

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : July 04, 2017

+ CRL.A. 770/2001
KAMAL KUMAR

..... Appellant

Through: Mr. D.K. Sharma, Advocate

versus

THE STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State with
Inspector Veer Singh, SHO, & Sub-
Inspector Ombir, Police Station Nand
Nagri, Delhi

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J

1. Aggrieved by the judgment of conviction dated 04.10.2001 thereby finding the appellant guilty for the offence under Section 307/506 of the Indian Penal Code (hereinafter referred to as 'IPC') and order on sentence of the same date, whereby he has been sentenced to undergo rigorous imprisonment for three years with fine of Rs.2,000/-, and in default of fine, to further undergo rigorous imprisonment for two month, further the appellant was sentenced to undergo rigorous imprisonment for two years for the offence under Section 506 Part II of IPC the appellant has preferred the present

appeal.

2. The facts giving rise to the present appeal are within that on 25.01.1997 at about 11 AM one Maheshwari, sister of complainant Shishpal was returning alongwith her friend Dulari from School. The accused teased her, to which the complainant objected whereupon the accused slapped the complainant. The complainant alongwith his elder brother Kalyan Singh approached the accused. Complainant slapped the accused and asked him not to repeat his act. Thereafter, at about 1.45 PM, complainant and his brother were unloading wooden phattas from trolley in front of their house. The accused who used to give coaching and resided in their neighborhood came alongwith 10/12 boys. Accused and one other boy climbed the trolley. Accused had a knife in his hand and the other man had a khukri. It is further alleged that the other man started hitting the complainant with khukri but complainant could save himself. On this the accused uttered that complainant had slapped him, defamed him and he would kill the complainant on that day. By saying so, he attacked on the left side of the chest of the complainant. The complainant took a turn and the knife hit on the left armpit of the complainant. Accused again hit on the back side of the left thigh and left hip. Brother of the complainant came to save him. The other man with khukri stopped brother of the complainant. In the meantime crowd gathered there and the accused alongwith his associate ran away and while running, the accused left a threat that complainant survived on that day but would be killed on some other day. Thereafter, the injured was taken to GTB Hospital by

PCR van. MLC of the injured was collected and statement of injured was recorded whereupon the present case was registered against the accused. During investigation, the accused was arrested and made his disclosure statement. Statements of the witnesses were recorded and after completion of investigation, charge sheet for the offence under Section 307/506 of IPC was registered against the accused, to which he did not plead guilty and claimed trial.

3. To prove the charges against the appellant, the prosecution examined 12 witnesses. They are; Dr. B.D. Singh, (PW-1); Head Constable Ashwani Kumar (PW-2); Head Constable Ombir (PW-3); Kumari Maheshwari (PW-4); Dulari (PW-5); Kalyan Singh (PW-6); Shishpal (PW-7); Constable Sevinder Kumar (PW-8), Sub-Inspector Amar Singh (PW-9); Radhey Shyam (PW-10); Sub-Inspector Yogesh Malhotra (PW-11) and Constable Mahinder Singh (PW-12).

4. Upon considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant guilty for offence punishable under Sections 307 of IPC by impugned judgment dated 04.10.2001, and vide order on sentence of the same date the appellant was sentenced as indicated above. Hence, the appellant has filed the instant appeal against the judgment and order on sentence passed by learned Additional Sessions Judge. During pendency of the present appeal, the sentence imposed upon the appellant was suspended vide order dated 01.11.2001.

5. Learned counsel for the appellant while arguing the case of the

appellant, contended that as per FIR the appellant Kamal climbed the trolley having phattas in it and inflicted knife injuries but subsequently in the court, the witnesses changed the total substratum of the case stating that Sheeshpal was caught hold of by one of the associates of the appellant and then the appellant inflicted injuries at his persons. It is further contended that Dulari (PW-5) stated before police that the appellant had passed sarcastic remarks against her and when the matter was reported to her brothers, they went to the place of the appellant and slapped him but in her statement before court, she had deposed that the students of the institution of the appellant passed certain remarks and the appellant was approached by Dulari and the appellant had not taken any action in the matter and in this way both Dulari and Kumari Maheshwari had failed to establish the incident of the day. With regard to the injuries suffered by the injured, it is contended that as per prosecution case, there was blood on the spot, clothes of Sheeshpal (PW-7) and on the wearing apparels of Kalyan Singh (PW-6) but the testimony has been opposed by the Complainant. Savender Kumar (PW-9) and Yogesh Malhotra (PW-11) Investigating Officer of the case, who had categorically deposed that there was no blood on the spot/either in the trolley or on the roof of the neighbours. Therefore, it is clear that the incident had not taken place at the alleged place and in fact Sheeshpal was stealing the phattas of someone and the incident had taken place and being unknown to the owner, he falsely implicated the appellant because of the morning incident. Attention is also drawn to the deposition of PW-7 where he deposed before Sub-Inspector Yogesh Malhotra that his blood stained

