

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

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Reserved on: 25th February, 2019

Decided on : 29th April, 2019

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CRL.A. 915/2018

AMAN @ KALE

....Appellant

Represented by: Mr. Ravinder Kumar Yadav
and Mr. Vinayak Sharma,
Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI
Dharmendra Kumar, PS
Mandir Marg

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Aman @ Kale challenges the impugned judgment dated 30th July 2018 convicting him for the offence punishable under Section 307 IPC in FIR No. 216/2013 registered at PS Mandir Marg and the order on sentence dated 1st August 2018 directing him to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹2,000/- and in default to undergo simple imprisonment for a period of two months.

2. Learned counsel for the appellant contends that there are various inconsistencies in the statements made by injured/ complainant Aman before the court and the Juvenile Justice Board. Moreover, the injury inflicted by the Appellant to the injured/complainant were not on vital organs. Hence his conviction is liable to be set aside.

3. Per contra, Learned APP for the State submits that that the impugned

judgment and the order on sentence suffers from no illegality.

4. Process of law was set into motion on the intervening night of 18/19th October 2013 at 12:15 A.M. when information was received from near Delhi Heart Hospital, R.K. Road, Balmiki Mandir about a knife injury to the brother of the caller. Aforesaid information was recorded vide DD No. 4A (Ex. PW-1/C) and was assigned to SI Mantosh. He along with Ct. Sunny reached at the Delhi Heart and Lung Institute, Panchkuian Road where the injured person was admitted. He collected the MLC of the injured Aman and recorded his statement wherein he stated that in the intervening night of 18/19th October 2013, he along with his cousin brother Akshay went to Valmiki Basti Mandir Marg, Panchkuian road on his Activa Scooty bearing No. DL-10-SG-0828, at around 11:00 pm to watch the fair. When they were starting their Scooty to go back to their home from the fair, their neighbour Kale @ Aman came there immediately and started pushing him. He took out a knife and stabbed him in the right armpit. In the meantime, 'C' also came and stabbed him in the chest. One other boy namely 'S' also stabbed him in his stomach. When his brother Akshay tried to intervene to save, they pushed him and manhandled him as well. On the previous day accused persons had fought with them at B block on the occasion of Valmiki Jayanti and threatened them. On the basis of the aforesaid statement (Ex.PW-3/A), FIR No. 216/2013 (Ex.PW-1/A) was registered for offence punishable under Section 307 IPC at PS Mandir Marg.

5. In the meantime, the parents of the injured/complainant came and took him to Sir Ganga Ram Hospital. Thereafter the Investigating Officer went to the place of incident and searched for the accused persons but no one was traceable. He prepared the site plan vide Ex.PW-11/B at the

instance of Akshay, cousin brother of the injured/complainant. He recorded the statement of Akshay and Rahul at Sir Ganga Ram Hospital. On 19th October 2013, Akshay handed over the clothes of the injured/complainant which were seized vide seizure memo Ex.PW-11/C. On 31st October 2013, Aman @ Kale surrendered himself in the police station. He was arrested vide arrest memo Ex.PW-3/B in the presence of the injured/complainant. His personal search was done vide Ex.PW-8/A and his disclosure statement was recorded vide Ex.PW-8/B wherein he disclosed that he could get recovered the weapon of offence i.e. the knife which was recovered at his instance. On 1st November 2013 Aman @ Kale pointed out the place of occurrence vide pointing out memo Ex.PW-8/C. The other two co-accused, namely 'C' and 'S' surrendered before the Juvenile Justice Board and they were sent to observation home. On completion of investigation, charge sheet was filed. Charge was framed vide order dated 5th June 2015 for offence punishable under Section 307 IPC.

