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

% ***Reserved on: 19.04.2023***
Pronounced on: 04.07.2023

\+ **CRL.A. 415/2009**

ANTOSH ..... Appellant

Through: Mr. Archit Updhayay, Advocate.

versus

STATE ..... Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State along with SI Tejram, P.S.: Uttam Nagar, Delhi.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

Index to the Judgment

SWARANA KANTA SHARMA, J.

1. The present appeal has been filed by the appellant under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') seeking setting aside the impugned judgment dated 30.03.2009 and order on sentence dated 13.04.2009 passed by learned Additional Sessions Judge-II, North-West District, Rohini Courts, Delhi ('Trial Court') in Sessions Case 257/06, arising out of FIR No. 419/2005, registered at Police Station Uttam Nagar under Sections 307 of Indian Penal Code, 1860 ('IPC'), whereby learned Trial Court convicted the appellant for offences punishable under Sections 326/324 of IPC. By virtue of order on sentence dated 13.04.2009, the appellant was sentenced to undergo rigorous imprisonment for three years and pay fine of Rs.1,000/-, and in default, to undergo simple imprisonment for one month, for the offence punishable under Section 326 IPC; to undergo rigorous imprisonment for 1 ½ years and pay fine of Rs.500/-, and in default, to undergo simple imprisonment for fifteen days, for the offence punishable under Section 324 IPC.

FACTUAL BACKGROUND

2. Brief facts of the case are that on receipt of DD No.25 dated 14.05.2008 at Police Station Uttam Nagar, the investigating officer had reached the spot where he had found that one Anil Kumar had been injured. On inquiry, it was revealed that another injured Titu Kumar had been taken to hospital by his brother. Injured Anil Kumar was taken to Deen Dayal Upadhyay Hospital where the investigating officer had found that the other injured i.e. Titu Kumar was also admitted there for treatment. Statement of one Neeraj Singh was recorded who informed the investigating officer that he alongwith present accused Antosh had gone to the house of Antosh where the injured Anil Kumar, who lived in adjoining room, started quarrelling with Antosh. Antosh had thereafter asked Anil Kumar to get a fan from the shop of one Lalu, however, Anil Kumar had refused to bring it. Antosh had therefore, stabbed Anil Kumar in his abdomen. The complainant's brother i.e. Titu Kumar who had tried to apprehend Antosh, was also stabbed by Antosh in his chest with intention to kill him. Thereafter, Antosh had run away from the spot. In the meantime, one Dev Shankar had reached the spot and had taken his brother Titu Kumar to the hospital. On statement of Neeraj, the present FIR was registered. During investigation, accused/appellant was arrested and the knife used for commission of offence was recovered at his instance. The opinion on the MLC was obtained and on the basis of the entire facts and opinion of MLC, chargesheet was filed against accused for offence punishable under Sections 324/307 IPC. After conclusion of trial, the accused was

convicted for commission of offence under Section 324 /326 IPC. The relevant portion of the judgment reads as under:

> "6.1 1 have heard the learned counsels and perused the evidence on record. To prove the occurrence evidence of Neeraj (PW1), Niranjan Kumar @ Titu (PW5) and Anil Kumar (PW6) is relevant. Neeraj (PW1) is the complainant and an eyewitness to the entire occurrence. He was with the accused since the beginning of the occurrence and watched the entire occurrence. As per his testimony, they were both coming together and they went to the shop of one electrician where the accused made inquiries about some fan. Both of them, then went to the room of Anil and accused directed Anil to collect fan from the electrician's shop. Anil declined to collect the fan on that day and deferred the matter to next day. This annoyed the accused and he stabbed Anil in the abdomen. In the meantime, second injured Niranjan also reached the place of occurrence and caught hold of the accused. On this accused gave one stab blow in the chest of Niranjan also. Witness identified accused as well as the weapon of offence. He was superficially cross examined and nothing damaging to prosecution came out.
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> 6.2. Injured Niranjan @ Titu (PW5) also proved the entire occurrence and deposed that four of his bones in the chest were cut because of injury and he remained admitted in the hospital for about 12 days. Initially this witness was not cross examined at all despite opportunities. Subsequently he was recalled seven months later, when he deposed that Anil received injuries during the scuffle as he fell down on a kitchen knife. He further deposed that accused Antosh was at fault but they did not want any action against him. There was no cross-examination of this witness as regards injuries caused to him by accused Antosh.
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> 6.3. Anil Kumar (PW6) proved the occurrence wherein he and Niranjan received injuries at the hands of the accused. This witness was also not cross examined initially. On being cross-examined seven(7) months later, he deposed that during scuffle with Antosh he fell down and sustained injuries with a kitchen knife. He also did not want any action against accused Antosh as he was his cousin brother. This witness was also not cross examined as regards stab blow by the accused to injured Niranjan.

