



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

% **Reserved on : 30.10.2023**
Pronounced on : 21.02.2024

+ **CRL.A. 243/2023 AND CRL.M.(BAIL) 379/2023**

SONU CHOUDARYAppellant

Through : Mr. K.S. Verma, Advocate.

versus

STATE OF NCT DELHI Respondent

Through : Mr. Amit Ahlawat, APP for the State
with SI Vijay Kumar, PS Jaitpur.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By this Judgment, I shall dispose of the present appeal U/s 374 of Cr.P.C. which has been filed against the judgment of conviction dated 30.11.2022 and order on sentence dated 04.02.2023 passed by the Addl. Sessions Judge-FTC-02 (South East), Saket Courts/Delhi vide which the appellant has been convicted U/s 324/452 IPC and sentenced to undergo simple imprisonment for a period of two years and to pay a sum of Rs.1,00,000/- as fine for the offence U/s 324 IPC and in default of payment of fine, simple imprisonment for a period of six months. He has been

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further sentenced to undergo simple imprisonment for a period of 4 years and to pay a fine of Rs. 5,000/- U/s 452 IPC and in default of payment of fine, simple imprisonment for a period of three months.

2. In brief, the case of the prosecution is that DD No. 3 A was registered and marked to SI Chander Shekhar (IO), who alongwith Ct. Sanjeev reached at the spot i.e., Baithak Restaurant situated at B-2, Sukrbazar Nala Road, Hari Nagar Ext., New Delhi where PCR van had already reached there and PCR officials handed over two injured persons namely Rajat and Imran to the IO.

3. Appellant was also apprehended by the PCR officials and he was also handed over to the IO. Statement of complainant/injured Rajat Dhyani was recorded by the IO who stated that on 06.10.2014 he was present in the restaurant namely Baithak being run by him. At about 11:00 p.m., appellant came and asked for water to consume alcohol. When injured Rajat denied, appellant took out a blade and inflicted injuries on his thigh, shoulder and back.

4. The injured/complainant further stated that when his friend Imran tried to save him, appellant also attacked him with blade and inflicted injury on his stomach. On the basis of the statement of injured/complainant Rajat Dhayani, the present FIR was registered and appellant was arrested.

5. After the completion of the investigation, challan was filed before the court of Metropolitan Magistrate, who after completing all the formalities committed the case to the Court of Sessions for trial.



6. Vide order dated 14.07.2016, charges for the offences U/s 452/307 IPC were framed against the appellant to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution has examined 9 witnesses.

7. I have heard the Ld. counsel for the appellant, Ld. APP for the State and have also gone through the records of this case.

8. It is submitted by the Ld. counsel for the appellant that the Ld. Trial Court has not appreciated the testimony of PW-1 in its right earnest and has convicted the appellant solely on his testimony. It is further submitted that PW-3 who according to the prosecution came to save PW-1 has not supported the case of the prosecution. It is further submitted that the IO has not recorded the statement of the workers of PW-1 who were the natural witnesses of the incident and there is no corroboration to the testimony of PW-1. It is further submitted that PW-4 and PW-5 have deposed that the injured i.e. PW-1 and PW-3 and the appellant were found near Siddharth Garden and not inside Baithak restaurant and according to the counsel for the appellant this fact has been ignored by the Ld. Trial Court. It is further submitted that there is nothing on record to show that the alleged place of incident is Baithak restaurant. It is further submitted that the ingredients of section 452 IPC are not attracted in the facts of the present case.

9. Ld. counsel for the appellant has further submitted that as per the case of the prosecution, the appellant was caught at the spot but there is no explanation on record qua the non seizure of the weapon of offence which clearly shows that the appellant was not apprehended at the spot and was



involved later on in the alleged incident. It is further submitted by the Ld. counsel for the appellant that as per PW-1 the appellant was in inebriated condition when he entered the restaurant but smell of alcohol was not detected by the doctor who examined the appellant on the same day which further goes to show that the appellant has been falsely implicated.

