

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

RESERVED ON : 6th FEBRUARY, 2017

DECIDED ON : 9th FEBRUARY, 2017

+ **CRL.A.181/2014 & CRL.M.B. 225/2016**

JITENDER KHARI

..... Appellant

Through : Mr.S.K.Sharma, Advocate.

VERSUS

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant – Jitender Khari impugns a judgment dated 13.11.2013 of learned Addl. Sessions Judge in Sessions Case No.25/11 arising out of FIR No.291/10 PS Keshav Puram by which he was held guilty for committing offence punishable under Section 307 IPC. By an order dated 19.11.2013, he was awarded RI for seven years with fine ₹50,000/-.

2. The factual matrix in which the appellant came to be prosecuted and convicted as reflected in the charge-sheet is that on 01.09.2010 at around 08.30 p.m. near Rajasthan Sweets / Punjab Sweets, Rimal Wali Gali, Rampura, the appellant inflicted injuries to Sunny Khari by a rod with an attempt to commit murder. Police machinery came into motion on getting information about the occurrence vide Daily Diary (DD) No.21 A (Ex.PW-5/A) recorded on 01.09.2010 at 09.25 p.m. The investigation was marked to HC Ram Dayal who with Const. Manoj went to the spot. The injured had already been taken to the hospital. On 02.09.2010 at around 06.15 p.m. PW-

2 (Sumit Khari) – victim's brother lodged complaint (Ex.PW-2/A) and the Investigating Officer registered the First Information Report. Statements of the witnesses conversant with the facts were recorded. The appellant was arrested. Upon completion of investigation, a charge-sheet under Section 307 IPC was laid before the Trial Court against the appellant. In order to establish its case the prosecution examined fourteen witnesses. 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. No independent public witness was associated at any stage of the investigation. Glaring infirmities and contradictions emerging in the statements of the prosecution witnesses have been ignored without tangible reasons. No motive was assigned to the appellant to inflict injuries to the victim, his cousin and with whom he had no prior animosity. Crime weapon allegedly recovered in this case was not identified by the victim in his Court deposition. Learned APP urged that there are no sound reasons to disbelieve the statement of the victim who had sustained injuries 'dangerous' in nature on his body.

4. Admitted position is that both the appellant and the victim are closely related to each other. There was some annoyance between the two over the appellant going to the roof of the house after consuming liquor. It is alleged that the appellant had extended threats to the victim.

5. The occurrence took place on 01.09.2010 at around 08.00 p.m. DD No.21A (Ex.PW-5/A) came into existence at 09.25 p.m. where

information about quarrel at H.No.266, Rimal Wali Gali, Rampura, was conveyed. Vide DD No.25A (Ex.PW-5/B) recorded at 10.55 p.m. another information was received informing that the injured had been taken to Maharaja Agarsen Hospital. On 02.09.2010 at about 06.15 p.m., PW-2 (Sumit Khari) lodged complaint (Ex.PW-2/A) and gave detailed account as to how and under what circumstances, the injuries were inflicted by the appellant to his brother – Sunny Khari.

6. In his Court statement, the victim appearing as PW-3 proved the version given to the police at first instance by his brother PW-2 (Sumit Khari). He deposed that on 01.09.2010 at around 08.00-08.30 p.m. when he was coming back after purchasing eatables from a 'dhaba' and reached near Rajasthan Sweet / Punjab Sweet at main road Rampura, he was hit by an iron rod on his head. On sustaining the blow, he started running and saw the accused Jitender chasing him with an iron rod in his hand. The appellant again struck another iron rod blow on his head, as a result of which he became unconscious. When he regained senses, he saw his brother Sumit Khari lifting him from there. He remained admitted in MGS Hospital for treatment for around 15 days. In the cross-examination, he denied if an altercation had taken place between him and a barber due to his causing damage to his shop. It was further denied if the beatings were given to him by the crowd.

7. On scanning the testimony of the victim, it stands established that the appellant was the perpetrator of the crime. The appellant was named in the FIR. Material facts deposed by the victim in examination-in-chief have remained unchallenged and uncontroverted in the cross-examination. No ulterior motive was assigned to the victim to falsely implicate the

accused to whom he was closely related. In the absence of prior enmity or ill-will, the victim is not expected to let the real offender go scot free and to rope in an innocent relation.

8. PW-2 (Sumit Khari) - victim's brother has corroborated victim's statement in material particulars. On getting information about the incident, he immediately reached the spot and found his brother PW-3 (Sunny Khari) lying in a pool of blood. He took him initially to Maharaja Agarsen Hospital from where he was taken to MGS Hospital. He made a call to the police on 01.09.2010 regarding the occurrence. In the cross-examination, he admitted that the name of the assailant was disclosed to him by his brother.

