

(2013) 08 DEL CK 0386

Delhi High Court

Case No: Criminal Appeal 328 of 2000

Chand Ram

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 7, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 360, 374(2)
- Penal Code, 1860 (IPC) - Section 307, 324

Citation: (2013) 6 AD 679**Hon'ble Judges:** Veena Birbal, J**Bench:** Single Bench**Advocate:** G. Kabir and Mr. Nikhil Bhalla, for the Appellant; Jasbir Kaur, APP, for the Respondent**Final Decision:** Dismissed

Judgement

Veena Birbal, J.

By way of this appeal u/s 374(2) of the Code of Criminal Procedure, a challenge has been made to the judgment dated 11th May, 2000 and the order of sentence dated 13th May, 2000 passed by the learned Additional Sessions Judge thereby convicting the appellant u/s 307 IPC and has sentenced the appellant to undergo RI for three years with a fine of Rs. 2000/- and in default to further undergo SI for three months. The case of the prosecution is that on the night intervening 27th and 28th January, 1998, SI Dharamvir, PW-10 who was posted at Police Station Vikas Puri had received an intimation from RML Hospital that one injured having injuries caused on his person by a knife had been admitted in the hospital. SI Dharamvir, PW-10 along with Constable Bimlesh, PW-6 went to the aforesaid hospital and collected the MLC Ex. PW 11/A of injured Raj Kumar, PW-1 who was declared fit for making statement. He recorded his statement Ex. PW 1/A wherein it was alleged that on 28th January, 1998 at about 11 pm, he was sitting in a street along with one Raju, PW-9 and appellant Chand Ram. During conversation appellant Chand Ram started abusing him and

threatened that he would not allow him to remain alive as on the previous Diwali, the injured i.e., Raj Kumar, PW-1 had given beatings to him. Thereupon, appellant Chand Ram went to his house and returned after some time with a knife and stabbed him in his abdomen. When he raised an alarm, appellant Chand Ram ran away from the spot. It was alleged that Raju, PW-9 took him to his house and from there his father Sh. Rajbir, PW-2 had removed him to the hospital. He had alleged that appellant Chand Ram had inflicted injury on his person with an intention to kill him. On the basis of aforesaid statement Ex. PW 1/A, SI Dharamvir, PW-10 put his endorsement Ex. PW 10/A and sent the rukka through Constable Bimlesh and got registered FIR Ex. PW 3/A u/s 307 IPC against the appellant.

2. From the hospital, IO SI Dharamvir, PW-10 came to the spot and made enquiries but no one came forward. He made search for the appellant but he could not trace him. During investigation, SI Dharamvir, PW-10 arrested the appellant on 29.1.1998 from Hastal Vihar, Vikas Puri. His personal search was conducted vide memo Ex. PW 6/A. On interrogation, appellant made disclosure statement Ex. PW 7/A and got recovered knife from a Government quarter where his mother was residing. The knife was seized by the SI Dharamvir, PW-10 and was taken into possession vide memo Ex. PW 7/B after completing necessary formalities in this regard. The blood stained clothes of the injured were also seized by the IO vide seizure memo Ex. PW 4/A. During investigation, statements of other witnesses were recorded. After completion of investigation, a challan was filed against the appellant before the concerned Ld. M.M.

After supplying the documents to the appellant, the learned MM committed the case to the Sessions Court. A charge u/s 307 IPC was framed against the accused by the learned Additional Sessions Judge to which he pleaded not guilty and claimed trial.

3. To prove its case, prosecution in all had examined 11 prosecution witnesses. Out of which, Raj Kumar, PW-1 is the injured. Raj Bir, PW-2 is the father of the injured, PW-1 who had taken him to the hospital. Raju, PW-9 is the alleged eye witness to the occurrence. Dr. Vinod Yedalwar, PW-11 has proved on record the MLC of the injured Ex. PW 11/A as well as the opinion about the nature of the injuries. The remaining testimony relates to the police officials.

4. After recording prosecution evidence, statement of the appellant was recorded u/s 313 Cr. P.C. wherein incriminating evidence was put to him. The appellant denied the same and stated that he was falsely implicated in the case. However, the appellant did not lead any evidence in defence.

5. After hearing learned counsel for the parties, the learned Additional Sessions Judge held that the prosecution has proved that injuries were inflicted upon the injured PW-1 by the appellant by a sharp weapon and the evidence on record also proves that the appellant inflicted blow with a knife on vital organ of the injured i.e.,

abdomen with an intention to commit his murder. The injured remained in hospital for 20-25 days. Accordingly, the learned Additional Sessions Judge convicted the appellant u/s 307 IPC vide impugned judgment dated 11th May, 2000 and sentenced him to undergo RI for three years as is stated above.