6.4. From the testimony of the above mentioned three eyewitnesses, I am of the opinion, that prosecution case is established beyond reasonable doubts. Testimony of Neeraj Kumar (PW1) has gone unrebutted. The injured persons namely Titu @ Niranjan (PW5) and Anil Kumar (PW6) were not cross-examined at any stage, as regards the injuries on the person of Titu @ Niranjan with respect to the injuries on the person of Anil, they tried to dilute their version by saying that these were accidental in nature. There of course, is no suggestion or cross examination of doctors if the injuries on the person of Anil Kumar (PW6) could have been caused in an accidental fall on a kitchen knife. The change of stance on being recalled for cross examination after a period of . seven months is also hit by the law laid down in Khujji's case (Supra).

6.5. I, therefore, hold that in the present occurrence, accused Antosh has caused stab injuries on the person of Anil and Titu Kumar @ Niranjan using a kitchen knife.

7.1. Dr. Dhananj ay Kumar (PW9) had examined Titu Kumar and I prepared his MLC Ex.PW9/A. As per the MLC and findings of Dr. Dhananjay Kumar (PW9) Titu had received one penetrating injury on left side of chest, and one linear abrasion. Dr. Sanjeev, S.R., Surgery could not be examined and on his behalf Dr. Nishu Dhawan (PW1 1) proved the nature of injuries to be grievous. Thus Titu Kumar @ Niranjan received a grievous penetrating injury by a sharp edged weapon. Since there is no repeated blow and also not ocular evidence to indicate that accused wanted to commit murder of Titu Kumar; I am of the opinion, that charge for the offence punishable under Section 307 IPC is not established. However, offence punishable under Section 326 IPC is made out with respect to injuries on the person of Titu Kumar @ Niranjan.

7.2. A perusal of MLC of Anil Kumar Ex.PW9/B and the . testimony of Dr. Dhananjay Kumar (PW9) reveals that injury on the person of Anil Kumar was simple with a sharp edged weapon. Thus the offence punishable under Section 324 IPC is established with respect to injuries on the person of Anil Kumar.

7.3. I, therefore, hold accused Antosh to have committed offence punishable under Section 326 and 324 IPC.

8.1. It was also argued by Shri Anand Sharma, leanred amicus curiae that the knife allegedly recovered at the instance of accused

was not examined by Dr. Sanjeev, S.R., Surgery, to establish if the same was the weapon of offence. It is also pointed out that the knife produced, Ex.P1, was a folding knife whereas the seizure memo does not record that S the recovered knife was folding. The argument of Shri Sharma, cannot be dismissed at the threshold. JO should have taken the opinion of Surgeon if the recovered weapon of offence could have caused the injuries. However, this lapse in investigation cannot be an escape route for the accused. There is overwhelming eyewitness account to indicate that accused was the only person, who had caused injuries to Anil Kumar and Niranjan @ Titu. In such circumstances, even if the weapon of offence is not recovered or its authenticity is not established, the accused cannot be acquitted on this ground.

8.2. The other official witnesses have proved various stages of investigation and no material irregularity has been noticed in their evidence. For the reasons stated in para 6 to 8 I hold the accused Antosh Kumar guilty for the offence punishable under Section 326 &324 IPC."

SUBMISSIONS BY LEARNED COUNSELS

3. Learned counsel for the appellant argues that the learned Trial Court has committed an error while convicting the appellant since the Court did not appreciate that the prosecution had failed to prove its case beyond reasonable doubt, that testimonies of the complainant and the police officials did not inspire confidence, and that there were discrepancies in the statements of the material witnesses. It is also argued that the learned Trial Court did not take note of the fact that PW-5 Titu Kumar @ Niranjan Kumar and PW-6 Anil Kumar, who were material witnesses in the case, did not support the prosecution story and had resiled from their previous statements. It is also argued that the case property was not sealed in the presence of the appellant, and it was produced in the Court in a tempered condition. It is also

argued that the doctor concerned had not been examined on the point as to whether the stab wound had been caused with the weapon of offence in question. It is also argued that the complainant had also not supported the prosecution case. Learned counsel for appellant also argues that the appellant had not caused any injury to anyone and that Anil Kumar had sustained injury during the scuffle with present appellant. It is argued that Anil Kumar had fallen down on a kitchen knife and had therefore sustained injury. It is also argued that the learned Trial Court has based its decision on inadmissible evidence and therefore, appellant be acquitted.

