

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

+ CRL. APPEAL NO.443/2001

% Reserved on : 15-02-2008
Date of decision: 27-02-2008

ISLAM & ANR. APPELLANTS
Through: Mr. Dharmender Rana, Adv. with
the appellants in person.

- V E R S U S -

STATE ... RESPONDENT
Through: Mr. Jaideep Mallik, APP for the
State

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J.

1. The present appeal has been preferred by the two appellants to challenge the judgment of their conviction and sentence dated 21-05-2001 passed by the ASJ to undergo R.I. for a period two years each for the offences under sections 324/34 of the Indian Penal Code (IPC for short).
2. The case of the prosecution in brief is that the appellants, being the relatives of one Mrs. Bano (PW1) and her husband Kallu (PW2), along with four other persons having their faces covered entered the house of PW1 and PW2 at night at about 2 am on the night of 12/13-09-1998 and

inflicted injuries with knife on both, PW1 and PW2. Thereafter, the injured persons were taken to GTB hospital in PCR van and on receiving such information, DD No. 29 (Ex. PW7/A) was recorded. One HC Hari Om along with Ct. Mahveer reached the spot from where they reached GTB hospital and registered the case vide FIR No. 677/1998 (Ex. PW3/A) dated 13-09-1998 on recording the statement Ex. PW1/A of PW1 after having been declared fit for making statement by the doctor. Both the injured persons were medically examined by the doctors in the hospital vide their MLCs Ex. PW6/A and Ex. PW8/A.

3. Subsequently, both the appellants was arrested and on interrogation, made disclosure statements. The injured PW2 also produced a knife like khukari (Ex. P1) before the IO and an opinion of the doctor was sought of the said knife. The case was committed to trial and charges were framed against the appellants vide order dated 30-01-2001. The appellants pleaded not guilty and claimed trial. The prosecution had examined ten witnesses in support of its case against the two accused persons. When examined under Section 313 of the Code of Criminal Procedure (the said Code for short) both the accused denied the prosecution case in its entirety and pleaded false implication on account of previous animosity. After hearing the learned Counsel for both the parties and considering the material placed on record, the learned trial Court convicted both the accused persons for the

offences u/s 324/34 IPC and sentenced them to undergo R.I. for a period two years. Feeling aggrieved, the said convicted accused persons have come up in appeal where the sentence of the appellants was suspended pending the appeal vide order dated 18-07-2001 till bailable warrants were issued against them for production before the court.

4. I have heard both the parties and have also gone through the evidence adduced on record. The case revolves around the two material depositions of the injured persons, PW1 and PW2. PW1 in her testimony has stated that on the intervening night of the date of incident, the two accused persons along with four other persons, whose faces were covered, entered the room of the house where both Bano (PW1) and her husband (PW2) were sleeping. The appellant no. 2 held her while appellant no. 1 pressed her mouth and gave knife blows on her chest and arm. She further averred that her husband was then taken hold of by others and stabbed by appellant no. 1, when he was awakened. It is then that she became unconscious and regained her consciousness only in the hospital where the police came and recorded her statement. PW2 in his statement before the trial court largely affirmed to the facts stated by PW1 and further stated that on such incidence, he called the police who took both the injured persons to the hospital.

5. Learned counsel for the appellants has contended that the

prosecution has miserably failed to establish its case on the ground that the material testimonies of both PW1 and PW2 suffer from serious infirmities since they have given contradictory versions of the incidence in question. It is stated that PW2 in his examination in chief has stated that he was sleeping inside the room and his wife (PW2) was sleeping in the courtyard. Both the accused along with four other persons entered the house and caught hold of his wife and stabbed her with knife. It is then that the wife came inside the room to awaken him. PW2 stated that the room was lit with a candle which was extinguished by the appellants when they entered the room. Learned counsel pleads that it was not possible for PW2 to have seen the incident of stabbing since it is his own case that the candle light was put out by the accused and that he was sleeping at that time and was awakened only later by his wife as also that according to PW1, Bano, her husband got awakened on hearing the commotion. It is also stated that there was no mention of the four persons other than the accused/appellants in the FIR. It is argued that the story concocted by both the injured persons that the persons who were not known to them had come with their faces covered and the ones who were their own relatives/appellants had not covered their faces, is difficult to believe. It is further stated that PW1 in her statement before the police had stated that when her husband tried to save her from being stabbed, appellant no. 1 gave a

