

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

% Decided on: 1st February, 2019

+ **CRL.A. 1024/2016**

SUNIL

....Appellant

Represented by: Mr. M.A. Inayati, Ms. Meenu
Sharma, Advocates

versus

STATE

.....Respondent

Represented by: Mr. Rajni Gupta, APP for
the State with Insp. M.P. Saini
PS H.Q.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeal, Sunil challenges the impugned judgment dated 9th December, 2014 convicting him for the offence punishable under Section 307 IPC in FIR No. 56/2013 registered at PS Haus Qazi and the order on sentence dated 18th December, 2014 directing him to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 307 IPC.

2. Process of law was set into motion on 7th April, 2013 when SI Shri Kishan along with Ct. Prakash reached Chatta Shahji, Chawri Bazaar pursuant to information received vide DD No.24A and 25A. On reaching the spot, they found shop no. 2356 closed and came to know that the injured had been taken to JPN Hospital. He went to the hospital and collected the MLC of the injured wherein the doctor opined that he was unfit for statement.

3. On 8th April, 2013 SI Shri Kishan along with Ct. Prakash recorded the

statement of the injured after he was declared fit for statement. Vikas Awasthi stated that he used to run a cold drinks and sweet Shop No. 2356 at Chhata Shahji, Chawri Bazaar. At about 7:00 P.M., when he was present at his shop one person namely Sunil, came to his shop and asked him for a cold drink bottle. Since Sunil had not cleared his previous dues, he asked him to first clear his earlier dues for the cold drink. On asking for money, Sunil started abusing him. When he refused to give the cold drink to Sunil, he entered into a scuffle and threatened him with dire consequences. Sunil then picked up an empty bottle of Pepsi, broke it into half and hit him with it on the left side of his stomach. On seeing blood oozing out from his stomach, Sunil threw the bottle in his shop and ran away. Thereafter, his friend Sunil Kanojia took him to the hospital. On the basis of the aforesaid statement (Ex.PW-1/A), FIR No. 56/2013 (Ex.PW-9/A) was registered for the offence punishable under Section 307 IPC at PS Haus Qazi.

4. Sunil was arrested from his house at Chatta Shaji, Chawri Bazar vide arrest memo Ex.PW-13/A. His personal search was conducted vide search memo Ex.PW-13/B. His disclosure statement was recorded vide Ex.PW-14/B. On 9th April 2013, one broken bottle was recovered at the instance of Sunil and was seized vide seizure memo Ex.PW-14/C. Further investigation of the case was transferred to SI Bhupender who prepared the site plan vide Ex.PW-1/C. He seized the CCTV footage vide seizure memo Ex.PW-1/B. The broken bottle of pepsi was seized vide Ex.PW-2/A. On completion of investigation, charge sheet was filed. Charge was framed against the appellant vide order dated 29th January, 2014 for commission of offence punishable under Section 307 IPC.

5. Vikas Awasthi was examined as PW-1 in Court. He deposed in sync

with his statement recorded before the police.

6. Kailash Awasthi (PW-2), father of Vikas Awasthi, stated that on 7th April, 2013 his son was present at the shop located at Chawri Bazar bearing number 2356, Chhatta Shaji while he had gone to his workplace at Noida. His friend Sadan Kumar called him and informed him about a quarrel between his son and the son of Ram Singh namely Sunil who was known to all of them as being the notorious person of the area. He was also informed that Sunil had given a blow with a bottle to his son. As soon as he heard of this he immediately rushed to Irwin Hospital where his son was admitted for treatment. His son had earlier told him that Sunil used to pick up quarrel as and when he demanded money against the goods from the shop. While he was cleaning the shop he found the broken blood stained bottle with which Sunil had hit his son and handed the same over to the police.

7. Rohit Kashyap (PW-3) stated that on 7th April 2013 he had gone to purchase grocery/confectionery items from the shop of Vikas. At about 7:00/ 7:30 P.M. when he reached the shop, a quarrel was taking place between the shop owner and Sunil regarding a bottle of soft drink. Sunil had made a demand for a bottle of soft drink and Vikas asked for money complaining that earlier also Sunil had not given any money. He tried to intervene and tried to restrain Sunil from using filthy language but Sunil slapped Vikas. Thereafter, a scuffle took place between Vikas and Sunil after which Sunil picked up one empty bottle of Pepsi, broke it by hitting the same on the gas stove lying at the shop and hit Vikas with the broken bottle in his stomach. Sunil Kanojia who was passing through in front of the shop was made to stop and the injured Vikas who was bleeding profusely was taken to the hospital on the his bike.

8. Lipin Kumar (PW-4) stated that he was in the business of computer laptop repairing and also a teacher in computer education giving coachings on call basis. There is a Mandir near his shop where CCTV cameras are installed. The shop of Vikas Awasthi is near the Mandir. He stated that since the focus of the CCTV cameras is in the gali and in front of the shops so if any quarrel happened in front of the shop including the shop of Vikas Awasthi and in front of the mandir, it is captured by CCTV cameras.

9. Sunil Kanojia (PW-5) in his testimony stated that on 7th April 2013 at about 7:30 P.M., he was going to his mother's house at Chatta Shah Jee to give her food on his motorcycle. On reaching Gali Chatta Shah Jee he saw Vikas Awasthi whom he used to call Kallu and found that he was bleeding profusely. He knew Vikas Awasthi as he was having shop of soft drink and confectionery in the same street. Vikas Awasthi informed him that he had been hit with a bottle by Sunil and asked him to take him to the hospital. He then took Vikas Awasthi to Irwin Hospital and got him admitted there.

10. Sadan Kashyap (PW-7) stated that on 7th April 2013 when he reached in front of the shop of Vikas Awasthi there were many persons gathered there. He noticed that there was an altercation taking place between Vikas Awasthi and Sunil. Thereafter Sunil went into the shop of Vikas Awasthi after which he picked up one empty bottle of Pepsi, broke it by hitting the same on the gas stove lying at the shop and hit the broken bottle in the stomach of Vikas. To stop the blood flow, the injury was bandaged with a torn shirt and Vikas Awasthi was taken to the hospital.

11. Dr. Lovenish (PW-8), Senior Resident (Surgery) Lok Nayak Hospital medically examined Vikas Awasthi and found the following injury:

- i. *Lacerated wound of size 5cm X 3cm on left side of flank of*

abdomen causing oozing of blood

12. Dr. Lovenish opined the nature of injuries to be dangerous. He stated that there was a penetrating injury with diaphragmatic rent with splenic injury with hemothorax for which Vikas Awasthi underwent exploratory laparotomy with diaphragmatic repair with splenorrhaphy with left intercostal tube insertion. The penetrating injury went from the left side and injured the left lung, diaphragm and spleen with blood collection.

13. Version of Sunil Kanojia that he took the injured to the hospital is corroborated by the MLC, which notes the name of Sunil. Further there is no discrepancy in the testimony of the injured Vikas Awasthi which is further corroborated by his MLC and the testimonies of the eye-witness Rohit Kashyap coupled with recovery of broken pieces of bottle from the shop which were blood stained with human blood and also the CCTV footage showing the presence of the appellant entering the shop of the victim at the relevant time.

14. In view of the overwhelming evidence produced by the prosecution, this Court finds no error in the impugned judgment of conviction or order on sentence.

15. Appeal is dismissed.

16. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

17. TCR be returned.

(MUKTA GUPTA)
JUDGE

FEBRUARY 01, 2019
‘vj/ga’