

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

%

Reserved on: 8th July, 2019

Decided on: 9th January, 2020

+

CRL.A. 960/2016

ROHIT @ GOLU

..... Appellant

Represented by: Mr. Ankur Sood, Ms. Romila Mandal
and Mr. Ankush Bhardwaj,
Advocates, DHCLSC

versus

STATE

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the State
with SI Suresh Kumar, PS New
Usmanpur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, Rohit @ Golu challenges the impugned judgment dated 6th August 2016 convicting him for the offences punishable under Sections 307/34 IPC in FIR No. 333/2012 registered at PS New Usmanpur and the order on sentence dated 17th August 2016 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹25,000/- and in default whereof to undergo simple imprisonment for a period of six months for the offence punishable under Section 307/34 IPC.

2. Assailing the conviction, learned counsel for the appellant contends that the identity of the appellant is not established. As per the version of the injured Rahul it was a sudden and momentary act under the state of intoxication. Reliance is placed upon the decision of the Delhi High Court reported as 2010 SCC OnLine Del 2761 *Jamalu & Ors. v. State of Delhi*. He further contends that the MLC of the injured is not duly proved as the doctor

deposed that he gave his opinion based on surgical records only and that Rahul was not present at that time. Reliance is also placed upon the decision of the Gauhati High Court reported as 1983 SCC OnLine Gau 48 Bhanda Garh v. State of Assam. Deepak and Gyaneshwar in their testimonies deposed that they knew the appellant, whereas in their cross-examination they have stated that they did not know the appellant prior to the incident. Gyaneshwar stated that he got to know about the appellant from the people present at the spot whereas Deepak stated that he got to know about him on the next day from someone else. Rahul stated that he knew the name of the accused as Guddu but later in the hospital he was informed by his friend Gyaneshwar that his real name was Golu, however in his cross-examination he stated that he did not know the accused persons prior to the incident. This creates a doubt regarding the identity of the appellant. Neither Deepak and Gyaneshwar were declared hostile nor they were called for re-examination. Therefore, the version of cross-examination is to be accepted in the present case as per which the identity of the appellant is doubtful. Reliance is placed upon the decision of the Supreme Court of India reported as (2005) 5 SCC 258 Mukhtiar Ahmed Ansari. v. State. He further submits that the appellant was arrested almost three months after the incident at the instance of Rahul. He further points out that the statement of defence witness that is father of the accused wherein he stated that the police officials of PS Usmanpur have falsely implicated the appellant in the present case due to enmity as he had made many complaints against police officials of PS Usmanpur regarding the organized crime in the area has not been considered by the learned Trial Court. Statement of the defence witness was erroneously rejected on the ground that a certificate under Section 65B of the Evidence Act was not

filed in support of the e-mails relating to the complaint. Reliance is also placed upon the decision of the Supreme Court of India reported as (2002) 1 SCC 351 Munshi Prasad and others. v. State of Bihar wherein it was held that the defence witnesses are entitled to same credibility as that of prosecution witness.

3. Per contra, learned APP for the State submits that the testimony of the complainant Rahul is corroborated with the testimony of the eyewitnesses, that is, Gyaneshwar and Deepak. She further contends that since the appellant was arrested at the instance of the complainant Rahul, no further identification parade was required nor can the identity of the accused be disputed.

4. Process of law was set into motion on 21st December 2012 at around 8:55 P.M. when information was received regarding a fight where the victim was stabbed with a knife near Shiv Mandir, Usmanpur. Another call was received at 9:01 P.M., where the caller informed that 4-5 boys had stabbed his friend with a knife near Shastri Park Hospital. Aforesaid informations were recorded vide DD No.76B (Ex. PW-6/A) and DD No.78B (Ex.PW-12/A) respectively and assigned to SI Vikrant. He along with Ct. Narender reached near Shiv Mandir, Usmanpur where he made an inquiry about the said incident but could not gather any information. Thereafter, he went to Jag Pravesh Hospital and collected the MLC of injured Rahul (Ex.PW-1/A) where he was informed that the injured was taken to GTB Hospital for further treatment. He along with Ct. Narender reached the Hospital where they found out that the injured was under treatment and was fit for statement. The injured Rahul did not get recorded his statement at that time and stated that he would give his statement after

