

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

CRL.A. 229/2013

Reserved on : 19.07.2019

Date of Decision : 27.08.2019

IN THE MATTER OF:

MOHD. ANIS

..... Appellant

Through : Mr. Vidur, Mr. Apurv and
Ms. Sanjeevni Mittal Jain, Advocates

versus

STATE

..... Respondent

Through : Ms. Kusum Dhalla, APP with
Insp. Ratnesh Kr. and ASI Suresh Kr.,
New Delhi

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings are instituted challenging the judgment on conviction dated 14.01.2013 passed by ASJ-03(NE), Karkardooma Courts, Delhi arising out of SC No.115/10 in FIR No.24/08 registered under Section 307 IPC at P.S. New Usmanpur, Delhi whereby the appellant was convicted for an offence punishable under Section 307 IPC and vide order on sentence dated 15.01.2013, the appellant was directed to undergo RI for two years with a fine of Rs.5,000/-, in default of which, the appellant was directed to undergo RI for a period of six months. The benefit of Section 428 Cr.P.C. was granted to the appellant.

2. The facts of the prosecution case, as noted by the trial court, are:

“That on 27.01.08 on receipt of DD no. 23A HC Jagbir Singh along with Ct. Mehboob Ali reached the spot i.e. gali no. 20, H. no. R/118, Brahmpuri, Delhi where he came to know that the injured had already been removed to GTB hospital by PCR van. HC Jagbir Singh along with Ct. Mehboob Ali reached GTB hospital and collected MLC no. C-377/08 of injured Noorjahan and the MLC showed the alleged history of assault and patient was declared fit for statement. Statement of Noorjahan w/o Anis r/o H. no. R-118, Gali no. 20, Brahmpuri, Delhi aged 30 years was recorded wherein she disclosed that due to strained relationship with her husband i.e. accused Anis she had been living along with her children at her parental home i.e at Jhuggi no. 7, near S Block, Patel nagar. On 27.01.08 she had come to Aggarwal Electronics to pay the installment of washing machine at D-23/5, Chauhan Banger, Seelampur, Delhi. When she came out of the shop after making payment her husband i.e. accused Anis met her there. He took her to his home at H. no. R-118, Gali no. 20, Brahmpuri, Delhi. At about 8.00 PM he started abusing her and told her that he had married another woman and she should take away all her clothes and belongings. He further threatened her by saying that "mai tujhe saal bher se apne maa baap ke sath rehne ka maja chakhata hoon. Aur abhi tera kaam tamam ker deta hoon" (I will teach you a lesson for staying with your parents for the past 1 year. I will kill you). He took out a knife from the pocket of his pants and attacked her. She raised alarm for help. The accused fled away from the spot. Some body called the police at no. 100. She was removed to GTB hospital in a PCR and she wanted that legal action be initiated against accused Anis. HC Jagbir Singh put his endorsement on the rukka and got the FIR registered u/s 307 IPC. Further investigation was handed over to SI Naval Singh who got the spot photographed, prepared site plan at the instance of complainant. He also collected the blood which was lying at the spot by cutting vinyl floor covering on which the blood had fallen. He also seized Salwar, kurta and bra of the injured which were having bloodstains. He

recorded supplementary statement of the complainant, also took into possession photocopy of her Nikahnama and photographs. Accused was arrested on 07.02.08. His disclosure statement was recorded. He could not get the knife recovered. The exhibits were sent to FSL and after completing other necessary formalities charge sheet was filed against the accused u/s 307 IPC.”

