

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

RESERVED ON : 31st MAY, 2016

DECIDED ON : 13th JULY, 2016

+ CRL.A.1055/2015

DEV KANT KAMAT @ DEBU Appellant

Through : Mr.Som Dutt Kaushik, Advocate.

VERSUS

STATE (NCT OF DELHI) Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant appeal has been preferred by the appellant – Dev Kant Kamat @ Debu to challenge the legality and correctness of a judgment dated 17.04.2015 of learned Addl. Sessions Judge in Sessions Case No.8/11 arising out of FIR No.49/09 PS New Friends Colony by which he was held guilty for committing offences punishable under Sections 307/325/323 read with Section 34 IPC. By an order dated 27.04.2015, he was awarded various prison terms with fine. The sentences were to operate concurrently.

2. The factual matrix in which the appellant came to be prosecuted and convicted as reflected in the charge-sheet is that on 07.02.2009 at around 06.00 p.m. at Pahari No.1, jhuggi IG Camp, near Ganda Nala, the appellant in furtherance of common intention with co-accused Nageshwar

(since Proclaimed Offender) inflicted injuries to Nazrul with an attempt to commit murder. Injuries were also caused to Mohd.Rana and Javed. The police machinery came into motion on getting information about the occurrence vide Daily Diary (DD) No.20A (Ex.PW-6/C) recorded at 06.25 p.m. on 07.02.2009. The investigation was handed over to HC Pramod Kumar who with Const.Mukesh went to the spot. After recording Mohd.Rana's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. The appellant was arrested. Efforts to apprehend co-accused Nageshwar remained futile and finally, he was declared Proclaimed Offender. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. The prosecution examined eleven witnesses. In 313 Cr.P.C. statement the appellant pleaded false implication and denied involvement in the crime. 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. Glaring infirmities and contradictions emerging in the statements of the prosecution witnesses were ignored without tangible reasons. The injuries sustained by the appellant during the occurrence were not explained. It is unclear as to how many were the assailants and who they were. No motive was assigned to the appellant to inflict injuries to the victims with whom he had no prior animosity. Crime weapon could not be recovered. No independent public witness was associated at any stage of the investigation. Learned Addl.

Public Prosecutor urged that injuries 'dangerous' in nature were inflicted to the victims and they had no reasons to falsely implicate the appellant.

4. The occurrence took place on 07.02.2009 at around 06.00 p.m. DD No.20A (Ex.PW-6/C) came to be recorded at 06.25 p.m. wherein, it was conveyed that a boy had been stabbed at Pahari No.2 near Nala Tamur Nagar. By DD No.21A (Ex.PW-6/D) recorded at 06.35 p.m. another information was received about a quarrel at the said place. DD No.23A (Ex.PW-6/F) was received to the effect that in the quarrel, hand of an individual has been cut by a sword. Victim's father vide DD No.24A (Ex.PW-6/G) informed the police from Holy Family Hospital that his son had been stabbed and he wanted to take the injured to a government hospital.

5. Nazrul after sustaining injuries was first taken to Holy Family Hospital, New Delhi. He was medically examined there vide MLC (Ex.PW-4/A). The arrival time of the patient recorded therein is 18:41 hours. The victim had suffered stab injuries on chest. Nature of injuries was opined 'dangerous'. PW-4 (Dr.Tirupti Ranjan Shukla) proved the MLC (Ex.PW-4/A) prepared by Dr.Tanveer Ahmed. Nazrul was shifted subsequently at Trauma Centre, AIIMS where he was medically examined. PW-11 (Dr.Biplab Mishra), the examining doctor, detailed the following injuries sustained by the victim:- 1) Stab injury, right anterior chest wall, 7th ICS, mid clavicular line, deep with active bleeding; 2) Internal injuries: right liver injury, right lung injury, right haemopneumothorax and haemoperitoneum (half liter + half liter blood); 3) Right diaphragmatic laceration 6 cm; and, 4) Right lung laceration.

He further informed that the patient was operated on the same day. Patient's chest and abdomen were opened and liver injury, right lung

injury and right diaphragmatic injury were repaired. He remained admitted in the hospital for seven days. Discharge summary is Ex.PW-11/A. Apparently, the victim had sustained 'dangerous' injuries on vital organs.

6. PW-8 (Dr.Vijay Singh) medically examined Javed and Mohd. Rana vide MLCs (Ex.PW-8/A & Ex.PW-8/B). The nature of injuries sustained by them were 'simple' and 'grievous' respectively. PW-5 (Dr.Saurabh Kumar) who examined X-ray reports pertaining to the injuries sustained by Javed and Mohd.Rana deposed that there was fracture in left fifth metacarpal of patient Mohd.Rana.

7. The crucial aspect to be ascertained is as to who were the assailants to have inflicted injuries to the victims. In the complaint (Ex.PW-1/A), Mohd.Rana named the appellant – Dev Kant Kamat @ Debu and his associate Nageshwar to be the assailants who had inflicted injuries to him, Nazrul and Javed. He gave graphic detail as to how and in what manner they were assaulted and injured by the appellant and his associate. Rukka (Ex.PW-7/C) was sent promptly on the same day at about 11.30 p.m. Since the FIR was lodged without any delay and the assailants were named in the FIR, there was least possibility of the complainant Mohd.Rana to concoct a false story in such a short interval.

