

**Dharam Singh @ Binder Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/955365](http://sooperkanoon.com/955365)

**Court :** Delhi

**Decided On :** Apr-01-2013

**Judge :** P.K.Bhasin

**Appellant :** Dharam Singh @ Binder

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % CrI. A. No. 269/2005 Date of Decision:

1. t April, 2013 + # ! DHARAM SINGH @ BINDER ....Appellant Through: Shri Randhir Jain, Advocate Versus \$ STATE ....Respondent Through: Mr. M.N. Dudeja, APP \* CORAM: HON'BLE MR. JUSTICE P.K.BHASIN JUDGMENT P.K.BHASIN, J: The present appeal has been preferred by the appellantaaccused against the judgment dated 31.01.2005 passed by the learned Additional Sessions Judge convicting him for the offences punishable under Sections 452/307 of Indian Penal Code (IPC in short) and the order dated 10.03.2005 whereby he was sentenced to undergo rigorous imprisonment for four years and also to pay fine of Rs.500/-, with a default stipulation, for the conviction under Section 307 IPC and to undergo two years rigorous imprisonment and to pay fine of Rs.200/-, with a default stipulation, for his conviction under Section 452 IPC.

2. Briefly stated, facts of the case as culled out from the FIR and prosecution evidence are that PW-1 Mahesh Roshan was running a grocery shop in a portion

of his residential house no.263, Church Wali Gali, Fatehpur Beri, New Delhi. The appellant accused was a neighbour of PW-1 and was a vagabond type of a person and he used to frequently stand outside his shop and PW-1 was telling him not to stand outside his shop as daughters-in-law and sisters (bahu-betiyaan) of the area used to come to his shop there but the appellant-accused did not listen to him and, in fact, he had abused PW-1 also. On 13.05.2001 when PW-1 Mahesh Roshan was sitting in his shop at about 9.30 in the morning the appellant-accused came entered his shop and told PW-1 tu bahut bolta hai, aaj mein tera hisab poora kar doonga and then struck a knife blow on his left hand and while he was trying to save himself the appellant-accused stabbed him again on the right side of the abdomen and then ran away. In the meanwhile father and sister of the injured reached the spot and his father then took him to Safdarjung Hospital.

3. After receiving information about the stabbing incident recorded vide DD no. 7A(Ex. 7/A) on 13.5.2001 at Mehrauli police station Sub Inspector Jitender Kumar(PW-7) went to Safdarjung Hospital where the injured had been taken and had remained admitted for over a week. His statement was recorded by PW-7. In that statement, PW-1 narrated the aforesaid facts and then on the basis of that statement FIR no. 275/2001 was registered under Sections 452/307 IPC(Ex PW-7/D). The appellant-accused was arrested on 14.05.2001 and during his interrogation he made a disclosure statement(Ex. PW 6/B) and pursuant to statement and at his pointing out one knife was recovered and seized by the police vide seizure memo Ex. PW 6/C. The injuries sustained by PW-1 were found to be dangerous by the treating doctor in the hospital.

4. After completion of investigation charge sheet was filed in the Court and in due course the case was committed to the Sessions Court. Charges under Sections 452/307 IPC were framed against the appellant-accused by the learned Additional Sessions Judge to which he pleaded not guilty and claimed trial.

5. The prosecution examined seven witnesses in all in order to substantiate the charges against the appellant-accused. Those seven witnesses included the injured-complainant himself and his sister also who claimed to have witnessed his brother being stabbed by the appellant-accused.

6. At the time of recording of his statement under Section 313 Cr. P.C. the appellant-accused took the plea that his father had purchased land from the father of the injured(PW-1) but he wanted to get that land back on the pretext that it had been sold at a less price and when his father refused PW-1 inflicted injuries on his body with a knife and falsely implicated him. Another plea taken by the appellant-accused was that he was having an affair with the sister of PW-I which was not liked by PW-1 and his father so that was also the reason for his false implication. However, no evidence was adduced by the appellant-accused in defence though he had sought many adjournments from the trial court for adducing defence evidence.

