

(2022) 01 DEL CK 0011

In the Delhi High Court

Case No : Criminal Appeal No. 491 Of 2020

Saleem Khan

APPELLANT

Vs

State (Govt. Of Gnct, Delhi)

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 308, 324, 506

Code Of Criminal Procedure, 1973 — Section 311, 313, 374(2), 428, 482

Citation : (2022) 01 DEL CK 0011

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : B. Badrinath, Ashok Kumar Garg

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The present appeal has been preferred under Section 374(2) read with Section 482 Cr.P.C. on behalf of the appellant challenging the judgment on

conviction dated 24.10.2019 and the order on sentence dated 30.10.2019 passed by the learned Addl. Sessions Judge-02 (North-East District),

Karkardooma Courts, Delhi in Sessions Case No. 257/2017 arising out of FIR No. 244/2017 registered under Sections 307/324 IPC at Police Station

Khajuri Khas, Delhi.

2. Vide the impugned judgment, the appellant was convicted for the offences punishable under Sections 307/324 IPC and vide the order on sentence,

he was sentenced as follows:-

(i) for the offence punishable under Section 307 IPC, to undergo Rigorous Imprisonment for a period of 06 years, alongwith payment of fine of

Rs.5,000/-, in default whereof to further undergo Simple Imprisonment for a period of 03 months, and

(ii) for the offence punishable under Section 324 IPC, to undergo Rigorous Imprisonment for a period of 01 year, alongwith payment of fine of

Rs.1,000/-, in default whereof to further undergo Simple Imprisonment for a period of 01 month.

3. The benefit of Section 428 Cr.P.C. was extended to the appellant. All the sentences were directed to run concurrently and the fines have already been paid.

4. The brief facts, as noted by the Trial Court, are as under:-

1. In brief the facts of the prosecution case are that on 24.05.2017, ASI Surender Pal received DD No. 115B. On receipt of the DD, ASI

Surender Pal along with Ct. Jhabar Ram reached at the spot i.e. Purani Chowki, Mustafabad, Delhi. On reaching there, they came to know

that the injured had already been removed to GTB Hospital. Thereafter, ASI Surender Pal along with Ct. Jhabar Ram reached GTB Hospital

and collected the MLC No. A-4451/17 of injured Yunus S/o Sh. Yusuf wherein the doctor had mentioned physical assault and U/O.

In the meantime, brother of injured Yusuf namely Sahil also came in the hospital in an injured condition who was also got admitted in the

hospital by ASI Surender Pal vide MLC No. C-1908/17 and the doctor had mentioned on his MLC as physical assault fit & U/O

sharp. Thereafter, ASI Surender Pal recorded statement of injured Yunus wherein he stated that he is the permanent resident of Village

Daurala, PS Daurala, Meerut UP and along with his family was residing on rent and works as sewing machine mechanic. On 24.05.2017,

he along with his brother Sahil was going to buy some medicine and when at about 10.00 PM, they reached at the corner of Block Gali

No.7, Nehru Vihar, accused Saleem, who resided in Gali o.6 Dayalpur assaulted upon him with knife on his neck and right shoulder. When

Sahil (brother of Yunus) came to rescue him, he was also assaulted by accused Saleem and caused injuries to him. He further narrated that

accused Saleem had met him in the day time and had said tune hamare upar mukadma karaya hai, mai tujhe aaj shaam tak jaan se maar

dunga and also threatened him. On this, Sahil (brother of Yunus) called at

100 number, PCR van came and took him and his brother

Sahil to the GTB hospital.â??

5. After completion of investigation, the charge sheet was filed under Sections 307/324/506 IPC. Vide order dated 06.09.2018, charges were framed

against the appellant under Sections 307/324 IPC, to which he pled not guilty and claimed trial.

6. Learned counsel for the appellant contended that the testimony of complainant/Mohd. Yunus is unreliable on account of prior enmity with the

appellant, which has been admitted by the complainant himself. It was submitted that neither the weapon of offence was recovered during

investigation nor were the complainant's blood-stained clothes seized. Further, the testimony of brother of the complainant/Sahil was contended to

be unreliable on the ground that Sahil had not accompanied his brother to the hospital. It was also submitted that the PCR Form pertaining to call on

100 number was not produced.