undergoing medical treatment. On 22nd December 2012, he visited GTB Hospital again and recorded the statement of injured Rahul wherein he stated that on 21st December 2012 at around 7:45 P.M while he was roaming around near IInd Pushta drain he reached C-Block *pulia* where he saw few boys standing there in an intoxicated condition. They started quarrelling and fighting with him and during the course of the fight he found out that the name of one of the boys was Guddu. During the scuffle Guddu stabbed him with a knife above his waist and below his left shoulder on his chest. He stated that other boys caught hold of him while Guddu caused injury to him. During that time his friends, Vishal and Gyaneshwar were returning from their tuition and when they saw him being beaten, they came to rescue him. After seeing his friends, boys who were beating him fled away. His friends took him to Jag Pravesh Hospital and informed the police. He was referred to GTB Hospital where his treatment was being carried out. On the basis of the aforesaid statement (Ex.PW-2/A), FIR No.333/2012 (Ex.PW-5/B) was registered for offence punishable under Section 324/34 IPC at PS New Usmanpur.

5. Thereafter, the investigating officer went to the place of incident after which he went to the house of the injured where his grandfather handed over one blue and white shirt and one grey colour T-shirt having blood stains on it which were seized vide seizure memo Ex.PW-6/B. Statement of grandfather of injured was recorded. An attempt was made to search for the three accused persons but they could not be traced. On 27th December 2012, he prepared the unscaled site plan at the instance of the injured vide Ex.PW-12/C. On 28th December 2012, Rahul visited the police station along with his friends Deepak @ Vishal and Gyaneshwar. Their statements were

recorded under Section 161 Cr.P.C.

6. On 12th February 2013, SI Vikrant Sharma was searching for the accused persons along with Ct. Azad and Rahul. During the search, they reached MCD Flats, New Usmanpur at around 3:00-3:30 P.M. when Rahul pointed out towards one of the accused persons who was present at main road of MCD Flats. He was arrested vide arrest memo Ex.PW-2/B and his personal search was done vide personal search memo Ex.PW-12/D. During the interrogation, accused disclosed his name as Rohit @ Golu. His disclosure statement was recorded vide Mark PW-9/1. He prepared apprehension memos of two delinquents namely 'R' and 'V' as they were juveniles. Thereafter, the case was transferred to SI Ajay Kumar for further investigation.

7. On 15th March 2013, Section 307 IPC was added in the case. On 16th March 2013 he got age proofs of JCL 'R' and 'V' verified from their concerned schools through HC Satender. On 7th April 2013, he rearrested the appellant vide arrest memo Ex.PW-10/A and conducted his personal search vide personal search memo Ex.PW-10/B. On completion of investigation, charge sheet was filed against the appellant. Charge was framed vide order dated 27th August 2013 for offences punishable under Sections 307/34 IPC against the appellant.

8. Rahul (PW-6), injured deposed in sync with his statement made before the police. He further stated that he knew the name of the accused as Guddu but later in the hospital he was informed by his friend Gyaneshwar that his real name was Golu. He also got to know about the names of co-accused as 'V' and 'R' through Gyaneshwar. He stated that he had seen 'V' and 'R' when they were apprehended by the police on 27th December 2012

and had identified them. The accused Golu was also arrested by the police on the same day. In his cross-examination, he stated that he did not know the accused persons prior to the incident. He saw Vishal and Gyaneshwar coming towards him while he was being stabbed by the accused persons. They did not try to catch hold of any of the accused persons. He further stated that after the incident, he went home from where he was taken to the hospital on his neighbours motorcycle which was driven by Vishal. He stated that police came to the hospital during his treatment and enquired about the said incident. He had not read the papers of arrest of accused 'R' before signing it. He further stated that after the incident many public persons had assembled at the spot.

9. Deepak (PW-3), friend of the injured deposed in sync with the statement of Rahul. He further stated that he took off Rahul's shirt and tied it around his wound which was bleeding after which they took him to the hospital on an unknown person's bike and called the PCR. They also informed family members of the injured who arrived at the hospital. In his cross-examination he stated that on next day of the incident Rahul's neighbours informed the name of the accused as Golu. He had seen accused Golu for the first time on the day of incident. He further added that they had taken lift from one unknown motorcycle rider and taken Rahul to the hospital. He took lift from some other unknown motorcycle rider and reached the hospital. He stated that police met them at Jag Pravesh Hospital for the first time, neither any inquiry was made nor any statements were recorded by them.

