

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

% Decided on: 7th March, 2018

+ **CRL.A. 612/2017**

KIRTI KUMAR @ NIKHIL

..... Appellant

Represented by: Mr. C.M. Thapliyal, Mr. M.P. Shukla, Mr. S.P. Paul, Ms. Kiran Lata Pal, Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Represented by: Ms. Kusum Dhalla, APP with SI Sanjeev Choudhary PS Vasant Kunj (S)

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 9578/2017

Since this court has heard the appeal, application for suspension of sentence is dismissed as infructuous.

CRL.A. 612/2017

1. By the present appeal the appellant challenges the judgment dated 18th March, 2017 convicting him for offence punishable under Section 307 IPC and the order on sentence directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹50,000/- in default whereof to undergo simple imprisonment for two months.

2. The case of the prosecution is that at about 9.34 PM on 5th September, 2015 a PCR call was received that outside House No. 345, Gali No.16,

Rangpuri, Delhi, of stabbing and when the PCR reached it was revealed that Kirti the appellant herein had stabbed on the chest and abdomen of Monu. The said PCR call has been exhibited vide Ex.PW-13/A wherein the name of the appellant and the injured are specifically mentioned. Before the PCR could reach the spot, parents of injured had taken him to the hospital as is also evident from the MLC Ex.PW-8/A.

3. FIR No.990/2015 was registered at PS Vasant Kunj on the complaint of Raj Kumar (PW-1) father of the injured who stated he was working in MCD Dispensary, Najafgarh as a Ward boy. Around 9.30 PM his son Sandeep was standing outside the house. He called his son inside the house to have dinner. In the meantime Kirti who lived as a tenant in the neighbourhood came with the knife in his right hand and started abusing his son Mandeep, stating that why he was interfering and standing over there and that he would finish him. On this his son asked Kirti not to abuse. Kirti from his right hand inserted the knife in the chest and left side of his son and twisted the same inside and left the knife as it is. The complainant called his elder son Sandeep who caught Kirti at the spot and in the meantime he took his son to Indian Spinal Injuries Centre.

4. Version of the complainant that he took his son Mandeep to the hospital is supported by the MLC Ex.PW-8/A and also the testimony of Dr. Jahedur Rehuman Chaudhary (PW-8) who examined Mandeep, S/o Raj Kumar at 9.55 PM on 5th September, 2015 in the hospital and noticed the following injuries:

- “i) On chest 5 cms below clavical size 4 x 2 cms CLW.*
- ii) Lateral to injury number 1 size 6x4 cms CLW.*
- iii) Left side abdomen CLW with knife in situ.”*

5. Dr. Preetesh Sahani (PW-3) on seeing the MLC opined the injuries to be dangerous in nature. In the MLC Ex.PW-8/A the diagram of the injuries on the injured has also drawn up which corroborates the version of the complainant who stated that after giving knife blows, the knife was twisted inside and thereafter left in the body.

6. PW-4 injured Mandeep Singh also deposed before the Court and stated as under:

“On 05.09.2015 at about 9.30 PM, he was standing outside his house when his father came towards him and asked him to come inside to have dinner to which he told him he would come inside in 5 minutes. He stated that the appellant (Kirti Kumar @ Nikhil) came towards him with a knife in his hand and started abusing him and told him that since he used to tell him not to stand in front of the gate he would teach him a lesson- ‘Kamm Tamam Kar Dunga’. On his objection to the appellant hurling abuses, the appellant attacked him with the knife on his chest, stomach and on the left side near his kidneys, thereafter, he twisted the knife while it was inside and then left it there. He then raised an alarm to which his elder brother Sandeep came there and the appellant was apprehended by the passersby. He stated that the appellant was beaten by the public and his brother Sandeep freed the appellant from the clutches of the public and thereafter caught hold of him. His father had then taken him to the Indian Spinal Injury Centre in Vasant Kunj.

He corroborated with PW-1’s statement regarding them receiving threatening calls near the court dates by one person who gives his name as Ram Kishan.”

7. Challenge of learned counsel for the appellant to the impugned judgment of conviction is that no public person was associated. Secondly the site plan differs from the ocular version. There are contradictions in the testimony of PW-1, PW-4 and PW-9 and that the alleged weapon of offence

i.e. the knife has not been produced nor exhibited in the Court.

8. Learned counsel for the appellant has taken this Court through the site plan and states that in cross-examination PW-1 admitted that Mandeep was standing in front of the house of Inder and not his own house. A perusal of the site plan Ex.PW-1/B reveals that complainant's house is opposite Inder's house, thus if a person is standing on the road he would be in front of the house of both the complainant as well as Inder.

9. Appellant was apprehended at the spot as is evident from the testimony of Sandeep (PW-9) the elder brother of Mandeep who caught him at the spot and handed him over to the investigating officer and HC Ajay Kumar. No doubt, the investigating officer did not produce the knife in the Court nor exhibited the same but in view of the testimony of the injured witness and eye-witness whose presence at the spot cannot be doubted as he immediately took the injured to the hospital and the fact injuries have been opined to be dangerous in nature, the non-exhibiting of the knife cannot be held to be fatal to the case of the prosecution.

10. Considering the evidence on record this Court finds no infirmity in the impugned judgment of conviction or order on sentence. Appeal is accordingly dismissed.

11. Copy of judgment be sent to the Superintendent Jail for updation of the records.

12. Trial Court Record be sent back.

(MUKTA GUPTA)
JUDGE

MARCH 07, 2018
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