

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

*Judgment Reserved on: December 22, 2017*

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*Judgment Delivered on: January 03, 2018*

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**CRL.A. 559/2016**

SUNDER

..... Appellant

Represented by: Mr. Javed Hashmi, Adv.

versus

STATE (GOVT OF NCT OF DELHI

.... Respondent

Represented by: Mr. Ashok Kr. Garg, APP with  
ASI Hanbir Singh, PS Sunlight  
Colony.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present appeal, the appellant challenges the impugned judgment dated 19<sup>th</sup> April, 2016 convicting him for the offence punishable under Sections 308/427/34 IPC in FIR No. 392/2012 registered at PS Sunlight Colony and the order on sentence dated 26<sup>th</sup> April, 2016 directing him to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹5000/- and in default to undergo simple imprisonment for a period of six months for the offence punishable under Sections 308/34 IPC and rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- in default whereof to undergo rigorous imprisonment for a period of one month for the offence punishable under Sections 427/34 IPC. Four accused namely Sunder, Bablu, Zakir and Gautam were tried on a charge-sheet filed

and vide impugned judgment Zakir and Gautam were acquitted. Bablu though convicted has not preferred an appeal.

2. Learned counsel for the appellant contends that since the intention of the main accused has not been proved, the appellant cannot be convicted with the aid of Section 34 IPC. Furthermore, it is the case of the prosecution that the stab injury was inflicted by Dharmender (declared Proclaimed Offender) and not by the appellant, thus appellant cannot be convicted as above. Alternatively, it was prayed that the appellant released on the sentence undergone.

3. Learned APP for the State on the other hand contends that that the prosecution case has been proved by the testimony of the injured victim Pramod PW-2 and the same is corroborated by his MLC.

4. Sequence of events leading to the prosecution case is a phone call received on 29<sup>th</sup> September, 2012 at 11:55 P.M. from control room stating about stabbing of a person at cremation ground, Sarai Kale Kha Power House. ASI Devendra Singh PW-27 along with a Ct. Vipin Kumar PW-6 reached at petrol pump at Sarai Kale Khan where they got to know about a quarrel which had taken place near Shamshan Ghat. When they reached at the Shamshan Ghat in Yamuna Khadar, they found that the ambulance and PCR were taking the injured to the hospital. HC Mangtu Ram PW-20 took injured Bacchi Singh to Trauma Center, AIIMS, while injured Pramod was taken by CAT Ambulance.

5. ASI Devendra Singh PW-27 found one Eco car DL3 CBL 5160 in a damaged condition and blood was lying at the spot as well as on stones. Thereafter, he reached Trauma Center AIIMS where he found three injured persons namely Bacchi Singh, Pramod Kumar and Varun Kumar. ASI

Devendra Singh seized from the spot the blood earth control and without blood earth control vide seizure memo Ex. PW-6/A, he also seized 12 pieces of stones and pieces of mirror of the Eco car vide seizure memo Ex. PW-6/D.

6. ASI Devendra Singh recorded the statement of Bacchi Singh [Ex. PW-1/A] on the basis of which FIR No. 392/2012 [Ex. PW-12/A] was registered at PS Sunlight Colony for the offences punishable under Section 323/324/427/308/34 IPC. On the basis of secret information he arrested Sunder vide arrest memo Ex. PW-7/A and his personal search was conducted vide memo Ex. PW-7/C. Disclosure statement of Sunder is Ex. PW-7/E. Ct. Mahesh PW-21 took photos of spot from different angles. Photographs are Ex. PW-21/1 to Ex. PW-21/15. Negatives of the same are Ex. PW-21/1A to Ex. PW-21/15A.

7. Bacchi Singh (PW-1) stated that he was a security guard at Armour Security. On 29<sup>th</sup> September, 2012 around 11:45 P.M., when he and Pramod PW-2 went to see the cables lying behind Sarai Kale Khan, four persons came from Cremation ground side, attacked them and threw stones at them. Windscreen of their car was broken. To take shelter, they sat in the car. Pramod tried to start the engine but it could not start. He was hit by something like stone on back side of his head. Pramod was stabbed by those four persons. He did not see the face of the assailants because it was dark. Bacchi Singh resiled from his earlier statement made before the police. During his cross examination, he stated that it was wrong to suggest that he had disclosed to the investigating officer that those assailants called one of them as Sunder saying that “*maro salon ko*” to that Sunder and his associates threw stones upon them due to which they received injuries. He

stated that he cannot say whether the accused persons present in the Court were the same persons who had attacked them.