4. Learned APP for the State, on the other hand, has argued that the witnesses had supported the prosecution case when their examination-in-chief was recorded, however, they did not support the prosecution case during their cross-examination. It is, therefore, stated that the witnesses had been won over as they had been cross-examined after a period of seven months of being examined-in-chief by the prosecution. It is, thus, stated that learned Trial Court has rightly convicted the appellant.

5. This Court has heard arguments addressed by both sides and has perused the material on record.

ANALYSIS AND FINDINGS

6. After hearing arguments and going through the case file, this Court is of the opinion that the learned Trial Court has based its opinion primarily on the finding that the testimony of PW-1 Neeraj has

remained unchallenged and testimony of PW5 and PW6 is also unchallenged on the point of injuries sustained by Titu Kumar, however, at the same time, the learned Trial Court has also opined that the witnesses had tried to dilute their version by stating that the injuries sustained by Anil Kumar were accidental in nature. The learned Trial Court, however, in the same breath had stated that no suggestion or cross-examination of the doctors regarding possibility of injuries being caused due to accidental fall on kitchen knife are part of the record and since the witness had changed their testimony after a period of seven months when their cross-examination was recorded, the charge under Section 324 IPC was proved on the basis of the fact that an injury was caused with a sharp edged weapon on the abdomen of Anil Kumar by the appellant. On the same ground, it opined that as far as the injured Titu Kumar is concerned, on the basis of the testimonies and MLC, the prosecution could prove its case beyond reasonable doubt under Section 326 IPC as he had received a grievous penetrating injury by a sharp edged weapon on his chest. The learned Trial Court has also stated that the lapses in the investigation have to be ignored at this stage and cannot be a ground for acquittal of the accused persons and therefore, convicted the appellant under Section 326/324 IPC.

i. Analysis of Evidence

7. After going through the case file and having given thoughtful consideration to the impugned judgment and the testimonies of the witnesses as apparent from the record, this Court is of the opinion that

a perusal of testimony of PW-1 Neeraj reveals that he has fully supported the case of prosecution and has clearly stated in his statement that on the day of incident, accused Antosh was infuriated with injured Anil as Anil had refused to collect a fan from electricity shop. Upon Anil refusing to collect the fan from the shop on the same day, as per testimony of PW-1 Neeraj, he had stabbed injured Anil in his abdomen. He has also clearly deposed that when his brother Niranjan had tried to intervene, Antosh had stabbed him (Niranjan) with a knife in his chest, and thereafter, had fled away from the spot. The witness has also identified the knife which was used in the commission of offence as Exhibit P-1. He was cross-examined by learned counsel for accused, however, even during cross-examination, no discrepancy could be brought out on record, and the cross-examination could not impeach the testimony about its truthfulness, thereby making it trustworthy and worthy of being relied upon. The cross-examination of the witness merely consists of suggestions given to the witness which were denied by the witness. The witness has also clearly denied that Niranjan had sustained injuries due to falling on the *saria* or that the accused had not caused injuries to Anil as deposed by him.

8. As far as testimony of PW-2 Brij Kishore i.e. father of injured Niranjan is concerned, he has in his examination-in-chief deposed that he was present in his house when the incident in question had taken place and on hearing commotion, when he had gone to the place of occurrence, he had found that accused had stabbed Anil and when his son Niranjan, who was also present at the spot, had objected to the

same, Antosh had stabbed him (Niranjan) in his chest. He has also clearly stated that on seeing him, Antosh had fled away from the spot after causing injury to Anil and Niranjan. He also mentions that on hearing the commotion, their neighbour Dev Shankar had come to the spot and since the injury caused to Niranjan was very serious, as it had cut the entire upper chest region, he and Dev Shankar had also taken Niranjan in a rickshaw to the police chowki and thereafter to Deen Dayal Upadhyay Hospital. He also states that surgery of his son was performed and later, the accused was arrested and the knife used by him in commission of offence was also recovered from his possession. A perusal of his cross-examination also reveals that he had denied the suggestion that knife was not recovered in his presence. He has also denied the suggestion that Anil and Niranjan had not sustained injuries due to stabbing by the present appellant. Therefore, the testimony of PW-2 also completely supports the prosecution case.