10. Ld. counsel for the appellant has relied upon the following judgments:

- (a) Subhash Saheb Rao Datkar Vs. State of Maharashtra, Nagpur Bench, Criminal Appeal No. 203/2009.*
- (b) Prasanta Kumar Patra Vs. State of Orissa, Judgment dated 10.08.1984 passed by the Orissa High Court.*
- (c) Chatra Vs. State of M.P. AIR 1957 MP 217.*
- (d) Chandra Bhushan Dubey & Others Vs. State of Bihar 1965 CRLJ 841.*
- (e) Pirmohammad Kukaji Vs. State of M.P. AIR 1960 MP-24.*

11. On the other hand, Ld. APP for the State has argued that there is no infirmity in the impugned judgment. It is further submitted that PW-1 who is the injured witness has supported the case of the prosecution and even if PW-3 has not supported the case of the prosecution, the testimony of PW-1 cannot be discarded. It is further submitted that it is the quality of the evidence and not the quantity which is to be looked into. It is further submitted that the MLCs support the testimony of PW-1 and PW-3,



according to which the injuries suffered by PW-1 were simple in nature caused by sharp edge weapon. It is further submitted by the Ld. APP that the appellant has caused three injuries on the complainant with blade and the injuries on the stomach of PW-3 Imran could have been fatal.

12. In the instant case, the appellant has been convicted U/s 324/452 IPC. The relevant Sections are reproduced as under:

"324. Voluntarily causing hurt by dangerous weapons or means.— Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

452. House-trespass after preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

13. In the present case, the prosecution has examined 9 witnesses. Out of these witnesses two witnesses are material eye witnesses and the remaining are formal witnesses.

14. PW-2 is SI Narender Singh, who was on duty on 07.10.2014, from 08:00 a.m. to 04:00 p.m. He has registered the FIR on the basis of the rukka



sent by IO through Ct. Sanjeev Kumar and proved the FIR as Ex. PW 2/A and endorsement on the rukka as Ex. PW 2/B.

15. PW-4 is HC Surender, who deposed that on 06.10.2014, he was on night patrolling duty in beat no. 7. At about 12.00 AM midnight, he received a call from PW9 SI Chandar Shekhar that a quarrel had taken place at Shukr Bazaar, Nala Road near Siddharath Garden and PW4 was directed to reach there. When PW4 reached there PW9 SI Chandar Shekhar and Ct. Sanjeev were already present there. Thereafter, PW4 and Ct. Sanjeev took the accused to PS Jaitpur.

16. PW-5 is SI Goverdhan Oraun, who deposed that on 06.07.2014, he was in-charge of PCR K-11. He received an information at 11.45 PM. He along with his staff reached at the spot where PW1 and PW3 were found in injured condition. He further deposed that he apprehended the accused and handed over the accused to SI Chandra Shekhar on his arrival.

17. PW-6 Rajender Singh, record clerk, AIIMS Trauma Center proved the MLC bearing No. 454230 dated 07.10.2014 of injured Imran as Ex. PW6/A, MLC No. 454231 dated 07.10.2014 of injured Rajat as Ex. PW6/B and MLC bearing No. 454244 of accused as Ex. PW6/C. He also exhibited his authority letter to appear in court as Ex. PW6/D and discharge notes of 3 MLCs as Ex. PW6/D1 to Ex. PW6/D5.

18. PW7 is Dr. Biswajit Singh, SR, AIIMS Trauma Center, New Delhi. He deposed that as per MLC No. 454230 dated 07.10.2014 of Imran s/o Fakruddin, prepared by Dr. Mahavir Singh, patient suffered incised looking



wound of 10 cm x 3 cm on the anterior lower chest and nature of injury is simple caused by sharp weapon. He further deposed that injured Rajat was examined vide MLC No. 454231 dated 07.10.2014 by Dr. Mahavir Singh and it is mentioned on the MLC that patient Rajat suffered "incised" wound of different dimensions mentioned in the MLC on his left anterior thigh, left shoulder and on left posterior chest and nature of injury was "simple" caused by sharp weapon. He further deposed that accused Sonu was examined vide MLC No. 454244 dated 07.10.2014 by Dr. Vijay Ranjan and as per MLC, he suffered abrasion of right knee foot and forearm and nature of injury was simple.

