

**(2013) 04 DEL CK 0405**

**In the Delhi High Court**

**Case No :** Criminal A. 292 and 374 of 2004

Vinod Tyagi

APPELLANT

Vs

The State <BR> Rajiv Kumar Vs State (Govt. of NCT) Delhi

RESPONDENT

**Date of Decision :** 22-04-2013

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 307, 324, 34

**Citation :** (2013) 4 AD 556 : (2013) 4 AD 145 : (2013) 2 JCC 1053

**Hon'ble Judges :** S.P. Garg, J

**Bench :** Single Bench

**Advocate :** Harish Parashar with Appellant in person in Criminal A. 292/2004 and Mr. Aditya Singh in Criminal A. 374/2004, for the Appellant; M.N. Dudeja, APP, for the Respondent

## Judgement

S.P. Garg, J.—Vinod Tyagi (A-1) and Rajiv Kumar (A-2) challenge the judgment dated 03.03.2004 in Sessions Case No. 117/2002 arising out of FIR No. 140/2000 registered at Police Station S.N. Puri by which they were held guilty for committing offence punishable u/s 307/ 34 IPC and sentenced to undergo RI for five years with fine Rs. 5,000/- each. Daily Diary (DD) No. 30-B (Ex.PW4/1) was recorded at Police Station S.N. Puri, New Delhi on 25.04.2000 at 03.50 P.M. on getting information from duty Constable Santosh Kumar at AIIMS that Constable Narender Kumar had admitted Rahul Sharma in injured condition from PGDAV college. The investigation was assigned to SI P.C. Yadav who with Constable Mukesh went to AIIMS. He recorded victim's statement (Ex.PW-1/1). Rahul Sharma disclosed that on 25.04.2000 when he with his friend Ravinder Kumar was present in the college to take exams, A-1 with his associates including A-2 reached there and picked up a quarrel with him. He inflicted injuries with a knife. A-2 and other associates caught hold him. He was stabbed with knife twice on his back by A-1. When Ravinder intervened to save him, he was also given beatings. SI P.C. Yadav made endorsement (Ex.PW-10/1) and lodged First Information Report. During the course of investigation, statement of witnesses conversant with the facts were recorded. Victim's MLC and injury report were

collected. After completion of investigation, a charge-sheet was filed against both the accused. They were duly charged and brought to trial. The prosecution examined ten witnesses to substantiate the charges. In their 313 statement both the accused pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment convicted the appellants u/s 307/ 34 IPC. Being aggrieved, they have preferred the appeals.

2. Counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Inherent defects in the prosecution's case and statements of witnesses were ignored without any valid reasons. Recovery of knife is suspicious and doubtful and is of no consequence as "blood" was not detected on it in FSL report. Presence of PW-3 (Ravinder Kumar) at the spot is highly doubtful. No independent public witness was associated at any stage of investigation. Constable Narender who admitted the victim in AIIMS was not examined. The ocular testimony is in conflict with medical evidence. The prosecution could not establish appellants' motive to inflict injuries to the victim. A-2 was not known to the injured prior to the incident and had no animosity with him. Learned Additional Public Prosecutor urged that testimony of PW-1 (Rahul), an injured witness, inspires confidence and there are no reasons to discard his cogent version.

3. The occurrence took place at about 02.15 P.M. at PGDAV College-Campus, Nehru Nahru Nagar on 25.04.2000. PW-1 (Rahul) sustained injuries and was taken to AIIMS. MLC (Ex.PW-8/1) was recorded. The alleged history, records "assault with knife". He suffered two stab wounds on back. The accused have not denied the injuries sustained by the victim. Their only plea is that the appellants were not the author of the injuries and he sustained injuries in a quarrel with his other enemies.

4. Statement of the victim-Rahul Sharma was recorded soon after the occurrence and thereafter First Information Report was lodged at 05.05 P.M. The complainant gave vivid details of the incident and named the accused persons to be the perpetrators of the crime. He attributed specific role to the each accused in causing injuries to him. Since the rukka was sent without any delay promptly, there was least possibility of victim Rahul Sharma to fabricate a false story to implicate the accused. While appearing as PW-1 (Rahul Sharma) he proved the version given to the police at the first instance without major variations. He identified both A-1 and A-2 in the court and deposed that A-2 and A-1's other associates caught hold him and A-1 inflicted knife blows twice on his back. In the cross-examination, no material discrepancies emerged to discard his version. A-1 did not deny his presence at the spot at the time of occurrence. Admittedly, he was not a regular student in the said college at the relevant time. He did not offer any explanation for his sudden visit to the college with his associates. The complainant also assigned motive to cause injuries to him. There were previous quarrels between the complainant and the accused on contesting of college

elections. It has come on record that A-1 was ex-student in the college. There was objection as to why he had organized Jam session sponsored by Coca Cola in 2000 when he was not a regular student of the college. PW-3 (Ravinder Kumar) has corroborated PW-1's version on material aspects. He also gave detail account in his deposition as to how and under which circumstances injuries were caused to PW-1 (Rahul Sharma) by A-1 with knife while A-2 and their other associates caught hold of him. He further deposed that on his intervention, he was beaten and taken to hospital. However, he did not sustain any visible injury and for that reason no MLC was prepared. PW-3's presence in the college is natural and probable as he had to take exam from 03:00 P.M. to 06:00 P.M. that day in the college. He elaborated in the cross-examination that he had taken exam at 03:00 P.M. To 06:00 P.M. and for that reason did not accompany the injured to AIIMS. However, he went to AIIMS after the exam was over.

