

**THE COURT OF SH. KAPIL KUMAR
METROPOLITAN MAGISTRATE-05, CENTRAL,
TIS HAZARI COURTS, DELHI**

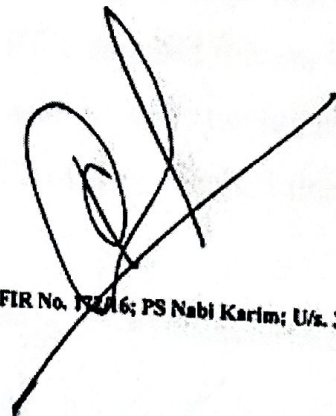
CNR No. DL CT-02-002047-2017
CIS No. 1116/17
State Vs. Mohd Wasim and Abdul Malik
FIR No. 172/16
PS. Nabi Karim
U/s. 324/34 IPC

JUDGMENT
(Through VC)

- 1) The date of commission of offence : 09.08.2016
- 2) The name of the complainant : Sonu
- 3) The name & parentage of accused : 1. Mohd Wasim
S/o Abdul Malik
2. Abdul Malik
S/o Abdul Razak
- 4) Offence complained of : 324/34 IPC
- 5) The plea of accused : Pleaded not guilty
- 6) Final order : Convicted
- 7) The date of such order : 03.07.2020

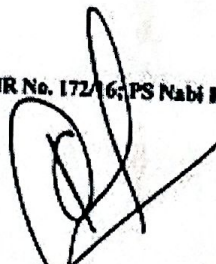
Date of Institution : 28.01.2017

Judgment announced on : 03.07.2020



THE BRIEF REASONS FOR THE JUDGMENT:

- 1) The case of prosecution against the accused persons is that on 09.08.2016 at about 3 AM near old police post Nabi Karim, Delhi within the jurisdiction of PS Nabi Karim both of them in furtherance of their common intention grappled with the complainant Sonu and caused simple injuries on his forehead by sharp weapon.
- 2) After completion of investigation, charge sheet was filed against the accused persons. In compliance of Sec. 207 Cr.PC, documents supplied to the accused persons. Arguments on point of charge were heard. Vide order dated 19.04.2017, a charge u/s. 324/34 IPC was framed upon the accused persons, to which they pleaded not guilty and claimed trial.
- 3) In support of its case, prosecution has examined eight witnesses. After conclusion of prosecution evidence statement of accused persons were recorded U/s 313 Cr.PC(as per section 281(1) Cr.PC) in which accused persons denied all the allegations and opted not to lead DE.
- 4) I have heard the arguments of Ld. APP for State and Ld Counsel for accused persons. I have also perused the record carefully.
- 5) It is the cardinal principle of criminal justice delivery system that the prosecution has to prove the guilt of the accused beyond reasonable doubts. No matter how weak the defence of accused is but the golden rule of the criminal jurisprudence is that the case of prosecution has to stand on its own legs.
- 6) The complainant of the present case namely Mohd Sonu was examined as PW1 by the prosecution. PW1 deposed that on 09.08.2016 he along with friends Saddam and Kasim were going to the house of Kasim by car. He deposed that when at around 2 AM they reached near police post,



accused Wasim (correctly identified) came there and started abusing him to which he objected. He deposed that accused Wasim grappled with him and in the meantime the father of accused Wasim namely Abdul Malik also reached there. He deposed that accused Abdul Malik caught hold of him while accused Wasim caused injuries on his forehead by sharp pointed object. He deposed that blood started oozing out and Saddam made a call at 100 number. He deposed that he was taken to Lady Hardinge Hospital by PCR. He deposed that police officials of PS Nabi Karim also reached at the hospital where his statement Ex.PW1/A was recorded. He deposed that the spot was inspected and the site plan Ex.PW1/B was prepared. Accused persons were arrested and personally searched.

7) Perusal of testimony of complainant reveals that he supported the case of prosecution in all aspects. He correctly identified the accused persons in the court. His testimony on the aspect of identification of accused persons sustained the test of cross-examination. Accused persons were known to complainant prior to the incident. Accused Wasim was the classmate of the complainant while accused Abdul Malik is the father of accused Wasim. This fact came in the cross-examination of PW1 and this fact has not been disputed.