9. A perusal of the testimony of the other material witness PW-5 Niranjan, who is one of the injured reveals that he has also supported the prosecution story completely in his testimony and states that a quarrel had taken place between Anil and accused, and since Anil had refused to bring fan from a fan repairing shop, accused had stabbed Anil in his abdomen and when he had tried to intervene, he was also stabbed in his chest. He states that he had remained admitted in the hospital for 12 days since the stab injury had cut four rib bones. The testimony of the witness was recorded on 16.12.2005. The accused did not avail opportunity to cross-examine this witness as is mentioned in

the records of learned Trial Court, that the witness was tendered for cross-examination, however, opportunity was not availed. The Court has mentioned as under:-

> "XXXXXX by accused.
>
> Nil. Opportunity given."

10. The said witness i.e. PW-5 was thereafter re-called for cross-examination by the concerned Court after about eight months and during cross-examination, the witness stated that a scuffle had taken place between Anil and Antosh i.e. the appellant and during the scuffle, Anil had fallen down on a vegetable knife lying nearby and injuries were sustained by Anil due to falling on the knife. The witness, however, also stated that the appellant Antosh is at fault in the entire occurrence, however, he does not want any action against him. The request made by learned APP for the State to cross-examine the witness was declined, however, no reasons have been mentioned as to why this request was declined by the learned Trial Court.

11. PW-6 is another injured and material witness who also supported the prosecution story and specifically deposed that the accused had stabbed him in his abdomen and had also caused injuries with a knife to Niranjan. He has identified the weapon of offence used in the incident. This witness was also not cross-examined on the same day i.e. 16.12.2005 and the learned Trial Court mentioned as under:-

> "XXXXXX by accused.
> Nil. Opportunity given."

12. PW-6 was also re-called and then cross-examined on 22.07.2006. The witness in his cross-examination admitted that there was a scuffle with the appellant and he had fallen down and sustained injuries with a kitchen knife. He also stated that his statement was not read over and explained to him. He also stated that he was made to sign several documents by the police but he did not know the contents of the same. He also stated that he did not want any action against the accused as he is his cousin brother. The request made by learned APP for the State to cross-examine the witness as he was resiling from his previous statement was declined without giving any reasons by the learned Trial Court.

13. PW-8 Dev Shankar did not support the prosecution case and stated that he had not seen the quarrel between the appellant and Anil or Niranjan. He also denied having made any statement to the police. He also stated that he was not aware if the accused and injured have settled their dispute.

14. The other witnesses are police witnesses who are not eye-witnesses to the case and have deposed regarding investigation in the matter and also the concerned doctor who has proved the MLCs on record.

15. In the statement of accused recorded under Section 313 Cr.P.C., while answering the question to explain incriminating material fact to him, he has merely answered to most questions as, “I do not know”, “it is incorrect” and that he has been falsely implicated in the case and is

innocent. Regarding as to why the witnesses have deposed against him, he has stated that they are interested witnesses.

16. The record, therefore, reveals that the witnesses PW1 and PW2 have fully supported the case of prosecution and their testimonies could not be impeached in any manner regarding their deposition that the present appellant had inflicted injury on the chest of injured Niranjan and in the abdomen of Anil. As far as testimonies of both injured(s) is concerned, this Court notes that their examination-in-chief is fully supportive of the prosecution case and the fact that they had been injured and stabbed in the chest and the abdomen by the appellant because Anil had refused to collect a fan from a repair shop and had also stabbed Niranjan who had tried to save Anil by intervening in the matter. Resultantly, there are four testimonies i.e. testimony of PW1 and PW2 which in totality supports the prosecution case and testimony of PW5 and PW6 wherein their examination-in-chief the witnesses did not deviate at all from the story of the prosecution and statements given to the police. However, the cross-examination of PW5 and PW6 was deferred. However, the cross-examination of PW-5 and PW-6 was not conducted on 16.12.2005 and nil opportunity was recorded by the learned Trial Court in the record. Thereafter, after an application under Section 311 Cr.P.C. was allowed, the witnesses were allowed to be recalled for cross-examination. Unfortunately, no reasons have been mentioned for allowing the application under Section 311 Cr.P.C. for re-calling of witnesses on 08.05.2006 except the ground that their

counsel was not able to reach Court due to some personal difficulty. The witnesses were finally cross-examined after about eight months.

