

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

% Decided on: 7th December, 2017

+ **CRL.A. 960/2017 & Crl.M.B. 1820/2017**

SUSHANT KUMAR DASS

..... Appellant

Represented by: Mr. Ankur Sood, Ms. Romila
Mandal, Advs.

versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeal the appellant challenges the judgment dated 16th December, 2016 convicting him for offence punishable under Sections 452 and 307 IPC and the order on sentence dated 20th December, 2016 directing him to undergo rigorous imprisonment for a period of 3 years and to pay a fine of ₹20,000/- in default whereof to undergo simple imprisonment for 4 months for offence punishable under Section 452 IPC and to undergo rigorous imprisonment for 4 years and to pay a fine of ₹30,000/- in default whereof to undergo simple imprisonment for 6 months for offence punishable under Section 307 IPC. From the amount of fine if realized, a sum of ₹40,000/- is to be paid to the victim/ injured Ms. Sunita.

2. Assailing the judgment of conviction and order on sentence learned counsel for the appellant contends that the testimony of the alleged injured witness is not reliable. The FSL report does not support the case of the

prosecution. No finger prints of the appellant were found on the alleged weapon of offence. The weapon of offence if any is a vegetable cutting knife and would not thus fall in the category of a deadly weapon. The learned Trial Court failed to notice the gapping loopholes in the testimony of the prosecution witnesses. Though PW-1 denied having any conversation with the appellant on the date of alleged incident, however PW-6 admitted that PW-2 had conversation with the appellant. Admittedly, the appellant was known to the witnesses prior to the incident which they failed to disclose. As per PW-2, PW-1 was physically weaker than the appellant and thus it was improbable for PW-1 to have caught hold of the appellant and called the PCR. Learned counsel for the appellant states that since no opinion has been given in the MLC he is at best liable to be convicted for offence punishable under Section 323 IPC and released, as the maximum punishment that can be awarded is imprisonment for a period of one year.

3. Learned APP for the State on the other hand contends that there is no contradiction in the testimony of the complainant and the injured witness. The injury caused by the appellant is dangerous in nature and was caused at vital part of the body i.e. the neck thus attracting Section 307 IPC. The appellant not only took away the injured on one side but he also threatened to kill her and her family members on refusal to marry him. The testimony of the injured witness PW-6 is corroborated to a large extent by PW-1, the complainant.

4. FIR No.336/2014 under Section 307 IPC was registered on 9th May, 2014 on the complaint of Rajeev Kumar Maurya (PW-1) who stated that he was residing along with his mother and sisters, and in one room of the house his sisters were running a herbal beauty parlour. On 9th May, 2014 at around

8.30 PM when he was talking to his sisters, a boy came on motorcycle No.DL-7S-BC-1558 at their door and came inside. He took his sister Sunita in the room where beauty parlour is being run and asked her why she was not agreeing to marry him, on which his sister replied that she would not marry him. On the reply of his sister, the boy gave her knife blows on the left cheek and neck with the intention to kill her. He caught hold of the assailant with the help of his other sister Suman and later his name was revealed as Sushant Kumar Dass. Thus, Sushant Kumar was handed-over to the Police and from his possession the knife was recovered.

5. In Court the complainant who appeared as PW-1 deposed in sync with the statement on the basis of which FIR was registered.

6. The injured Sunita was examined as PW-6 who stated that she was residing with her brothers and sisters along with their mother and she along with her elder sister was running a beauty parlour shop in the house itself. Before that she had worked at Godhili Senior Citizen Home, Sector 2 where she met the appellant and got acquainted with him. The appellant proposed to marry her to which she agreed at that time. Later she realized that her decision was not correct as the appellant had neither any property in Delhi nor was he employed so she started withdrawing herself. After some time she left her job and started the beauty parlour at her residence. On 9th May, 2014 at about 8.15 or 8.30 M when she was going to close the parlour, the appellant came at the door of parlour, took her on one side and asked her whether she would marry him or not and that he was asking this for the last time. He further stated that if she did not agree for the marriage he would kill her and her family. To this she replied that she did not want to marry him. He took out something appearing like a knife from his backside, of

which she could only see the wooden part and assaulted her on left cheek, front and back side of the neck. When she raised alarm, her brother thought that she had suffered an electric current and switched off the lights. After coming inside her brother switched on the light. Thereafter she lost consciousness and regained when she was in the hospital. Blood stained clothes of the injured were seized and sent to FSL.

7. PW-1 in his cross-examination clarified that when appellant entered their house he called his sister by the name Sunita, where after his sister got up and went to the outside room. At that time he had seen the appellant entering the house, though he did not know the appellant prior to the incident. Similar statement has also been made by Suman (PW-2) the sister of Sunita. Presence of these witnesses i.e. Rajeev and Suman cannot be disputed, the place of occurrence being their house and the incident having taken in the late evening hours. The presence of Suman at the spot is also evident as she is the one who took Sunita to the hospital and got her admitted there and the consent form has been signed by the complainant/ Rajeev on the same date immediately after the incident.

8. Contention of learned counsel for the appellant that since the appellant and Sunita knew each other there are improvements in the testimony of the witnesses deserves to be rejected for the simple reason even if appellant and Sunita knew each other and were friendly to each other, on her refusing to marry the appellant he could not compel her to marry him and on a refusal inflict injuries on the vital parts. The appellant has been apprehended at the spot.

9. MLC of the injured was prepared by Dr. Tapeswar Sehgal (PW-9) who found the following injuries on her person:

“-multiple deep cut wounds over left cheek, left neck, back of neck.

Injury No.1- 15 cm long cut wound over left cheek.

Injury No.2- 7 cm long cut wound over left neck.

Injury No.3- two 5-6 cm long deep wounds over back of neck.

Wound is muscle deep.

Active bleedings present from all the wounds.

All wound margins are sharp cut and all wounds were muscle deep.”

10. Contention of learned counsel for the appellant that no opinion on the injuries having been given, the same can be treated as simple injuries only is incorrect for the reason injuries have been opined to be grievous in nature, caused by sharp weapon corroborating version of the injured and the other witnesses.

11. Considering the evidence led by the prosecution, the nature of injuries, the fact that the appellant was apprehended at the spot and that he came prepared with a knife in his hand and inflicted injuries on the vital parts of Sunita, this Court finds no illegality in the impugned judgment convicting the appellant for offences punishable under Section 307/452 IPC and the order on sentence as noted above.

12. Appeal and application are accordingly dismissed.

13. Copy of this order be sent to Superintendent Tihar Jail for updation of records.

14. Trial Court Record be sent back.

(MUKTA GUPTA)
JUDGE

DECEMBER 07, 2017

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