

\$~R-7AB

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 7th January, 2019

+ CRL.A. 233/2018

ABDUL REHMAN @ GHOSHU Appellant

Through: Mr. Nilanjan Bose, Advocate/
DHCLSC

versus

STATE Respondent

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

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On the basis of report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted upon conclusion of investigation into first information report (FIR) No.1087/2014 of Police Station Jahangir Puri, the appellant herein was put on trial in the court of Sessions (new Sessions Case No.58507/2016 and Old No.57/2015) on the charge for offences punishable under Sections 307 and 201 of Indian Penal Code, 1860 (IPC), the gravamen whereof was that on 21.12.2014 at about 9:00p.m. in the area described as public street in CD Park, Jhuggi No.38A-77 in front of Sabri Langar, he had intentionally caused knife injury in the lower abdomen of Fazlu (PW-3) with the intention and knowledge and under such circumstances that if the said injury had resulted in death of Fazlu, he would have been guilty of committing

the offence of murder and subsequently committed certain acts of commission by throwing his own bloodstained clothes and the weapon of offence (knife) into a moving motor vehicle (tempo) with the intention of causing the evidence to disappear so as to screen himself from legal punishment.

2. The court of sessions, upon conclusion of the trial, rendered its judgment on 15.12.2017 finding the appellant guilty, as charged, and thereafter by order dated 20.12.2017 awarded punishment in the form of rigorous imprisonment for seven years with a fine of Rs.15,000/- for offence under Section 307 IPC and rigorous imprisonment for two years with fine of Rs.10,000/- for offence under Section 201 IPC, directing that, in the event of default in payment of fine, he would further undergo simple imprisonment for six months and five months respectively, both the substantive sentences having been directed to run concurrently, the benefit of set off in terms of section 428 Cr.P.C. also extended.

3. Feeling aggrieved by the judgment returning the finding of guilty and convicting him and the order on sentence meting out the punishment as stated above, the present appeal has been filed, the prime submission of the appellant being that he has been falsely implicated, there being no role on his part in inflicting any injuries to PW-3 Fazlu (the victim), the evidence of said person being intended with a design to falsely frame him, the injuries suffered by him being self-inflicted.

4. The learned counsel for the appellant and Additional Public Prosecutor for the State have been heard at length and with their assistance the trial court record has been carefully gone through.

5. There is ample evidence on record to show that Fazlu did suffer serious stab injury which was life threatening, sometime around 9:00 p.m. on 21.12.2014, the incident wherein he had suffered the said injury being a locality where there is a slum cluster, wherein he and the appellant would live. There is ample evidence to show that the stab injury had caused such extensive damage to the insides that the intestines (bowel) had come out.

6. The first intimation about incident wherein such stab injury was inflicted had come through police control room (PCR), it having been recorded vide DD No.37-A (Ex.PW-4/A) a copy whereof has been proved by Constable Satya Prakash (PW-4), who along with ASI Ashok Kumar (PW-15) were deputed to proceed to the spot and make inquiry, it leading eventually to registration of the FIR. The victim was taken to Babu Jagjivan Ram Memorial Hospital (the hospital) by his relative Iqbal (PW-7), who apparently was not at the scene, at the crucial time of the incident, inasmuch as no witness would mention his presence at that stage. In the hospital the medical examination was conducted by Dr. Farookh Ahmad, Junior Resident followed by further examination by Dr. Devender, Senior Resident. By the time trial commenced, both the said doctors had left the services of the hospital and their immediate whereabouts being not known in their lieu, Dr. Gopal Krishan (PW-8) Chief Medical Officer of the hospital,

acquainted with their writings and signatures, proved the MLC (Ex.PW-8/A). The correctness of the evidence adduced through PW-8 has not been questioned. It would clearly establish, beyond all manner of doubts, that the victim had been brought to the hospital by PW-7 by 9:45 p.m. on 21.12.2014 and thus in about three quarters of an hour of the injury being inflicted. The victim was conscious and oriented. The MLC would show there had been no loss of consciousness, seizure or vomiting. The local examination indicated a stab wound in left iliac fossa, the bowel having come out through the wound site. This was confirmed by the senior resident in his notes on the MLC itself, owing to the conditions in which the victim had been placed he having been referred to LNJP hospital for further management. The MLC would also show that the victim (PW-3) was unfit for statement as is the import of the certificate recorded at 2:00 a.m. on 22.12.2014.