3. After completing the investigation, a charge-sheet was filed. During the trial, the prosecution examined 15 witnesses. The complainant (estranged wife of the appellant) was examined as PW-2. Two independent witnesses, who were the neighbours i.e., Babloo and Rihana, were examined as PW-1 and PW-6 respectively. Dr. Parmeshwar Ram, who proved the MLC of the injured, was examined as PW-13. Dr. V. Shankar Narayanan, Sr. Scientific Officer (Biology) to prove the FSL report, was examined as PW-15. SI Naval Singh, the Investigating Officer was examined as PW-14.
4. The other witnesses who were examined related to various stages of investigation, the nature and purpose of their examination was noted by the trial court as under:-

“The other witnesses examined by the prosecution are police officials. PW5 Ct. Noorjahan took the injured to hospital. Doctor handed over preserved blood sample of the injured to her which IO seized vide memo Ex. PW-5/A. PW-9 Ct. Mainpal and PW-10 HC Jasbir Singh MHC(M) are formal witnesses. PW-11 Mohd Aslam is photographer who proved photographs mark C-1 to C-5 as Ex. Pw-11/A (collectively) and the negatives of the same are Ex. PW-11/B (collectively). PW-12 HC Jagbir Singh was the first IO who reached at the spot on receipt of DD no. 23A Ex. PW-3/C. He went to GTB hospital, recorded statement of injured Ex. PW-2/A and made endorsement on the same vide Ex. PW-12/A. PW-14 SI Naval Singh is the IO of the case to whom the investigation was

marked. He prepared site plan Ex. Pw-14/A. He recorded statement of Babloo and Rihana vide Ex. Pw-14/C and Pw--14/D. He proved the FSL report as Ex. PW-14/X and Y. PW-8 HC Netra Pal Singh joined investigation with SI Naval Singh on 07.02.08 when the accused was arrested."

5. The chronological sequence of the events surrounding the incident was noted by the trial court as under:-

<u>"Dates</u>	<u>Events</u>
<i>At 8.00 PM on 27.01.08</i>	<i>The injured Noorjahan was attacked with the knife by her estranged husband accused Mohd Anis.</i>
<i>At 8.43 p.m. on 27.1.08</i>	<i>DD no. 23A was received that 'gali no. 21 Brahmpuri Usmanpur main road per ek aurat ko ooske husband ne chaaku maar diya'.</i>
<i>At 9.20 p.m. on 27.1.2008</i>	<i>The injured was examined at GTB hospital vide MLC Ex. Pw-13/A, as per which nature of injuries received by her was simple.</i>
<i>At 00.20 hrs on 28.01.2008</i>	<i>FIR Ex.PW3/A was registered.</i>
<i>On 28.1.08</i>	<i>Site plan Ex. PW-14/A was prepared.</i>
<i>At 7.00 PM on 07.02.08</i>	<i>Accused was arrested from old Delhi Railway Station parking TSR vide Ex. PW-4/A and B.</i>
<i>On 25.7.08</i>	<i>FSL report Ex. PW-15/A and B was prepared which showed blood on pieces of plastic mat (Exhibit '1'), lady's shirt (Exhibit '3a'), brassier (Exhibit '3b') and Salwar (Exhibit '3c'). The blood was of 'B' group on Ex. 3b and 3c."</i>

TESTIMONY OF THE INJURED:

6. The complainant was examined as PW-2. She deposed that on the day of the incident she had gone to one "Aggarwal shop" in Brahmpuri,

Seelampur to pay the instalment of the Washing Machine. The appellant (her husband) used to live in the neighbourhood at H. No. R-118, Gali No.20, Brahmpuri. He met her outside the said Aggarwal shop and asked her to come to his house and remove her belongings as the appellant had got married to another lady. The complainant went along with the appellant where she was assaulted with a knife in her stomach and chest. She further deposed that although she had no quarrel with the appellant at that time or even prior, the appellant had said that he will get her killed. She further deposed that when she raised the alarm, the neighbours came inside the house to intervene. Thereafter, the appellant ran away along with the knife. She also deposed that her statement (Ex.PW-2/A) was recorded, which bears her thumb impression at point A. During her testimony, she also exhibited the seizure memo of her clothes which were seized during the investigation as Ex. PW-2/Article 1 to 3.

