

**Ram Kumar and ors Vs. State**

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**Court :** Delhi

**Decided On :** Mar-10-2014

**Judge :** Veena Birbal

**Appellant :** Ram Kumar and ors

**Respondent :** State

**Advocate for Def. :** Ms. Jasbir Kaur

**Advocate for Pet/Ap. :** Mr. R.N. Mittal, Mr. Puneet Mittal, Mr. Ankit Goel, Mr. Ankur Aggarwal, Mr. Nitin Sharma

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 687/1999 % Date of decision: March 10, 2014 RAM KUMAR & ORS ..... Appellants Through: Mr. R.N. Mittal, Sr. Adv. with Mr. Puneet Mittal, Mr. Ankit Goel, Mr. Ankur Aggarwal & Mr. Nitin Sharma, Adv. versus STATE ..... Respondent Through: Ms. Jasbir Kaur, APP for State with SI Jagdish, P.S. Najafgarh. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. By way of present appeal, challenge has been made to judgment dated 27.11.1999 and order on sentence dated 30.11.1999 both passed by learned Additional Sessions Judge in S.C. No.66/1997 arising out of FIR No.277/92 P.S. Nazafgarh under Section 452/307/34 IPC whereby the learned Additional Sessions Judge has held the appellants guilty for the offences punishable under

Section 452/34 IPC and 307/34 IPC and sentenced them to undergo R.I. for two years and to pay fine of Rs.1000/- each for the offence punishable under Section 307 IPC and in default of payment of fine to further undergo R.I. for 6 months and for the offence punishable under Section 452 IPC, the appellants have been sentenced to undergo R.I. for one year and to pay fine of Rs.500/- each and in default of payment of fine to further undergo R.I. for three months. It is further ordered that substantive sentence of imprisonment shall run concurrently.

2. The prosecution case is based on statement Ex.PW1A of Rajender Singh, PW-1 alleged to have been made by him to S.I. Raj Singh PW-10 wherein it is alleged that on 26.09.1992 his brother Roshan Lal i.e., victim PW-3, had come to his house at about 11 pm and told about a quarrel between his son Ajit and the sons of Tek Chand i.e. who are their next door neighbour. When he rose to go out with his brother Roshan Lal PW-3, appellants i.e. Satpal @ Pale, Ram Kumar and Rajbir @ Virey entered through the main gate with knives in their hands. It is alleged that as soon as his brother Roshan Lal, PW3 reached near the gate the appellants attacked him. Appellant Satpal @ Pale inflicted injury on the left side of his stomach with knife on which his brother sat down. In the meantime, appellant Ram Kumar stabbed him with knife on waist and appellant Rajbir @ Virey had stabbed him on his left arm. When they raised alarm the appellants ran away from there and he took his brother to Safdarjung Hospital.

3. It is alleged that the aforesaid statement Ex.PW1A was recorded by SI Rajbir Singh PW10 who had reached the hospital on getting DD No.18 Ex. PW10/A. Initially, PW10 had gone to the place of occurrence at village Choukalan along with Constable Puran Singh and Constable Ajit Singh where they were informed that injured had been taken to hospital. He left Constable Puran Singh to preserve the spot and went to hospital with Constable Ajit Singh where he received MLC Ex.PW12A of injured Roshan Lal PW3 who was declared unfit to make statement. His brother Rajender Singh PW-1 was present who made statement Ex.PW1A. He made his endorsement Ex.PW10/B and sent rukka and got the case registered vide FIR No.277/92 Ex.PW5A. Then he came back to the place of occurrence where blood was lying at the spot. The same was seized by him vide memo Ex.PW2/B by completing necessary formalities. He also prepared the site plan

Ex.PW10/C at the instance of Savitri PW-4. The clothes of injured were also produced before him by Savitri, PW-4 vide memo Ex.PW2/A. The appellants were arrested on 27.2.1992. Their personal search was conducted vide memos Ex.PW8/A, Ex.PW8/B and Ex.PW8/C respectively. The injured Roshan Lal PW-3 had left the hospital without any information on 11.10.1992 and got himself admitted in Batra hospital. After completion of necessary formalities challan was prepared by him. During investigation, the statements of other PWs were recorded. The challan was filed in the concerned court of learned M.M., Delhi. After supplying the documents to the appellants , the case was committed to the court of Sessions. A charge under Section 452/307/34 IPC was framed against them by learned Additional Sessions Judge, Delhi to which they pleaded not guilty and claimed trial.

