

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : May 29, 2017

+ CRL.A. 846/2001
MUSLIM KHAN

..... Appellant

Through: Mr. R.K. Sonakiya, Advocate

versus

THE STATE OF DELHI

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

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

1. Aggrieved by the judgment of conviction dated 16th August, 2001 convicting the appellant finding him guilty under Section 307 of the Indian Penal Code (hereinafter referred to as 'IPC') and order on sentence dated 11th September 2001, whereby the appellant has been sentenced to undergo rigorous imprisonment for three years with fine of Rs.1,500/-, and in default of fine, to further undergo simple imprisonment for one month, the appellant has preferred the present appeal.

2. The facts giving rise to the present appeal are within the narrow compass. It emerges from the record that on 3^d October, 1999, when the injured Smt. Sheela Devi was with her husband Sh. Dev Dutt Sharma at home, at about 8.45 p.m., their neighbour Muslim Khan started abusing her husband and asked him to come out so that he could teach him a lesson. The injured Sheela Devi did not let her husband go out instead went out herself and her neighbour Sharda and Ram Murthi were also stated to be there with her. Afterwards, Muslim Khan, who had an Ustra in his hand, came to the injured and hit her on the left side of her stomach as a result of which blood started oozing and Smt. Sheela Devi was taken to the hospital by her husband and neighbour. It appears from the record that a case under Section 324 IPC was registered. Statement of witnesses was recorded; site plan was prepared and MLC was procured. The doctor opined the injuries to be grievous in nature and were inflicted with a sharp weapon. Thereafter, Section 307 of the IPC was added; accused was arrested; disclosure statement was recorded in pursuant whereof, recovery of weapon of offence i.e. Ustra was made which was kept in pulanda and sealed with the seal of CSR. After completion of

investigation, the charge sheet under Section 307 of IPC was filed against the appellant and to which he pleaded not guilty and claimed trial.

3. To prove the charges against the appellant, the prosecution examined 10 witnesses. They are; Smt. Sheela Devi (PW-1); Dev Dutt Sharma (PW-2); Smt. Sharda Devi (PW-3); Smt. Ram Murti (PW-4); Dr. M.A. Siddiqui (PW-5); Bharat Singh (PW-6); Hukam Singh (PW-7); Constable Krishan Kumar (PW-8), Head Constable Satpal (PW-9); and Sub-Inspector Chander Singh (PW-10).

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 16.08.2001, and vide order on sentence dated 11.09.2001 and 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 21.11.2001.

5. It is a matter of record that the counsel appearing on behalf of the appellant was more interested in taking adjournments than to argue the present appeal. Narration of proceedings of this court on different dates when the appeal came up for hearing before this court on different dates, i.e. on 07.08.2009, 26.02.2014, 29.05.2014, 03.03.2017, either none appeared on behalf of the appellant or took an adjournment on one ground or the other. From the perusal of the order sheet dated 10.03.2017, this court observes that in such like matters, it is noticed that the routine is to file an appeal; apply for bail; be enlarged on bail; and thereafter to become untraceable or to take adjournments. Accordingly, arguments on behalf of the learned Additional Public Prosecutor for the State were heard and appeal was reserved for orders.

6. The main grounds of challenge are that the prosecution has miserably failed to prove its case beyond reasonable doubts as prosecution witnesses did not support its case. The testimony of PW 2 i.e. husband of the injured is unbelievable inasmuch as he in his statement deposed that there was only ten per cent truth/reality in the FIR and the case of the prosecution; he gave a bribe of Rs.3,000/- to

