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

Date of decision: 15.01.2025

+ **CRL.A. 96/2020**

STATEAppellant

Through: Mr Aashneet Singh, APP for State

versus

LOKESHRespondent

Through: Mr Archit Upadhayay, Adv. (DHCLSC)
SI Pankaj Kumar, PS-Jyoti Nagar

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an appeal filed under section 378(1) of Code of Criminal Procedure, 1973 ("**CrPC**") seeking to challenge the impugned judgment dated 14.11.2017 passed by the learned MM, Shahdara District, Karkardooma Courts, Delhi wherein the learned MM acquitted the respondent for the offences under section 324 of Indian Penal Code, 1860 ("**IPC**").

FACTUAL BACKGROUND

2. The brief facts of the case are that the complainant was working at Loni Road near Petrol Pump, Dhama Automobiles, Delhi. On 27.01.2010 at about 05:30 PM, the complainant Sh. Ram Kumar called a PCR with the allegation that the accused/respondent had stabbed the complainant on the left side of the stomach with a knife and fled away. Thereafter, the complainant was shifted to GTB



hospital where the doctor removed the knife. Hence, the FIR was registered and thereafter the clothes of the complainant/injured were seized. The complainant correctly identified the accused in Court.

3. After completion of investigation, a chargesheet was filed against the respondent and thereafter, the charges were framed against the respondent under section 324 of IPC. From the side of the prosecution, a total of 8 witnesses were examined.
4. The complainant was examined as PW-1 wherein he deposed that he had given a loan of Rs. 70,000/- to the father of respondent on interest and when he had demanded back his money back altercation had taken place several times between him, respondent and father of respondent. He further states that on 27.01.2010 at 5:30 PM, the respondent reached his office and started abusing the complainant on the issue of money, thereafter, the respondent stabbed the complainant on the left side of his stomach with a knife and fled away. Consequently, he called the police at 100 number and was shifted to the GTB Hospital where the doctor had removed the knife.
5. PW-2 (Ct. Mahesh Kumar) and PW-4 (Ct. Mukesh) had accompanied PW-3 (HC Om Prakash) Investigating Officer (IO) to the incident spot and GTB Hospital and deposed about the registration of FIR and arrest of the respondent.
6. PW-3/IO, PW-5 (HC Dilbag Singh), PW-6 (SI Ram Niwas) and PW-8 (SI Nafe Singh) are police officials and are formal witnesses who have deposed about the steps taken by them during the course of investigation.



7. PW-7 (Dr. Parmeshwar Ram, GTB Hospital) has proved the MLC of the complainant which was prepared by him as Ex. PW-7/A.
8. The respondent in his statement recorded under section 313 of CrPC stated that he was falsely implicated in the present case. None of the witnesses were examined from the side of the respondent.
9. *Vide* judgment dated 14.11.2017, learned Trial Court acquitted the respondent from the said charges i.e. 324 of IPC. Hence the present appeal is filed by the State/appellant seeking setting aside of the said judgment.
10. Mr Singh, learned APP appearing for the appellant submits as under:-
 - 10.1 The impugned judgment passed by the learned Trial Court is not sustainable in the eyes of law as the same is based on the presumption, conjectures and surmises and hence is liable to be set aside. He argues that it is quite probable for a person to run with a knife embedded to the doctor first rather than removing it from his body as removing a knife may further aggravate the injury. The fact that the complainant was attacked with a knife is proved from the fact that there was a knife embedded on the left side of the stomach of the complainant.
 - 10.2 Learned Trial Court failed to appreciate the motive of the respondent who had turned dishonest. Instead of returning Rs 70,000 to the complainant borrowed from him and the respondent voluntarily caused hurt to the complainant.
 - 10.3 Learned MM failed to appreciate that immediately after the



incident, the complainant informed the police. Further, the testimony of the complainant being an injured witness has great evidentiary value and unless compelling reasons exist, the statement cannot be discarded lightly. Reliance is placed on *Tarun Vikram v. State, 2014 SCC OnLine Del 6935*.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

11. *Per Contra*, Mr Upadhayay, learned counsel appears for the respondent and submits as under:-

11.1 No independent witness has been produced and examined by the prosecution in support of its case. The testimony of the complainant suffers from a lot of contradictions.

11.2 The chances of the voluntary self infliction of injury in the instant case cannot be ruled as it is very unusual for a person to run with a knife embedded in his stomach to the doctor without raising hue and cry rather than removing it from his body.

11.3 It is probable that the injury could be self-inflicted because the wound measures 4 cm by 2 cm and is inflicted with a kitchen knife and there was no active bleeding from the wound. Thus, the injury is opined to be “simple injury” in nature.

ANALYSIS AND FINDINGS

12. I have heard learned counsel for the parties and perused the material available on record.

13. Admittedly, there is no eye witness to the incident. The case of the



prosecution rests upon the circumstantial evidence.

14. It is settled law that when the case is based on the circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. Further those circumstances should be unerringly pointing towards the guilt of the accused. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion, within all human probability, the crime was committed by the accused and the accused should be incapable of explanation on any hypothesis other than that of the guilt of the accused. Relevant para of the judgment of ***Sharad Birdhichand v. State of Maharashtra, (1984) 4 SCC 116*** is extracted below:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerning “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri)



p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

15. In the case of ***Prem Kumar & Another v. State of Bihar, (1995) 3 SCC 228***, the Hon’ble Supreme Court has held that:-

“5. When there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the court. It is true that this Court has held in State of U.P. v. Moti Ram [(1990) 4 SCC 389 :



1990 SCC (Cri) 585] that in a case where the prosecution party and the accused party were in animosity on account of series of incidents over a considerable length of time, the motive is a double-edged weapon and the key question for consideration is whether the prosecution had convincingly and satisfactorily established the guilt of all or any of the accused beyond reasonable doubt by letting in reliable and cogent evidence. Very often, a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In our opinion, in a case when motive alleged against the accused is fully established, it provides a foundational material to connect the chain of circumstances. We hold that if the motive is proved or established, it affords a key or pointer, to scan the evidence in the case, in that perspective and as a satisfactory circumstance of corroboration. It is a very relevant and important aspect — (a) to highlight the intention of the accused and (b) the approach to be made in appreciating the totality of the circumstances including the evidence disclosed in the case.”

