

(2014) 03 DEL CK 0039**Delhi High Court****Case No:** Criminal Appeal No. 677 of 2012

Sukhbir

APPELLANT

Vs

State (Govt. of NCT) of Delhi

RESPONDENT

Date of Decision: March 11, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 411(c)
- Penal Code, 1860 (IPC) - Section 307, 34

Citation: (2014) 2 Crimes 546**Hon'ble Judges:** S.P. Garg, J**Bench:** Single Bench**Advocate:** Saahila Lamba, Advocate for the Appellant; M.N. Dudeja, APP, Advocate for the Respondent**Judgement**

S.P. Garg, J.

Laxman Singh, Satish, Sukhbir and Sudhir were suspects in case FIR No. 171/99 PS Jahangir Puri. Allegations against them were that on the night intervening 30/31.03.1999 at about 12.00 (night) near jhuggi No. 493, H-2 Block, Shah Alam Bagh, Jahangir Puri, Delhi, they in furtherance of common intention inflicted injuries to Nathu in an attempt to murder him. Daily Diary (DD) No. 103B (Ex. Mark "A") was recorded at 12.10 (night) at PS Jahangir Puri on getting information of the incident. PW-1 (SI Chandan Singh) from PCR went to the spot and shifted the injured to Hindu Rao hospital. Since no eye witness was available, the Investigating Officer lodged First Information Report after making endorsement (Ex.PW-6/A) on Daily Diary (DD) No. 103B. During investigation, statements of the witnesses conversant with the facts were recorded. The injured was discharged from the hospital on 08.04.1999. In his statement he implicated Sukhbir, Laxman, Satish and Sudhir. Nature of injuries was ascertained as "dangerous". Laxman and Satish were apprehended; arrested and a charge-sheet was filed against them in which, Sukhbir and Sudhir were shown Proclaimed Offenders. In Sessions Case No. 132/2000, both Satish and Laxman

Singh were held guilty by a judgment dated 22.01.2004 for committing offence under Section 307/ 34 IPC. By an order on sentence dated 23.01.2004, they were awarded RI for two years with fine Rs. 1,000/-each. They challenged conviction in Crl. A. No. 91/2004. It appears that subsequently, they did not pursue the appeal. By an order dated 10.02.2010, the appeal was dismissed for non-prosecution. They served the sentence awarded to them. Since the appellant - Sukhbir was Proclaimed Offender, on 13.04.2007, he was arrested under Section 411(c) Cr.P.C. vide arrest memo (Ex.PW-6/A). Supplementary charge-sheet was submitted against him. The prosecution examined eleven witnesses to establish his guilt. In 313 statement, he denied his complicity in the crime and pleaded false implication. The Trial Court, by the impugned judgment dated 08.08.2011 in Sessions Case No. 63/2008, convicted him under Section 307/ 34 IPC. He was awarded RI for five years with fine Rs. 5,000/- by an order on sentence dated 11.08.2011.

2. I have heard the learned counsel for the parties and have examined the file. Crucial witnesses are PW-4 (Nathu) and PW-8 (Sher Singh Chauhan). PW-4 (Nathu) categorically deposed that on 30/31.03.1999 at about 11.30 P.M. when he was coming back to his house from his place of work and reached in front of jhuggi No. 493, he was caught hold by Satish, Sudhir and Laxman. The appellant Sukhbir took out a long knife from his pant and inflicted knife blows on the left side of the chest and face. He fell down and became unconscious. He identified bloodstained shirt (Ex.P1). PW-8 (Sher Singh Chauhan), a neighbour, fully corroborated the version given by the injured witness and attributed specific role to the appellant Sukhbir whereby he inflicted multiple stab wounds on the various body organs of the victim Nathu. All these accused persons were acquainted with the victim and the independent witness prior to the incident as they lived in the same locality. There was no past history of animosity among them except petty quarrels on trivial issues. Both these witnesses were cross-examined at length. However, their cogent and natural version could not be shattered. No ulterior motive was assigned to these witnesses to falsely implicate the appellants and to spare the real offenders. In the absence of prior ill-will or enmity, the victim and the independent witness from the neighbourhood were not expected to rope in an innocent and to let the real offender go scot free. Medical evidence is in consonance with ocular evidence. The prosecution examined PW-3 (D.K. Sharma), Record Clerk, who produced MLC (Ex.PW-1/A). PW-5 (Dr. R.N. Sahai) identified signatures of Dr. O.P. Mahajan on MLC (Ex.PW-1/A) whereby nature of injuries was opined as "dangerous". PW-7 (Dr. Amrendra Pathak) also identified signatures of Dr. V.P. Singh. MLC (Ex.PW-1/A) records that the patient was taken to Hindu Rao hospital by PCR at 00.35 hours. Multiple incised wounds noted in the MLC (Ex. PW- 1/A) were found on his body. He was unfit for statement. Appellant's counsel could not point out any vital discrepancy in the eye witness account to demolish the prosecution case. The prosecution had examined Dr. V.P. Singh earlier in Sessions Case No. 132/2000 and he proved the MLC (Ex.PW-1/A) prepared by him in which he had given the nature of

injuries as "dangerous". Specific role was assigned to the appellant for inflicting injuries by a knife on various body parts of the injured. The injuries were caused repeatedly with a sharp weapon on vital organs. Apparently, these were inflicted with the avowed object and intention to cause death. The appellant did not give plausible explanation to the incriminating circumstances. In 313 statement, he failed to offer reasonable explanation for his presence along with his associates at odd hours. Since the appellant was the main perpetrator of the crime, he was awarded RI for five years. The role attributed to Laxman Singh and Satish was only that of catching hold of the victim. Apparently, the Trial Court in previous trial awarded RI for two years each to them. The appellant escaped apprehension and arrest and could be arrested only in 2007. He was declared Proclaimed Offender and was charge-sheeted subsequently. When PW-4 (Nathu) was under examination on 29.10.2010, the appellant Sukhbir who was on bail threatened him and was taken to custody after cancellation of bail bonds. This shows the violent nature and conduct of the appellant who had the audacity to threaten the witness under examination in the Court itself. He deserves no leniency. The appeal is un-merited and is dismissed. Trial Court record be sent back immediately.