



2024 : DHC : 273



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

Judgment reserved on: 05.01.2024

Judgment delivered on: 15.01.2024

+ CRL.A. 1073/2023, CRL.M.(BAIL) 1807/2023
SURAJ

..... Appellant

Through: Mr.Rohan Joachim Alva, Advocate
(DHCLSC).

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Meenakshi Dahiya, APP for State
with SI Rakesh Kumar, PS S.B. Dairy,
Delhi.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Appeal has been preferred under Section 374(2) read with Section 482 of Code of Criminal Procedure, 1973 (Cr.P.C.) challenging the judgment and order on sentence dated 26.08.2023 and 30.10.2023 respectively, whereby the appellant has been convicted under Section 308 IPC in FIR No.477/2021 registered at PS: Shahbad Dairy, Delhi.

2. In brief, the law was set into motion vide DD No.89A on 23.08.2021 followed by registration of FIR No.477/2021, PS: Shahbad Dairy, Delhi under Section 308/34 IPC on the statement of Sunny (PW1), which culminated in filing of charge-sheet against appellant Suraj and co-accused Robin.



It may be noticed at this stage itself that co-accused Robin who was charge-sheeted along with the appellant was acquitted vide the impugned judgment.

3. As per the case of the prosecution, on 22.08.2021, injured Arjun (PW-2) received a call from appellant Suraj to meet him in Matke Wali Gali, Shahbad Dairy, Delhi. When Arjun reached Matke Wali Gali along with his friend/neighbour Sunny (PW-1/complainant), he was confronted by appellant on the issue of Arjun having proximity with his ex-girlfriend namely Monika. Arjun was further assaulted by appellant who was joined by two-three other associates including Robin. As Sunny raised alarm, appellant along with other co-accused fled from the spot. Arjun was removed to Dr.BSA Hospital, from wherein he was referred to Safdarjung Hospital. The information regarding the incident was reported to the police telephonically on the next day i.e. 23.08.2021 by sister of the injured (Neha/PW-5), which was entered vide DD No.89A. Statement of Arjun was also recorded during course of investigation. Appellant was arrested on 08.02.2022 since he was lodged in JC in another case bearing e-FIR No.3060/21 under Section 379/411 IPC, PS: K.N. Katju Marg, Delhi. Co-accused Robin was also arrested from Rohini Jail wherein he was lodged in case FIR No.675/21, under Section 302 IPC, PS: Shahbad Dairy, Delhi. Charge was framed against appellant Suraj as well as co-accused Robin for the offences punishable under Section 308/34 IPC.

4. In support of the prosecution case, ten witnesses were examined. PW-1 complainant Sunny and PW-2 injured Arjun are the material witnesses relating to assault. PW-4 Subhash (father of injured) was examined to prove that Arjun had left about 09.00 PM on the date of incident and subsequently



Arjun informed him regarding assault by appellant and Robin. It may be noticed at this stage itself that PW-4 was cross-examined on behalf of prosecution and declared hostile since he denied that Arjun had informed him that Robin was also involved in the assault. PW-5 Neha (sister/cousin of injured) was also examined to prove that Arjun had left on the date of incident along with his friend Sunny and also proved the photographs of Arjun taken after the assault at BSA Hospital.

PW-3 ASI Shri Chand, (Duty Officer), PW-6 ASI Surender Singh, PW-7 Dr.Pawan Chaudhary (Sr. Resident, Department of Neurosurgery, Safdarjung Hospital) and PW-10 Dr.Manu Tripathi (CMO, Dr.BSA Hospital) are formal witnesses. PW-8 HC Vijay Prakash and PW-9 ASI Rakesh Kumar were associated with investigation.

5. Learned counsel for the appellant submits that the findings of the learned Trial Court are based on surmises and conjectures since PW-1 Sunny (complainant) who is alleged to have been present at the spot did not support the case of the prosecution and was declared hostile.

It is also urged that PW-4 Subhash, father of injured did not support the prosecution version and resiled from his statement under Section 161 Cr.P.C. *qua* role of co-accused Robin.

Further, the testimony of PW-2 Arjun (injured) is stated to be unreliable since he did not support the prosecution version on the point of assault by co-accused Robin. It is also urged that PW-2 Arjun (injured) had animosity with the appellant on the issue of an ex-girlfriend namely Monika and, as such, was falsely implicated. It is further contended that the object with which the injuries were inflicted has not been specified by PW-7 Dr.Pawan Chaudhary. Also, the name of the assailants is stated to have not



been disclosed at the time of admission at Dr.BSA Hospital after the incident. Prosecution version is also challenged for want of joining of independent witness from the public though the area is stated to be heavily inhabited. It is also submitted that no video footage of the incident was obtained to support the prosecution version though the CCTVs have been installed in the area. The conviction of the appellant on the basis of testimony of solitary witness (injured) is stated to be bad in law.

In the alternative, it is also prayed that the appellant be released on the sentence undergone since he has undergone sentence of about 01 year 10 months including remission as on 01.12.2023.