17. A perusal of testimony of PW-5 and PW-6 will still reveal that they did not deviate from the entire testimony recorded as their examination-in-chief or the case of prosecution, but only tried to convey to the Court that they had forgiven the appellant as he was their cousin. PW-5 mentions in his cross-examination that in the entire occurrence, it was fault of the appellant only but since he was their cousin, he did not want action against him. PW-6 also states that they had forgiven the appellant as he is his cousin brother, which means that they admitted that he had committed the offence as witnesses had also deposed in their examination-in-chief, but they did not want any action against the appellant, when their cross-examination was recorded.

ii. Denial of Opportunity to Prosecutor to Cross-Examine Hostile Witness

18. Unfortunately, the request of learned APP for the State to the Court to cross-examine these witnesses had been declined by the learned Trial Court without even a single reason mentioned as to why such request was being declined. In this regard, this Court is constrained to observe that while the witness was denying having given statements to the police and was also deviating from his examination-in-chief, the learned APP for the State had a right to defend the State by cross-examining the witness regarding the same. The learned Trial Court, by declining such request, had ignored that learned APP for the

State had a right to effectively defend the State, and that could have been done only if he would have been permitted to ask the questions he wanted to ask when the witnesses were not supporting the case of prosecution, not in the examination-in-chief, but after application under Section 311 Cr.P.C. was allowed and the witnesses appeared before Court for cross-examination after eight months of examination-in-chief being recorded wherein they had fully supported the prosecution case. Learned APP for the State was well within his right to confront the witnesses with their earlier statements and deposition wherein they had supported the prosecution case in order to bring before the Court, the reasons for the change of heart and under which circumstances they had earlier supported the case of prosecution in their examination-in-chief on 16.12.2004. He was also entitled as a matter of right to have asked the witnesses as to which version of the two, deposed by them was correct before the Court. Unfortunately, the learned Trial Court failed to provide even a single reason as to why the request of the learned APP for the State was being declined.

iii. Impact of Witness turning Hostile during Cross-Examination

19. In this regard, this Court takes note of the observations of Hon'ble Apex Court in case of ***Rajesh Yadav v. State of UP*** *(2022) 12 SCC 200*, wherein the Apex Court has explained the law on 'hostile witness' in the following manner:

> "22. The expression "hostile witness" does not find a place in the Indian Evidence Act. It is coined to mean testimony of a

witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.

23. On the law laid down in dealing with the testimony of a witness over an issue, we would like to place reliance on the decision of this Court in *C. Muniappan v. State of T.N., (2010) 9 SCC 567*:

> "81. It is settled legal proposition that:
>
> > "6. … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."
> >
> > (Vide Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389, Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233, Syad Akbar v. State of Karnataka, (1980) 1 SCC 30 and Khujji v. State of M.P., (1991) 3 SCC 627,

SCC p. 635, para 6.) 82. In State of U.P. v. Ramesh Prasad Misra [(1996) 10 SCC 360: 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra [(2002) 7 SCC 543: 2003 SCC (Cri) 112], Gagan Kanojia v. State of Punjab [(2006) 13 SCC 516: (2008) 1 SCC (Cri) 109], Radha Mohan Singh v. State of U.P. [(2006) 2 SCC 450: (2006) 1 SCC (Cri) 661], Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360: (2009) 1 SCC (Cri) 188] and Subbu Singh v. State [(2009) 6 SCC 462: (2009) 2 SCC (Cri) 1106].

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of

witnesses." Vide Sohrab v. State of M.P., [(1972] 3 SCC 751 : (1972) SCC (Cri) 819 : AIR 1972 SC 2020], State of U.P. v. M.K. Anthony, [(1985) 1 SCC 505 : 1985 SCC (Cri) 105], Bharwada Bhoginbhai Hirjibhai v. Sate of Gujrat, [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], State of Rajasthan v. Om Prakash, [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411], Prithu v. State of H.P., [(2009) 11 SCC 585 : (2009) 3 SCC (Cri) 1502], State of U.P. v. Santosh Kumar, [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and State v. Saravanan, [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580].

24. This Court in *Vinod Kumar v. State of Punjab,* (2015) 3 SCC 220 **had already dealt with a situation where a witness after rendering testimony in line with the prosecution's version, completely abandoned it, in view of the long adjournments given permitting an act of manoeuvring**. While taking note of such situations occurring with regularity, it expressed its anguish and observed that:

"51. It is necessary, though painful, to note that PW 7 was examined-inchief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on

13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9- 1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9- 1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the reexamination.

