

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

% *Date of Decision: November 08, 2017*

+ **CRL.A. 1271/2012**

MOHD.KHURSHID Appellant

Through: Mr.M.L.Yadav, Advocate

versus

STATE Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State.

PRATIBHA RANI, J. (Oral)

1. By the present appeal the appellant Mohd.Khurshid lays challenge to the judgment dated 5th May, 2012 convicting him for the offence punishable under Section 307 IPC and order on sentence dated 9th May, 2012 whereby he has been sentenced to undergo RI for a period of 5 years and to pay a fine of ₹10,000/-, in default to undergo SI for 3 months.

2. Mr.M.L.Yadav, Advocate who is on the panel of DHCLSC, is appointed to represent the appellant in this case.

3. Assailing the conviction, learned counsel for the appellant, Mr.M.L.Yadav submits that the appellant had no motive to cause death of the injured Jujhar Singh as neither were they known to each other nor did they have any enmity. Hence, there was no motive to cause any injury to him which could have caused his death.

4. Learned counsel for the appellant has further submitted that it is a case where the appellant was got identified on the basis of dossier

shown to the injured Jujhar Singh (PW-1). Further he has been apprehended from a public place i.e. Daya Basti Railway Station but no independent public witness has been joined. Hence it is a case where the prosecution failed to prove its case beyond reasonable doubt hence the appeal may be allowed.

5. Learned APP for the State, on the other hand, submits that injured has fully supported the case of the prosecution and the nature of the injury suffered by him was a stab wound on vital parts, which is dangerous in nature. Hence the impugned judgment suffers from no illegality.

6. Process of law was set into motion when on 17th April, 2011 at about 23:58 hrs DD No.29 was recorded at PS Sarai Rohilla about stab incident near Sulabh Shochalaya, Inderlok Industrial Area, Shahzada Bagh, Delhi. The informant Arjun Singh is the brother of the injured Jujhar Singh. The DD was assigned to SI Abhijeet Kumar who along with Constable left for the spot.

7. On reaching the spot he came to know that injured had been taken to Hindu Rao Hospital. On reaching Hindu Rao Hospital he was informed that the injured was in the Operation Theater. There, he met with his brother Arjun Singh and recorded his statement Ex.PW-2/A on the basis of which FIR No.122/11 under Section 307 IPC was registered at PS Sarai Rohilla. The injured was declared fit for statement on 19th April, 2011. At that time IO/PW-10 SI Abhijeet Kumar showed him dossier of some criminals involved in such type of activities. Out of them the injured identified Mohd. Khurshid to be the assailant. Statement of the injured was also recorded and the appellant

was apprehended on the basis of his identity being established from the dossier, as shown to the injured. Thereafter the appellant was also identified by the injured PW-1, Jujhar Singh during Test Identification Parade before PW-6, Sh. Tarun Yogesh, learned Metropolitan Magistrate. Test Identification Parade proceeding in this regard are Ex.PW-6/C.

8. PW-1, the injured Jujhar Singh deposed that on 17th April, 2011 he had gone to take dinner at Zakhira and while returning near Zakhira Pul railway track, one boy asked him to handover his valuables and he told him that he was a poor person residing in a factory. The said boy pushed him, slapped him and pulled out a knife and stabbed below his abdomen. The injured, apprehending that he would be killed if he did not run away, ran towards the factory to save his life. Thereafter, he was taken to Hindu Rao Hospital by his brother Arjun Singh who also informed the police control room.

9. PW-1, Jujhar Singh identified the assailant from the dossier shown during Test Identification Parade.

10. The case of the appellant before the learned Trial Court was of denial simplicitor. The testimony of injured, PW-1, Jujhar Singh has been duly corroborated by his brother Arjun Singh, PW-2, who informed the PCR and also removed him to Hindu Rao Hospital. FIR has been recorded on the basis of his statement.

11. PW-11, Dr.Sunil Kumar Aggarwal, Specialist Surgery, Hindu Rao Hospital proved the opinion on the MLC Ex.PW-11/A wherein the nature of the injury has been opined to be dangerous.

12. Considering the nature of the injury which is a stab wound on

the vital part of the body, which is below the abdomen, the nature of the weapon and the manner in which it was used, the motive for the crime i.e. frustration on not being able to get any valuable from the injured, PW-1, Jujhar Singh, who was a poor person, the necessary intention and knowledge of causing injury can be clearly inferred. From the evidence on record produced by the prosecution as well the nature of the injury and the weapon of the offence, it is proved beyond reasonable doubt that the appellant attempted to commit the murder of the injured PW-1, Jujhar Singh.

13. Learned Trial Court has rightly convicted the appellant for committing the offence punishable under Section 307 IPC and sentenced him to undergo RI for 5 years.

14. In the light of above discussion the appeal preferred by the appellant is dismissed and the conviction and sentence awarded to him is maintained.

15. LCR be sent back alongwith copy of this order.

16. A copy of this order be sent to the concerned Jail Superintendent for information.

PRATIBHA RANI
(JUDGE)

NOVEMBER 08, 2017

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