7. The medical record was subjected later for opinion to be formed as to the nature of injuries. This opinion was recorded by Dr. Meena, who has also left the services of the hospital and in her lieu Dr. Ronal Kori (PW-11) proved the endorsement on the MLC confirming the injury to be “grievous”.

8. Though the prosecution had not formally introduced the said document in evidence at the trial, at the hearing on the appeal, the counsel for the appellant sought reference to discharge summary issued by LNJP hospital on 26.12.2014, it being part of the trial court record (page 255). It may be noted here itself that as per the discharge summary, the victim was found to be in a state where he had suffered

the injury at the time when he had consumed alcohol, though the level of consumption of alcohol was never tested or analyzed. Be that as it may, the discharge summary would also show that the injury suffered was *“laceration of size 3x1x2 cm in the left iliac fossa 5 cm lateral and 3 cm below the umbilicus”*, it being a case of *“peritoneal breach with bowel loops palpable on inserting finger”*. Though the medical opinion would not expressly say so, it only opining that the injury was “grievous”, it does not call for much imagination that the injury was indeed life threatening. The stab wound of such nature in such part of the body, as required surgical management, possible cut to the intestines could have resulted in excessive loss of blood proving mortal.

9. The victim was apparently not in a fit state to make statement, he being under the care of medical doctors who were attending on him. When PW-15 (the first investigating officer) accompanied by PW-4 had reached the spot, upon receipt of DD No.37-A, the victim had already been shifted to the hospital. They called in the crime team which consisted of SI Rajender Singh (PW-2) and Head Constable Manoj Kumar (PW-1), the former being the officer in-charge of the team and the latter being the photographer attached thereto. It is clear from the evidence of these two witnesses that no blood was found spilled at the spot. This was duly noted in the crime team report (Ex.PW-2/A). PW-1 took four photographs of the scene which have been proved as Ex.PW-1/A (collectively), the same having been developed with the help of digital camera and, thus, supported by

certificate (Ex.PW-1/B) under Section 65-B of the Indian Evidence Act, 1872. The photographs are not of much help in evaluating the case for the prosecution in so far as the complicity of the appellant is concerned. Their relevance is only to the extent that the scene as described at the first instance was a jhuggi cluster in front of a mosque, it being the period of winter when everyone around would generally be in heavy woolen clothing.

10. PW-15 testified that when he had reached the hospital for follow up, he was met by Sheikh Aslam (PW-9) who introduced himself as an eye witness. He recorded the statement (Ex.PW-9/A) of Sheikh Aslam and on that basis found that the injury had been inflicted intentionally by the appellant, he having been mentioned by his name and full description including the particulars of his residence. PW-15 made an endorsement (Ex.PW-15/A) and sent the *rukka* to the Police Station through PW-4. This fact is confirmed by PW-4 as also by Head Constable Harender Kumar (PW-5), who was posted as the duty officer in the Police Station, later proving the FIR (Ex.PW-5/B).

11. There is no reason why the aforementioned sequence of steps taken by the police in inquiry leading to registration of the FIR should be disbelieved. The FIR, thus, had come to be recorded by 10:40 p.m. on 21.12.2014, in less than two hours of the occurrence.

12. As per the version of the first informant (PW-9), set out in the FIR, he was present at the scene with neighbour Ijul (PW-6), both of them having noticed at about 9:00 p.m. on 21.12.2014, the appellant using abusive language against the victim (PW-3) who was protesting

reminding the former that he was married to his sister. The abuses, as per the FIR, led to PW-3 giving a push to the appellant who continued using filthy language and then having proceeded to his house declaring that he would teach him a lesson (*aaj tujhe maza chakhake rahunga*). It was alleged in the FIR that the appellant thereafter came back on the scene with a serrated knife and uttered the words, to the effect he would not be spared (*aaj tujhe nahi chorunga*). He inflicted stab injury into the left side abdominal region of PW-3, but before he could inflict another stable wound, those present including the first informant intervened and caught him. The first informant would also state that since the focus shifted on the victim (PW-3) being taken to hospital, the appellant got himself free from their clutches.