Learned counsel also contended that the testimonies of the complainant and his brother have material contradictions, inasmuch as the complainant

stated that the incident had occurred at about 10:00 p.m., but his brother stated that the incident occurred at about 8:00 p.m. It was further contended

that Dr. Deepika, who proved the nature of injuries recorded in the MLC of the complainant, did not depose regarding preparation of the same. Lastly,

it was contended that the Investigating Officer had not recorded the statement of any public witness. In the alternative, learned counsel submitted that

the appellant was not pressing his appeal on merit and he may be released on the period already undergone by him.

7. Learned APP for the State, on the other hand, supported the impugned judgment and order. It was submitted that the testimonies of both Mohd.

Yunus and Sahil are consistent with each other and reliable, as both have deposed that they were assaulted by the appellant, who was already known

to them.

8. I have heard learned counsels for the parties and have also gone through the Trial Court Record, as well as the written submissions filed on behalf

of the appellant.

9. In support of its case, the prosecution had examined a total of seven witnesses. The complainant/injured/Mohd. Yunus was examined as PW-1; the

complainant's brother Sahil, who was also injured in the incident, was examined as PW-2; Ct. Jhabar Ram (PW-3) and HC Rajender Singh (PW-

4) were examined to prove the arrest memo and registration of the FIR respectively; Dr. Arvind Gautam, who proved the MLCs of Mohd. Yunus and

Sahil on behalf of Dr. Deepika, was examined as PW-5; ASI Surender Pal, the Investigating Officer of the case, was examined as PW-6; Dr.

Deepika, who also proved the MLC of complainant/Mohd. Yunus wherein nature of injury was opined as grievous by Dr. Ramandeep Kaur, was

examined as PW-7.

10. The complainant/Mohd. Yunus deposed in his testimony that he was residing alongwith his parents in a rented accommodation and worked as a

mechanic of sewing machines. On the day of the incident, i.e. on 24.05.2017, at about 10:00 p.m., while he was going alongwith his brother Sahil to

take medicine, the appellant came and assaulted him with a knife. The assault resulted in injuries to the witness on his neck and on front side of his

right shoulder. When the complainant's brother Sahil tried to save him, he was also given a knife blow by the appellant on his left cheek. After

being assaulted, the brother of the witness made a complaint at 100 number, whereafter PCR came to the spot and took them to the GTB Hospital. It

was further deposed that the appellant had attacked the complainant on an earlier occasion as well with a hockey and danda, regarding which

complaint was given to the police and a case was registered. It was also deposed that in order to take revenge, the appellant had asked the

complainant about a day prior to the day of the incident to withdraw the earlier complaint. In this regard, he was also given life threats. After about

three days of the incident in question, the appellant came to be arrested at the instance of the witness. He was also identified by the complainant in the

Court.

In cross-examination, the witness stated that on the date of the incident, he went to buy medicine for himself as he was having eye-pain due to injuries

which were earlier caused by the appellant. He further stated that though he remained hospitalized for three days, his brother was discharged on the

same day. He denied the suggestion that injuries received by him were caused by some other person and not the appellant. A suggestion that the

appellant was falsely implicated as the complainant's family members had

enmity with some other person, or that the appellant was falsely implicated at the instance of complainant's family members, was also denied. He also denied the suggestion that he had not seen the face of the appellant at the time of incident.

11. Sahil, i.e. the brother of Mohd. Yunus deposed that, two days prior to the incident, the appellant had assaulted his brother in respect of which a complaint was lodged at the police station. He further deposed that on the day of the incident, the appellant had caused injuries on the neck and other parts of the body of his brother with a chhurri. When he tried to save his brother, he was also assaulted by the appellant with the chhurri on his left cheek, whereafter the appellant ran away. Subsequently, the witness had made a call to 100 number. While he went to call his family members, the PCR Van took his brother/Mohd. Yunus to GTB Hospital, where he was also taken later by the police.

In cross-examination (recalled under Section 311 Cr.P.C.), the witness denied the suggestion that he was not present on the spot at the time of the incident or that he had deposed falsely to implicate the appellant.