4. of To prove its case prosecution in all had examined 12 witnesses. Out which Roshan Lal PW-3 is the injured, Rajinder PW1 is the complainant, Roop Ram PW-2 is the brother of victim and Savitri Devi PW4 is the wife of complainant PW-1. Satish Kumar, PW-7 is the photographer who had taken the photographs i.e. Mark P7/1 to 6 of place of occurrence. Sh. Madan Lal PW9 is the record clerk from Batra Hospital. Sh. S. Rawat PW-12 is Medical Record Technician from Safdarjung hospital. The remaining testimony relates to police officials and the doctors.

5. After prosecution closed its evidence, the statement of appellants under section 313 Cr.P.C. was recorded wherein incriminating evidence was put before them. They had denied the same and stated that they were innocent persons and were falsely implicated. In defence no evidence was led by them.

6. After hearing the arguments of both the sides and considering the evidence on record, Ld.Addl. Sessions Judge held that the injury on Roshan Lal, PW-3 was grievous and the same was on the vital part of the body and appellants had come with deadly weapons like knives in their hands. All the facts taken together indicate that they had come with the intention of causing fatal injury to Roshan Lal and had acted in furtherance of their common intention. It was also held that the assault was made in the courtyard of the house. Accordingly, ASJ held them guilty under

Section 452/307/34 IPC and imposed the sentence as is stated above.

7. Aggrieved with the judgment and order on sentence, the present appeal has been filed.

8. Learned counsel for the appellants has contended that the appellants are not responsible for the alleged occurrence. It is contended that the appellants have been falsely implicated in the present case. It is submitted that Rajender PW-1, Savitri Devi PW-4, the alleged eyewitnesses have not supported the case of prosecution. Roop Ram PW-2 gave a contradictory statement as to whether victim PW-3 came to his home vis-a-vis complainant as such he is not a reliable witness. It is submitted that sole testimony of injured PW3 makes a case for conviction unsafe. Learned senior counsel for appellants has contended that assuming the appellants have caused injuries on Roshan Lal PW3, in any event, the offence under Section 307 IPC is not made out against them. It is contended that as per evidence, Roshan Lal PW-3 was taken to Safdarjung hospital where he remained admitted from 26.09.1992 to 11.10.1992. It is submitted that the witnesses from the said hospital have not produced the case sheet/treatment papers of the injured PW-3. It is contended that on the day the injured was admitted in Safdarjung Hospital, the MLC Ex.12/A shows that nature of injury has been shown as simple. It is contended that the case history of the injured from Batra Hospital cannot be taken into consideration as the appellants cannot be held responsible for the treatment provided to Roshan Lal PW3 over there. It is contended that septicaemia as is shown in Ex. PW11A may be due to lapse on the part of the doctors about treatment given to Roshan Lal, PW-3 at Safdarjung hospital. It is contended that as the case sheet/treatment papers have not been produced by the prosecution from Safdarjung hospital wherein the injured Roshan Lal, PW-3 was provided treatment, in these circumstances, the case history of Batra Hospital cannot be read against the appellants. It is contended that injury caused on 26.9.1992 could not be the reason behind the kind of injury treated at Batra Hospital. It is contended that the link is missing. It is contended that reading the evidence on record if any offence is established against the appellants, the same is under Section 324/34 IPC.

9. Learned Senior Counsel has further contended that even the evidence on record does not establish that the appellants have committed the offence punishable under Section 452/34 IPC. It is contended that the alleged occurrence had taken place outside the house. The FIR Ex.PW5A and the site plan Ex.PW10C shows that the occurrence had taken place outside the house.

10. On the other hand, learned APP has contended that the learned ASJ has rightly convicted the appellants under Section 452/307/34 IPC. It is further submitted that the evidence on record clearly establishes the guilt of the appellants. It is submitted that even if the case history/treatment papers from Safdarjung hospital are not produced, the same does not demolish the case of the prosecution in any manner. It is contended that same is not withheld deliberately as is contended. It is contended that the evidence of Dr. T.R.N.Raju and the history sheet from Batra Hospital Ex.PW11/B and MLC Ex.PW12A of victim clearly proves the case of the prosecution.