13. The prosecution case indicates that PW-3 remained unfit for statement even on the next date. This has to be believed inasmuch as the nature of injury was such that the surgical procedure that had to be performed would have precluded any access to him for the investigating agency. During the interregnum, however, the trousers (Ex.P1) of the victim which statedly had been removed from his person on account of it having been covered in bloodstains, were handed over to PW-15 by Siraj (PW-10), the brother of the victim on 22.12.2014, the seizure memo (Ex.PW-4/B) in this regard being endorsed as attesting witness by PW-4. This piece of evidence, in view of the narration that the trousers were bloodstained, would have been a crucial corroborative material. But then, unfortunately the investigating agency did not use it for its optimum value. The trousers

(Ex.P1) were not sent for any forensic examination. There is, thus, no corroboration from any quarter that the stains on the trousers (Ex.P1) were actually stains of the blood that would have spilled on account of stab injury suffered by PW-3 in the incident.

14. The evidence of PW-15 would show that though he had made efforts to trace the appellant but there was no immediate success. The investigation remained with him till SI Naveen Kumar (PW-14) would take it over on 01.01.2015. As per the evidence of PW-14, the appellant was apprehended, upon secret information, on 03.01.2015 in the area of Kushal chowk, Jahangir Puri, he having been formally arrested by memo (Ex.PW-13/A) in the presence of Head Constable Uday Bhan (PW-13), the beat constable of the area. Though the prosecution would also refer to a disclosure statement made by the appellant (vide Ex.PW-13/C) and the memo (vide Ex.PW-13/D) indicating he having pointed out the place of occurrence, such part of the documentary material submitted in the course of trial deserves to be kept aside inasmuch as the same is hit by provisions of Sections 24 to 27 of the Evidence Act.

15. The prosecution brought the case before the criminal court primarily on the strength of the version of the victim (PW-3) seeking corroboration from the accounts given by Sheikh Alam (PW-9) and Ijul (PW-6), the latter two being presented as eye-witnesses. PW-6 and PW-9, however, did not fully support the prosecution version, particularly about the role attributed to the appellant in the crime, they having been declared hostile and subjected to cross-examination.

While PW-6 was cross-examined, primarily on the basis of statement (Ex.PW-6/A) under Section 161 Cr.P.C. attributed to him, the cross-examination of PW-9 was based on his statement (Ex.PW-9/A) which was the foundation of the FIR itself. It is not that both the said witnesses do not support the prosecution case at all, they do confirm that PW-3 had suffered knife injury. They also do confirm that both of them were residents of the same jhuggi cluster, the locality where both the appellants and the victim would also reside. It comes out vividly in the course of statement of PW-3, PW-6 and PW-9 that all of them, as indeed the appellant, would live, in close vicinity. The evidence that the place where PW-3 was attacked is only one minute walk away from his jhuggi has gone unimpeached. Similarly, his statement that the appellant resided 8-10 jhuggi away from his jhuggi has also not been assailed.

16. PW-6 and PW-9 do confirm that knife had been used in inflicting injury on the person of PW-3. Both of them attributed certain outcry, PW-6 attributing it to the victim himself. As per PW-6, the victim had used the expression “*chaku lag gaya*”, while PW-9 would state that he had heard the words “*chaku maar diya*”. Indeed, both expressions are different but then, their import was not necessarily different. The fact that PW-9 is signatory to the statement (Ex.PW-9/A) wherein he had informed the police, made in less than two hours of the occurrence, that he had himself seen the appellant inflicting the knife injury on the person of the victim and yet he turned hostile disowning the said statement, without giving any plausible

explanation as to why the FIR would show facts to the contrary, indicates that the denial made in which he had come to the witness box may not be the entire truth. PW-3 has deposed at the trial affirming the facts as stated in his original statement to the police, though recorded after he had been discharged from the hospital, it coinciding fully and substantially with the original version of PW-9 in the FIR.