5. Various discrepancies/ contradictions/ improvements highlighted by the learned counsel are not material to discredit the testimony of an injured witness. The law on this aspect has been detailed in the latest judgment State of U.P. Vs. Naresh and Others, 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, Balraje v. State of Maharashtra and Abdul Sayeed v. State of M.P.)

6. Similarly in another case Abdul Sayeed Vs. State of Madhya Pradesh, Supreme Court observed that:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that 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.

7. The ocular testimony of PWs 1 and 3 is in consonance with medical evidence.

PW-2 (Dr.Sanjeev Lalwani)'s opinion that the victim suffered simple injuries with sharp edged weapon remained unchallenged in the cross-examination. The prosecution has thus established beyond doubt that the appellants in furtherance of their common intention inflicted injuries to the complainant-Rahul Sharma.

8. Regarding conviction u/s 307 IPC, it reveals that there was no enough material on record to prove it. MLC (Ex.PW8/1) was prepared and proved by Dr. Sanjay Mandal (PW-8) on 25.04.2000. There were two stab wounds on the back each measuring 3cms X 1cm. Depth was not measurable. Nature of injuries suffered by the victim were opined simple in nature caused by sharp object. Admittedly, the victim was discharged the same day. The injuries inflicted were not on vital organ. The relations between the complainant and the victim were hostile due to participation in college elections. However, at no stage prior to the occurrence, any threat was extended by the accused to eliminate him. No attempt to cause physical assault/harm was made earlier. It appears that on the date of occurrence a quarrel took place between the two which resulted in the infliction of the injuries on the body of the injured at the hands of the appellants. A-1's associates were not armed with any weapon. They also did not inflict any injuries to the complainant or PW-3 (Ravinder Kumar). It is unclear as to with which weapon the injuries were caused to the complainant. The prosecution failed to establish beyond doubt that knife (Ex.P-1) was used in causing injuries to the complainant. It was a rusty knife and had no blood stains on it. In FSL report blood was not detected on the knife. It was an ordinary knife. The recovery of knife is also doubtful as no independent public witness was associated that time. Earlier opinion about the nature of injury was not collected. The concerned doctor was unable to give opinion on the basis of MLC (Ex.PW-8/1). Subsequently, the victim was reexamined to ascertain the nature of injuries and after a long gap, PW-2 (Dr. Sanjeev Lalwani) described the nature of injuries as "simple". Admittedly, injuries were not dangerous to the life of the victim. No repeated blows with deadly weapon were caused in attempt to commit murder, I am conscious that to justify conviction u/s 307 I.P.C., it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act fore-boding death. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof. In the instant case there was no obstruction for A-1 to inflict knife blows repeatedly to cause dangerous injuries to the complainant. From these facts and circumstances it is not prudent to hold that an attempt to murder the victim was made. The prosecution was able to establish that the appellants in furtherance of their common intention voluntarily caused simple injuries with sharp object to complainant. The appellants are liable to be punished u/s 324/ 34 IPC.

9. u/s 307 IPC, the appellants were sentenced to undergo RI for five years with fine of Rs. 5,000/- each. Perusal of the file reveals that the appellants were in custody prior to their release on bail during trial for some period. They have suffered agony of trial for about 12 years. The occurrence took place when A-1

was a young man and perhaps a student. He has now joined legal profession. The appellants are married and have families to take care of them. No useful purpose will be served to send the appellants A-1 and A-2 to jail after they were released on bail by orders dated 29.10.2004 and 21.09.2004 respectively during the pendency of the appeal. The occurrence took place on a trivial issue between the parties. A-2 was not even armed with any weapon and was not known to the complainant. Interest of justice would be met if both the appellants are sentenced for the period already undergone by them in this case. However, to compensate the victim for the injuries, fine of Rs. 5,000/- is enhanced to Rs. 25,000/- which shall be deposited by A-1 only with the Trial Court within 15 days. Out of total fine of Rs. 30,000/-, Rs. 25,000/- shall be released to the complainant as compensation as per rules/procedure.

10. The appeals stand disposed of in the above terms. Bail bond and surety bond stand discharged. Trial Court record be sent back forthwith.