7. During the cross-examination, the complainant stated that she remained with the appellant for 4/5 years after the marriage. She further stated that the appellant met her at the shop of “washing machines” where she had gone to pay the installment for the washing machine. She stated that the incident had happened at 8:00 pm. She also stated that 2/3 months prior to the incident, she had stayed at her maternal house. A suggestion was given that the injuries were self-inflicted to falsely implicate the accused, which was denied.

8. In the cross-examination, a suggestion was given that after inflicting injuries on herself, the complainant had called the police after coming down stairs. Another suggestion was given to the witness that

the appellant used to request her to join the matrimonial home and to look after the children but the complainant did not come, the said suggestion was denied.

MATERIAL WITNESSES

9. Babloo, a neighbor residing near the appellant's house i.e, at Gali No.20, Brahmpuri, Usman Pur, Delhi, was examined as PW-1. Although he was declared hostile yet in his examination-in-chief, he deposed that on the day of the incident, he met the complainant at the place of the incident at 9:30 pm. He also deposed that the complainant was injured and bleeding from her hand. She was saying "*mar gaya mar gaya*". The injured had made a call to the police and was taken to GTB Hospital.

10. During the cross-examination by the learned APP for the State, the witness admitted his signatures on the seizure memo of the clothes (Ex.PW-1/A). However, in his examination-in-chief, he had stated that his signatures were taken on the blank papers.

11. During the cross-examination by the learned defence counsel, the witness stated that the complainant had met him at a distance of 50-60 yards.

12. Rihana, another neighbour, R/o. H. No.118, Gali No.20, Brahmpuri, Delhi, was examined as PW-6. She deposed that while she was returning from her mother's house at about 9:30 pm, she saw the police officials in front of the house of the complainant. She came to know that some quarrel had taken place with the complainant. The complainant was not present there. She did not recollect the date. She

was declared hostile and during cross-examination by the learned APP for the State, she admitted that the quarrel happened on 27.01.2008.

MLC

13. The complainant was taken to GTB hospital by the PCR officials, where she was medically examined on 27.01.2008 at 9:20 pm with the alleged history of assault. The MLC recorded that the complainant was brought by HC Vikram. The following injuries were noted on her person:-

- “(i) Incised wound of 2 x 1 cm and 1 x 1 cm on right side of abdomen.*
- (ii) Incised wound of 1 x 1 cm on episternum.*
- (iii) Incised wound of 2 x 1 cm and of 1 x 1 cm on right breast.*
- (iv) Incised would of 1 x 1 cm and 1 x 1 cm on left side of umbilicus.”*

14. The nature of injuries was opined as simple.

15. Dr. Parmeshwar Ram, CMO, GTB Hospital, Delhi appeared as PW-13 and proved the said MLC. He identified the signatures of Dr. Ashar, who had prepared the MLC.

FSL

16. During the investigation, the Investigating Officer had seized pieces of plastic mat from the house of the appellant as well as clothes of the complainant, i.e. lady's shirt, salwar and a bra having brown stains. As per the result of FSL analysis, blood was detected on the piece of the plastic mat and the clothes of the complainant. Although, as per the serological report, the blood of group 'B' was noted on the salwar and

the bra, but no grouping could be obtained on the plastic mat and the lady's shirt.

17. I have heard learned counsels for the parties and have also gone through the case records. Learned counsel for the appellant contended that the statements made by the complainant are full of improvements and contradictions; that there are contradictions in the statements of witnesses as to the place of incident; that the injuries were self-inflicted as is apparent from the size and the nature of the injuries; that there are contradictions in the statements of the witnesses about the place of arrest of the accused; that the leading questions ought not to have been permitted to be asked to PW1 and lastly that the knife, the alleged weapon of offence was not recovered.