11. I have heard the submissions made and perused the material on record.

12. The star witness to the alleged occurrence is Roshan Lal PW3 who has categorically deposed that on the day of occurrence he had reached home at about 10.30 p.m. when he was told about some scuffle having taken place with the children of Tek Chand i.e. appellant Ram Kumar and Satpal. He went to the house of his brother Rajinder PW1 and told him about the scuffle and asked him to accompany him to the house of appellants. He has further deposed that when he was coming out from the house of Rajinder PW1, all the 3 appellants came there with knives in their hands. They had challenged him and declared that they would kill him. Appellant Satpal inflicted injury on the left side of his stomach with knife. He sat down. In the meanwhile, appellant Ram Kumar s/o Tek Chand stabbed with knife on his back. Appellant Rajbir s/o Ram Phal gave three injuries with knife on his left arm. Then he fell down on the ground and raised alarm. His brother Rajinder PW1 also raised alarm and the appellantss ran away. He has identified his clothes Ex.P1, P2 and P3 which he was wearing at the time of incident i.e. kurta, baniyan and pyjama which were all stained with blood. On being cross-examined, he has stated that he sustained injuries at the boundary wall of the

house. He denied the suggestion that he had an altercation with appellant Ranbir. He has denied that appellants were not present at the spot or did not cause injury to him. His material deposition is not demolished in the cross-examination.

13. His evidence finds support from MLC Ex.PW12/B which shows

1. Incised wound abdominal wall (left side), 2 c.m. below the umbilicus; 2. Left side of the back 2 c.m. stitched; 3. Mid line over the back 2 c.m. wound; 4. Medial side of the left arm just above the elbow 1.5 c.m. CLW; 5. Anterior side of the left arm 5 c.m. below the elbow joint, size around 3.5 cm and 6. Posterior surface of the elbow 3.5 cm.

14. The other alleged eye witness to the occurrence are Rajinder PW-1 and his wife Savitri PW-4. They have not supported the case of the prosecution. Both were cross-examined at length by the Id.APP but nothing relevant has come out. The evidence of Roop Ram PW4 has been rightly rejected by the learned ASJ by observing that he has been introduced later on. Accordingly, his evidence is not considered. Even if Rajinder PW1 and Savitri PW4 have not supported the case of the prosecution, the case of prosecution is not demolished in any manner specially considering the evidence of injured Roshan Lal, PW-3. Reading the testimony of Roshan Lal PW3, there is no reason to disbelieve the same. It is well settled law that the testimony of injured witness is considered to be reliable unless there are strong grounds to reject the same. An injured witness will not spare his actual assailant to falsely implicate someone. Reference is made to judgment of Abdul Sayed v. State of Madhya Pradesh; (2010) 10 SCC259 and State of Uttar Pradesh v. Naresh and Ors.; 2011 (4) SCC324 In the present case, the evidence of victim PW3 supported with MLC Ex.PW12/B, case sheet Ex.PW11/B and discharge sheet Ex.PW11A clearly establishes that the appellants had caused injuries to Roshan Lal, PW-3 with knives on the date and time mentioned in the FIR.

15. The stand of appellants is that they were falsely implicated. However, they stated that there was altercation between them and Ajit Singh i.e. son of Roshan Lal, PW-3 wherein their brother Karan Singh was injured and police had taken them to the police station. However, there is nothing on record to show that at the time of alleged incident they were at the police station. No evidence is led in this

regard. As per evidence on record, SI Raj Singh PW-10 had taken Karan Singh to P.H.C. Najafgarh where he received the information of this case vide DD No.18A i.e. PW10/A. SI Raj Singh PW10 has denied that appellants had accompanied Karan Singh to PHC. The defence taken by appellants is rightly rejected by the learned Additional Sessions Judge.

16. Now, the question to be considered is whether on the basis of evidence on record can the appellants be held guilty for the offence punishable u/s 307/34 or 324/34 IPC.

17. The MLC Ex.PW12/B shows that the injured PW3 had remained in Safdarjung Hospital from 27.9.1992 to 11.10.1992. The evidence on record i.e. case sheet Ex.PW11/B and discharge report Ex.PW11/A issued by Batra Hospital in respect of PW3 show that from 11.10.1992 to 7.11.1992, the injured had remained in Batra Hospital where he was treated. Both are proved on record by Dr. G.S. Tucker, PW-11 Orthopaedic Surgeon of aforesaid Hospital who has deposed that the injured was under the treatment of Dr. Atul Kuthiyala and he was called to see his spinal injury. The patient was admitted in the hospital with alleged history of stab injury on left side of chest and was operated at Safdarjung hospital. The patient came to Batra Hospital with infected wound abdomen with `septicaemia with complete paraplegia (loss of power of both lower limbs). He has further deposed that the spinal injury of the patient did not recover and the patient was discharged on 7.11.1992 when his septicaemia and infected wound healed. He has also deposed that the cause for spinal injury was a penetrating injury at the level of D-8/a causing complete transection of spinal cord. The above witness is not cross-examined by the appellants.