the IO to make out a case under Section 307 IPC and PW 2 stated that the accused was arrested on 3rd October, 1999 i.e. the day of incident while the IO stated that he arrested the appellant on 7th October, 1999. There were material improvements in the deposition of the injured i.e. PW 1 Smt. Sheela Devi. The place of occurrence/site plan (Ex.PW 10/D) was changed and disputed. PW 3 Sharda Devi deposed that the quarrel took place between the appellant & PW 3 i.e. the husband of the injured and not between PW 1 and the appellant. The prosecution failed to prove as to who took away and got admitted the injured in hospital. **The recovery of weapon of offence i.e. ustra (razor) was not proved beyond reasonable doubts inasmuch as PW 2 who was the sole independent witness, stated that the weapon was not recovered in his presence on the said date, time and place at appellant's instance. More so, the expert opinion of the doctor was not sought whether the injury was caused by the alleged weapon** no record was produced by the prosecution regarding admission, treatment and discharge of the injured from the hospital. As per the statement of PW 5 and the MLC which is Ex.PW 5/A, **it was a case of stabbing while the alleged weapon of offence was an 'Ustra'**

inasmuch as stabbing could be caused by a pointed weapon and not by the alleged weapon of offence

7. 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 appellant came to the house of the injured, abused her husband and threatened him to teach a lesson. Upon her refusing to do so, the accused, who had a piece of Ustra, hit her on the left side of the stomach as a result of which the injured Smt. Sheela Devi sustained grievous injuries. The victim, in her statement, specifically alleged the accused Muslim Khan to have inflicted her injuries. 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.

8. The nominal roll of the appellant has been called for which reflects that as on 3rd January, 2002, the appellant had undergone incarceration of three months and ten days and earned remission of eight days.

9. 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 and on the basis of MLC of the injured.

10. Smt. Sheela Devi (PW-1) is the victim/injured in the present case, who in her deposition before the court stated that on 19th September, 1999 a dispute arose with Rajinder Tyagi over Govt. underground water pipeline and on 3rd October, 1999 when this witness along with her neighbour PW 4 Ram Murthi were talking, the accused, who sat on a cot in front of Tyagi's house, started abusing her husband. She further deposed that her husband was inside the house. She objected to the accused abusing her husband as there was no grudge between them but despite that, the accused kept on abusing. After that, the wife of Muslim Khan called Tyagiji; husband of PW 1 also came out on hearing the noise; PW 4 Ram Murthi was standing besides PW 1 while PW 3 Smt.Sharda Devi was in the back of this witness and PW 6 Bharat Singh was on her right side. She further

deposed that the accused pushed knife into her abdomen which she earlier thought to be knife but later came to know that the same was a Razor. This witness further stated that her son, tenant and neighbour took her to Jeevan Hospital where she was given treatment. She further stated that she was earlier taken to Kamal Hospital by her son, but the said hospital refused to give her treatment.

11. Dev Dutt Sharma (PW-2) in his statement deposed that on 3rd October, 1999 when he was listening to the news, he heard noise of his wife i.e. injured/PW-1 Sheela Devi, who was talking to PW-4 Ram Murti sitting on slab. He further stated that his wife was asking the accused not to abuse them as they had no grudge against each other and that the accused Muslim Khan was using very filthy abuses. PW-2 stated that he was pushed inside by his wife. This witness made a call to police to the effect that the accused had injured his wife with razor. This witness further stated that on 3rd October, 1999, the accused started abusing him so that he could come out but after that, he injured his wife. PW 2 stated that his son and a lady took his wife to Kamal Nursing Home where they told them that his wife should be taken to Safdarjung or AIIMS. In cross-examination, the witness deposed that

when his wife restrained Muslim Khan not to rebuke him, he immediately took out ustra (razor) and attacked his wife and she got injuries in her stomach. He also deposed that ustra (razor) was recovered from the appellant on 07.10.1999 and the appellant as well as razor were identified on his pointing out.

12. PW-3 Smt.Sharda Devi in her statement stated that on 03.10.1999 she noticed some quarrel between wife of Dev Dutt Sharma and the accused Muslim Khan. On hearing some noise, she came out and heard that Sheela Devi had been cut by Muslim Khan. Thereafter, Rajinder asked Muslim Khan to run away to the House of Jagdish Narain. Thereafter, some children came and they snatched the knife from Muslim Khan.