In support of his contentions, reliance is placed upon *Chhote Lal v. Rohtash and Others*, 2023 SCC OnLine SC 1675 and *Karuppanna Thevar and Others v. The State of Tamil Nadu*, (1976) 1 SCC 31.

6. On the point of delay in registration of FIR, learned Trial Court noticed that the incident took place on 22.08.2021 at about 09.30 PM while the information was given to the police by sister of injured Arjun, namely Neha (PW-5) through mobile phone only on 23.08.2021 at 06.47 PM which was registered as DD No.89A, on the basis of which the investigation was commenced. The statement of Sunny (PW-1) was recorded by the IO at the spot on 23.08.2021 at 11.50 PM and rukka was thereafter forwarded for registration of FIR.

7. I am of the considered view that the learned Sessions Judge rightly inferred that from 06.47 PM on 23.08.2021 after receiving the information till preparation of rukka on the same day, the IO had spent 4-5 hours in the initial investigation of the case, collecting the MLCs and, consequently, the FIR could be registered only on 24.08.2021 at 12.21 AM. It was also noticed



that day of occurrence was during peak of Covid pandemic, due to which there was possibility of no police personnel being on duty in Dr.BSA Hospital at the time of admission as revealed from MLC (Ex.PW10/A). As such, the delay in registration of FIR appears to have been satisfactorily explained by the prosecution and there does not appear to be any circumstances whereby the FIR may be considered to have been lodged as an afterthought and deliberations.

The veracity cannot be doubted merely on account to delay in registration of FIR, in the facts and circumstances of the case.

8. The conviction has been strongly challenged on behalf of the appellant since PW-2 Arjun (injured) was cross-examined on behalf of prosecution *qua* role of co-accused Robin and the prosecution version has not been supported by PW1 Sunny.

9. The oral evidence may be either (1) wholly reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable. It is well settled that accused can be convicted even on the sole testimony of a witness if it is wholly reliable. However, where the witness does not partly support the case of the prosecution *qua* the role of the co-accused or any other fact and is cross-examined on behalf of the prosecution, the same does not result in automatic rejection of his evidence. **Section 154 of the Indian Evidence Act, 1872 provides that the Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Further, sub-section 2 of Section 154 does not disentitle the person so permitted to rely on any part of the evidence of such witness.** The evidence of a witness who has



been cross-examined by the party relying upon it can be taken into account and conviction can be based, if it finds corroboration, and the credit of the witness has not been shaken, when taken as a whole. However, if the complete testimony of a witness is impugned and the witness squarely stands discredited, as a matter of prudence, the evidence should be discarded in toto. Reliance in this regard may be placed upon *Sat Paul v. Delhi Admn.*, (1976) 1 SCC 727.

10. Reverting back to the facts of the case, it may be noticed that PW1 Sunny was cross-examined on behalf of the prosecution since he did not support the prosecution version on the point of having witnessed the assault though he admitted that he had accompanied the injured PW-2 Arjun to the spot. He also stated that since Arjun had affair with a girl namely Monika, there was quarrel on the issue as Suraj was earlier having friendship with Monika.

During examination-in-chief, he stated that when Suraj started chasing Arjun and 3-4 boys also came running in the street, he fled from the spot. Thereafter, on returning to the site after 15-20 minutes, he saw that Arjun was lying in injured condition and took him to BSA Hospital, Rohini. The statement was also stated to have been recorded by the police on the next day of the incident. He also stated that Suraj had taken out a knife when he and Arjun had reached the street, prior to his fleeing from the spot. On cross-examination on behalf of the prosecution, PW-1 did not support the prosecution version on the point of witnessing the assault, as well as denied having made a statement to aforesaid extent to the police. On cross-examination on behalf of the appellant, PW-1 maintained his stand regarding presence of appellant Suraj at Matke Wali Gali when they reached the spot.



In view of above, the testimony of PW-1 to the extent that he had accompanied PW-2 Arjun to the spot wherein the appellant was already present, could not be dented. Also, the fact that PW-1 fled from the spot since the appellant was in possession of a knife and as three-four associates of appellant followed, can be taken note of.

11. The veracity of testimony of PW-2 Arjun (injured) may now be examined to see if the same can be relied for basing the conviction.

PW-2 Arjun stated that Suraj had taken a knife and gave a blow but he managed to save himself. Thereafter, PW-2 was assaulted by putting a blanket on his face and was hit with stones on which he became unconscious. The role of co-accused Robin was denied by PW-2 though during investigation Robin is alleged to have participated in the assault.

During cross-examination except on the point of presence and participation of co-accused Robin, testimony of PW-2 remained consistent. No material contradictions could be brought in the short cross-examination on behalf of the appellant. Merely because carrying of knife by the appellant was not mentioned by PW-2 in his statement Ex.PW2/C, it cannot be a ground to disbelieve the testimony of PW-2. Minor alterations are bound to be there in a natural testimony on account of lapse of time and may have been missed to be disclosed at the time of recording of statement under Section 161 Cr.P.C.

