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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 25, 2016

DECIDED ON : MAY 27, 2016

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CRL.A. 1575/2014 & CrI.M.B.8178/2015

SUNIL KUMAR

..... Appellant

Through : Mr.Mukesh Sharma, Advocate.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Tarang Srivastava, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 5.9.2014 of learned Additional Sessions Judge in Sessions Case No.29/10 arising out of FIR No.359/07 registered at Police Station Maya Puri by which the appellant Sunil Kumar was held guilty for committing offence under Section 307 IPC, the instant appeal has been filed by him. Vide order dated 09.09.2014, the appellant was sentenced to undergo Rigorous Imprisonment for four years with fine ₹5,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 19.10.07 at about 2.00 a.m. at Tiraha near A-42, Maya Puri, the appellant sharing common intention with co-accused Narender Parsad (facing trial before Juvenile Justice Board) voluntarily caused injuries by a

sharp object at Davender Singh's chest in an attempt to commit murder. The incident was conveyed to the police vide Daily Dairy (DD) No.8A (Ex.PW-1/C) at around 2.10 night. The Investigation was assigned to SI Nanak Chand who along with Const.Jitender went to the spot. After recording victim's statement (Ex.PW2/A), the Investigating Officer lodged First Information Report. The statements of witnesses conversant with the facts were recorded. The accused persons were arrested. Pursuant to disclosure statement, the appellant recovered the crime weapon. Upon completion of investigation, a charge-sheet was filed against both the accused persons in the court. To establish its case the prosecution examined fifteen witnesses. In 313 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 filed.

3. I have heard the learned counsel for the parties and have examined the file. During the course of arguments, the appellant's counsel, on instructions, stated that the appellant has opted not to challenge the findings of the Trial Court on conviction. Prayer was, however, made to take lenient view and to release the appellant for the period already undergone by him in this case due to mitigating circumstances. Learned Additional Public Prosecutor urged that the injuries caused to the victim were 'grievous' in nature and no leniency is called for.

4. The occurrence took place in the night intervening 18/19.10.2007 at around 2.00 a.m. The victim Davender Singh was going to his residence after performing duty at his place of work. In the complaint (Ex.PW-2/A), he informed that on the way, when he reached near Tiraha,

two persons met him and asked him to walk by the side of the road. When he asked them as to why he should walk in that manner, they started quarrelling with him. One of them grappled and caught hold of him and the other one stabbed him on chest with a sharp object. He attempted to apprehend the assailants but they succeeded to flee the spot. He claimed to identify the assailants if produced or shown to him.

5. The victim keeping his hand on his chest to prevent flow of blood returned to his place of work. Soon thereafter, he was admitted at Deen Dayal Upadhyay Hospital. MLC (Ex.PW-9/B) records the arrival time of the patient as 2.30 a.m. The victim had sustained stab wound measuring 3x2x5 cm over lt. side chest and stab wound of size 2x1x1 cm over lt. forearm. Subsequently, the nature of injuries was opined as 'grievous' caused by sharp object.

6. After the arrest of the accused, an application was moved by the Investigating Officer to hold Test Identification Parade. However, the appellant for no plausible reasons declined to participate in the Test Identification Proceedings. He was identified by the appellant to be the individual who had stabbed him.

7. While appearing as PW-2 (Davender Singh), the victim proved the version given to the police without any major variation. He deposed that on 19.10.2007 at about 2.00 a.m., when he was going to his home after completing his work as electrician, he was stabbed by two individuals at Tiraha, Maya Puri. A quarrel had taken place with them over their insistence to walk towards road side. He was caught hold of by one of the assailants and the other hit on his chest with a pointed sharp object. He identified the appellant to be one of the assailants who had caught hold of

him at the spot. In his re-examination by learned Additional Public Prosecutor, the witness stated that the appellant was the individual who had stabbed him on the left side of his chest. This minor inconsistency is not crucial as the appellant was found to have shared the common intention with the co-accused to inflict injuries on victim's body. The accused did not deny his presence at the spot at the relevant time. The victim had no prior acquaintance with the appellant; there was no previous history of any hostile relationship between the two. In the absence of any prior animosity, the victim who was engaged to perform his duty at night hours and was going to his residence on foot was not expected to suddenly implicate the appellant for the grievous injury sustained by him on his person. The victim must be interested to bring the real culprit to book and is not expected to spare the real offender and implicate an innocent one without any ulterior motive. Material facts disclosed by the complainant/injured remained unchallenged in the cross-examination.

8. PW-5 (Joginder Singh) has corroborated complainant's version in its entirety. He also deposed that around 2.00 a.m., the victim posted as electrician in the company, had gone back to his home. He, however, returned after about ten minutes with his hand on chest; he was bleeding. The victim informed that two boys had hit him with some pointed object on his body. He removed the victim to DDU Hospital and informed the police. This independent witness had no ulterior motive to make a false statement. The ocular testimony of the complainant and PW-5 has been further corroborated by medical evidence. In the MLC (Ex.PW-9/B) two wounds on various body parts of the victim were found. Name of PW-5 (Joginder Singh) finds mention in the MLC (Ex.PW-9/B) showing that he had brought

the victim for admission to the hospital. In 313 statement, the accused did not furnish plausible explanation to the incriminating circumstances. He did not explain as to for what specific purpose he was present at the spot at odd hours. He had no reasons to keep a pointed object (say knife) in his possession. For minor altercation with an innocent person, he was not expected to inflict stab wounds on the vital part of the body i.e. chest over minor altercation. The appellant after inflicting injuries endangering victim's life, did not bother to take care of him and succeeded to flee the spot.

9. The impugned judgment based upon fair appreciation of evidence needs no intervention. Conviction under Section 307 is affirmed.

10. The appellant has been sentenced to undergo Rigorous Imprisonment for four years. Apparently, already a lenient view has been taken by the Trial Court. No further leniency is warranted as the injuries suffered by the victim were 'grievous' in nature. Injuries were caused to him without any fault of his.

11. The appeal lacks merits and is dismissed. Pending Application stands disposed of. Trial Court record along with the copy of the order be sent back forthwith. Intimation be sent to Superintendent Jail.

(S.P.GARG)
JUDGE

MAY 27, 2016/sa