clothes with cut marks of the knife were lying at his residence but subsequently before the court, he deposed that the clothes had been stolen from the hospital. There is non-production of clothes with blood stain and cut marks, which clearly indicates that the clothes were destroyed and were not produced before the court. It is further urged that Sheeshpal (PW-7) disclosed in his statement that after the incident he had run to the house of a neighbour and the door was bolted by the neighbour and he had a fall on the roof but the prosecution neither examined nor produced the neighbour during the trial. Even the prosecution failed to show in the sketch, the trail of blood from the venue of incident i.e. trolley up to the house of the neighbour and even in the stair case or had seen any blood of the neighbours. It is further submitted that there is substantive statement of PW-6 and PW-7 to the effect that there were 10-12 associates of the appellant and during the incident they were armed with knife and khukri but none of them had even been identified by PW-6 and PW-7. So far as the injuries suffered by the injured are concerned, Dr. B.D.Singh (PW-1) had opined the nature of injury as being simple in nature and that too without mentioning the length, depth and breadth of the injury. Therefore, in such a situation the offence under Section 307 of IPC cannot be made out. It is further urged that Sheeshpal (PW-7) has belied his statement whereby he had stated that there were two stabbed injuries on the left side below stomach, but in the MLC, no such injury was found on his person. On these grounds, learned counsel for the appellant urged for setting aside of the impugned judgment and order on sentence.

6. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the accused/appellant was rightly held guilty under Section 307 of the IPC inasmuch as the complainant remained consistent on his statement regarding narration of the incident before the police as well as before the court and for convicting the accused for the offence under Section 307, the testimony of injured witness is sufficient. Therefore, the prosecution has successfully proven the offence of the appellant beyond all reasonable doubts and in such circumstances, the impugned judgment and order on sentence passed by learned Additional Sessions Judge do not call for any interference and the same are liable to be upheld.

7. The nominal roll of the appellant has been called for which reflects that the appellant had remained behind bars only for 7 days.

8. I have heard the submissions made on behalf of the State and gone through the petition, impugned judgment and order on sentence and the material available on record. This court finds that the learned Additional Sessions Judge had held the appellant guilty on account of the injured witness, eye-witness.

9. Sheeshpal (PW-7) is the victim/injured in the present case and on his statement, the present case is registered against the appellant. On careful scrutiny of his deposition before the court, it reveals that he stated that on 25.01.1997 at about 10.30 AM his sister Maheshwari came to his house and told that the appellant had given her a slap when she alongwith her friend Dulari were coming back from her

school and on the way, some students of appellant used filthy language against them and they complained about the same to the appellant. Thereafter, he alongwith his brother Kalyan Singh went to the accused and asked the accused as to why he had given a slap to his sister, on which he used hot words against them and thereupon he slapped him. He further deposed that at that time, accused extended threat that he would see him and left the place. It is further deposed that at about 1 PM when he alongwith his brother Kalyan were unloading the phattas from tractor trolley, accused Kamal alongwith 10/12 boys came there, some were armed with open khukhri and some were having open knives in their hands. When he was on trolley, he was caught hold of by one boy and accused Kamal started stabbing him. When his brother tried to save him, one another boy stopped him on the point of knife. He sustained injury in his armpit and on his left thigh and one stab injury on his left hip. He also sustained two stab injuries on left side below abdomen. It is further deposed that all the injuries were inflicted by the accused. The accused had also said that he would teach him a lesson for his insult. According to the witness, at the time of stabbing incident public persons had gathered, blood oozed out from his wounds and accused Kamal alongwith his associates ran away from the spot after extending threat that today he had escaped from him but he would kill him in the future. He was taken to hospital by police gypsy and got medically examined. According to witness, his statement was recorded in the hospital on the same day after 15/20 minutes of reach in the hospital. In his cross-examination he reiterated that he had received stab injuries twice in the tractor trolley and one

