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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 170/2020

Reserved on : 10.12.2021

Date of Decision: 04.01.2022

IN THE MATTER OF:

ANKIT

..... Appellant

Through: Mr. Saurabh Soni & Ms. Mannat Singh,
Advocates.

Appellant in person (through V.C. from Jail)
alongwith Mr. Deepak Kumar, Jail Warden,
Central Jail No. 5, Tihar, New Delhi.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Hirein Sharma, APP for State along
with SI Sachin Dev Dangi, P.S. Nand Nagri, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present appeal has been preferred under Section 374(2) Cr.P.C. read with Section 482 Cr.P.C. on behalf of the appellant challenging the judgment on conviction dated 03.10.2019 and the order on sentence dated 09.10.2019 passed by the learned ASJ (FTC), E-Court, Shahdara, Karkardooma Courts, Delhi in SC No. 17/2018 arising out of FIR No. 82/2017 registered under Sections 307/34 IPC at Police Station Nand Nagri, Delhi.

2. Vide the impugned judgment, the appellant was convicted for the offences punishable under Sections 307/34 IPC. Vide the order on sentence dated 09.10.2019, he was directed to undergo Rigorous Imprisonment for a



period of 04 years alongwith payment of fine of Rs.4,000/- in default thereof, to further undergo Simple Imprisonment for a period of 01 month. The benefit of Section 428 Cr.P.C. was extended to the appellant.

3. Brief facts of the case, as noted by the Trial Court, are as under:-

"1. Criminal law was set into motion on 09.02.2017 at about 6.45 pm when an information regarding stabbing was received at PS Nand Nagri, which was recorded vide DD No. 85-B and was assigned to SI Manoj Kumar, who alongwith Ct. Deepak reached at the spot i.e. E-2 Block, Jhuggi Nand Nagri, where they came to know that injured had gone to GTB hospital. Thereupon, SI Manoj Kumar alongwith Ct. Deepak reached at GTB hospital and obtained the MLC of one Subhash S/o. Het Ram, who was opined fit for statement. The gist of the statement is that "on 09.02.2017 complainant Subhash S/o. Het Ram was going towards District Park via E-2 Block, Jhuggies. At about 6 pm, Ankit and his friend met him near jhuggies and Ankit asked from him his mobile phone to make a call and when he refused Ankit started abusing him. When he objected the friend of Ankit caught hold him from behind and Ankit took out a knife and started hitting him on his left ear, left shoulder and stomach. He started shouting, on which they both ran away from there. Ankit is resident of E-2 Jhuggies and used to come at his shop of tent. Ankit and his friend stabbed him with an intention to kill him. On the basis of above statement of injured, rukka was prepared and present case FIR was registered. Accused took a plea of juvenility, however, after conducting enquiry, J.J.Board, vide order dt. 01.09.2017 held that accused Ankit was more than 18 years of age on the date of commission of offence."

4. After completion of investigation, the charge sheet was filed against the appellant under Sections 307/34 IPC. Vide order dated 18.04.2018, charges were framed against him under Sections 307/34 IPC, to which he pled not guilty and claimed trial.

5. During the course of submissions, Mr. Saurabh Soni, learned counsel for the appellant, on instructions from the appellant, who also joined the

proceedings through V.C. from Central Jail No. 5, Tihar, New Delhi and v. 

identified by *Mr. Deepak Kumar*, Jail Warden, submitted that the appellant does not wish to press the appeal on merits. It was prayed that considering the period of incarceration of the appellant as well as his age and clean antecedents, the appellant may be released on the period already undergone. Lastly, it was submitted that the appellant is ready and willing to pay the fine of Rs.4,000/- as imposed on him vide the impugned order on sentence.

6. Mr. Hirein Sharma, learned APP for the State, on the other hand, supported the impugned judgment and order on sentence. It was submitted that the appellant in the present case is guilty of causing grievous injuries to the complainant on vital parts of his body and thus, the order on sentence may not be interfered with.

7. I have heard learned counsels for the parties and have also gone through the Trial Court Record.

8. To prove its case, the prosecution had examined a total of nine witnesses. The complainant/*Subhash* was examined as PW-1; *Dr. Akash Varshney*, who proved the MLC of the complainant, was examined as PW-5; *SI Manoj Kumar*, the Investigating Officer of the case, was examined as PW-7 and *Dr. Suruchi Shreshtha*, Asstt. Professor, *GTB Hospital*, who proved the nature of injuries of the complainant, was examined as PW-9.

