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

Date of Judgment : March 19, 2024

+ CRL.A. 986/2002

NARENDER KUMAR @ BITTOO

..... Appellant

Through: Mr. Anil Hooda and Mr. Shafik
Ahmed, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP with
SI Sonu Kumar, P.S. : Sultan Puri.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Present appeal has been preferred under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Section 482 Cr.P.C. against judgment and order on sentence, dated 09.07.2002 and 15.07.2002 respectively, in SC No.5/99, whereby the appellant has been convicted under Section 307 IPC and sentenced to undergo RI for three years and a fine of Rs.1,000/- (in default of payment of fine, to undergo RI for one month). Benefit of Section 428 Cr.P.C. has also been extended to the appellant.

2. In brief, as per the case of the prosecution as recorded in the impugned judgment, on 12.08.1997, on receipt of DD No.8B, SI Randhir Singh along with Ct. Durga Prasad reached at M.R. Hospital, Village Karala wherein they were informed that injured Sanjay, after receiving first aid, left along with his brother for an unknown hospital. The injured could not be



traced in any Government hospitals by SI Randhir Singh. In the meantime, DD No.5A was handed over to SI Randhir Singh wherein it was recorded that injured had been admitted in Saroj Hospital, Madhuban Chowk.

Statement of injured Sanjay was recorded wherein he alleged that on 12.08.1997 in the midnight at about 12:30 am, he had visited Punjabi Chicken Corner owned by his neighbour Narender @ Bittoo. As he complained to hotel owner about the quality of food served, owner of the hotel (Narender/appellant) became agitated and stabbed him with a knife lying on the table, on the right side of the chest. Complainant/injured was initially moved to M.R. Hospital from where his brother Satish shifted him to Saroj Hospital. Accordingly, FIR No.739/97 was registered under Section 307/34 at PS: Sultanpuri.

3. Appellant/accused Narender @ Bittoo was arrested during the course of investigation and on his disclosure, knife used in the assault was recovered at his instance. It may also be noticed that in supplementary statement recorded under Section 161 Cr.P.C. complainant further alleged that at the time of the incident, he was caught hold by co-accused Devender and injury was inflicted by appellant Narender @ Bittoo. Charge-sheet was accordingly presented after investigation against both the accused.

4. Charge was framed against both the accused under Sections 307/34 IPC, to which they pleaded not guilty and claimed trial. Vide impugned judgment, co-accused Devender was acquitted giving benefit of doubt, while appellant stands convicted under Section 307 IPC.

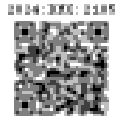
5. In support of its case, prosecution examined ten witnesses. PW-2 Sanjay (injured) is the material witness on the point of assault. PW-1 Dr.Sanjeev Chopra proved the MLC (Ex.PW-1/A): PW-3 Sunil (brother of



Sanjay) deposed regarding admission of injured Sanjay at Saroj Hospital and proved the site plan Ex.PW-3/A. PW-4 ASI Mahabir Singh (Duty Officer) proved the FIR (Ex.PW-4/A). PW-5 Ct. Neg Ram and PW-6 Ct. Virender deposed on the point of arrest of appellant Narender and proved his personal search memo Ex.PW-5/A, disclosure statement made by the accused Ex.PW-5/B and pointing out memo Ex.PW-5/C. They further deposed that knife was recovered at instance of appellant which was taken into possession vide memo Ex.PW-5/C and also proved the sketch of the knife Ex.PW-5/D. PW-7 Ct. Durga Prasad deposed that he had taken rukka to the Police Station for registration of FIR and handed over copy of FIR to SI Randhir Singh. PW-8 HC Chand Singh MHC(M) deposed that two parcels containing blood stained clothes and knife were deposited by SI Randhir Singh as per Ex. PW8/A on 13.08.1997. Further the said parcels were sent to FSL, Malviya Nagar on 21.10.1997 through Ct. Ashok. PW-10 Ct. Ashok deposed regarding taking of the two parcels from Malkhana and depositing the same with FSL, Malviya Nagar on 21.10.1997. PW-9 SI Randhir Singh (I.O) deposed regarding conduct of investigation.

6. Statement of accused was thereafter recorded under Section 313 Cr.P.C. Appellant denied the incident and claimed to have been falsely implicated. However, no evidence was led in defence.

7. Counsel for the appellant assails the judgment passed by the learned trial court and submits that testimony of the witnesses is discrepant on material points and not worthy of acceptance. It is also submitted that complainant/injured changed his version and also roped co-accused Devender who has been acquitted by the learned Trial Court. It is contended that no independent witness was joined by the prosecution though 3-4

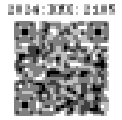


persons were allegedly present at the time of incident and knife has been planted on the accused. The seizure of the clothes is also stated to be tainted, in view of discrepancies in statement of PW-5 & PW-6. It is pointed out that at the time of production of knife and clothes, it was noticed that the same could be taken out without opening the seal of parcel, as revealed in evidence of PW-2.