18. Learned counsel for the appellant has placed reliance on Jagdish Vs. The State, reported as **1987(12) DRJ 136**, Manoj Kumar Vs. The State, reported as **114(2004) DLT 511**, Sajjan Kumar Vs. State, reported as **2009 SCC OnLine Del 618** and Gula and Ors. Vs. State of Orissa reported as **2007 CriLJ 2582**. He also placed reliance on the Medico-Legal Aspects of Wounds, 'Modi's Textbook of Medical Jurisprudence and Toxicology, 23rd edition.

19. Ms. Kusum Dhalla, learned APP for the State, on the other hand, has supported the impugned judgment. She contended that the incident was first reported vide DD No.23A (Ex.PW-3/C) which mentions that the place of the incident was the house of the appellant.

ANALYSIS

20. From a perusal of the suggestions given in the cross-examination as well as examination of the appellant under Section 313 Cr.P.C., it

stands proved that the complainant was not residing with the appellant at his H.No. R-118, Gali No.20, Brahmpuri, Delhi. On that day, she had gone to one “Aggarwal shop” in Brahmpuri, Seelampur where the appellant met her.

21. From the testimony of Babloo, an independent witness, although declared hostile, it stands proved that he had seen the complainant outside the house of the appellant on 27.01.2008 at 9:30 pm. He had accompanied the complainant to the hospital. The complainant was examined in the hospital at about 9:20 pm, the time recorded in the MLC.

22. From the house of the appellant, a plastic mat (Exhibit-1) was seized having brownish stains. PW-11 proved the photographs (Ex. PW-11/A) taken at the house of the appellant which showed the presence of blood on the first floor of the house. Although in the FSL result, no grouping could be obtained, however, human blood was found on it. From a combined reading of the testimony of the complainant, the neighbor Babloo and the MLC, it can be safely concluded that the prosecution has been able to prove that the complainant got injured at the house of the appellant on 27.01.2018 at about 9-9:30 pm. It also stands proved that the complainant was not living with the appellant and was staying at her parental home.

23. Learned counsel for the appellant has doubted the presence of the complainant at the place of incident. However, neither in the cross-examination nor during his statement recorded under Section 313 Cr.P.C., he denied his own presence at the place of incident. The

presence of the complainant at the place of incident, as noted above, was corroborated by the independent witness, Babloo.

24. Learned counsel for the appellant further contended that the injuries were self-inflicted. Although a suggestion to this effect was given to the complainant, however, such suggestion was not given to the doctor when he was examined to prove the MLC. As the complainant was not staying with the appellant, she had no motive to cause injuries on herself to falsely implicate the appellant.

25. Learned counsel for the appellant has relied upon a decision rendered in Sajjan Kumar Vs. State reported as **2009 SCC OnLine Del 618** to contend that it was prosecution's duty to prove that the injuries were not self-inflicted and in support of his contention he has relied upon 'Modi's Textbook of Medical Jurisprudence and Toxicology, 23rd edition as referred above. This Court finds itself in complete disagreement with the contention raised by learned counsel for the appellant. The prosecution's case was that the appellant had inflicted injuries on the complainant with a knife. The onus was on the appellant to prove that the injuries of the complainant were self-inflicted. Not a single question was put to the expert witness, who had proved the MLC during the trial, as to whether the injuries were self-inflicted. In Sajjan Kumar (supra), the injuries were appearing on the hand of the appellant himself and not on the complainant. In that view, the decision was rendered holding injuries on the hand of the appellant were self-inflicted. As such, the decision is not applicable in the facts of the present case.

26. Learned counsel for the appellant has also contended that there are discrepancies in the testimony of the complainant and the witnesses as to

the exact place of the incident. Whereas the complainant deposed that the injuries were caused inside the house, PW-1 in his cross examination conducted on behalf of the appellant, deposed that he saw the complainant at a distance of 50-60 yards. Considering the nature of the evidence that has come on record, the inconsistency, as pointed out, is not material in nature.