9. The complainant/injured/*Subhash* (PW-1) deposed that in the year 2017, he was residing as a tenant in the *jhuggis* of Nand Nagri and was working in a tent shop as a laborer. He further deposed that it was winter season of the year 2017, when one day at about 6:00 p.m., while he was taking water from a tap, two boys came and demanded mobile phone from him. When he refused, one of the boys caught hold of him and another gave knife blows on his abdomen, ear and back and forcibly took his mobile. As a result, he became unconscious and was taken to the hospital by his



employer. The witness identified the appellant in Court as the person who gave him knife blows.

In cross-examination, the complainant denied the suggestion that the appellant was falsely implicated by him as he had taken loan from the appellant. He also denied the suggestion that no such incident had taken place.

10. *Dr. Akash Varshney* (PW-5), Jr. Resident at *GTB Hospital* at the time of the incident, deposed that he had medically examined the complainant on 09.02.2017 and proved his MLC (*Ex.PW-5/A*). In cross-examination, the witness deposed that the injuries mentioned in the MLC were not possible due to fall.

11. *Dr. Suruchi Shreshtha*, Assistant Professor, Surgery, *GTB Hospital* (PW-9) identified the handwriting and stamp of *Dr. Shailendra Patel*, who gave opinion on the MLC of the complainant/injured, and deposed that as per the opinion, the nature of injuries was grievous.

12. *SI Manoj Kumar* (PW-7) deposed that he had recorded the statement of the complainant whereafter, on 10.02.2017, information was received that the boy who stabbed the complainant (later identified to be the appellant) was present at his house. When Investigating Officer reached the house of the appellant, the appellant's mother claimed that her son was about 15 years old. However, subsequently, the age-related documents of the appellant were collected and produced before the JJB, which declared the appellant a major.

13. In his statement recorded under Section 313 Cr.P.C., the appellant admitted his presence at the spot on 09.02.2017, while answering Question No. 1. He further stated that on the said date, he had only demanded Rs.100/- , which the complainant owed to him.

14. The law on appreciation of testimony of an injured witness has been enunciated by the Supreme Court in a catena of decisions, including State of



was held as under:-

“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. 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 during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the 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. (Vide Jarnail Singh v. State of Punjab, Balraje v. State of Maharashtra and Abdul Sayeed v. State of M.P.)”

15. Adverting to the facts of the present case, it is noted that the complainant/injured deposed that on the day of the incident he was given knife blows by the appellant on his abdomen, ear and back and his mobile phone was also forcibly taken. He was medically examined on the same day i.e., on 09.02.2017 at 7:05 p.m. and the MLC was prepared, which was proved during trial (Ex.PW-5/A). In the said MLC, the following injuries were noted:-

- “(I) Incised wound 2×1 cm on abdomen Epigastrium region*
- (II) Incised wound 2×1 cm lt. Ear lobe*
- (III) Incised wound 2×1 cm Back Side lt. shoulder”*

Notably, the nature of the injuries obtained by the complainant was opined to be grievous. A perusal of the MLC of the complainant would show that his testimony is duly corroborated by the observations made in the



MLC.

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16. The appellant has not denied his presence at the spot on the day of the incident. The defence taken by him is of false implication, on the basis that the complainant owed him Rs.100/-. At the time of registration of the FIR, the appellant was named as he was already known to the complainant. Further, the injuries were caused on vital parts of the complainant's body with a knife and the nature of the said injuries was opined to be grievous.

17. In view of the aforesaid, this Court, being of the opinion that the charges against the appellant have been established beyond reasonable doubt, concurs with the conclusion arrived at by the learned ASJ. Accordingly, the impugned judgment on conviction is upheld.

18. It was prayed on behalf of the appellant that he is a first-time offender, aged about 22 years, and thus, lenient view may be taken insofar as quantum of his sentence is concerned. As per the Nominal Roll of the appellant available on record, he has already undergone sentence of 03 years and 12 days as on 29.11.2021 alongwith remission of 08 months and 12 days and his unexpired portion of sentence is 03 months and 06 days (IFP). The appellant's jail conduct for the last one year has also been reported to be satisfactory.

19. Keeping in view the age of the appellant, the period already undergone by him and the fact that he is not involved in any other case, it is directed that the appellant's sentence be modified to the period already undergone and he be set free unless required in any other case, subject to deposit of enhanced fine of Rs.14,000/- by him, out of which Rs.10,000/- shall be paid to the complainant. In default of payment by the appellant of the fine imposed vide the impugned order and/or the enhanced fine imposed by this Court, the appellant shall undergo Simple Imprisonment for a period of one month.



20. With the above directions, the appeal is disposed of. Appeal is disposed of: 022/DHC/000024

21. A copy of this judgment be communicated electronically to the Trial Court as well as to the concerned Jail Superintendent forthwith.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 4, 2022

p'ma

Click here to check corrigendum, if any