8) It was argued by Ld Defence Counsel that accused persons have been falsely implicated in the present case. It was argued that the complainant sustained injuries while he was working with steel sheets at his work place. This submission of Ld Defence Counsel does not instill the faith of this court. This is a mere averment appearing to be fluke without anything to substantiate the same. The testimony of the complainant that he was beaten by the accused persons got corroborated vide MLC Ex.A1 which was

prepared just after the incident in question. In the MLC Ex.A1 the complainant given the history of physical assault and he was fit for statement. It was not argued as to what was the reason for the complainant to falsely implicate the accused persons. No such reason has been explained by the accused persons when they were examined U/s 313 Cr.PC recorded as per section 281 Cr.PC. I found no reason to disbelieve the testimony of the complainant as far as the identification of accused persons and the factum of causing injuries to the complainant are concerned.

9) It was argued that the complainant deposed that his clothes were got blood stained at the time of incident and some blood fallen on the earth also. It was argued that the IO did not pick the earth sample nor seized the blood stained clothes. This argument is also of not of such a consequence that the entire testimony of the complainant, which sustained the test of cross-examination, can be side lined. These errors or omissions on the part of the investigating officer are not so material that can be said to be going to the roots of the present case.

10) It was argued that it was admitted by the complainant during the cross-examination that his signatures on the site plan Ex.PW1/B were taken in the police station. It was argued that it suggest that every document was prepared in the police station and does not have any sanctity. The fact that the signatures of the complainant were taken on the police station on the site plan are of no consequence as far as the facts of present case are concerned. The purpose of site plan is to apprise the court as to the place of alleged offence. In the present case the place of incident clearly came in the testimony of the complainant. This is sufficient for the present case. The identity of place of occurrence is very much on record and any irregularity



in the site plan Ex.PW1/B is not material.

11) The testimony of complainant is duly corroborated vide testimony of friend of the complainant namely Saddam Khan examined as PW3 by the prosecution. PW3 deposed that on 09.08.2016 he was present with the complainant and one another friend Kasim Ahmed. He deposed that they were going in a car and when about 2:40 AM when they were present near old police post Nabi Karim accused Wasim (correctly identified) started abusing Sonu to which Sonu objected. He deposed that Wasim grappled with Sonu and in the meantime the father of accused Wasim namely Abdul Malik (correctly identified) came there and caught hold of Sonu and there Wasim assaulted Sonu with the pointed object. He deposed that he made a call at 100 number and thereafter Sonu was shifted to Lady Hardinge Hospital.

12) The testimony of PW3 Saddam Khan is on the lines of that of complainant/PW1 and supported the case of the prosecution. In the testimony of PW3 also the factum of identification of accused persons and impliedly presence of accused persons at the spot squarely came on record. PW3 also sustained the test of the cross-examination on both the aspect of identification of accused persons and in the fact that the complainant was assaulted by a sharp object by accused Wasim who was assisted by his father namely Abdul Malik who is also one of the accused in the present case. I found no reason to disbelieve the testimony of PW3.

13) Now coming to the testimony of third eye witness namely Kasim Ahmed examined as PW8 by the prosecution. PW8 deposed that on 09.08.2016 he along with complainant Sonu and Saddam were going in a car and when they reached near police post accused Wasim started abusing Sonu and thereafter accused Wasim assaulted Sonu with sharp object. He



correctly identified the accused Wasim but deposed that accused Abdul Malik was not present at the spot at the time of the incident. He turned hostile qua the role of accused Abdul Malik in the incident in question and did not identify him when he was cross-examined by Ld APP for the State. The testimony of PW8 also supporting the case of the prosecution and corroborating the testimony of complainant/PW1 and that of PW3 as far as the entire incident is concerned and on the role of accused Wasim. His testimony is different on the aspect of presence of accused Abdul Malik.