10. Gyaneshwar (PW-4), friend of the injured deposed in sync with the statement of Rahul. In his cross-examination he stated that 'R' and 'V' were

earlier known to him and the name of third accused namely Golu came into his notice from one of the public person gathered at the spot. He and Deepak took the injured to the hospital on a bike, which was arranged by Rahul.

11. Dr. Manish Jain (PW-8), S.R. (Surgery), GTB Hospital, Delhi stated that on 14th February 2013 he had given opinion on injuries sustained by the injured Rahul. The MLC was prepared at Shastri Park Hospital and subsequently case was referred to GTB hospital. He opined that as per the surgical injury there was penetrating injury left chest with left hemopneumothorax hence the nature of injury was grievous in nature. In the MLC (Ex.PW-1/A) following observations were made:

- i. *Chest – Decrease Air Entry on left side*
- ii. *One Incised wound about the size of 3 cm x 0.5 cm and 1.5 cm deep over the left side of the chest with active bleeding present and localised swelling present.*

12. Rohit @ Golu in his statement recorded under Section 313 Cr.P.C. stated that he was innocent and was falsely implicated and arrested in this case. He called Ct.Pankaj to apprehend Anil Rajput who was declared Proclaimed Offender in another case of the same police station. After apprehending him, Ct. Pankaj called him to the police station and he was falsely implicated and arrested in this case. His father had also made several complaints against police officials of New Usmanpur and due this reason he was falsely implicated in this case.

13. Rakesh Gupta (DW-1), father of the appellant stated that he was running a registered NGO in the name of Sangrash Jan Kalyan Samiti at Usmanpur. The police officials of PS Usmanpur falsely implicated his son in the present case due to enmity as he had made many complaints against

police officials of PS Usmanpur against the organized crime in the area. He had made a complaint on 2nd November 2011 against SI Vikrant and Ct. Pankaj through e-mail along with five other complaints which he placed on record vide Mark A (Colly). The police officials of PS Usmanpur knew that Rohit @ Golu was his son and he was not Guddu. In his cross-examination he stated that he had not filed any certificate under Section 65B of the Indian Evidence Act in support of his documents.

14. Version of the injured victim that he suffered an injury is duly corroborated by the opinion of Dr. Manish Jain who opined the injury to be penetrating injury on the left chest with left hemopneumothorax, that is, collapsed lungs and decreased air entry in the lung on the left side. The incident took place at about 7.45 P.M. and an information in this regard was received at around 8.55 P.M. in the police station on 21st December, 2012 and the injured victim had been admitted to the hospital by 9.00 P.M. as per the MLC on the same day. The Investigating Officer reached the hospital and the only request of the victim was that he would get his statement recorded after the treatment, rightly so and on 22nd December, 2012 at 11.50 A.M. the statement of the victim was recorded and sent for registration of rukka. The appellant was duly named in the rukka as Guddu.

15. Case of the defence is that the pet name of the appellant is Golu and not Guddu however, the same is immaterial for the reason the appellant has been arrested at the instance of the victim. Version of the victim is duly corroborated by PW-2 Deepak @ Vishal and PW-3 Gyneshwar who were also the eye witnesses to the incident and who had also got him in hospital as the name Vishal finds mention in the MLC. The explanation of the appellant in his statement under Section 313 Cr.P.C. is that he had called

constable Pankaj to apprehend Anil Rajput who was proclaimed offender, whereafter appellant was called to the police station and arrested in this case. The suggestion made to the Investigating Officer in this regard is denied who even stated that he had no knowledge if Anil Rajput was the proclaimed offender or that thereafter the appellant was arrested falsely. Version of the father of the appellant is that he has been making complaints against various illegalities being committed in the area and hence his son has been falsely implicated. No such suggestion has been given to the police witnesses in this regard nor the so called complaints duly exhibited nor is this version given by the appellant in his statement under Section 313 Cr.P.C.

16. Considering the version of the victim which is duly corroborated by his injuries as also by the testimony of the eye witnesses, this Court finds no illegality in the impugned judgment of conviction or order on sentence.

17. Appeal is accordingly dismissed.

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

19. TCR be returned.

न्यायमेव जयते (MUKTA GUPTA)
JUDGE

JANUARY 09, 2020
‘sk/vn’