18. The medical documents discussed above prove that injured PW3 had remained in hospital for more than a month. There is no break in between i.e. from the date of incident i.e. from 27.9.1992 upto date of discharge i.e., 7.11.1992 when injured had remained in hospital. In these circumstances, the injuries cannot be taken as simple as is contended. The same would be `grievous under Section 320 IPC. As per evidence of injured PW3 and medical evidence discussed above, the injuries are on vital part of the body. Even if cause of septicaemia is not proved by

producing case sheet of injured from Safdarjung Hospital, the same does not demolish the case of prosecution considering the other medical evidence discussed above. Considering the unchallenged evidence of Dr. G.S.Tucker PW11 from Batra Hospital, non production of Dr.T.R.M. Raju of Safdarjung Hospital and Dr.K.P.S. Raj from Batra Hospital is also not fatal to the case of prosecution.

19. The fact that the prosecution has produced Dr. G.S. Tucker, PW11, Orthopaedic Surgeon, Batra Hospital who had himself examined the spinal injury of the Roshan Lal, PW-3 and has proved on record the relevant record i.e. case sheet Ex.PW11/B and discharge report Ex.PW11A of injured, the MLC Ex.PW12/B of injured has also been proved on record, in these circumstances, no missing link is seen as is contended. Further, stab injury has been inflicted on the vital part of the body i.e. on the left side of the stomach with a sharp weapon. It has also come in the evidence that due to the injuries there was loss of power of legs also which has also not been challenged in cross-examination. There was motive also as prior to the incident scuffle had taken place between son of Roshan Lal, PW-3 and appellants Satbir and Ram Kumar. The evidence on record clearly establishes that appellants committed the act with an intention to Roshan Lal PW-3. kill The essential ingredient of Section 307 IPC is established in the present case.

20. The evidence on record also establishes that the incident had occurred inside the courtyard. In the cross-examination, the injured has categorically deposed that the injuries were caused to him inside the courtyard. The site plan Ex.10/C also shows that the assault was made at the main gate of Roshan Lals brother i.e. Rajender PW1.

21. Ld. Addl. Sessions Judge has rightly convicted the appellants u/s 307/452/34 IPC. Accordingly, their conviction u/s 307/452/34 IPC is upheld.

22. On the point of sentence, learned senior counsel for the appellants has argued that the occurrence had taken place 21 years ago. The appellants have faced trial including present proceedings for the aforesaid period. The appellants are suffering from various ailments i.e. appellant Satpal is stated to be 45 years of age suffering from seizures. It is submitted that appellant Ram Kumar is a suspected case of cancer and has a difficulty in speech. His vocal cord has been removed in

the year 2002. Appellant Rajbir is 44 years of age and is suffering from disc degeneration. The relevant documents are filed in support of stand taken. The same have not been challenged by the State. It is also submitted that the appellants have families to support. It is further submitted that they are not involved in any other criminal activity and have clear antecedents. They are still living in the same area. It is submitted that the appellant Ram Kumar has undergone sentence of two months and twenty eight days, appellant Rajbir has undergone sentence of one month and ten days and appellant Satpal has undergone sentence of three months and eight days. It is submitted that the fine amount has already been deposited by the appellant. It is further submitted that appellants are ready to pay Rs.50,000/- each as compensation to the legal heirs of victim as it is stated that victim had died of natural death few years back. It is submitted that the sentence undergone by them will meet the ends of justice. In support of submissions made, learned senior counsel for the appellants has relied upon judgments in Sultan vs. State: MANU/DE/0380/2013; Sewa Das vs. State of Punjab: MANU/PH/4060/2010 and Raja Ram & anr Vs. State of Haryana:

1998. 1)CC Cases 218.

23. In the present case, as noted above, the incident had occurred 21 years ago. The reports about the antecedents of appellants have been received as per which appellants are not involved in any other criminal case except the present one. They are the sole bread earner of their respective families. They were released on bail way back and are living in peace in the same area where the family of victim is residing and also considering the respective ailments being suffered by them and that they have offered reasonable amount of compensation i.e. compensation of Rs.50,000/- each, their sentence of imprisonment is reduced to the period already undergone by them. The sentence of fine is upheld.

24. The injured PW3 is stated to have died of natural death. His wife is also stated to have died. In these circumstances, the appellants shall deposit the compensation amount i.e., Rs.1,50,000/- with the learned trial court within four weeks from today. The Id.trial court after verifying the factum of death of victim and his wife, shall release the same to his legal heirs in accordance with law. The

appeal stands disposed of with the above modification in sentence and award of compensation. VEENA BIRBAL, J MARCH10 2014 kks/srb

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