6. Aggrieved with the judgment of conviction dated 11th May, 2000 and order of sentence dated 13th May, 2000, the present appeal is filed.

7. Learned counsel for the appellant has contended that the injured was having enmity with the appellant, as such, he has been falsely implicated. It is contended that there are material contradictions in the evidence of injured PW-1 as compared to his statement Ex. PW 1/A made to the police on the basis of which FIR Ex. PW 3/A was registered, as such he is not a believable witness. It is further contended that the eye witness has not supported the prosecution case.

It is further contended that recovery of knife has also not been proved, as such it cannot be said that prosecution has been able to prove the case beyond doubt. It is further contended that reading the entire evidence on record, accused be given benefit of doubt. It is further contended that even assuming that on the basis of evidence, the court comes to the conclusion that appellant was responsible for the alleged occurrence, in that event, the evidence on record does not establish that he had the intention to cause his death, as such offence u/s 307 IPC is not made out against him. At the most, it is a case u/s 324 IPC and appellant deserves to be given benefit u/s. 360 Cr. P.C.

8. On the other hand, learned APP for the State has contended that even if the eye witness PW-9 has not supported the case of the prosecution, the statement of injured, PW-1 is sufficient to bring home the guilt of the appellant. It is contended that even if recovery of knife is not proved, the same does not demolish the case of the prosecution in any manner. It is contended that the evidence on record establishes that appellant had caused serious injuries on the vital part of the body of the injured, PW-1 with a sharp weapon and the said injuries were sufficient to cause his death, as such, ingredients of section 307 IPC are established.

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

10. The material witness to the occurrence is injured i.e., Raj Kumar, PW-1. He has deposed that on the day of occurrence i.e., 27th January, 1998 at about 11 or 11.30 pm, he along with his neighbour Raju, PW-9 and appellant were sitting in a street near the shop of one property dealer. Earlier on Diwali, he had a quarrel with the appellant. The appellant was under intoxication on that day and started abusing him and thereafter appellant went to his house and came after about 10 minutes on the spot with a knife and stabbed him with the said knife on his abdomen and ran away from the spot. He started bleeding profusely. His friend Raju, PW-9 had taken him to his residence from where his father Rajbir, PW-2 had removed him to RML Hospital where police had reached and recorded his statement Ex. PW 1/A. He has identified

the clothes seized vide memo Ex. PW 4/A which he was wearing at the time of occurrence.

11. In cross-examination he has stated that appellant was known to him for the past 8-10 years. Appellant resides in the same street where he resides. On the day of incident, they were sitting in a street and were talking to each other. At that time, appellant was under intoxication. He has further deposed that appellant had gone to his house and returned back to the spot from his back side and when he turned, appellant immediately stabbed him. He had seen the knife in appellant's hands. In cross-examination, he has given the description of the knife also. He has deposed that he was unconscious after the stab injury and his friend Raju had taken him to his house. He has denied the suggestion that appellant was not present at the spot. He has further stated that earlier appellant had a quarrel with him on the occasion of Diwali falling in the previous year of the date of incident. However, he had not lodged any report in that regard.

12. His material evidence is not shaken in cross-examination. His evidence is in consonance with his earlier statement made to the police Ex. PW 1/A on the basis of which FIR Ex. PW 3/A was registered.

13. As per prosecution, Raju, PW-9 is the eye witness to the alleged incident. However, the said witness has not supported the case of the prosecution as regards stab injury being caused by the appellant on the person of injured Raj Kumar, PW-2 on the day of incident. He has also deposed that he does not know the appellant. He knows injured Raj Kumar, PW-1. He has stated that on the day of incident, he was passing through the street. He saw Raj Kumar, PW 01 in an injured condition. On the asking of injured, Raj Kumar, PW-1, he took him to his house. Thereafter he came back.

14. Rajbir, PW-3 is the father of injured PW-1 who has also deposed that the appellant resides in the same street which they are residing. He has also deposed that on the day of occurrence at about 12.30 am, his son Raj Kumar, PW-1 had come to the house having stab injury and told him that appellant Chand Ram had stabbed him. He was brought by one Raju, PW-9 and he had removed his son to RML Hospital.

15. On being cross-examined, he has stated that an altercation had taken place between his son and the appellant on Diwali prior to the incident. He has given the timings when they reached the hospital.