Non-seizure of stones or weapon of offence cannot be detrimental to the prosecution case as the injured was assaulted after covering his head with blanket. Also, the non-seizure of the clothes of PW-2 by the investigating agency seems inconsequential since the nature of injuries remains undisputed



on record as proved in the MLC.

The prosecution version cannot be doubted merely on the ground that no independent witness from public was joined in the investigation. Apparently, neither the complainant nor injured have claimed that they knew the identity of other persons who allegedly gathered at the spot. Even otherwise, it is a ground reality that members of public are reticent to be a witness to the criminal proceedings out of fear and concerns of their own safety and life.

12. It needs to be kept in perspective that minor discrepancies, infirmities and deficiencies unless they impact the root of the case and render the testimony unworthy of belief, cannot be given much credence as they may occur on account of errors of memory due to lapse of time. The testimony of PW-2 cannot be completely washed away merely on the ground that he has been cross-examined on behalf of the prosecution and did not support the prosecution version *qua* role of co-accused Robin. The testimony of PW-2 can be scrutinized and accepted to the extent it is found dependable or trustworthy. I am of the considered view that testimony of PW-2 Arjun on the point of assault by the appellant could not be dented and there was no reason to falsely implicate the appellant. The motive of assault by appellant was apparently over relationship of PW-2 with Monika though it has been contended on behalf of the appellant that he has been falsely implicated because of inimical relations. The intention, knowledge and motive are writ large on the face of record and the assault was premeditated, since the victim was telephonically called at the place of occurrence and thereafter mercilessly assaulted.



13. It is well settled that conviction can be based on solitary testimony of a credible witness though uncorroborated. The Courts should not insist on corroboration except in the cases where the nature of the testimony of the single witness itself requires as a rule of prudence that corroboration should be insisted upon like in case of a witness of an accomplice or of an analogous character. The consideration whether corroboration of testimony of solitary witness is or is not necessary depends upon the facts and circumstances of each case. Reference may be made to *Vadivelu Thevar v. The State of Madras*, AIR 1957 SC 614. It may be noticed that even Section 134 of the Indian Evidence Act, 1872 provides that no particular number of witnesses shall in any case be required for the proof of any fact, keeping in perspective that the evidence has to be weighed and not counted.

14. The question which also arises for consideration is whether the act of accused in causing injuries on the person of PW-2 attracts the ingredients of offence under Section 308 IPC and the same was committed with the intention or knowledge to commit culpable homicide not amounting to murder and if the accused by the said act had caused death, he would have been guilty of culpable homicide. Admittedly, the intention and knowledge is to be deduced from the circumstances as well as the nature of injuries and the area of the body where the injuries were inflicted.

On the face of record, the assault was premeditated and there is clear evidence on record that accused/appellant held a grudge against the complainant over the relations with his ex-girlfriend Monika. After a failed attempt to cause harm with the stab blow, the injuries were inflicted with avowed object or knowledge to cause death by causing several injuries on



the parietal region, which is a vital part of the body with stones. The offence, as such, falls within the ambit of Section 308 IPC.

The authorities relied upon by learned counsel for the appellant are distinguishable on facts.

15. Learned counsel for the appellant has also contended that appellant be released on the sentence undergone since he has been in custody for about 01 year 10 months including remission as on 01.12.2023.

16. The prime objective of criminal law is imposition of adequate, just, proportionate punishment commensurate with gravity, nature of crime and the manner in which the offence is committed. Punishment should not be so lenient that it shakes the conscience of the society since awarding lesser sentence encourages any criminal and as a result of the same, the society suffers. Reference in this regard may be made to *Jameel v. State of Uttar Pradesh*, (2010) 12 SCC 532 and *State of Madhya Pradesh v. Surendra Singh*, (2015) 1 SCC 222.

17. The convict in the present case is also involved in other offences and as such it cannot be said to be a case of solitary aberration. The injuries suffered by PW-2 Arjun reflect that he was mercilessly assaulted resulting in several injuries in the parietal region as well as other parts of the body, which were opined to be 'grievous' by PW-7 Dr.Pawan Chaudhary, Sr. Resident, Department of Neurosurgery, Safdarjung Hospital.

18. In the facts and circumstances, this Court is of the opinion that learned Trial Court has appropriately sentenced the appellant with rigorous imprisonment for three years and payment of fine of Rs.10,000/- and in default of payment of fine, to undergo further simple imprisonment for 30



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days, with benefit of Section 428 Cr.P.C., for the offence punishable under Section 308 IPC after taking into consideration the facts and circumstances of the case. No grounds for reduction of sentence are made out.

For the foregoing reasons, the appeal is dismissed. Pending applications, if any, also stand disposed of. A copy of this judgment be supplied to the appellant through Superintendent, Tihar Jail and also be forwarded to the learned Trial Court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

JANUARY 15, 2024/sd