7. After analysing the evidence led by the prosecution the learned trial Judge found the offences under Sections 307 and 452 of IPC to have been established fully and accordingly convicted the appellant-accused. Feeling aggrieved, the appellant-accused filed this appeal assailing the correctness of the judgment of conviction rendered against him as also the punishment awarded to him by the learned Additional Sessions Judge.

8. Mr. Randhir Jain, learned counsel for the appellant-accused contended that the evidence of the injured-complainant and his sister was not reliable and based on their evidence the appellantaccused should not have been held guilty. In any case, Mr. Jain also contended that the injuries sustained by the injuredcomplainant (PW-1) could not be said to be dangerous since the doctor who had examined and treated the injured had not been examined and, therefore, in his absence even the MLC also could not have been held to be proved as per law.

9. On the other hand, Mr. M.N. Dudeja, learned Additional Public Prosecutor, fully supported the decision of the trial Court holding the appellant-accused guilty of the offences under Sections 307 and 452 IPC.

10. PW-1 Mahesh Roshan, who is the injured-complainant of the case and the star prosecution witness had deposed before the trial court that: On 13.05.01 I opened my shop at about 6 a.m. in the morning. On that day at about 9 A.M. Dharam Singh, present in the Court came to my shop and I was sitting at that time in my shop. He came inside the shop and attacked me by knife. First blow of the knife hit

my hand while I was saving myself. The second time when he attacked me I stood up and when tried to save myself, the door came on the back side of me, the knife blow hit my stomach. By hearing my noise, my sister Dimple came there and while taking out the knife from my stomach my sister saw it. The accused immediately took out the knife from my stomach and ran away. The accused usually comes to my shop alongwith other friends and when I denied him to stand in front of my shop, he attacked me. Prior to this incident, I advised the accused not to stand in front of my shop as many brothers and sisters of the locality are coming to my shop...

11. In cross-examination, PW-1 stated that he was operated upon after administering anesthesia to him. The testimony of PW-1 could not be shattered in cross-examination. A suggestion was put to him on behalf of the appellant-accused, which of course was denied by the witness, that the appellant-accused had wrong relationship with his sister and, in fact, his (PW-1s) companion wanted to give a knife blow to the appellant-accused but the knife hit him(PW-1). Thus, the appellant-accused at least admitted that there was some incident in which PW-1 was stabbed with a knife. Now, as far as his defence that PW-1, in fact, received knife injury at the hands of his companion is concerned the same has not been substantiated by him by adducing any evidence. In fact, that defence was given up by the appellant-accused at the time when his statement was recorded under section 313 Cr.P.C. by the trial court and, as noticed earlier, he took a totally different plea at that stage to the effect that PW-1 had himself inflicted knife blows on his person. That plea has also remained unsubstantiated. Thus, I have no reason to reject the testimony of PW-1 Mahesh Roshan which I have found to be wholly truthful and, in my view, his evidence alone is sufficient to convict the appellant-accused for the offences for which he stands convicted by the trial Court already and I find no fault with the appreciation of the prosecution evidence by the trial court.

12. The sister of the injured(PW-3) was also examined by the prosecution as an eye witness of the incident. This is what she stated in her examination-in-chief: On 13.5.01 I came to the house of my father at Fatehpur Beri. On that day at about 10 a.m. I was present inside the house of my father and at that time, I heard the noise

of BACHAO BACHAO, the noise was of my brother Mahesh. I immediately rushed to the spot and saw accused Binder @ Dharam Singh, present in the Court was stabbing my brother Mahesh with a knife and after seeing me, he fled away from the spot.....

13. The testimony of this witness, which lends full assurance to the testimony of her brother though the same did not require any corroboration, also could not be shattered in her cross-examination. She was also given a suggestion that she had illicit relationship with the appellant-accused which was not liked by her father (PW-2) and that because of that relationship her brother had stabbed himself. She also denied these suggestions. I have already observed that the appellant-accused could not substantiate any of these defence pleas.