16. The injured Raj Kumar, PW-1 has categorically deposed that appellant had caused injury on his person by a knife. His material deposition is not demolished in cross-examination. The eye witness Raju, PW-9 has not supported the case of prosecution as having seen the alleged occurrence. However, he has supported the case of the prosecution to the extent that on the day of occurrence at about 12 night he had seen injured Raj Kumar, PW-1 in an injured condition and had taken him to

his house. Even if eye witness has not fully supported the case of the prosecution, the same is not fatal to the prosecution. The injured is the best witness. No corroboration to the testimony of the injured is required if his evidence is trustworthy. In the present case, nothing material has been pointed out by the Id. counsel for the appellant on the basis of which it can be said that testimony of injured can be doubted. No contradictions of material nature is pointed out by the Id. counsel for the appellant in the evidence of injured PW-1 before court as compared to his statement Ex. PW1/A made to the police. His testimony on material aspects is also not demolished in cross-examination. In cross-examination a suggestion was given to injured PW-1 that the appellant was not present at the time of incident. The injured, PW-1 has denied the same. No evidence is led by the appellant in defence to substantiate it. The evidence of injured finds support from the MLC Ex. 11/A which shows that the injured had suffered grievous injuries on the vital part of his body.

17. Learned counsel has contended that the knife Ex. P3 alleged to be used in the occurrence is not proved by the prosecution, as such it can't be said that prosecution has proved its case. Learned APP has submitted that even if the recovery of knife Ex. P3 is not established, the same does not create any doubt in the prosecution case. The argument has been considered.

18. In the present case there is nothing to disbelieve the evidence of injured, PW-1. His evidence inspires full confidence. It has also come in the evidence that there was a previous quarrel between appellant and the injured, PW-1. The same is not denied by the appellant. The injured PW-1 has deposed in cross-examination that earlier also appellant tried to stab him but he rescued himself. No suggestion is given to injured PW-1 that nothing of that sort occurred. The evidence on record clearly establishes that on the day of occurrence it is the appellant who had caused injuries on the person of injured Raj Kumar, PW-1 with a knife. In these circumstances, even if the recovery of knife is not proved, the same does not dilute the case of the prosecution in any manner.

19. The question for consideration is whether the nature of assault and the injuries bring in application of section 307 IPC.

20. Section 307 of the Indian Penal Code, 1860 reads as under:-

307. Attempt to murder:-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned. Attempts by life convicts:- When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

21. In [Hari Kishan Vs. Sukhbir Singh and Others](#), the Supreme Court has discussed as to what the court has to see in order to bring the offence u/s 307 IPC. The relevant portion of the judgment is as under:- "Under Section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". u/s 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention."

22. The Supreme Court in the [State of Maharashtra Vs. Kashirao and Others](#), has discussed the essential ingredients required to be proved u/s. 307 IPC. The relevant para of the judgment is as under:-

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
- (iii) That such death was done with the intention of causing death; or that it was done with the intention of causing bodily injury as; (a) the accused knew to be likely to cause death; or
- (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act know to him to be so imminently dangerous that it must in all probability (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

23. In offence u/s 307 all the ingredients of offence of murder are present except the death of the victim. For the application of Section 307 it is not necessary that the injury capable of causing death should have been actually inflicted." In the present case, the injury has been inflicted with a sharp edged weapon on the vital part of the body i.e., abdomen. The appellant during trial has not explained the incriminating circumstances appearing against him. The appellant has simply denied the occurrence. No evidence was led by the appellant to prove that he was present at any other place at the time of occurrence, as is alleged. The evidence on record establishes that the appellant had inflicted injury on Raj Kumar, PW-1 with a sharp weapon. The injury inflicted was on the vital part of the body i.e., abdomen. As per MLC Ex. PW 11/A, there is one incised wound of 3 inch size, 4 inch above umbilical. Even bowel was seen coming out from the wound meaning thereby that the stab blow was inflicted with force. The nature of injury is "grievous". The injured

remained admitted in the hospital for about 20-25 days. The evidence on record clearly establishes that appellant has caused injuries with an intention of causing death of the injured PW1. The trial court has rightly analyzed the evidence. In view of the above discussion, appellant has been rightly convicted by the learned Additional Sessions Judge u/s. 307 IPC. Keeping in view the nature of offence, the appellant does not deserve any leniency in sentence. The order of sentence is also upheld.

The appeal stands dismissed.

The appellant is on bail. His bail stands cancelled. The appellant be arrested for undergoing remaining sentence.

A copy of the judgment be sent to the Id. trial court.