14) Now, this court has to weigh the testimony of the complainant and that of PW3 on one hand and that of testimony of PW8 on the aspect of the presence and involvement of accused Abdul Malik is concerned. The testimony of complainant and PW3 have been appreciated in the initial part of this judgment where this court concluded that the testimony of PW1 and PW3 does instill the faith of this court and this court has no reason to disbelieve their testimonies. The testimony of PW8 is contrary on the aspect of involvement of accused Abdul Malik. When the testimony of PW1 and PW3 be read along with the complaint Ex.PW1/A and the fact that the testimony of PW1 and PW3 corroborates each other and has inherent flow this court is inclined to give more weight to the testimony of PW1 and PW3 and specifically to the testimony of complainant who is injured witness.

15) The testimony of injured (who is the complainant/PW1 in the present case) has been accorded a special status in law. This is in consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailants go unpunished merely to falsely implicate a third party for the commission of offence. Reliance on this aspect can be placed upon



judgments titled as **Ram Lagan Singh vs State of Bihar AIR 1972 SC 2593**; **Dinesh Kumar vs State of Rajasthan (2008) 8SCC 270**; **Vishnu & Ors vs State of Rajasthan (2009) 10SCC 477** and **Annareddy Sambasiva Reddy vs State of Andhara Pradesh AIR 2009 SC 2261**.

16) The issue as to the evidentiary value of injured witness was taken by Hon'ble Apex Court in judgment titled as **Jarnail Singh vs State of Punjab (2009) 9SCC 719** wherein it was held that-

'Darshan Singh (PW4) was an injured witness. He had been examined by the doctor, his testimony cannot be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached at the tubewell. In Shivalinghappa Kallayanappa Vs State of Karnataka 1994 SUPP (3) SCC 235, this court held that the deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case. It is proved that he suffered the injuries during the said incident'

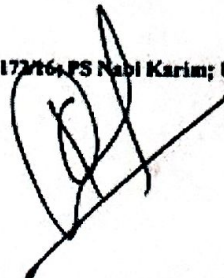
17) On the trite that the testimony of injured has a greater sanctity the reliance could also be placed upon judgments titled as **State of UP vs Kishanchand (2004) 7SCC 629**; **Krishan vs State of Haryana 12 SCC 459** and **Abdul Sayeed vs State of MP Criminal Appeal no. 1243/2007** decided on 14.09.2010 by Hon'ble Apex Court.

18) Being guided by the above-mentioned judgments and in view of discussion that the testimony of complainant has inherent flow as that of natural witness and sustained the test of cross-examination, there is no inhibition to state that the testimony of complainant is to be given more weightage as that of PW8. The presence of accused Abdul Malik at the time of the incident and his role in the incident in question is very much proved on record.

19) The *modus-operandi* adopted by the accused persons in which accused Wasim grappled with the complainant and thereafter the complainant was caught hold by accused Abdul Malik while assaulted by a sharp pointed object by accused Wasim clearly makes out that accused persons were sharing common intention at the time of the incident in question. Their acts are so connected to each other that it makes so clear that there was prior meeting of minds of the accused persons prior to the incident in question.

20) The MLC of the complainant Ex.A1 is not in dispute as per which the complainant sustained simple injuries. As per MLC the weapon used was sharp. This fact is also not in dispute. Merely the fact that the weapon was not recovered is of no consequence when it is clearly stated in the MLC that the injuries were caused by a sharp weapon. In these circumstances it is proved on record that the accused persons used sharp weapon while assaulting the complainant in furtherance of their common intention.

21) Accordingly, in view of above-discussion it is proved on record that on 09.08.2016 at about 3 AM accused persons in furtherance of their common intention caused simple injuries to the complainant Sonu with sharp weapon. The case of the prosecution stands proved. All the ingredients

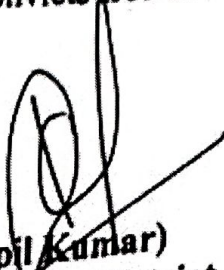


CNR No. DL CT-02-002047-2017

of the offence U/s 324/34 IPC stands proved and accused persons namely Mohd Wasim and Abdul Malik are hereby convicted accordingly.

Copy of the judgment be supplied to the convicts free of cost. Be heard on point of sentence.

Announced through VC
on 03.07.2020


(Kapil Kumar)
MM-5/Central District
Tis Hazari Courts/Delhi,