stab injury on ground. On the trolley one associate of Kamal had caught hold of him and other associates of Kamal were standing on the ground near trolley. He was grappled by other 10/12 associates and when he jumped from the trolley, accused also jumped behind him. Thereafter he entered through the door of the other's house which was at a distance of one and a half meter from the trolley. He remained in the said house for about 6/7 minutes and blood fell down in the said house. His clothes were also blood smeared. In his cross-examination, he further deposed that after stitching his wounds doctor allowed his family members to meet him and at the time of recording his statement, he was wearing his blood stained clothes. However, the said clothes were stolen from the hospital.

10. From the deposition of the injured witness, it is revealed that at the time of incident, his brother Kalyan Singh (PW-6) was also accompanying him. Let the extracts of his deposition before court be scrutinized to find out any corroboration with the deposition of the injured witness. He had stated before court that on the date of incident i.e. on 25.01.1997 at about 11.30 AM when his sister Maheshwari went to take his daughter Jyoti from her school, on the way accused Kamal slapped his sister. When his sister Maheshwari made complaint to him and his younger brother Shashi, they went near the school and asked the accused why he gave slap to his sister. He further deposed that the accused gave reply in hot words whereupon his brother Shashi slapped him. Appellant – Kamal went away from there after extending threat that he would see his brother after a while. At about 2 PM, when

they were unloading phattas from the tractor trolley, appellant – Kamal alongwith 10/12 of his associates came there. At that time his brother Shishpal was on trolley and he was caught hold of by two boys on ground. The accused alongwith his associates gave beatings to his brother on the trolley. He tried to free himself from those boys and to intervene and save his brother, whereupon one boy having khukhri stopped him on the point of khukhri. He further deposed that he himself saw his brother being stabbed by the accused Kamal and his associates. Thereafter, his brother jumped from the trolley and entered in the house of neighbours to save himself from the clutches of accused and his associates. He further deposed that the accused extended threat that today he had escaped from them but he would kill him in the future and ran away from the spot. In his cross-examination he deposed that due to the stab injury the blood was oozing out and his clothes were also blood stained. Police did not take into possession his blood stained clothes and his brother's blood stained clothes were missing from the hospital.

11. The other crucial witness in such cases is the deposition of the doctor and his opinion to know the nature of injuries. Dr. B.D. Singh (PW-1) CMO, GTB Hospital, deposed before court that on 25.01.1997 he had conducted medical examination of the injured Shishpal who was brought in emergency by ASI Lachman Singh vide MLC No. B-217/97 (Ex. PW-1/A). He deposed that at the time of examination of the injured, the following injuries were found on the person of injured:

1. CLW half inch left axial.

2. CLW one inch on left hip with active bleeding.
3. CLW one inch on left ey with active bleeding.

This court has further perused the MLC of the injured, in which the doctor had opined the injuries caused on the victim to be of simple in nature.

12. Another relevant witness for the purpose of proving guilt of the accused is Yogesh Malhotra (PW-11), who was Investigating Officer of the case. He had deposed before the court that on the date of incident he had received information regarding quarrel and when he reached the spot, HC Ombir and Ct. Shivender were already present. They handed over the DD No.7. The injured was already removed to GTB Hospital by PCR Van. He went to the hospital and collected the MLC of injured Shishpal and also recorded his statement. He also recorded the statement of injured's brother, Kalyan Singh in the hospital. In his cross-examination he had deposed that no person was present at the spot only 10-15 persons were present but he did not inspect the site before going to the hospital. He also did not see the khukri cover at the place of incident before going to the hospital. He had also not inspected the trolley before going to the hospital. He had also not seen any blood lying on the ground before going to the hospital. He further deposed that when he recorded the statement of injured in hospital, he had already changed his clothes. He further deposed that he had not mentioned the place where the empty cover of the khukri was lying in the site plan Ex. PW-11/B.

13. Perusal of the impugned judgment passed by the learned

Additional Sessions Judge reveals that the appellant has been convicted for 307 read with section 506 of IPC on the basis of statement of injured and eye-witness. For ready reference, Section 307 of the IPC which reads as follows is provided hereunder:

"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned."