14. Thus, the prosecution has been successful in establishing the stabbing incident and the involvement of the appellant-accused beyond any doubts.

15. There is no doubt that the doctor who had opined the injuries sustained by the injured-complainant to be dangerous was not examined by the prosecution but for that reason it cannot be said that the offence of attempt to murder was not made out and it is only a case under Section 324 IPC, as was also the submission of the learned counsel for the appellant-accused and, in fact, that was his main contention. In this regard, learned APP for the State placed reliance upon one judgment dated 21st February, 2007 of this Court in CrI. Appeal no. 534/1998, Rajesh Kumar @ Raju v. The State (Delhi Admn.), CrI. A. No. 269/2005 and another judgment 01.11.2011 in CrI. Appeal No. 620/2000, Jai Kumar v. State wherein it was held that MLC cannot be rejected merely because the concerned doctor was not personally examined and that the MLC can be proved by any other doctor who is familiar with the signatures of the concerned doctor. In both these cases the MLC was proved by record clerks of the concerned hospital and still they were accepted. In the present case the concerned doctor had left Safdarjung Hospital, as deposed by PW-4 Dr. Shalini Aggarwal who proved the MLC Ex. PW-4/A since she claimed to have seen the concerned doctor writing and signing. According to the MLC (Ex. PW-4/A) the injured-complainant had sustained the following two injuries:

1. wound over right abdomen region 2 c.m. X 2 c.m. wide open intestinal loop protruding through it and 2. injury to left hand between thumb and index finger. In her cross-examination PW-4 had stated: If there is stab injury in stomach and even if BP and pulse is normal it can be called a dangerous injury. A suggestion was given to this doctor on behalf of the accused that she was threatened by the APP and that is why she had claimed that she had seen the concerned doctor writing and signing. The witness had denied that suggestion and I have no reason to accept that the APP would have extracted that statement from the witness by threatening her. The medical evidence also lends full corroboration to the testimony of the injured complainant.

16. The appellant-accused had entered the shop of the injured Mahesh Roshan with a knife. If he had no intention of killing PW1 then he would not be carrying with him a knife. He stabbed PW1 not once but twice. One knife blow was on a vital part of the body and as a result of that injury the intestine of PW-1 had come out of the stomach. That certainly was a dangerous injury and which also shows that the intention of the appellant-accused was to kill PW-1. In any event, knowledge that that kind of an injury could cause death of PW-1 can certainly be imputed to the appellant-accused. It was his own case that the injured did not like his relationship with his sister. So, for that reason also the appellant-accused could be nursing a grudge against PW-1 and so had a reason to get rid of him and considering the fact that PW-1 sustained dangerous injuries the same could not be expected to be self-inflicted.

17. Therefore, I am in agreement with the trial Court holding the appellant-accused guilty of making a murderous assault on PW-1 after entering into his shop and convicting him under Sections 452 and 307 IPC.

18. The trial court has awarded only four years imprisonment to the appellant-convict for his conviction for the attempted murder of the injured-complainant. That much punishment cannot be said to be harsh at all. The appellant-accused does not deserve any further leniency in the matter of sentence by letting him off with the sentence of imprisonment which he has already undergone during the investigation stage and then after his conviction, as was also the submission made

by his learned counsel. Here is a person who wanted to take the life of someone and did everything to bring about his death but timely medical aid could save his life and now the stabber does not even want to spend few years of his own life in jail and is praying for mercy which he did not show to the person whose life he was attempting to take. So, how can this court show any mercy to the appellant-accused? 19. This appeal, thus, being devoid of any merit is dismissed. Since the sentence of imprisonment awarded to the appellant-accused was suspended by this court during the pendency of this appeal after he had spent over a year in jail his bail bonds now stand cancelled and he is ordered to be taken into custody forthwith and lodged in jail to serve out the unspent portion of sentence of imprisonment. P.K. BHASIN, J April 1, 2013

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