6. Aman (PW-3), complainant deposed in sync with his statement made to the police. He further stated that the police had called him 8-10 days after the incident in Police Station Mandir Marg where Aman @ Kale was arrested in his presence. He remained admitted in the hospital for one month. In his cross-examination he stated that he knew Aman @ Kale prior to the incident as he was a resident of the same locality. He further stated that one day prior to the incident an altercation had taken place between Aman @ Kale and him but the same was not reported to the police. He further stated that his statement was also recorded before the Juvenile Justice Board with respect to this incident. He also stated that two photographs of his, in injured condition were taken by the investigating officer in the Police

Station. He further admitted that he took the treatment from different hospitals after the incident which fact stands corroborated by the medical documents from different hospital exhibited by the prosecution. He did not remember who removed him to the hospital

7. Aman was examined as PW-2 before the Juvenile Justice Board wherein he stated that on the intervening night of 18th/19th October 2013 he had gone to attend the function of Balmiki Jayanti at Mandir Marg. As soon as he started the engine of his car 'C' and 'S' caught hold of his hand and Aman @ Kale attacked him with a knife. Aman @ Kale had given him a knife blow on his chest, stomach and near his heart. Blood was oozing out of his body. He travelled some distance after which he fainted. He called his brother Akshay who had accompanied him to the function of Balmiki Jayanti who then took him to the hospital. In his cross-examination he stated that the incident took place where the program was going on and 'S' and 'C' had not inflicted any injury on him.

8. Rahul (PW-6) stated that on the intervening night of 17th/18th October 2013 between 10:00 to 11:00 P.M. his vehicle was stuck at Mandir Marg opposite Delhi Heart and Lung Institute. Balmiki Mela was going on over there because of which it was very crowded. The complainant/injured Aman came to him and informed him that he had sustained injuries. He noticed blood oozing out from the left side near arm. He stopped a passerby bike and took him to Delhi Heart and Lung Institute. In his cross-examination he denied giving any statement to the police and also denied witnessing the abovementioned incident.

9. Akshay (PW-10), cousin brother of Aman stated that no incident had taken place before him with his cousin Aman. He did not know how Aman

sustained injuries and who caused these injuries.

10. Dr. Hitesh Chauhan (PW-2), Private Practitioner stated that on 18th October 2013 he was working as a Resident (Cardiology) at Delhi Heart & Lung Institute and on that day, he examined Aman who was brought in casualty by Rahul. Aman was bleeding from knife stab wounds mid clavicular line, parasternal region and 12 cm right to umbilicus region along with some wounds on chest. He opined the injuries as dangerous in nature and caused by a knife vide the MLC Ex.PW-2/A. Aman was referred to higher centre for further intervention and management on the same day vide Ex.PW-2/B.

11. Dr. Sanjay Solanki (PW-4), Senior CMO, Sir Ganga Ram Hospital stated that on 19th October 2013 Aman was brought to the hospital from Delhi Heart and Lung Institute for treatment. He handed over the casualty assessment sheet (Ex.PW-4/A) and emergency treatment record (Ex.PW-4/B) of the patient to the police.

12. Roshan Lal (DW-1), Judicial Assistant, Juvenile Justice Board-II produced the certified copy of statement of the complainant/injured Aman recorded on 18th March 2014 vide Ex.DW-1/A and statement recorded on 4th April 2014 Ex.DW-1/B.

13. Aman @ Kale in his statement recorded under Section 313 Cr.P.C. stated that he did not make any disclosure statement to the police and his signatures were obtained on a blank sheet by the police.

14. Learned counsel for the appellant has sought to highlight the contradictions between the statement of the injured victim Aman made before the Court and before the Juvenile Justice Board. As noted above, in his deposition before the Court as well as before the Juvenile Justice Board,

the role assigned to Aman @ Kale is of attacking with knife. The only difference in the two statements is that he deposed that after Aman @ Kale stabbed him even 'C' and 'S' stabbed him in the stomach whereas before the Juvenile Justice Board he stated that 'C' and 'S' had only caught hold of his hand and Aman @ Kale attacked him with a knife. There is no contradiction in the statements to the extent that Aman @ Kale attacked him with the knife.

15. Since there is no contradiction in the two statements in so far as the role of Aman @ Kale is concerned and the version of the victim Aman is corroborated by the injuries caused to him which have been opined to be dangerous in nature, this Court finds no infirmity in the impugned judgment of conviction or the order on sentence. Appeal is accordingly dismissed.

16. Since the sentence of the appellant was suspended pending hearing of the appeal, the appellant would surrender to custody to undergo the remaining sentence. His bail bond and surety bond are cancelled.

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

18. TCR be returned.

APRIL 29, 2019
'vj/rk'

(MUKTA GUPTA)
JUDGE