



2025:DHC:9822



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 03.11.2025

+ **CRL.A. 363/2020 and CRL. MA 9646/2020**

DEEPAK @ NISHU

.....Appellant

Through: Mr. Ishaan Ojha, Advocate with
Appellant in person

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant seeks setting aside of the judgment of conviction dated 29.01.2020 and order on sentence dated 13.02.2020 passed by the learned ASJ-05 (West), Tis Hazari Courts, Delhi in SC No. 57600/2016 arising out of FIR No. 62/2016 registered under Section 307 IPC at P.S. Paschim Vihar East.

Vide the impugned order on sentence, the appellant was sentenced to undergo RI for a period of 4 years along with a fine of Rs.2,500/-, in default whereof he would undergo SI for 3 months, for the offence punishable under Section 307 IPC; and RI for a period of 2 years along with a fine of Rs.1,500/-, in default whereof he would undergo SI for 1 month, for the offence punishable under Section 201 IPC. Both sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was also extended to the appellant.



The sentence of the appellant was suspended during pendency of the present appeal vide order dated 30.01.2023.

2. The prosecution case, briefly stated, is that on 27.01.2016 at about 10:30 p.m., the complainant, the appellant, and one other person were playing cards together, when a quarrel broke out between the appellant and the complainant as the appellant alleged that the complainant had stolen Rs.500/- from him. The complainant denied this allegation, whereupon the appellant, after hurling abuses and threatening to teach the complainant a lesson, took out a knife and stabbed him on the right lower side of his abdomen. The complainant raised an alarm, whereupon his mother rushed to the spot, tied her *chunni* on the wound, and called the police. The injured was removed by PCR to SGM Hospital, Mangolpuri, where he was medically examined. The appellant was arrested from his residence the next day. During investigation, the complainant's blood-stained clothes and his mother's *chunni* were seized, the site plan was prepared, and statements of witnesses were recorded. Upon completion of investigation, charges were framed under Sections 307 and 201 IPC, to which the appellant pleaded not guilty and claimed trial.

3. During trial, the prosecution examined 7 witnesses in support of its case. Among them, PW-1/*Satish*, the injured complainant, and PW-2/*Shakuntala Devi*, his mother, were the material witnesses of fact. PW-3/ASI *Hari Charan*, PW-4/Ct. *Harish*, PW-5/HC *Virender*, and PW-6/Ct. *Balwan* were the police witnesses associated with investigation. PW-7/Dr. *Gurdeep Singh* proved the MLC of the complainant. The I.O. of the case, SI *Rajender Singh*, could not be examined as he passed away during pendency of the trial.

4. PW-1/*Satish*, the complainant and injured witness, deposed that while



he was playing cards with his friends outside his *jhuggi*, the appellant, who was his neighbour, accused him of having stolen his Rs.500/-. He denied the allegation, but the appellant started insisting that he return his money. The appellant then took out a knife and stabbed him in his abdomen. He started crying for help. His mother came running from inside the *jhuggi*, tied her *chunni* around his wound, and called the police. He was taken by the PCR to the hospital, where he remained admitted for 4 days. PW-1 stated that while he was in hospital, he kept wearing the same blood-stained clothes as he had no means to change them. After his discharge, he met the I.O., produced the clothes he had worn at the time of the incident, as well as his mother's *chunni*, and the same were seized and sealed vide memo Ex. PW-1/B. He identified the pant and shirt (Ex. P-1 collectively) and the *chunni* (Ex. P-2) in Court.

During cross-examination, he stated that there was no prior quarrel between him and the appellant. He denied the suggestion that he and the appellant had quarrelled a month prior to the incident, because of which he had falsely implicated the appellant. He further denied the suggestion that he had self-inflicted the injuries to falsely implicate the appellant.

5. PW-2/*Shakuntala Devi*, the mother of the complainant, deposed that at about 10:00 or 10:30 p.m., she was inside the *jhuggi* when she heard her son shouting in pain. She rushed outside and saw that the appellant was fighting with her son and had stabbed him with a knife. Her son was bleeding from the abdomen. She immediately tied her *chunni* on the wound to stop the bleeding and called the police. A PCR van arrived shortly thereafter and took her son to the hospital. She identified the *chunni* as Ex. P-2 in Court.

