

**Vishal @ Chinki Vs. State .**

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**Court :** Delhi

**Decided On :** Dec-07-2010

**Judge :** Shiv Narayan Dhingra. J

**Acts :** Indian Penal Code (IPC) - Section 307, 326, 308

**Appeal No. :** Crl. Appeal No. 1191/2010 & Crl.M.B.No. 1417/2010

**Appellant :** Vishal @ Chinki

**Respondent :** State .

**Advocate for Def. :** Mr. Sunil Sharma, Adv.

**Advocate for Pet/Ap. :** Mr. Dinesh Garg, Adv

**Judgement :**

1.This appeal has been preferred against the judgment dated 9th August, 2010 whereby the appellant was convicted by the trial Court under Section 307 IPC read with Section 34 and order on sentence whereby he was sentenced to undergo RI for 03 years and fine of Rs.8,000/-.

2. The case against the appellant is that on 17 th June, 2006 at about 8.30 pm he along with his other associates stopped Ravi and his friend Vicky near the railway line and assaulted both of them with knife. The appellant was known to the injured from before. Knife blows were given on chest of Ravi and on the chest and belly of

Vicky. After giving knife blows the appellant ran away with his friends. The cause of giving knife blows is stated CrI. Appeal No. 1191/2010 Page 1 of 5 to be a previous quarrel that had taken place between the appellant and cousin brother of injured, on occasion of Diwali.

3. Both the injured deposed before the trial Court in respect of the incident on the same lines as was the complaint made to the police and supported the prosecution case about appellant having caused knife blows to Ravi on his chest and to Vicky on his chest and stomach. However, the injured stated that they did not know why they were assaulted and what was the intention of the appellant. The issue of identity of the appellant did not arise because the appellant was known to the injured persons and they had categorically deposed that it was the appellant who had stopped them near the railway line and then grappled with them and injured them with knife. It was 'he' (appellant) alone who gave knife blows. The cross examination conducted by the Counsel for the appellant was not fruitful to the appellant and rather went against the appellant. PW-1 Kuldip cousin brother of Ravi also testified that when he met the injured in the hospital, the injured told him that they were attacked by the appellant. Thus, the fact of attacking injured persons by the appellant with knife stood proved beyond reasonable doubt. MLCs of the two injured were proved by PW-8 and PW-9 as Exh.PW8/A & PW8/B. PW-9 stated that injuries, on the person of patient Vicky ie. PW-3, were grievous in nature and this opinion was Exh. PW-9/A. The injuries on person of PW-2 were found to be simple and sharp. PW-3 testified that he received knife injuries on chest and stomach and he had to be operated upon in the hospital as knife penetrated and reached his kidney. There is no rebuttal to this testimony.

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4. The learned Counsel for the appellant has argued that in this case knife was not recovered by the police and in absence of recovery of knife, the case against the appellant could not be stated to be established beyond reasonable doubt. He also submitted that no motive was proved as to why the appellant would have caused injuries to the injured persons. The only witness examined by prosecution viz. Kuldip to prove the motive did not support the prosecution. The other argument is

that the learned trial Court had not given due weight to the evidence of DW-1, mother of the appellant, who had testified that the appellant was with her at the time of incident. It is also argued that even it is considered that the injuries were grievous in nature, no case under Section 307 IPC was made out and at the most it would be a case under Section 326 IPC and the conviction of the appellant under Section 307 IPC was therefore not maintainable.

5. These arguments do not stand the scrutiny of reason. Testimonies of PW-2 & PW-3 are categorical as to who caused the injury and how the injuries were caused. Non-recovery of weapon of offence cannot be a ground to doubt the testimonies of PW-2 & PW-3. The appellant might have thrown knife anywhere so that it was beyond the reach of Investigating Officer. I, therefore find no force in this argument.

6. Non-proving of motive is not such a drawback of the prosecution that the case of the prosecution is not to be believed. In fact, no questions were asked to the witnesses about reason, if any, for false implication of the appellant. There was no motive for the witnesses to falsely implicate the appellant. PW-2 during cross examination categorically denied that he had named appellant due to suspicion because appellant quarreled with his cousin Crl. Appeal No. 1191/2010 Page 3 of 5 Kuldip on previous Diwali on the issue of firing crackers. PW-3 also denied that he had named the appellant at the instance of his friend Ravi. No suggestion had been given to PW-2 & PW-3 of any reason for alleged false implication of the appellant except about the quarrel which appellant had picked up on Diwali with Kuldip. I, therefore consider that though motive has not been proved categorically in examination-in-chief of PW-2 & PW-3, but cross examination does throw a light on the motive of accused to assault the victim and the conviction cannot be set aside on the ground, that accused had no motive.

7. DW-1 examined by appellant is mother of the appellant and she had simply stated that the appellant was sitting with her in the house at the time of accident. However, her testimony showed that she had not made any complaint to any authority about alleged false implication of the appellant and she had also testified that the police had no enmity with her or her family to falsely implicate the

appellant. Thus, it is wrong to say that the trial Court had not given due weightage to the testimony of DW-1. In fact DW-1 made a self-serving deposition before the trial Court, which did not inspire confidence.

8. As far as conviction of the appellant under Section 307 IPC is concerned, an intention on the part of the appellant to do an act with an intention or knowledge that it may cause death and that he may be guilty of murder if act had succeeded, has not been proved by the prosecution. However, it has been proved that the appellant had come prepared for assault with his friends and brought a knife to attack the injured but the moment injured raised voice and cried for help he fled away from the scene of the crime. The injuries inflicted by the appellant on the parts of the body i.e. chest CrI. Appeal No. 1191/2010 Page 4 of 5 and belly do show that a knowledge can be imputed to the appellant that he was aware that the act of causing injuries by the knife on the chest and stomach with such a force that knife penetrated in stomach upto kidney, could have resulted into death of victim and in such a case he would be guilty of culpable homicide not amounting to murder. I, therefore consider that the conviction of the appellant should have been under Section 308 IPC read with Section 34 instead of Section 307 IPC. However, that does make much of the difference in awarding sentence of 3 years RI to appellant as the injuries caused to the PW-3 were grievous in nature and the knife had penetrated up to kidney of injured and he had to be operated upon. He was lucky to have got medical help in time to avoid death.

9. I consider the trial Court rightly awarded sentence of 3 years RI to the appellant. The sentence awarded was not harsh neither disproportionate to the offence. The appeal is hereby dismissed.

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