16. In the case of ***Bhajan Singh @ Harbhajan Singh & Others v. State of Haryana, (2011) 7 SCC 421***, the Hon’ble Supreme court concluded that:

“36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence



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 at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." Thus, the evidence of an 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 Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; Kailas v. State of Maharashtra [(2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401] ; Durbal v. State of U.P. [(2011) 2 SCC 676 : (2011) 1 SCC (Cri) 877] and State of U.P. v. Naresh [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] .)"

17. The significance of motive would primarily depend upon the facts and circumstances of a given case. According to the case of the prosecution, a creditor-debtor relationship existed between the



complainant and the respondent as the complainant gave Rs. 70,000 to the respondent's father as a loan and when the same was asked to be returned, the respondent attacked the complainant. The said factual position was disputed by the complainant himself in his cross examination and states as under:-

“.....Apart from me one more persons works at Dhama Automobile. My duty hours are from 10.00 am to: 6.00 am. No register is maintained regarding the duty hours and no I.D. Card was issued by my employer. I was alone in office when the incident took place and my fellow workers were not there. I do not give money on interest. It is wrong to suggest that I am engaged in the business of money lending on interest. Vol. Accused took money from me as he has to buy cloth and later on accused assured me that he will pay interest @ interest payable by the bank. It is correct that I had not stated to the police that accused borrowed money from me in order to buy cloth. Vol. I was not in position to state everything to police at that time as I was stabbed by the accused and I was in severe pain. I had given money to the accused by way of cash. I had accumulated money from the committee. I do not know by what means accused came to my office but he might have come by foot.”

18. The fact that the respondent had borrowed Rs. 70,000 from the complainant has not been proved by the PW1/complainant. The complainant in his cross examination, rather than supporting the case



of the prosecution, voluntarily stated that the respondent took money as he had to buy cloth. Further, PW-1 has denied the suggestion that he is engaged in the business of money lending on interest.

19. Hence, the statement of the PW-1/complainant finds no corroboration. Thus, the said testimony of the complainant is inconsistent and not trustworthy. The learned MM has correctly analysed the said testimony which shows that there are a lot of contradictions in his testimony recorded in the examination in chief as well as in his cross examination.
20. The learned MM has correctly appreciated the facts and evidence of the case that there is no independent witness despite the spot being a commercial area and the timings of the incident allegedly being 05:30 PM which is also a busy time of the day particularly when PW1/complainant has stated himself that there are several offices and shops in the vicinity which were open at the time of alleged incident. Relevant portion from the testimony of the complainant is extracted below:-

“Other offices and shops are also situated adjacent to my office which were open. The accused after coming to my office started abusing. After sustaining the injuries I cried and accused fled away. Public persons were not able to apprehend the accused as he fled from the spot. Police personnel came at the spot after 5-10 minutes of the incident and I was taken to the hospital and I was interrogated by the police in the way. I had also shown the place of incident



to the police but I do not remember when I showed the same.”

21. In the case of **Anwarul Haq v. State of U.P., (2005) 10 SCC 581**, the Hon’ble Supreme Court laid down that:-

“12. Section 324 provides that “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 a 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” can be convicted in terms of Section 324. The expression “any instrument, which used as a weapon of offence, is likely to cause death” should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this section.”

22. The fact that the respondent has voluntarily caused hurt to the victim is a *sine qua non* to Section 324 IPC. The circumstance that the respondent and the complainant were present in the complainant’s office in the evening of 27.01.2010 at about 05:30 PM has not been



proved, as PW1/complainant himself stated that he was alone when the incident took place and his fellow worker was not there. The other witnesses had reached the spot after the occurrence of the incident and had not witnessed the incident in question. No other evidence has been put on record by the prosecution. Thus, in the present case, the prosecution has not been able to prove the same beyond reasonable doubt.

23. Further, the learned MM has rightly observed that:-

“The chances of the voluntary self-infliction of injury in the instant case cannot be ruled out as it is very unusual for a person that he ran to a doctor with the knife embedded not so deep in his person to the doctor first rather than removing it from his body without raising hue and cry.”

24. The fact that the injury could be self-inflicted is also probable in view of the fact that the wound measures 4 cm x 2 cm and is inflicted with a kitchen knife and there was no active bleeding from the wound. Therefore, the testimony is inconsistent and cannot be relied upon and raises doubts over the authenticity of the appellant's case.

25. For the reasons noted above, in the instant case, I can find major contradictions in the testimony of the complainant which tilts the balance in favour of the respondent.

26. Another factum which weighs with me is that the present appeal has been filed by the State and the victim has chosen to accept the verdict passed by the learned Trial Court.

CONCLUSION



27. For the reasons noted above, the impugned judgment dated 14.11.2017 does not require any interference. Hence, the present appeal is dismissed.

JASMEET SINGH, J

JANUARY 15, 2025/sr
(Corrected and released on 27th January, 2025.)

Click here to check corrigendum, if any