

**Sultan Vs. State**

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**Court :** Delhi

**Decided On :** Feb-05-2013

**Judge :** Indermeet Kaur

**Appellant :** Sultan

**Respondent :** State

**Judgement :**

R-14 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Judgment:05.02.2013 CrI. A. 217/2000 SULTAN Through: Appellant Mr. Sumeet Verma, Adv. Versus STATE Through: Respondent Mr. Manoj Ohri, APP. SI Gulshan Kumar, PS Geeta Colony. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(oral) 1 The appellant Sultan along with co-accused Vinod Kumar @ Bihari have been convicted under Section 307/34 of the Indian Penal Code (IPC) and each had been sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- in default of payment of fine to further undergo simple imprisonment for six months. Benefit of Section 428 of Cr.PC had been granted. 2 Before this Court the appellant is Sultan. The co-convict has not filed any appeal. The nominal roll of the appellant shows that he has undergone sentence of about 10 months including his period as a undertrial; submission of the learned counsel for the appellant being that he must have also earned certain remissions in this period. 3 The present FIR was registered at the complaint of Maqbool Hassan (PW-1). He along with co-accused Sultan and Vinod had gone to

see a cinema and after seeing the cinema knife injuries had been given to him by both the accused. Accused Sultan caught hold of him whereas accused Vinod gave him one knife blow. Thereafter accused Vinod caught hold of him and accused Sultan gave 3-4 knife blows. The testimony being to the effect that he had been appointed as a Khidmatkar of the Durgah; accused Sultan wanted to seize the said sanand so that PW-1 would be out of the Mazar. This was the motive which has been attributed to the accused which had led to the incident. Further deposition of PW-1 being that he had received knife injuries on his abdomen and his back and on his left leg. Thereafter the accused persons ran away from the spot. This testimony of PW-1 was recorded in chief on 16.01.1995 and was deferred as the case property i.e. the knife could not be produced. On the following date i.e. on 19.02.1996 as the pulanda was again not produced, he was again examined in chief on 08.09.1998. His cross-examination took place on 23.03.1999 by which time PW-1 had turned turtle; in his cross-examination, he refused to identify the accused Sultan; submission being that he had been tutored by the Police to name him; further deposition being to the effect that it was late at night when the incident had occurred and he could not see any of the assailants and in fact this assailant was not present in Court. 4 The entire case of the prosecution was based on the testimony of PW-1. The MLC Ex. PW-5/A was proved by PW-5 Dr. R.V. Singh. Since Ex. PW-5/A already stood proved, the argument of the learned counsel for the appellant that PW-9 could not identify the signatures of the Doctor who had prepared the MLC is not of much weight. 5 Ex. PW-5/A had noted the injuries on PW-1 to be simple but sharp. Admittedly the knife which was used in the incident was not produced although the prosecution had at one time taken time to produce it but the same again remained un-exhibited. Record shows that the injured remained admitted in the hospital between 21.07.1991 to 02.08.1991 i.e. for a period of 11 days. The nature of the injuries as opined in Ex. PW-5/A shows that there were a deeply embedded CLWs up to 6 in the back; a wound of a lesser depth below the angle of scapula and another around the level of the 7<sup>th</sup> rib as also in the renal area. 6 This ocular testimony of PW-1 coupled with the medical evidence has established that the nature of the injuries suffered by PW-1 were dangerous which had entailed his confinement in the hospital for almost 11 days. The motive of the crime was also

borne out in the first part of the version of PW-1 although as noted supra, the witness had become hostile in the later part of his version. 7 The law on this point is settled. The testimony of a hostile witness is not to be disregarded in toto. The cross-examination of PW-1 having taken place almost four years later after his first version of recorded (which was in 1995 and cross-examination having been effected in 1999), the trial Court has rightly noted that the witness was won over in this intervening period. The Supreme Court in AIR 1999 Supreme Court 1853 Khujji @ Surendara Tiwari Vs. State of Madhya Pradesh had reiterated that the evidence of a hostile witness cannot be effaced or washed off the record altogether and that part of his evidence which was otherwise acceptable can be acted upon qua the hostile portion of his testimony. The corroborative medical evidence as also the members of the investigating team was also rightly noted. 8 The conviction of the appellant does not call for any interference. 9 Learned counsel for the appellant has vehemently argued that the incident had occurred more than 22 years ago i.e. in July, 1991 and in this intervening period of 22 years, there has been not even a single complaint against the appellant; he has reformed himself and since that time has five minor children aged 12, 9, 5, 3 and youngest child aged 1- years; submission being that he is sole bread winner of his family and the object and aim of the punishment being reformatory, the appellant would clearly qualify in such a category and accordingly he has prayed that the period of sentence already undergone by him be treated as his sentence. 10 Submission of the learned counsel for the appellant on this count has force. The incident is admittedly more than two decades old; the appellant has grown with the family over the years; as on the date of his conviction which was on 29.10.1999, he was reported to be 30 years of age meaning thereby that he is at present in his mid 40s. He has spent about one year in jail although at the time of imposing sentence, it appears to have been recorded that he had spent four and half years in judicial custody. This is however not borne out from the nominal roll which has been placed before this Court. 11 The reformatory theory of punishment emphasizes on reformation of offenders through the method of individualization. It is based on the humanistic principle that even if an offender commits a crime, he does not cease to be a human being. Therefore, an effort should be made to reform him/her during the period of his/her incarceration. 12 In this background, this would be a fit case

where keeping in view the fact that the incident had occurred more than 22 years ago and the appellant still working in the same Durgah which is also a part of the place where the victim was living and the Court has been informed that the parties are still living in the same vicinity and they have been living in peace with one another, the ends of justice, in the peculiar facts of this case would be met if the appellant is directed to be released on the sentence already undergone by him. It is ordered accordingly. The appellant is present in Court. His bail bond stands cancelled. Surety stands discharged. A copy of this order be sent to the Jail Superintendent for necessary intimation. 13 The appeal disposed of in the above terms. 14 This Court appreciates the assistance rendered by Ms. Charu Verma, learned amicus curiae who had been appointed by this Court to render assistance in the matter. 15 Appeal is allowed in the above terms. FEBRUARY 05 2013 A CrI. Appeal No. 217/2000

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