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57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. **That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature**

is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. **In fact, it is not at all appreciable to call a witness for cross examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day.** If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. **It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial**.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, “Awake! Arise!”. There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High

> Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."
>
> (Emphasis supplied)

20. To summarize, the principles which can be culled out from the aforesaid decision are as under:

a. The term 'hostile witness' would refer to a witness who deposes in favour of the opposite party.
b. A witness may turn hostile either at the stage of examination-in-chief itself, or later during the cross-examination.
c. The evidence of a hostile witness cannot be discarded as a whole merely because the prosecution chose to treat him as hostile, and the relevant parts of evidence which are admissible in law can be used by the prosecution or the defence.
d. It is imperative that if the examination-in-chief is complete, the cross-examination should also be completed on the same day and must not be deferred for a long period of time as it may provide opportunity to the accused to pressurise and win over the witness.

21. Further, in ***State of Bihar v. Laloo Prasad*** *(2002) 9 SCC 626* the Hon'ble Apex Court had highlighted the importance of providing fair opportunity to the public prosecutor for cross-examination of a witness who has turned hostile during his cross-examination. The relevant observations read as under:

> "4. Section 154 of the Evidence Act reads thus:
>
> > "154. Question by party to his own witness.-The court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party."
>
> 5. Learned counsel for the appellant invited our attention to the decision of this Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* in support of his contention that it is open to the party who calls the witness to seek the permission of the court (as envisaged in Section 154 of the Evidence Act) at any stage of the examination.
>
> 6. Nonetheless, a discretion has been vested with the court whether to grant the permission or not. **Normally when the Public Prosecutor requested for permission to put cross-questions to a witness called by him the court used to grant it.** Here if the Public Prosecutor had sought permission at the end of the chief examination itself the trial court would have no good reason for declining the permission sought for. But the Public Prosecutor did not do so at that stage. That is precisely the reason why the trial Judge declined to exercise his discretion when the permission was sought for after the cross-examination was over. **The witness has said only the details in cross- examination regarding the matter which he said in the chief examination itself. It would have been a different position if the witness stuck to his version he was expected to say by the party who called the witness, in the examination-in-chief, but he showed propensity to favour the adverse party only in cross-examination. In such case the party who called him has a legitimate right to put cross-questions to the witness.** But if he resiled from his expected

> stand even in the chief examination the permission to put cross-questions should have been sought then…"
>
> (Emphasis supplied)

22. Thus, upon consideration of the above-mentioned decision, it becomes evident that when a witness, who has been called by the State, supports the case of prosecution in examination-in-chief, but resiles from his earlier statements during cross-examination, the public prosecutor who had called the witness to strengthen the case of prosecution has a right to cross-examine the same witness who has turned hostile, and it is the duty of the trial Court to ensure that the prosecutor is not arbitrarily denied the opportunity to avail this legitimate right. This duty of the Court assumes even greater significance when the witness turns hostile during cross-examination that occurs after a significant lapse of time.

iv. Fair Trial: Right of State vs. Right of Accused

23. The journey of a criminal case starts from registration of an FIR and thereafter, the State takes over, conducts investigation and files chargesheet. There are two key players in a criminal case i.e. the defence and the State. The accused is represented through a defence counsel, and the State and complainant through public prosecutor.

24. It is to be noted that before the criminal Courts, it is essential to provide both the prosecutor for State as well as Defence counsel, equal and fair opportunity of hearing since the Court, as a neutral seat of justice, has to consider the rights of accused which are ensured through

a defence counsel and effective cross-examination etc. At the same time, the interest of the State also cannot be ignored since the State is defending itself from the crime and criminals and thus, has a legitimate precious right to be given equal and effective opportunity to defend its case.

25. To put it in other words, as the accused has a right to be considered innocent until proven guilty and his counsel has a right to defend him, during this journey of being proven guilty or not guilty, the State has an equal right to defend its case and prove the accused guilty by effectively presenting its case and evidence before the Court through its prosecutors.

26. There is no doubt that the fundamental rights of an accused to defend himself, right to have effective legal aid as well as right to raise effective defence have to be of paramount importance to the criminal jurisprudence, the same, however, cannot be at the cost of compromising the right of the State to defend itself. Upholding fundamental right of the accused to effective legal assistance cannot be read as ineffective hearings or lack of opportunities to the State. In the case at hand, the accused was granted opportunity to cross-examine two material witnesses after eight months on the ground that it will cause serious prejudice to the accused if the witnesses are cross-examined.