19. PW-8 is H.C. Sanjay who deposed that on 06.10.2014, he was on emergency duty from 08:00 p.m. till 08:00 a.m. (07.10.2014) alongwith SI Chander Shekhar. At about 12:10 a.m. on receipt of DD No. 3A regarding scuffle at Nala Road, Sidharth Garden, Hari Nagar Extension, New Delhi, he alongwith SI Chander Shekhar reached at the spot where they met PCR officials, who had already apprehended accused and injured Imran and Rajat were also present with PCR staff in injured condition. He further deposed that both the injured were shifted to hospital by PCR van. Ct. Surender also reached at the spot with IO. He further deposed that in the meantime, IO received DD No. 9 A from AIIMS Trauma Center. PW-8 alongwith IO reached at Trauma Center, however, none of the injured met them. IO collected the MLC of both injured and went to the house of injured Rajat i.e., C-19, Hari Nagar Extension, Badarpur, New Delhi and recorded the statement of injured, prepared the rukka and got the FIR registered through PW-8. Injured Imran also joined the investigation and blood stained clothes

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of both the injured were seized by the IO. PW-8 alongwith IO returned to PS and IO arrested the accused, conducted his personal search and recorded disclosure statement of accused which is Ex. PW 8/A.

20. PW-9 SI Chander Shekhar is the IO of the case. He unfolded the sequence of investigation done by him. He proved on record endorsement made on the rukka as Ex. PW 9/A, site plan as Ex. PW 9/B and seizure memo of blood stained clothes of injured Imran as Ex. PW 9/C.

21. Apart from these formal witnesses PW-1 Rajat Dhayani who is the complainant/injured of this case and PW-3 Imran is the second injured in the case.

22. Statement of the appellant was recorded U/s 313 Cr.P.C. who stated that he has been falsely implicated. He further stated in the statement that when he reached at the spot, there was some scuffle between the complainant and some unknown persons and when he tried to intervene, the said unknown persons fled away from the spot and the complainant has wrongly taken his name as he was the member of that unknown persons and kept him sitting at the spot, so he was handed over to the police personnels.

23. To appreciate the case, it is apposite to reproduce the testimonies of two material eye witnesses i.e. PW-1 and PW-3 which reads as under:

"PW-1 Rajat Dhayani is the complainant and injured in this case. He deposed that on 06.10.2014, he was present in his restaurant namely Baithak situated at Shukarbazar Road, Badarpur. At about 11:00 PM, accused came to his restaurant and asked him to give a jug of water for consuming alcohol. When Rajat refused for the same, accused started arguing with him and boasted himself by stating that injured did not know as to who the accused was and also claimed that

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he was a bad character of the area. A scuffle took place and he inflicted injuries with a blade on thigh, shoulder and back of the injured. Rajat raised hue and cry and one known person namely Imran came to his restaurant to save him. Accused also attacked him with blade and caused injury on his stomach. A worker of complainant called police at number 100 and complainant become unconscious due to excessive bleeding. Thereafter, PCR got him admitted to AIIMS Trauma Center alongwith Imran. After treatment they were discharged and on the next date i.e. 07.10.2014 at about 08:00 AM IO recorded his statement. He exhibited his statement as Ex. PW1/A. Accused was arrested vide arrest memo which is Ex. PW1/B and his personal search was also conducted vide personal search memo which is Ex. PW1/C. Complainant handed over his blood stained clothes to the IO which were seized vide seizure memo which is Ex. PW1/D. He also exhibited his pants having a cut near the belt area in his deposition as Ex. P1.

In his cross examination, he stated that at the time of incident his employee namely Hemraj Thappa and Kalu were present in the restaurant. He stated that accused was heavily drunk and he came to his restaurant, however, he was not carrying any liquor bottle in his hand. He expressed his ignorance as to who had informed the police on the ground that he was unconscious due to injuries. He admitted that he did not hand over his blood stained shirt to the police. He also admitted that many persons had collected at the spot at the time of incident. He stated that Imran came within 5 minutes of the altercation.

***PW-3 Imran** is the second injured in this matter. He deposed that he does not know the complainant or the accused. He stated that he saw a quarrel going on between unknown persons and when he stopped there, someone from public inflicted injury on his stomach by a blade. He was taken to hospital by PCR van alongwith one more unknown injured. He has been cross examined at length by Ld. Addl. PP but he denied the case of the prosecution on material aspects. He denied the fact that he was attacked with the blade by the accused when he tried to save Rajat from him. Hence, PW3 Imran has turned hostile in this matter."*

24. PW-1 in his testimony has categorically stated that it was the appellant who had attacked him with blade and caused injuries to him. His testimony with regard to the role assigned to the appellant could not be shaken in the cross examination conducted by the Ld. counsel for the



appellant. His testimony finds corroboration with his MLC Ex. PW6/B. The identity of the appellant is also not in dispute as he was apprehended at the spot which is the admitted fact on record.