17. Having gone through the statements of PW-3, PW-6 and PW-9, as indeed the statement under Section 313 Cr.P.C. of the appellant, certain indisputable facts stand out which may be taken note of before proceeding further. The appellant is married to Savera, cousin sister of PW-3. There had been matrimonial discord on account of which Savera had left the company of the appellant 10-15 days prior to the incident, she having gone to her native place in Bindapura, West Bengal where most of her parental family would live. On account of matrimonial discord between the appellant and his wife Savera, the relationship between the appellant and the victim (PW-3) was also strained. It is in this context that the PW-3 would refer to the sequence of events leading to the stabbing incident on 21.12.2014.

18. PW-3 took it on himself to have initiated the discussion by trying to show reason to the appellant, asking him to set his domestic affairs in order. He would testify that the appellant instead had started abusing and beating him and had given him a push in the course of which the appellant also slipped. Given the original version in the FIR, it may be assumed that the physical push may have been given

for the first time by PW-3 to the appellant. Be that as it may, the victim (PW-3) would tell the court in his testimony that the appellant had left the place extending threats to teach him a lesson and, thereafter, had returned with knife with which he had given him the injury in the stomach. He would state that he had raised noise and PW-6 and PW-9 had come to his rescue and seeing his condition (his intestines having come out), they had left the appellant alone and took him to the hospital while the appellant fled away with the knife from the spot.

19. During cross-examination of PW-9 by the prosecution, he having been confronted with his statement (Ex.PW-9/A), the witness conceded that the appellant was abusive towards the victim who was telling him not to harass his sister. It was brought out that a number of public persons were present at the scene. During cross-examination of PW-3 it was suggested on behalf of the appellant to him that he (the victim) himself had intentionally gone to the place with a knife to teach a lesson to the appellant and further that the knife injury was suffered by him due to a fall in the course of grappling with the appellant. The witness denied the said suggestions as incorrect.

20. During the statement under Section 313 Cr.P.C., the appellant pleaded ignorance as to the circumstances in which PW-3 had suffered injuries, denying the evidence indicating his role, claiming that he had been falsely implicated due to matrimonial “*misunderstanding*” on part of the family members of his wife. The appellant did not lead any evidence in defence.

21. It is clear from the record that the trial Judge found the evidence of PW-3 to be worthy of reliance, the hostile evidence of PW-6 and PW-9 being inconsequential. Accepting the version of PW-3, the finding of guilty has been returned on the two counts mentioned earlier.

22. It is the submission of the counsel for the appellant that given the fact that PW-6 and PW-9 have not supported the prosecution case, the sole word of PW-3 should not be believed. It is the argument that in absence of corroboration from any independent witness, particularly when public persons were present at the scene, the court must extend benefit of doubts. It is argued that it is strange that no blood was found at the scene and further that there is no corroboration of any blood stains having been suffered on the wearing apparels, such material not having been produced or proved. It is further the submission of the appellant that it is not believable that a victim having suffered such an injury would have first gone to his residence, far away from the scene, to remove his trousers before being shifted to the hospital rather than being immediately rushed to the hospital – the evidence, as per the submission, about the seizure of the trousers (Ex.P1) being contradictory in that PW-4 and PW-15 are not in sync with each other as to the place where the said wearing apparel was handed or taken over. The above arguments do not impress this court.

23. The presence of PW-6 and PW-9 at the scene is not disputed. As noted earlier, it is a small jhuggi cluster where all houses (hutments) are located close-by. The residence of PW-3, as indeed of

his brother PW-10, is not “far away” from the scene where the stabbing took place. It is just a minute walk away. The nature of injury and its situs is such that it was not necessary that it would have immediately resulted in blood eruption or spilling in volumes over the road. The bowels had come out of the cut that was inflicted and the blood that may have started oozing would possibly have drenched some of the wearing apparel in due course. But then, this necessarily would not affect the upper garments. Given the fact that the victim was rushed to the hospital, inasmuch as he arrived there in less than an hour, not much time would have been spent in he first rushing into his jhuggi from where he was put in a rickshaw and taken to hospital by his kith and kin.