27. In this case, it was fault of the accused that the witnesses could not be cross-examined on the same day when their examination-in-chief was recorded. In contrast, learned APP for the State who was

defending the case on each date of hearing and had not sought any adjournment, when requested the Court to cross-examine the same witnesses who had come before the Court for cross-examination on an application moved under Section 311 Cr.P.C., the request of learned APP for the State was declined in one line without assigning any reasons, which in this Court's opinion, amounts to travesty of justice.

v. Multi-fold responsibilities of Public Prosecutors

28. In this background, it is important to take note of the fact that is it not always the case between the complainant and the accused alone, it is also about the State defending itself against commission of offence by an offender. The State represents its citizens as the State has a duty towards maintaining not only law and order and ensuring rule of law, but also ensuring safety of the public from criminal offenders and criminal offences. The duty of the learned APP for the State in this backdrop comprises of multi-fold responsibilities. It cannot be overlooked that the job of a public prosecutor is not only to work towards ensuring defending the State, but a more onerous duty of placing before the Court, the entire material collected by the investigating agency to help the Court reach a just decision. The duty of a Judge is to ensure justice in its purest form which connotes that justice should be done after evaluating, without fear or favour, the material on record and the testimonies of the witnesses and if the accused is found guilty, punishing him and giving relief and justice to the complainant. The myth generally is that by doing so, the judge is

doing justice only to the complainant whereas in reality, the Judge is performing a higher duty of not only giving justice to the complainant before that particular criminal Court, but also to the State by ensuring that the offender is punished so that the public can be safeguarded from his further criminal actions, if any. Thus, by performing such duty, the Court provides a sense of safety to its citizens, ensuring rule of law, ensuring that the punishment works as deterrent for others and also ensuring that the punishment so awarded will reform the offender as the offender is also a part of the State, and if reformed, will again become a useful member of the society.

29. The public prosecutors not only help to execute the society's principle concern of pursuing punishment for criminal behaviour through judicial adjudicatory process, but also protect the rights of the persons involved in criminal proceedings. The right of the State through its prosecutors ensures that law not only protects fundamental rights of the victims of crime, but also of the witnesses for whom the prosecutors owes a responsibility, as it is the prosecutor who deals with the prosecution witnesses, victims, addresses arguments on bail, and recommends sentencing. It is the prosecutor who has full access to the evidence that he has to present and in the crucial criminal process helps the Court as a central figure to protect the human rights. Prosecuting offenders to the full extent as law describes is a delicate task and cannot be performed without being awarded effective opportunity to prosecute and assist the Court to ensure smooth functioning of criminal justice system.

vi. Right of Public Prosecutors to effectively defend the State

30. A crime against the victim is against the society as a whole. While there is no dearth of cases laying down importance of providing effective legal aid, defence counsel, and giving sufficient opportunity to the defence counsel for conducting effective hearing is concerned, there are seldom occasions where the case as the present one is confronted by the Courts where the State has not been granted legitimate opportunity and that too without reason. It is, therefore, essential to highlight the role of public prosecutors in conducting trial of criminal cases which should not be undermined, undervalued or ignored and their right to effectively defend the State.

31. The criminal courts cannot ignore that cross-examination by the defence counsel or by the learned APP for the State are of importance in determining whether a witness is credible or not. The right to re-examine a witness or cross-examine a witness by the public prosecutor, when a witness of the State turns hostile or deviates from the statement given to the police is a valuable right. It is essential to establish the credibility of the witness. In the cases as the present one where the witnesses had supported the prosecution case in the examination-in-chief but had turned hostile partially, the importance to cross-examine or re-examine the said witness was critical since it cannot be denied that the public prosecutor could have brought the truth before the court only by re-examination or cross-examination of the witness, be it through asking him question or by confronting him with his previous statements.

32. Thus, cross-examination is the ultimate means of bringing out the truth, and testing veracity of the witness as cross-examination is essential for a defence lawyer to bring out truth of a prosecution witness. In case of a prosecution witness deviating or turning hostile, the learned APP also has the right to cross-examine the witness to bring out truth and assist the Court in performing its fundamental duty of providing a fair trial not only to an accused, but also fulfilling its duty towards the complainant.

33. There is no denial of the fact that the right to cross-examine in certain circumstances may not be absolute and will be subject to certain limitations however, in cases as the present one, the truth could not have been brought before the Court when the learned public prosecutor was not permitted to prove and bring before the court the truth by permitting cross-examination of the witness who was turning hostile partially.