25. The other injured witness is PW-3. The Ld. counsel for the appellant has argued that he has not supported the case of the prosecution and therefore cannot be believed and the appellant cannot be convicted on the sole testimony of PW-1. Now as far as the question of hostility of PW-3 is concerned, no doubt, he has not supported the case of the prosecution to the extent of the appellant being involved in the incident. It is also settled proposition of law that the testimony of the hostile witness cannot be discarded in toto. PW-3 has supported the case of the prosecution on the aspect of the injuries sustained by him on the date and time of the incident. He has further supported the fact that he was taken to the hospital in a PCR van alongwith one injured. Meaning thereby, PW-3 has corroborated the version of PW-1 about the incident which had happened on that day and that they both have sustained injuries and were taken to the hospital in PCR van, therefore, his testimony cannot be discarded as a whole. He has only failed to identify the appellant but on all other aspects he has supported the version of PW-1.

26. In the instant case, PW-1 is the injured witness and as already observed hereinabove, he has categorically narrated the incident and has also assigned the role to the appellant. There is nothing on record to suggest that PW-1 had any enmity with the appellant and even otherwise, no one would



let his actual assailant escape and name or implicate the persons who are not involved in inflicting injury to him.

27. It has also been argued by the Ld. counsel for the appellant that the public witnesses have not been examined from the vicinity and even servants from the restaurant were also not examined by the IO. In my opinion, no benefit of such non examination can be given to the appellant as it is the quality of the evidence and not the quantity which is required to prove a case. In the instant case, PW-1 Rajat who is the injured witness has categorically deposed that it was the appellant who has inflicted injuries upon him and nobody else and there is no such law that conviction cannot be based on the sole testimony of the injured/eyewitness.

28. In this regard reliance can be placed on ***State of Uttar Pradesh Vs. Naresh and Ors. (2011 4 SCC 324)*** wherein it has been 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 offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

29. In case titled as ***Chacko @ Aniyan Kunju and others Vs. State of Kerala (AIR 2004 SC 2688)*** and in ***Rama Krishna Madhusudhan Nayar***



Vs. State of Maharashtra (AIR 2008 SC 927), it has been held by Hon'ble Supreme Court that a person can be convicted on the basis of the solitary evidence, if it is wholly reliable. If the evidence is unblemished and beyond all possible criticisms and the court is satisfied that the witness was speaking the truth then on his evidence alone, conviction can be maintained.

30. Therefore, there is not even an iota of doubt that an accused cannot be convicted on the basis of sole testimony of a witness provided the same is reliable and creditworthy, which is so in the present case. Therefore, argument of non-examination of servants of the appellant and non-joining of public witnesses or hostility of PW-3 Imran does not affect the case of the prosecution.

31. Another point raised by the Ld. counsel for the appellant is in regard to the non-seizure of weapon of offence by the IO. In the instant case, MLC No. 454230 of injured PW-3 Imran has been exhibited as Ex. PW 6/A and the nature of injury has been proved by Dr. Biswajit Singh who has been examined as PW-7. As per the MLC Imran had received an incised wound of 10 cm x 3 cm on the anterior lower chest portion. PW-1 Rajat was examined vide MLC No. 454231 which is exhibited as Ex. PW 6/B and as per the opinion of PW-7, the nature of injury was simple caused by sharp weapon. He had suffered three incised wounds of 6 cm x 3 cm.

32. Now it is to be seen as to what is the effect on the case of the prosecution on non seizure of weapon of offence. In this regard, reliance can be placed on *Saleem Khan Vs. State Government of NCT of Delhi*



(Criminal Appeal No. 491/2020 decided on 05.01.2022) in which it has been held as under:

"19. A contention was raised on behalf of the appellant with respect to non recovery of the weapon of offence. In connection therewith, it is noted that Supreme Court has observed in Rakesh & Anr. Vs. State of Uttar Pradesh & Anr. reported as (2021) 7 SCC 188 that recovery of the weapon of offence is not a sine qua non for convicting an accused. Albeit under section 302/34 IPC, the court in this case also opined that it was not possible to reject the ocular evidence of eye witness to the incident, who are reliable and trustworthy.

