cricket. In the cross-examination, he was fair to admit that his brother Sumit was not present at the spot and had arrived at the spot after about ten minutes of the occurrence. He was emphatic to deny if the statement was given by him at the behest of his mother.

5. On scanning the entire testimony of the witness, it reveals that nothing material has been extracted to discard his cogent and natural version. The accused did not deny his presence at the spot. He did not deny if he had no confrontation with the injured child and had not stabbed him. In the 313 Cr.P.C. statement, the accused admitted his presence at the spot and claimed himself to be under the influence of liquor. He further admitted that he had given a blow to the victim's jacket. The accused did not offer plausible explanation as to why he had 'kept' a knife in his possession and why it was put against victim's jacket. The accused admitted recovery of the knife from his possession. No ulterior motive was assigned to the child witness for making a statement against him. In the absence of any prior animosity or ill-will, the child was not expected to implicate the accused. Being an injured, he must be interested to book the real culprit.

6. The knife (Ex.P-1) recovered from accused was connected with the crime. FSL report (Ex.PW-9/G) reflects that the cut marks found on the victim's clothes were caused by the metallic knife recovered in this case. The patient was taken to Jaipur Golden Hospital soon after the occurrence and the arrival time recorded therein is 02.45 p.m. The victim had sustained injuries 'grievous' in nature on his abdomen; these are not self-inflicted injuries. PW-4 (Dr.Manoj Dhingra) after examining the recovered knife prepared its sketch (Ex.PW-4/A) and was of the view that injuries found on

the victim's body were possible with the said weapon. PW-10 (D.K.Chabra) has proved the MLC (Ex.PW-10/A) prepared by Dr.Ashok Gupta. PW-5 (Dr.Kapil Sethi) also examined the patient and found stab injury of 12 to 15 c.m. depth. He further informed that considering the injury, explorative laparotomy was conducted; three intestinal perforations were closed. The victim remained admitted in the hospital till 10.01.2013. After going through the discharge summary (Ex.PW-5/A), he opined that the injuries suffered by the victim were 'grievous' in nature and could have become life threatening if left untreated. The injuries sustained by the victim reveal that the said blow was given with great force. There was no provocation from the victim's side to force the accused to stab on his vital organ.

7. True, some discrepancy has emerged about the presence of the victim's brother PW-3 (Sumit Kumar) at the spot. It, however, does not discredit the victim's version given before the Court. Even if PW-3's testimony is discarded or ignored, it won't affect the prosecution case whereby the appellant was taken as a perpetrator of the crime.

8. The impugned judgment based upon fair appreciation of the evidence warrants no intervention. Sentence Order is also based upon fair reasoning and no modification or alteration is required.

9. The appeal lacks in merits and is dismissed.

10. 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

AUGUST 29, 2016 / tr