34. The learned APP is also an officer of the Court, and as stated earlier is defending crucial rights of the State to ensure the rule of law and safety of its citizens. A trial Judge, therefore, has to balance the right of an accused to a fair trial with that of the State and the complainant through the prosecutor.

vii. Duty of Court to balance the Two Competing Rights

35. There can be no set rules which can be designed by a court of law to ensure fairness to witnesses, accused and other stakeholders. It is the judge who is the master of the trial and, therefore, has to take into

account that the burden of balancing the rights of both is protected equally.

36. In the present case, the learned Trial Court has unduly and without any reasons restricted the right of the public prosecutor for State to conduct cross examination of the witness without giving any reason, and thereby constraining the scope of arguments and bringing the truth before the Court by the prosecution. To sum up, the right of the prosecution, and the State to be heard, therefore, has to be given same weightage, importance and sanctity lest the fair trial is vitiated. The State comes before the Court with a duty to place on record all available legal evidences, facts and present its case with legitimate persuasive strength and fairness. It is not for a prosecutor to function as if he has to win or lose, but efficiently perform his duties with a sense of dignity and justness in the judicial adjudicatory process. As the accused has the right to plead innocence, the State and the complainant through public prosecutor have the right to question a prosecution witness who deviates from his statement or turns hostile in reference to previous statements made under oath before the Court, by way of cross examination.

CONCLUSION

37. The deeply rooted and zealously guarded principle of criminal jurisprudence is fair trial, which does not mean fair trial to the accused alone but also to the complainant and the State through public prosecutor. In every criminal trial, the State has a duty and stake that a

criminal who commits crime against the society and may prove to be a threat to the safety and security of other citizens due to his criminal behavior must be brought under four walls of law and either be punished or reformed which cannot be attained without ensuring fair trial and opportunity to both the parties to present their case before the Court.

38. Fortunately, in the present case, the two witnesses PW-1 and PW-2 fully supported the prosecution case and the injured PW-5 and PW-6 in their cross examination-in-chief fully supported the prosecution case and all the witnesses identified the weapon of offence. It is only PW-5 and PW-6 who deviated from their previous statements to some extent. PW-5, however, did not give entire clean chit to the appellant but only stated in the cross-examination that he did not want him punished. The PW-6 also in his cross examination stated that since the appellant is their cousin he does not want him punished. The statement of one witness PW-6, that too only in the cross examination, that the injuries were sustained by falling on a knife are apparently incorrect in view of unimpeachable testimony of PW-1 and PW-2 who were eye witnesses of the case, and the testimony of PW-5. Further, the MLC records clearly indicate the extent of injuries sustained by both the injured persons which is being listed as under:

Injuries sustained by injured Anil Kumar-

> "Penetrating injury of size 2X1 cm over left side of chest (about 1 cm lateral to xiphiserum) and one linear abrasion over left forearm over lateral aspect (upper 1/3rd)."

Injuries sustained by injured Titu Kumar-

> "Penetrating injury left side of chest of dimension 7cm X 4 cm tending from 2 cm lateral to *** at the level. Linear abrasion at level of sternal angle."

39. These injuries by no stretch of imagination could be caused by falling on a kitchen knife, and the knife cannot be said to be lying on the floor in such a position that it itself stabs and causes injuries to the extent of cutting four ribs of one of the complainants, and itself causing some injuries to the other injured. The reasoning, therefore, given by the learned Trial Court and the judicial precedents as discussed in para no. 19 and 21 do not persuade this Court to reach a conclusion that the conviction recorded by the learned Trial Court was erroneous on facts or on law.

40. In view of the foregoing discussion, this Court finds no reason to interfere with the impugned judgment. Accordingly, the conviction of the appellant is upheld.

41. As far as the sentence of the present appellant is concerned, this Court notes that the appellant was sentenced to undergo rigorous imprisonment for a period of 03 years and as per the Nominal Roll on record, the appellant has already remained in judicial custody for a period of 01 years, 05 months and 07 days.

42. In this Court's opinion, the appellant has already faced agony of going through the criminal trial for about 15 years including the period of pendency of this appeal.

43. Thus, taking into account the sentence awarded to the appellant by the learned Trial Court, the period of sentence already undergone by

him and the fact that the incident in question pertains to the year 2008, this Court is of the opinion that ends of justice will be met by reducing the sentence of imprisonment to the period already undergone.

44. Accordingly, the present appeal stands disposed of in the above terms.

45. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 4, 2023/ns