Combined with the fact that the testimonies of the complainant and his brother Sahil are cogent and consistent, the contention raised on behalf of appellant that the weapon of offence was not recovered, has no merit. The same is rejected accordingly"

33. Now coming to the facts of the present case. The testimony of PW-1 has been found to be trustworthy and reliable. The appellant had entered into the restaurant armed with a blade and inflicted three injuries on the body of PW-1 (injured/complainant). As per the case of the prosecution, the appellant was carrying a blade and as per the opinion given by the doctor after examining the injuries of the injured, the weapon used for inflicting these injuries was a sharp edge weapon.

34. The appellant was carrying a blade and it is not understood as to why he was carrying the same in his pocket. Even, no explanation has been given by the appellant in this regard in his statement recorded U/s 313 Cr.P.C. It is a matter of common knowledge that nobody carries a blade in his pocket while moving around in the society, unless and until the said person carrying the blade has something in his mind. Moreover, looking into the testimony of PW-1, nature of injuries suffered by him, non seizure



of weapon of offence by the IO is of no significance and does not cast doubt on the case of prosecution.

35. It has also been argued by the Ld. counsel for the appellant that as per the testimony of PW-1 the appellant was in inebriated condition when he entered the restaurant but smell of alcohol was not detected by the doctor who had examined the appellant on the same day.

36. The perusal of the statement of injured PW-1 on the basis of which the present case was registered and his examination-in-chief, it is nowhere stated that the appellant was in a drunken condition when he came to the restaurant. PW-1 has stated that the appellant asked for a jug of water to consume alcohol but only in his cross examination he has stated that the appellant was in drunken condition when he entered the restaurant. This contradiction which has been pointed out by the Ld. counsel for the appellant is a minor contradiction and does not go to the root of the prosecution's case and does not shake otherwise the reliable testimony of PW-1.

37. Ld. Trial Court after appreciating the evidence produced on record has convicted the appellant U/s 324 IPC though he was charged U/s 307 IPC. Ld. counsel for the appellant has argued that Section 452 IPC is not made out in this case as this Section contemplates house trespass with previous preparation made for causing hurt and there is no such evidence on record. This argument has no force in it. Section 452 IPC has already been re-produced hereinabove. As per PW-1 injured Rajat and PW-3 Imran they have received injuries with a sharp edge weapon which according to the



prosecution is a blade. The MLC of both the injured also suggests that they have received injuries with a sharp edge weapon.

38. The prosecution has been able to prove on record that it was the appellant who had entered the restaurant and thereby caused injuries with a blade to PW-1 and PW-3. It is not that only a single injury has been caused by the appellant, the appellant has caused three injuries on PW-1 and one injury on the person of PW-3. Though, PW-3 has failed to identify the appellant but the date and time when the injuries were inflicted are the same as received by PW-1.

39. The appellant was carrying a blade when he entered the shop and it does not strike to logic as to why would anyone carry a blade which is a very sharp edge cutting instrument with him unless the person carrying the same has other intentions.

40. In the instant case, the appellant has inflicted four injuries with the blade which clearly shows that he was not carrying the blade simply for the sake of carrying, he had all the intentions to use the same as and when he chose to, which he used in this case as already discussed hereinabove.

41. As far as the judgments relied upon by the Ld. counsel for the appellant are concerned, there is no dispute with regard to the propositions of law laid down in the said judgments but each criminal case has to be dealt with its own peculiar facts and circumstances and the judgments relied upon by the Ld. counsel for the appellant are not applicable to the facts of the present case.



42. Therefore, in view of the discussions mentioned hereinabove, I find no infirmity in the impugned judgment dated 30.11.2022 and order on sentence dated 04.02.2023, the same are, therefore, upheld. Consequently, the appeal is, dismissed. Pending applications (if any) are disposed of. Trial court record be sent back forthwith alongwith a certified copy of this judgment.

RAJNISH BHATNAGAR, J

February 21, 2024

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