CONCLUSION

27. The testimony of an injured witness stands on a higher pedestal as it guarantees her presence at the scene of the crime. Reference in this regard is made to a decision rendered by the Supreme Court in Bhajan Singh and Ors. Vs. State of Haryana reported as **AIR 2011 SC 2552** as under:-

“21. 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 at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness 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”. Thus, the evidence of an 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.”

28. The testimony of a hostile witness is not to be discarded completely. The part of the evidence which is cogent and credible can be relied upon. Reference in this regard is made on the decision rendered in Himanshu @ Chintu Vs. State of NCT of Delhi reported as **(2011) 2**

SCC 36 and Koli Lakhman Bhai Chana Bhai Vs. State of Gujarat reported as **(1999) 8 SCC 624**.

29. The testimony of the complainant, an injured is credible and trustworthy. Her presence at the spot is proved by the testimony of an independent witness. The MLC corroborates the testimony of the complainant about the incident as well as the timings. The prosecution successfully proved that the appellant caused injuries to the complainant on 27.01.2008 at his house. As such, non-recovery of knife, is of no significance in the facts of the present case.

30. Whether an accused has the requisite intention for the offence punishable under Section 307 IPC, can be gathered from the attending circumstances of the case. In Sarju Prasad Vs. State of Bihar reported as **AIR 1965 SC 843**, it was held as under:-

“9. It is true that the witnesses say that the appellant used a chhura. It is also true, that the injury was inflicted on a vital part of the body but the fact remains that no vital organ of the body was injured thereby. Again, we do not know how big the chhura was and, therefore, it cannot be said that it was sufficiently for to penetrate the abdomen deep enough to cause an injury to a vital organ which would in the ordinary course of nature be fatal. The chhura could not be recovered but the prosecution should at least have elicited from the witnesses particulars about its size. We are, therefore, unable to say with anything near certainty that the appellant had such intention or knowledge. Incidentally we may point out that Shankar Prasad does not say that after he released the wrist of Sushil the appellant inflicted or even tried to inflict any further injury on him.”

31. The Supreme Court in Jage Ram and Others vs. State of Haryana reported as **(2015) 11 SCC 366**, while affirming the conviction of Jage

Ram for having caused grievous injury on the injured, under Section 325 IPC, held as under:-

“12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused. Such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature and severity of the blows given etc.”

32. Even in the decision relied upon by the learned counsel for the appellant rendered in Manoj Kumar (Supra), it was held as under:

“18. One fact that stands out, that out of 3 incised wounds, two were skin deep. Only 1 was deep and penetrating. This shows that either intensity of the force used was weak, or the length of “Sua” was small.

19. If the injuries are reflected of the intention, evidenced by weakness of the thrust, it certainly rules out intention to cause death of the injured.”

33. In view of the above enunciation of law, the requisite intention for the offence punishable under section 307 IPC can be gathered from the nature of the weapon used, situs of the injury, severity and persistence of the blows including the number of blows, nature of injury, words spoken by the accused at the time of the incident alongwith other attending circumstances.

34. In the light of the evidence that has come on record, the nature of the injuries and the fact that no vital organ of the body was injured and also that the injured was discharged from the hospital on the same day, it cannot be said with certainty that the appellant had the intention as required in the offence punishable under Section 307 IPC.

35. At the same time, it has been proved on record that the appellant had nevertheless, caused injuries to the complainant. A perusal of the MLC shows that the injuries were caused by a sharp weapon however, the same were opined to be simple in nature.

36. The conviction of the accused under 307 IPC is set aside. Instead, the appellant is convicted for the offence punishable under Section 324 IPC. The appellant is sentenced to undergo RI for a period of 6 months. The fine of Rs. 5000/- has also been paid. As per the Nominal Roll dated 10.07.2019, the appellant has undergone 3 months and 4 days as on 15.01.2013. The appellant's bail bonds are cancelled and he is directed to surrender before the concerned court within a period of 2 weeks from today to undergo the remaining sentence.

37. A copy of this judgment be sent to the trial court. Trial court record be sent back.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 27th, 2019
na