24. It is not a first case of its kind where public persons would not come forward to volunteer to be a witness in support of the victim. The stabbing incident had occurred in presence of public persons. From the perspective of the police, however, an independent witness (PW-9) had come forward. There is nothing to show that he (PW-9) is directly related, his only connection being that he was a neighbour (jhuggi dweller), his presence at the scene being quite natural. It is clear from his testimony that he was subsequently won over. He has disowned his entire statement claiming a role only to the effect that he helped the injured move away from the scene. But then, during cross-examination by the Public Prosecutor, upon being confronted with his statement forming basis of the FIR, he conceded that this was preceded by an abusive conduct of the appellant towards the victim

who was protesting against it, the backdrop being the matrimonial discord between the appellant and his wife, the latter being cousin sister of PW-3. Clearly, this witness was intentionally withholding facts that are crucial.

25. The submission of the appellant that the injuries of PW-3 were self-inflicted needs only to be noted and rejected. The injuries of such nature cannot conceivably be self-inflicted. At any rate, no such suggestion was given to any of the witnesses during the course of trial. On the contrary, what was suggested to PW-3 was that the injuries were suffered accidentally. Suggestions to this effect were denied by PW-3 and given the backdrop noted above, there is no reason why he should be disbelieved in the said denial. Going further, the said suggestion brings in an implied admission that a knife was indeed used and the appellant and PW-3 were actually involved in grappling with each other. This reinforces the evidence of PW-3. His version cannot be disbelieved only because he is the cousin brother of the estranged wife of the appellant.

26. The fact that the victim had consumed alcohol also does not afford any plausible defence to the appellant. As mentioned earlier, the extent or effect of alcohol was never gauged. The fact that PW-3 was trying to show reason to the appellant vis-à-vis his marital discord just prior to the stabbing incident indicates that the consumption of alcohol was not of such level as would have made him dis-oriented. On the contrary, the MLC shows that when he was brought to the hospital he was conscious and fully oriented.

27. There are no such contradictions in the prosecution case as could go to the root of the matter. The seizure of the trousers (Ex.P1) may have been made upon the same being presented to the investigating officer on 22.12.2014 by PW-10 either at the place of occurrence or at the residence of the witness. It is inconsequential if PW-4 would attribute it to be police proceedings drawn at the residence of PW-10 while PW-15 would state such proceedings took place at the scene inasmuch as both are located close-by.

28. On the foregoing facts and in the circumstances, this court endorses the view taken by the trial court in accepting the version of the victim Fazlu (PW3). There is no reason why the prosecution case in so far as the act of intentional inflicting of stab injury in the abdominal region to PW-3 be disbelieved. Given the situs and nature of the injury, the finding that it amounted to attempt to murder also must be endorsed and confirmed inasmuch as the injury was such as was likely to result in death and the knowledge that such was the nature of injury or its after effect will have to be imputed to the assailant, *i.e.*, the appellant.

29. But, there is no substantive evidence in so far as charge under Section 201 IPC is concerned. Such findings or conclusions cannot be recorded merely on the basis of disclosure statement of the accused. The conviction and order on sentence under Section 201 IPC, thus, will have to be set aside.

30. As a result, the appeal is partly allowed. The conviction for offence under Section 201 IPC and the sentence awarded for the said

offence are set aside. The conviction for the offence under Section 307 IPC is upheld and maintained.

31. Given the nature of injuries inflicted, the sentence awarded does not appear to be excessive. Thus, this court declines to interfere in the matter of punishment for the offence under Section 307 IPC.

32. The appeal stands disposed of in above terms.

33. The appellant is in custody undergoing the sentence awarded by the trial court. The conviction warrant shall be suitably modified and communicated to the Superintendent Jail by the Registrar (Appellate).

34. A copy of this judgment shall also be sent to the Superintendent Jail for being made available to the appellant.

R.K.GAUBA, J.

JANUARY 07, 2019

vk

न्यायमेव जयते