9. In fact, injuries sustained by the victim are not under challenge. Appellant's only plea is that he was not the author of the injuries and these were caused by the crowd due to the causing of the damage by the appellant in the barber's shop. This defence does not inspire confidence and deserves outright rejection. Nothing has emerged on record to show if any damage was caused to the barber's shop by the appellant. No such complaint whatsoever was lodged by the said barber whose name has not been disclosed. Apparently, the appellant had made a feeble attempt to shift blame upon someone else for the injuries suffered by the victim.

10. PW-1 (Dr.Dhiraj Gandhi) who medically examined the victim on 01.09.2010 at Maharaja Agarsen Hospital deposed that the patient was conscious and oriented and had suffered one lacerated wound over right earlobe and other lacerated wound over temporal parietal region in the size of 5 x 4 c.m. PW-6 (Dr.Surinder Nath Kundra), MGS Hospital deposed that on 02.09.2010 Dr.Sushil examined the patient and declared him "unfit for

statement”. The patient was operated by him as he was having “depressed fracture of left parietal bone”. The bone fragments had gone into the brain and had to be surgically removed. He further deposed that on 14.09.2010 the patient was discharged vide discharge summary (Ex.PW-6/A). Nature of injuries from portion ‘X’ to ‘X’ bearing his signatures at point ‘Y’ was given by him as ‘dangerous’ on 20.10.2010. There is thus no conflict between ocular and medical evidence.

11. In 313 Cr.P.C. statement the appellant did not give plausible explanation to the incriminating circumstances. He did not give any reason as to why he was falsely implicated in this case.

12. Merely because the complainant did not identify the crime weapon (Ex.P-2) allegedly recovered at the appellant’s instance, it did not cause dent in the prosecution case and on that score the statement of the victim cannot be discredited. The crime weapon was not recovered at the spot. It was allegedly recovered subsequently at appellant’s instance. If the appellant has got recovered a crime weapon which was not actually used in the crime, it would not have any impact on the statement of the victim which otherwise inspires confidence.

13. The evidence of an injured witness cannot be disbelieved without assigning cogent reasons. Mere contradictions/improvements on trivial matters could not render injured's deposition untrustworthy. The law on this aspect has been detailed in the latest judgment **State of Uttar Pradesh vs. Naresh and ors.,(2011) 4 SCC 324** as under :

“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally

considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”

14. Similarly in another case **Abdul Sayed vs. State of Madhya Pradesh (2010) 10 SCC 259**, Supreme Court laid down:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate

someone. "Convincing evidence is required to discredit an injured witness."

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab*, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

28. *Darshan Singh (PW 4)* was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* this Court has held that 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, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (*vide Krishan v. State of Haryana*). Thus, we are of the considered opinion that evidence of

Darshan Singh (PW 4) has rightly been relied upon by the courts below.

30. 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 inbuilt 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.”

15. The appellant had inflicted injuries ‘dangerous’ in nature on the vital organs of the victim. The victim remained admitted in the hospital for around 15 days. As per PW-6 (Dr.Surinder Nath Kundra)’s testimony, the patient was to be operated as he was having depressed fracture of left parietal bone. Bone fragments had gone into the brain and had to be surgically removed. The appellant had inflicted injuries with an iron rod on the victim when he was coming unsuspectingly after purchasing eatables to his house. Needless to say, the appellant had come well prepared to assault the victim. After causing injuries, the appellant fled the spot and did not even bother to take his cousin to the hospital. It can well be inferred that the intention of the appellant was to cause fatal injuries to the victim. Conviction under Section 307 IPC, thus, cannot be faulted.

16. The appellant has been sentenced to undergo RI for seven years with fine ₹50,000/-. Nominal roll dated 12.04.2016 shows that he has already undergone two years, seven months and four days incarceration besides remission for eight months and twenty-eight days as on 11.04.2016. He is a first time offender and is not involved in any other criminal case. He was aged around 25 years on the day of occurrence. Both the victim and the appellant are closely related and are cousins. Sentence Order records that the appellant has a younger brother and old aged parents to take care of them. At the time of occurrence the appellant was working in the office of a property dealer. Considering these mitigating circumstances, Sentence Order is modified to the extent that RI shall be for five years with fine ₹50,000/-; default sentence for non-payment of fine would be SI for two months.

17. The appellant shall, however, pay ₹50,000/- to the victim as compensation and this amount shall be deposited in the Trial Court within two weeks. ₹50,000/- shall be released to the victim after due notice. This payment is over and above the one given by the Trial Court as compensation out of fine (if realised).

18. The appeal stands disposed of in the above terms. Pending application also stands disposed of.

19. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 09, 2017 / tr