In cross-examination, she denied the suggestion that the appellant had



not stabbed her son and that she had not seen him stabbing or that her son had falsely implicated the appellant to extract money from him.

6. The medical evidence was proved through PW-7/Dr. *Gurdeep Singh*, CMO, SGM Hospital, who produced and identified the MLC No. 1379/2016 of the injured *Satish* (Ex. PW-7/A). The MLC records that the complainant was brought to the hospital at about 11:30 p.m. on 27.01.2016 with an alleged history of stab injury and was examined by one Dr. *Prashant* in the emergency ward. A penetrating stab wound was found on the right lower abdomen and abrasions were noted on the chest. The injuries were opined by the witness himself to be simple in nature.

7. The remaining witnesses examined by the prosecution were police officials who deposed as to various aspects of the investigation. PW-3/ASI *Hari Charan*, the then Duty Officer, proved that the *tehrir* was received at the police station in the early hours of 28.01.2016 and that FIR No. 62/2016 was registered forthwith. PW-4/Ct. *Harish* corroborated that he accompanied the I.O., SI *Rajender Singh*, to the spot of the incident upon receipt of DD entry regarding the stabbing, and thereafter to SGM Hospital where the injured was found admitted. He deposed that the injured's statement was recorded and that he carried the *tehrir* to the police station for registration of FIR before rejoining the investigation. PW-5/HC *Virender Singh* and PW-6/Ct. *Balwan* were members of the team that participated in the appellant's arrest and the subsequent search for the weapon. They stated that on 28.01.2016, acting on the complainant's information, they went to the house of the appellant at Peeragarhi Camp, where he was apprehended. The arrest and personal search memos were prepared in their presence and were proved during trial.

8. In his examination under Section 313 Cr.P.C., the appellant denied the



allegations and stated that he was innocent. He asserted that the complainant, who was intoxicated at the time, had fallen into a nearby drain, sustained injuries, and thereafter falsely implicated him. The appellant did not, however, lead any evidence in defence.

9. The appellant is present in person and has been duly identified by the I.O. His gate pass has been handed over and is taken on record. Learned APP for the State has also handed over a status report regarding the antecedents of the appellant, which is taken on record. The said report reflects that the appellant has other involvements.

10. On a perusal of the record, this Court finds that the principal testimony in the present case emanates from PW-1, the injured complainant, and PW-2, his mother, whose depositions are natural, coherent, and mutually consistent. Both have categorically deposed that the appellant stabbed the complainant with a knife after a verbal altercation over Rs.500/-. Their accounts corroborate each other on the time, place, and manner of the occurrence and are in consonance with the medical evidence furnished by PW-7. The defence has not been able to shake their credibility in cross-examination or bring out any material contradiction that could render their testimony doubtful.

11. The presence of PW-1 and PW-2 at the scene is wholly natural; since they reside in the same *jhuggi*, and the time of the incident being about 10:30 p.m. also finds reflection in the MLC prepared soon thereafter at 11:30 p.m. The medical findings of a penetrating wound on the right lower abdomen correspond exactly with the ocular version.

12. The argument that the complainant is a habitual drunkard who may have sustained the injury by falling into a drain is wholly unsubstantiated. The appellant has not produced any material in support of that claim. The



plea of self-infliction is equally untenable. It is improbable that an individual would inflict a penetrating wound on his abdomen merely to implicate a neighbour. No credible motive has been shown for such conduct, whereas the immediate provocation arising from the quarrel over Rs.500/- provides a plausible explanation for the appellant's act. It is also worth noting that an injured witness is considered to be a stamped witness, and such testimony generally stands on a higher pedestal. In the present case, the consistent ocular versions of PW-1 and PW-2 are further amply corroborated by the medical evidence.

13. The contention that the absence of recovery of the weapon creates a fatal gap in the prosecution case was rightly rejected, as the law on the point is well settled. Non-recovery of the weapon of offence is not, by itself, a ground to discard otherwise trustworthy ocular evidence.

14. The non-examination of the original I.O., who had expired during the pendency of the trial, does not create any *lacuna* fatal to the prosecution case as the other police witnesses have proved all essential steps in the investigation. No prejudice has been shown to have been caused to the appellant by the I.O.'s absence.