8. On the other hand, learned APP for the State contends that testimony of PW-2 Sanjay/injured is fully reliable and trustworthy and there is no reason to falsely implicate the appellant. It is urged that the stab wound inflicted on the injured by the appellant stands further corroborated by the recovery of knife (weapon of offence) at the instance of appellant which contained the blood stains of the complainant. It is also contended that minor discrepancies do not in any manner discredit the testimony of PW-2.

9. The reasons recorded by learned Additional Sessions Judge for convicting the appellant and extending the benefit of doubt to co-accused Devender may be briefly noticed as under:

“It has been further submitted by the counsel for the accused that in complaint Ex PW2/A the name of accused Davender does not appear. He has submitted that the prosecution recorded the supplementary statement of the injured on 14.8.97 when the injured stated that accused Devendar caught hold of him and accused Narender gave him knife blow. He has referred to the cross-examination of PW2 Sanjay where he stated that police recorded his statement in the hospital and thereafter did not meet him. When the injured did not meet the police after the day of incident then how the police recorded the supplementary statement of injured Sanjay. In this regard it has been submitted by Ld. APP that it has come in the evidence of PW2 Sanjay that accused Davender present in court caught hold of his while accused Narender gave him a knife blows. He has submitted that



when it has specifically come in his evidence about the involvement of Devender.

There is no reason to disbelieve him. He has also submitted that this witness has not been confronted with statement Ex.PW2/A. I do not find force in the submissions made by Ld. APP that since the witness has not been confronted so the accused Devender was also liable to be convicted. It may be on account of inexperience on the part of Ld. counsel for the accused that he did not confront the witness. However, the complaint of the injured has been exhibited as Ex.PW2/A and the name of Devender does not find mention in this complaint. Accused Devender is thus liable to be given benefit of doubt.

The accused took the defence that he has been falsely implicated on account of previous enmity. There is no such evidence on the file that there is previous enmity between the injured and accused Narender. The defence of the accused is of thus no avail to him. As per the testimony of PW1 the nature of injury was found to be grievous.

In view of my above discussion, I am of the considered opinion that prosecution has been able to prove its case beyond any shadow of reasonable doubt against accused Narender and as such he is ordered to be convicted, U/S 307 I.P.C. While giving benefit of doubt to accused Devender, he is acquitted of the charge. His bail bond and surety discharged. It is ordered accordingly.”

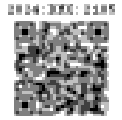
10. At the outset, it may be noticed that every improvement in testimony of witness is not fatal to the prosecution case until and unless the same creates a serious doubt about the truthfulness or credibility of a witness, of which the defence may take an advantage. There is no rule of law that if one of the accused has been acquitted on the basis of evidence of complainant raising doubt of his complicity in the crime, the other accused against whom



there is absolute certainty about his role in the incident must be given benefit of doubt. It needs to be kept in perspective whether the role ascribed to both the accused is similar or identical or a clear distinction exists as to the role ascribed to different accused. The statement of a witness needs to be looked into in entirety to appreciate if there is a material or serious contradiction striking to the root of the case which may lead to an inference that the accused may have been falsely implicated or creates a doubt as to the credibility of the witness. It is not the quantity but the quality of evidence, which matters for determining the guilt or innocence of the accused. The testimony of an injured witness cannot be considered to be untrustworthy, until and unless there are major contradictions and discrepancies.

11. Reverting back to the facts of the present case, it may be noticed that appellant Narender was residing in the neighbourhood of complainant/injured (PW2) Sanjay and as such was known to him. The visit of the complainant to the hotel was for consumption of food at late hours and complainant categorically deposed that he did not know the other 3-4 persons, who were present in the hotel at the aforesaid time. Complainant stuck to his version as deposed in examination-in-chief that he was caught hold of by co-accused Devender while stab injury was inflicted on the lower portion of chest by the appellant. Further, he clarified that since he was unconscious, he came to know later on that he was shifted from MR Hospital to Saroj Hospital.

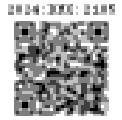
It may be noticed that except for bald suggestion that accused had been named on account of old enmity or that accused were not involved in the incident, nothing substantive could be elicited in the brief cross-examination of injured/PW1 to doubt his veracity and credibility on the



point of infliction of stab injury by appellant.