12. Dr. Arvind Gautam, CMO, GTB Hospital, Delhi proved the MLC dated 24.05.2017 of Mohd. Yunus (Ex.PW-5/A) and deposed that it was prepared under his supervision by Dr. Deepika, then JR (Junior Doctor). He identified the handwriting and signatures of Dr. Deepika on the said MLC and stated that following injuries were noted on local examination:-

1. Incised wound in the size of 4x2 cm on right side of chest near shoulder.
2. Incised wound in the size of 15x3 cm on throat extending to chin.
3. Old injury as mentioned in the MLC NO. A-4422/14/17.

The witness also proved the MLC dated 25.05.2017 of Sahil (Ex.PW-5/B). He further deposed that any opinion on the nature of injuries suffered by Sahil could not be given as he had absconded from the casualty.

In cross-examination, a suggestion that the injuries could have resulted from a fall was denied by the witness, since they were sharp in nature.

13. Dr. Deepika, Sr. Resident, ENT Department, GTB Hospital also proved that the injuries suffered by complainant/Mohd. Yunus were grievous in nature. In this regard, she identified the signatures of Dr. Ramandeep Kaur on the complainant's MLC.

14. ASI Surender Pal, the Investigating Officer of the case, deposed that he had recorded the statement of the complainant (Ex.PW1/A) and at his

pointing out, arrested the appellant on 27.05.2017. He also deposed that despite best efforts, the weapon of offence could not be recovered.

15. The appellant's statement under Section 313 Cr.P.C. was recorded, wherein he stated that he was falsely implicated in the present case.

16. Needless to state, Mohd. Yunus was the star witness of the prosecution case, being the complainant who suffered injuries at the time of the

incident. The law on appreciation of testimony of an injured witness has been enunciated by the Supreme Court in a catena of decisions, including

State of Uttar Pradesh v. Naresh and Others reported as (2011) 4 SCC 324, where it was 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 the offence. Thus, the evidence of the 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 Jarnail Singh v. State of Punjab

[(2009) 9 SCC 719, Balraje v. State of Maharashtra (2010) 6 SCC 673 and Abdul Sayeed v. State of M.P. (2010) 10 SCC 259])

17. A perusal of the material on record in the present case would show that the complainant/Mohd. Yunus had clearly deposed that there was pre-

existing enmity between the accused/appellant and him, as earlier also the appellant had caused injuries to him, and in pursuance thereto a police

complaint was made. In the incident in question, the complainant received injuries on the neck and on front shoulder, which are corroborated by his

MLC, and are alleged to have been caused by a chhurri.

Sahil, i.e. brother of the complainant, was also injured in the same incident and he also deposed that it was the appellant who inflicted injuries on him

and his brother with a chhurri. The testimony of Sahil is not only cumulative to the testimony of the complainant, but also consistent and it finds

corroboration from his own MLC, which has been proved on the record as Ex.PW-5/B.

During the trial, the suggestion given on behalf of the appellant that the injuries were possible on account of fall was denied by Dr. Arvind Gautam as

the injuries were sharp in nature. The incident is stated to have taken place at about 10:00 p.m. The complainant's MLC was prepared on the

same day at about 10:45 p.m., i.e. immediately after the incident. The FIR came to be registered at 03:30 a.m. and the appellant being already known,

was named in the FIR itself.

18. It is seen that the testimonies of both, the complainant/Mohd. Yunus and his brother/Sahil, are consistent with their earlier statements and find

support not only from each other, but also from the respective MLCs, which have been duly proved on record. In view of the aforesaid and the other

evidence placed on record, this Court finds the testimonies of the complainant/Mohd. Yunus and his brother Sahil to be both creditworthy and reliable.

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

the Supreme Court has observed in *Rakesh and Another v. State of Uttar Pradesh and Another* 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 Sections 302/34 IPC, the Court in this case also opined that it was not

possible to reject the ocular evidence of eye-witnesses to the incident, who were 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 the

appellant that the weapon of offence was not recovered, has no merit. The same is rejected accordingly.