15. As for the discrepancy between the complainant's initial statement recorded by the police, which mentioned injury on the thigh, and the subsequent evidence referring to the abdomen, it is apparent from the MLC prepared within about an hour of the occurrence that the injury was indeed on the right lower abdomen of the complainant. The minor inconsistency in the site of injury appears to be a clerical error in the recording of the complaint and does not go to the root of the matter. The uniformity of the medical and ocular evidence establishes the actual site of injury beyond doubt.



16. As for the conviction under Section 201 IPC, the same is also found to be well founded. The evidence on record establishes that the knife used in the assault was never recovered despite immediate and sustained efforts by the police. The unexplained disappearance of the weapon points to a conscious act of concealment aimed at effacing evidence of the offence. The circumstances, taken cumulatively, lead to a reasonable inference that the appellant, after causing the injury, ensured that the weapon was disposed of so as to screen himself from legal consequences. This conduct of the appellant attracts the offence under Section 201 IPC and his conviction under the said provision is accordingly upheld.

17. The Trial Court observed that though the injury was opined to be simple in nature, it was nevertheless on a vital part of the body and thus sufficient to infer intention to cause death. Having carefully perused the record, this Court finds that inference to be not entirely justified. The evidence shows that the appellant inflicted only a single blow during a sudden quarrel. There is no suggestion that he continued the attack or repeated the assault after the complainant fell or cried out. The medical opinion categorically states the injury to be simple. In such circumstances, it would be excessive to attribute to the appellant the intention necessary to constitute an attempt to murder.

18. In order to sustain a conviction under Section 307 IPC, the prosecution must establish that the act was done with such intention or knowledge that if death had been caused, the offence would amount to murder. The presence of intention or knowledge is *sine qua non*. When assessing whether an offence committed falls under the provision of Section 307 IPC, the intention to commit the offence can be gathered from attending circumstances such as the nature of the weapon, the seat of injury, the



severity of the blow, and the surrounding circumstances. As such, it is the intention or knowledge with which the act was committed which is to be considered. The ingredients of the Section are satisfied if the prosecution is able to prove the intent and for its execution, commission of some overt acts¹. The Supreme Court, in the case of Sivamani v. State², discussed the law prevailing around Section 307 IPC in the following manner:-

“9. In State of Madhya Pradesh v. Saleem, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that ‘...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.’ The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v. State of Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, ‘The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.’”

19. Applying the above principles to the facts of the present case, it becomes evident that while it is undeniable that the appellant stabbed the complainant with a knife, the evidence suggests an impulsive act arising from loss of temper rather than one guided by the design or preparation characteristic of attempted murder. Accordingly, this Court is of the considered view that the appellant’s act, arising out of a quarrel, cannot be said to have been committed with the intention to cause death. The weapon used was an ordinary knife; there was no prior enmity; the quarrel erupted

¹ State of Maharashtra Vs. Balram Bama Patil, reported as (1983) 2 SCC 28



suddenly; and the appellant inflicted only a single blow. However, an overall view of the facts and circumstances would show that though the appellant did not have the intention of causing death, he can certainly be attributed the knowledge that he was, likely by such act, to cause death. Viewing all of these factors cumulatively, the conviction of the appellant is altered from one under Section 307 IPC to Section 308 IPC.

20. Now, the matter turns to the question of sentence. The appellant is about 40 years of age and has a wife, two daughters, and one son. He is stated to be the sole earning member of his family. The order dated 30.01.2023 shows that he has already undergone over half of his sentence; and the incident in question is now nearly a decade old. The latest nominal roll on record further reflects that his conduct in jail was satisfactory.

21. Having regard to the totality of the circumstances, including the modification of the appellant's conviction from Section 307 to 308 IPC, the nature of the injury, the absence of premeditation, and the period of incarceration already undergone, this Court is of the considered view that the ends of justice would be met if the substantive sentence imposed upon the appellant is modified to the period already undergone by him.

The sentence of fine imposed upon the appellant, however, is maintained. In default of payment of fine, the appellant shall undergo the sentence in default, as directed by the Trial Court. The receipt of payment of fine shall be furnished before the concerned I.O.

22. The present appeal is partly allowed in the above terms.

23. Subject to deposit of fine, the personal bond furnished by the appellant stands cancelled and his surety is discharged.

² 2023 SCC OnLine SC 1581



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24. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 03, 2025

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