The MLC (Ex.PW1/A) has been further proved by PW1 Dr. Sanjeev Chopra and has been opined to be grievous and sufficient to cause death in the ordinary course of nature. No foundation has been laid out on behalf of the appellant in cross-examination to infer false implication except for making of bald suggestions to PW1. Learned Trial Court also noticed that identify of clothes and knife is not disputed as the same have been identified by the injured and the said clothes were worn by him at the time of the incident. It was also noticed that the knife (Ex.P1) which was sent for FSL examination, as per the report (Ex.PX) bears the same 'AB blood group', which is the blood group of the injured. Minor contradictions on the point of recovery of knife or the fact that clothes could have been taken out of the pullanda without breaking open the seal as observed in evidence, are not of much significance. The ocular evidence stands duly corroborated by the medical evidence and weapon of offence also stands duly recovered. No material contradictions could be elicited during cross-examination of PW2, which may strike to the root of the prosecution version.

12. The contention raised on behalf of the learned counsel for the appellant that appellant has been falsely implicated since no independent witnesses, who were present at the hotel at the relevant time have been examined, is also without much merit since PW2 clarified during cross-examination that 3-4 persons who were present at the hotel at the aforesaid time were not known to him. There is nothing on record to suggest if the identity of aforesaid persons stood revealed to the Investigating Agency at the relevant time. It is also a well known fact that persons from the public are reluctant to be a witness to criminal proceedings and merely on this



ground, the testimony of PW2, which is cogent and credible, qua role of appellant cannot be disbelieved.

13. Learned Trial Court rightly extended the benefit to co-accused Devender on the ground that he was not named in the initial FIR (Ex.PW2/A), but was only implicated by way of supplementary statement under Section 161 Cr.P.C.

14. It is also well settled that some delay in recording the FIR does not necessarily discredit the case of the prosecution, in case the delay is suitably explained to the satisfaction of the Court. In the present case, since the complainant/injured had been shifted initially to MR Hospital by someone and subsequently removed to Saroj Hospital by his brother, a delay of few hours in registration of FIR cannot be treated to be fatal to the prosecution case.

15. For the foregoing reasons, the prosecution version stands proved beyond reasonable doubt, against the appellant and there do not appear to be any cogent reasons to interfere in the judgment passed by the learned Trial Court convicting the appellant.

16. Learned counsel for the appellant in alternate submits that since appellant has undergone sentence of about 01 year 01 month and 21 day including remission and the unexpired portion of sentence as on 01.07.2003 is 01 year 07 months 15 days, he be released on sentence undergone. The appellant is stated to have since settled in life and was aged about 28 years in the year 2003.

17. It is well settled that punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realize his fault and is deterred from repeating such acts

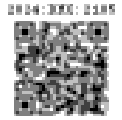


in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being.

While reducing the sentence, the mitigating and aggravating circumstances which are relevant for the purpose of imposing appropriate sentence need to be weighed. The gravity of offence and grievous injuries sustained by the victim/injured are crucial to be kept in perspective. Merely the long passage of time of about 21 years, after which the appeal has come up for consideration, cannot be the sole factor for reducing the sentence imposed by the learned Trial Court.

18. The Courts must see that public does not lose confidence in the judicial system as imposing inadequate sentence would do more harm to the justice system and victims may lose confidence in the system itself. The observations of Hon'ble Apex Court in *State of Madhya Pradesh v. Udham and Others*, (2019) 10 SCC 300 are apt to be noticed:

“12. Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).



13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.”

19. Keeping in perspective the aforesaid principles of sentencing, it may be observed that the injured was inflicted with stab wound of 2”x1”, just below the left side of the chest which has been opined to be grievous in nature and sufficient in the ordinary course of nature to cause death. The injury was inflicted on the vital part of the body below the heart and the complainant was as such lucky enough to survive since the heart was not punctured. The same was inflicted over a minor issue of complaint of food served to the injured. Nominal roll of the appellant also reflects another involvement in FIR No.934/1996 under Section 379/411/425 IPC, though the final outcome of the same is not known. The reduction of sentence may be inappropriate, merely because the appellant may have re-settled in life.

20. In the facts and circumstances, it is not a fit case to interfere with the impugned judgment and order on sentence **whereby the appellant has been sentenced to undergo RI for three years and pay a fine of Rs.1,000/- (in default of payment of fine, to undergo RI for one month)**. Reliance in this regard may also be placed upon *State of Rajasthan v. Banwari Lal*, (2022) 12 SCC 166, wherein the Hon’ble Apex Court strongly deprecated the reduction of sentence by the High Court considering that the occurrence of the incident took place about 26 years prior to the judgment in appeal passed by the High Court in an offence under Section 307 IPC to the period of sentence already undergone.

21. Appeal is accordingly dismissed. Appellant is directed to surrender



forthwith before learned trial court to serve the remainder of sentence imposed vide impugned judgment and order on sentence. Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the Superintendent Jail as well as learned Trial Court and SHO PS concerned for information and compliance, and ensure that appellant undergoes the remainder of sentence.

Trial Court Record be returned back to learned trial court.

(ANOOP KUMAR MENDIRATTA)
JUDGE

MARCH 19, 2024/v/sd/dc