8. Pramod PW-2 corroborated the version of Bacchi Singh with respect to the incident. He identified the accused persons except one namely Gautam. During his examination and cross-examination, he identified Sunder. He denied the suggestion that Sunder was not among the assailants at spot.

9. Praveen PW-4 resiled from his earlier statement made before the police.

10. Jai Singh PW-9 stated that in the year 2012 (date and month he did not remember) he was working as security guard in Jai Amba and was deputed in the parking of Pushap Vihar. Around 11:00 P.M., he along with one other security guard were present in the parking lot in a TSR. Two persons who were under the influence of liquor came there. They asked them to take them at a destination in that TSR. Both of them told them that they were not the drivers of the TSR. Thereafter, both of them gave them beatings by fists and legs. He could not identify the assailants present in the court.

11. Rajender Singh, Record Clerk, Trauma Center, AIIMS PW-14 identified the signatures of Dr. Pitta Parveen who had prepared the MLC [Ex. PW-14/A] of Varun. As per the MLC, there was laceration of 5 X 1 X 1 CM behind the left ear. Nature of injury was opined to be simple.

12. Dr. Venkat, Senior Resident, Department of Neurosurgery, AIIMS PW-17 stated that on 30<sup>th</sup> September, 2012, he examined Bacchi Singh and prepared his MLC Ex. PW-17/A. As per the MLC, lacerated wounds were found on the occipital and scalp region which were opined to be simple

injuries with blunt object.

13. Dr. Atul Kumar, Sr. Resident, Trauma Center AIIMS PW-25 stated that on 30<sup>th</sup> September, 2012 he had medically examined Pramod and exhibited his MLC as s Ex. PW-25/A. As per the MLC, visible injuries were:

*“Stab (5cm X 2cm X 6 cm laterl aspect of right thigh with swelling of thigh)  
Abrasion ( 5cm X 2 cm medial aspect of left thigh)  
Laceration ( 5 cm X 0.5 cm X 0.5 cm on scalp left fronto-parietal region)”*

Nature of injuries were opined to be grievous in nature and the kind of weapon used was sharp.

14. Ms. Manisha Upadhyaya, Senior Scientific Officer (Biology), FSL, Rohini PW-22 stated that on 5<sup>th</sup> November, 2012 she had received four sealed pulandas and after examination, she prepared two reports Ex. PW-22/A and Ex. PW-22/B. As per the report Ex. PW-22/A, blood was detected on exhibits ‘1’ (one shirt having dirty brown stains), ‘2’ (one wet, foul smelling dirty brownish pants (jeans) and ‘3’ (few dirty brown concrete glass and stone pieces described as earth blood earth). As per the serological analysis report Ex. PW-22/B, human blood of B Group was detected on exhibit ‘1’ (shirt) and human blood with no reaction was found on exhibit ‘3’ (concrete glass and stone pieces).

15. Contention of learned counsel for the appellant that the stab injury was inflicted by Dharmender, who has since been declared Proclaimed Offender, thus appellant cannot be convicted for the same, is of no benefit to the appellant for the reason the case of the prosecution is that all the accused

with the common intention attacked the victims and despite the victims trying to flee away in a car which could not start, the victims were dragged out by the accused and stabbed. Considering the evidence of Pramod who identified Sunder as one of the assailants coupled with the evidence of Bacchi Singh who corroborated the same in material particulars except identifying the accused and that Pramod is an injured witness having received stab injuries opined to be grievous in nature this Court finds no illegality in the judgment on conviction and order on sentence.

16. Appeal is consequently dismissed.

17. Copy of this order be sent to Superintendent, Central Jail Tihar for updation of the Jail record.

18. TCR be returned.

**(MUKTA GUPTA)**  
**JUDGE**

**JANUARY 03, 2018**  
**'yo'**

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