20. The next contention raised on behalf of the appellant was that the testimonies of the complainant and his brother exhibit material contradiction on

the aspect of the time of the incident. While the complainant deposed that the incident occurred around 10:00 p.m., his brother Sahil deposed that the

incident occurred around 08:00 p.m. In this regard, it is noted that in the alleged history of offence recorded by the concerned Doctor in the MLC of

Sahil, it was mentioned that the physical assault took place around 10:00 p.m. as per the patient himself. Even otherwise, the contradiction, as

suggested, is immaterial, insofar as the appellant was already known to both the injured persons and their testimonies are consistent on all other

aspects of the incident.

21. Another contention raised on behalf of the appellant was that Dr. Deepika had not deposed about preparation of the complainant's MLC.

However, this contention as well lacks merit, as the said MLC was also proved by Dr. Arvind Gautam. Dr. Arvind Gautam categorically deposed that

the complainant's MLC was prepared under his supervision by Dr. Deepika, who was working as a JR under him at the time. Further, while

appearing as PW-7, Dr. Deepika proved the nature of injuries appearing on the complainant's MLC as grievous and no suggestion was given to

her in cross-examination that she had not prepared the complainant's MLC.

22. It was also contended on behalf of the appellant that the blood-stained clothes of the complainant were not seized and the PCR Form was not

produced. However, in view of the fact that the complainant was medically examined within 45 minutes of the incident, the contention bears no merit

and is rejected.

23. Insofar as the contention with respect to non-examination of public witness is concerned, suffice it to note that when the testimony of an injured

complainant is consistent and finds support not only from his own MLC, but also from the testimony of another injured, then such a contention pales

into insignificance. In this regard, it is deemed expedient to refer to the decision of the Supreme Court in *Sadakat Kotwar and Another v. State of*

Jharkhand reported as 2021 SCC OnLine SC 1046, where the Court observed as follows:

“7. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to

be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on

hand on the aforesaid principles, when the deadly weapon - dagger has been used, there was a stab injury on the stomach and near the

chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have

committed the offence under Section 307 IPC.â??

24. Note is also taken of the fact that the injuries suffered by the complainant, allegedly caused by a chhurri, were inflicted on vital part of his body i.e.

the neck. The nature of the corresponding injury was opined to be grievous. It was deposed by the complainant that earlier also, he was assaulted by

the appellant, pursuant to which a complaint was lodged with the police. The appellantâ??s Nominal Roll also indicates that he is involved in FIR No.

235/2017 registered under Sections 308/34 IPC at Police Station Khajuri Khas, Delhi.

25. The pre-existing enmity between the appellant and the complainant, the receipt of two injuries by the complainant during the incident, out of which

one was on vital part of the body i.e. neck, the nature of the injury being opined as grievous would indicate that the appellant had the requisite intention

as well as the knowledge that such injuries could have been fatal. Thus, in the opinion of this Court, the ingredients of the offence punishable under

Section 307 IPC are clearly proved against the appellant beyond any shadow of doubt. On the same parameters, even though there was no opinion on

the nature of injury suffered by Sahil, the receipt of injury by him was proved through his MLC.

26. In view of the aforesaid analysis, this Court concurs with the impugned judgment on conviction passed by the Trial Court. Accordingly, the

impugned judgment is upheld.

27. Learned counsel for the appellant prayed that a lenient view on the appellantâ??s sentence may be taken as the appellant has already undergone

about 04 years and 06 months out of the total sentence of 06 years awarded to him and the fine imposed on him has already been deposited. It was

further stated that the appellant at the time of incident was a little over 18 years of age and he belongs to a poor family. It was also stated that the

appellant has responsibility of his parents as well as five brothers and sisters on him.

28. As per the Nominal Roll of the appellant available on record, he has already undergone sentence of 04 years 05 months and 09 days as on

07.11.2021, alongwith remission of 06 months and 03 days, and his unexpired

portion of sentence is 01 year and 18 days. The fine amount is stated to have been deposited. His jail conduct for the last one year is also stated to be satisfactory.

29. Keeping in view the appellant's age, the period of incarceration, his jail conduct for the last one year and other mitigating circumstances, this

Court deems it fit to modify the order on sentence and direct that the appellant be released on the period already undergone by him unless required in any other case.

30. The appeal is dismissed insofar as challenge to the judgment on conviction is concerned, however the order on sentence is modified to the aforesaid extent.

31. A certified copy of this judgment be communicated to the appellant through the concerned Jail Superintendent and also to the Trial Court.