8. Nazrul in his Court statement as PW-2 implicated both the appellant – Dev Kant Kamat @ Debu and his associate Nageshwar for causing injuries to him. He deposed that on 07.02.2009, when he, Javed and Mohd.Rana were returning to their house from ration shop, four individuals stopped them and enquired as to where they lived. On their informing that they lived at Pahari No.2, the said individuals / assailants started beating them. Attributing specific and definite role to the appellant, he deposed that

he was stabbed by a knife on his stomach by him. Javed was also beaten. Mohd.Rana managed to escape from the spot. In the cross-examination, he disclosed that it was 06.00 / 06.30 p.m. when they were coming from Bharat Nagar; it was dark. He regained consciousness after about a week. He denied the suggestion that some other individuals had caused beatings to him.

9. Scanning the testimony of this injured witness, it transpires that no material infirmities could be extracted to discredit his version. No suggestion was put to the witness if the accused and his associate Nageshwar were not present at the spot and the injuries were not inflicted by them to the victims. No ulterior motive was assigned to this witness for falsely naming the appellant to be the author of the crime. Material facts stated by the witness remained unchallenged in the cross-examination.

10. PW-3 (Javed) another victim has also corroborated Nazrul's statement in entirety. He assigned a specific role to the present appellant whereby he stabbed Nazrul by a sharp edged weapon / knife on his stomach. He further deposed that he was given beatings by 'dandas' as a result of which he sustained injuries. Getting chance at the spot, he ran away. Subsequently, he came to know that Mohd.Rana's hand has been broken. In the cross-examination, he elaborated that initially the police had taken them to Holy Family Hospital and thereafter, at Trauma Centre. He was kept in the Holy Family Hospital as none of the doctors attended him until 03.00 a.m. He denied the suggestion that some unknown persons had given beatings to them. Again, nothing material could be elicited in the cross-examination to suspect the version narrated by the injured witness.

11. PW-1 (Mohd.Rana) in examination-in-chief disclosed that on the day of occurrence, he, Javed and Nazrul were going from Bharat Nagar on foot to their house. When they reached Pahari No.1 at about 06.00 p.m., the appellant – Dev Kant Kamat @ Debu and Nageshwar met them. Both of them started beating Nazrul by ‘danda’ and a sharp edged weapon. When he and Javed intervened, they were also given beatings by them. After getting 2 - 3 danda blows, he ran from the spot. Subsequently, Nazrul who had sustained stab injuries by a knife on the right side of the chest arrived there and was taken to AIIMS. Learned Addl. Public Prosecutor after Court’s permission cross-examined the witness. In the cross-examination by learned Addl. Public Prosecutor, he admitted that Nageshwar and the appellant resided in the slums of Tamoor Nagar. In the cross-examination, the accused person did not deny their presence at the spot and of inflicting injuries to the victims. True, this witness has not supported the prosecution in entirety and has resiled from his previous statement whereby he had claimed that the appellant had stabbed Nazrul by a knife. The Trial Court has dealt with this aspect minutely. Trial Court has rightly observed that the testimony of a hostile witness cannot be treated as effaced or washed off the record altogether. It can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

12. On scrutinising the testimonies of all the injured / victims it stands established that a specific and definite role has been assigned to the appellant whereby he stabbed Nazrul and in furtherance of common intention with his associate Nageshwar inflicted injuries to Javed and Mohd.Rana. The victims must be interested to bring the real offenders to book. It is inconceivable that they would let the actual assailants go scot

free. It has come on record that the appellant and his associates Nageshwar lived in the nearby jhuggies and were acquainted with the victims. The appellant was identified by all the victims in their Court statements without any hesitation. The Court identification itself is a good identification in the eye of law. It is not always necessary that it must be preceded by the Test Identification Parade. Medical evidence is in consonance with ocular testimony. The injuries found on the victims' body were not self inflicted.

13. Non-examination of independent public witness is not fatal to the prosecution case as testimony of injured witness stands on higher footing. Many a time, public witnesses for various reasons shun to avoid police investigation. In the instant case, the occurrence took place at about 06.00 or 06.30 p.m. when there was darkness and the area was a secluded place. No material is on record to show that there was human habitation in the nearby place. It is unclear if any independent public witness was present at the spot. It has come on record that after the occurrence, the victims had left the spot for medical treatment. So there was no question of the Investigating Officer to join the independent public witness at the spot.

14. It has come on record that the appellant had also sustained injuries and was medically examined. MLC prepared for the injuries sustained by him has not been placed on record. It is not clear as to what was the nature of injuries sustained by him. The appellant did not summon any such medical record in his defence. In 313 Cr.P.C. statement, the appellant did not plead if any injuries were inflicted to him, or if so, by whom. He did not assign any role to any of the victims in causing injuries to him. Contrary to that in 313 Cr.P.C. statement, the appellant set up plea of 'alibi' and denied his presence at the spot in response to question No.1. In

response to question No.15, he admitted to have gone to the spot albeit after the quarrel between the injured and Nageshwar was over. He alleged false implication as the victim used to demand 'monthly' from him for running cable TV network in the area which was declined by him. No such suggestion was put to the victims in their cross-examination. Apparently, the appellant has taken conflicting and inconsistent defence which deserves outright rejection. Sustaining of the injuries by him in the occurrence rather shows his presence at the spot. Non-recovery of crime weapon is inconsequential.

15. The Trial Court has based conviction on fair appreciation of the evidence and it deserves no intervention; the conviction is affirmed. The Sentence Order is also based upon fair reasoning and needs no modification.

16. The appeal lacks merit and is dismissed. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

JULY 13, 2016 / tr