14. After carefully perusing the MLC of the injured, this court finds that the treating doctor has opined the injuries as being simple in nature by the sharp object. To prove the guilt of the accused for the offence under Section 307 of IPC, what the court needs to ascertain is the fact whether the act committed by the accused person had an intention to commit the offence or not. This court is also of the considered opinion that for holding a person guilty for the offence under Section 307 of IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in

some cases, be ascertained without any reference at all to actual wounds. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the *intention or knowledge* and under circumstances mentioned in the Section.

15. This court is further of the view that whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is *intention or knowledge*, as the case may be, and not the nature of injury.

16. In the considered opinion of this court, to justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. It is also not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances as mentioned in the Section. An attempt, in order to be criminal need not be the penultimate act. It is sufficient in law, if there exists an intent coupled with some overt act in execution thereof.

17. This court further finds that the complainant/injured remained

consistent in his statements recorded before police as well as before the court. He has specifically deposed before the court that the appellant had inflicted stab injuries upon him due to which he got injuries. He further deposed that the appellant threatened him while leaving the spot that though he was saved on that day but he would not leave him. Not only this, Kalyan Singh (PW-6), the brother of the complainant/injured also corroborated the statement of the injured and has deposed that though he tried to save his brother but some other boy stopped him on the point of Khukhri and he himself had seen the appellant inflicting the stabbed injuries to the complainant/injured.

18. The Hon'ble Apex Court, while dealing with the reliability of testimony of injured witness in *Abdul Sayeed vs State Of M.P.*, (2010) 10 SCC 259, has held that only the statement of injured is sufficient to prove the guilt of the accused. The relevant extract is reproduced hereinbelow:

“The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are

strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

19. In the facts of the present case, the appellant had caused injuries on the injured Sheeshpal with some sharp edged weapon/instrument which is also corroborated by the deposition of Kalyan Singh (PW-6). This court further observes that in the present case, the alleged weapon of offence was not recovered, and the injuries suffered by the complainant were opined to be simple in nature but with sharp edged weapon. More so, the prosecution has not taken the blood stained clothes of the injured and could not send the same for FSL analysis.

20. What is clear from the facts of the present case are that the injured had suffered injuries, appellant had caused injuries with some sharp object, which is not recovered by the prosecution and the injuries were opined by the doctor to be of simple in nature. Identity of the appellant is also established by the complainant as well as his brother Kalyan Singh (PW-6). This court also finds from the evidence and the material placed on record that the presence of the appellant at the spot on the date of incident; recovery of cover of khukhri at the place of incident; and identity of the appellant have been established by the prosecution beyond all reasonable doubts.

21. In the facts and circumstances of this court, this court is of the opinion that the appellant is liable to be convicted for the offence under Section 324 of IPC. Accordingly, in the light of the evidence produced on record, as discussed above, this court finds that the

impugned judgment dated 04.10.2001 passed by the learned Additional Sessions Judge thereby convicting and sentencing the appellant for the offence under Section 307/506 of IPC, needs to be modified to the extent that the appellant is held guilty for the offence under Section 324 of IPC. It is ordered accordingly.

22. Now on the quantum of sentence, this court observes that the learned Additional Sessions Judge vide impugned order on sentence dated 04.10.2001 has awarded a sentence of 3 years rigorous imprisonment with fine of Rs.2,000/- for the offence under Section 307 IPC; and rigorous imprisonment for two years for the offence under Section 506 of IPC. In the peculiar facts and circumstances of the present case, considering the fact that the incident is of the year 1997 and the appellant has faced the agony of trial for the last more than 20 years, this court is of the considered opinion that the interest of justice would be met if the sentence imposed upon the appellant is reduced to the period of two years. It is ordered accordingly.

23. Resultantly, the appeal filed by the appellant is partly allowed thereby converting the offence committed by the appellant from Section 307 IPC to Section 324 of IPC and modifying the sentence to undergo rigorous imprisonment for two years. However, the amount of fine shall remain the same and in default of payment of fine, the appellant shall undergo simple imprisonment for two months.

24. The appellant is directed to surrender before the trial court concerned within a period of 15 days to serve the remainder of

sentence of imprisonment.

25. A copy of this order be sent to the Trial Court for information and necessary steps.

26. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

JULY 04, 2017
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HIGH COURT OF DELHI



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