13. Another relevant witness for the purpose of proving guilt of the accused is Ram Murti (PW-4), who in her statement deposed that at about 8/8.30 PM when Sheela was talking to her, accused Muslim Khan started abusing masterji by the name of his daughter. When she objected, the accused pushed her and stabbed Sheela with knife in the left portion of her abdomen. In her cross-examination, she deposed that the accused had a knife in his hand, he pushed her and she fell

down and thereafter he stabbed Sheela.

14. Dr. M.A. Siddiqui (PW-5) had prepared the history sheet of the injured Sheela Sharma and deposed **that she had stabbed injuries** on 03.10.1999 and later on 07.10.1999 after seeing the prescription and injury he opined the nature of injury as **grievous**. He further deposed that he referred the patient to a surgeon.

15. Sub-Inspector Chander Singh (PW-10) had deposed in his statement that after receiving the information; DD No.59B; he visited Jeevan Nursing Home where the injured Sheela was admitted; recorded the statement of the injured and sent the same for registration of FIR. Site was inspected, site plan prepared with correct marginal notes at the pointing out of witness Sarda, recorded the statement of witnesses and collected the MLC of the injured on 07.10.1999 and after considering the opinion of the doctor regarding the injuries being grievous, Section 307 was added to the FIR. On the same day, he arrested the accused, his personal search was conducted and upon disclosure of the accused, he recovered one blade of ustra.

16. Perusal of the impugned judgment passed by the learned

Additional Sessions Judge reveals that the appellant has been convicted for 307 IPC on the basis of statement of injured and eye-witness as well as on the basis of the MLC of the injured upon which the doctor has opined the injuries being grievous. 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."

17. 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.

18. 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.

19. 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.

20. Apart from the above, to prove the guilt of the accused, only the statement of injured is sufficient. In this regard, it would be relevant to mention that in ***Abdul Sayeed vs State Of M.P.***, (2010) 10 SCC 259, the Hon'ble Apex Court, while dealing with the reliability of testimony of injured witness, has held as under:

“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.”

21. In the facts of the present case, the appellant had caused injuries on the abdomen of the injured Sheela with some sharp edged weapon/instrument like ustra (razor) and at the relevant time the accused/appellant had knowledge of the fact that causing injury with sharp edged weapon/instrument like ustra (razor) to the victim may cause her death. More so, the to corroborate the injuries on the person of Sheela, Dr. M.A. Siddiqui (PW-5), Medical Officer, Jeevan Nursing Home, New Delhi, has even deposed that as per medical certificate (Ex.PW-5/B) he had opined the nature of injury as grievous.

22. What more required to prove the guilt of the appellant for the offence under Section 307? He had caused injury with sharp edged weapon, with knowledge of the fact that causing injury at the vital party of body of the victim, i.e., abdomen, may result to her death couple with the fact that the treating doctor has opined about the injuries being grievous. 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 ustra (razor) at his instance;

and identity of the appellant have been established by the prosecution beyond all reasonable doubts. The injured eye witnesses examined by the prosecution, i.e., Ram Murti, PW-4 has specifically stated that when injured - *Sheela was talking to her, accused Muslim Khan started abusing masterji by the name of his daughter. When she objected, the accused pushed her and stabbed Sheela with knife in the left portion of her abdomen the role of the appellant in causing grievous injuries on her abdomen.*

23. In view of the evidence produced on record, as discussed above, this court finds that there is sufficient evidence on record to convict the appellant for the offence under Section 307 of IPC and this court does not find any irregularity or infirmity in the impugned judgment. Accordingly, this court does not find any illegality or infirmity in the impugned judgment dated 16.08.2001 as well as order on sentence dated 11.09.2001 passed by the learned Additional Sessions Judge thereby convicting and sentencing the appellant for the offence under Section 307 of IPC, therefore the same are upheld.

24. Resultantly, finding no merit in the appeal, the appeal filed by the appellant is dismissed. 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.

MAY 29, 2017
pkb



(P.S.TEJI)
JUDGE