knife blow to him also while her deposition before the Ld. Trial Court was that when she went inside the room after being stabbed, she saw appellant no. 1 stabbing her husband.

6. Learned counsel for the appellants sought to draw the attention to certain contradictions. It was pointed out that PW1 had stated that she regained consciousness in Hospital and her statement was recorded in Hospital whereas PW2 averred that his wife's and his statement was recorded in the PCR van. Further, PW1 and PW5, ASI Somnath stated that no public person had gone to the hospital with them while PW2 stated that his brother had also gone with them to the hospital in the van. Other than this, PW2 in his testimony stated that the police officials did not conduct any proceedings in his house whereas PW 9, S.I. Ravinder Kumar Sharma stated that the statement of PW2, Kallu was recorded at the place of occurrence and the alleged weapon (knife) was recovered by PW2 from his possession. It has also not been brought on record whether there were any blood stains or not, no cloth was taken into possession of blood stains or mark of knife on clothes and were not sent for C.F.S.L. And there was no blood seizure memo prepared by the I.O. The Doctor opined that the injuries received could not be possible from the said knife. Learned counsel for the appellants pleaded that all the contradictions and inconsistencies pointed out aforesaid were also brought before the trial

court but had been brushed aside in a casual manner by the learned trial judge.

7. Apart from the above, it was submitted that in the light of the facts that the appellants being the only bread earners of their big families, have been facing trial for a long period now and have no past or prior criminal antecedents, the appellants may be given the benefit of the provisions under the Probation of Offenders Act (the said Act for short).
8. On the other hand, the learned counsel for the State fully supported the judgment of the trial court and contended that there is no infirmity in the findings of the trial court in holding the appellants guilty and that this appeal should be dismissed and their convictions and the sentences awarded to them should be affirmed.
9. It was submitted that the case is duly supported by PW2 and PW1 and PW1 has identified the two accused and assigned specific roles to the appellants while deposing before the trial court. It is averred that the plea raised by the accused that they have been falsely implicated has not been proved and is not supported by any evidence on record. It is further stated that the testimony of PW1 is supported with the recovery of knife as Ex. P1 and the fact that PW2 also received injuries on his shoulder in the same incident and denied the suggestion that appellant no. 1 had not given a knife blow, makes the case of the prosecution even more reliable.

10. In the given facts and circumstances of the case, I am of the view that it cannot be disputed that there are some inconsistencies in the testimonies of PW1 and PW2 but at the same time, these infirmities are not of a nature which would lay a doubt in the mind about the credibility of the said depositions and thus, cannot be rejected at the threshold as rightly pointed out by the learned ASJ. It cannot be lost sight of that the appellants have been identified by PW1 and have been alleged to have effectuated their particular tasks in order to accomplish their objective to cause hurt to PW1 and PW2. The MLCs proved on record as Ex. PW 6/A and PW 8/A provide that the nature of injuries are simple which has not been disputed and have been caused by a sharp weapon. The testimony of PW1 is supported by the MLC which also provides that PW1 received injuries on the chest and arm. In the disclosure statement of appellant no. 1, he has admitted to have gone to the house of PW1 and PW2, with his brother, appellant no. 2 and stabbing PW1 with a knife which was later seized by the police officials from the possession of PW2 and proved by the prosecution.

11. Thus, though the evidence produced on record is not sufficient to convict the appellants u/s 307 IPC since the element of mens rea is lacking, nonetheless, it is established beyond reasonable doubt that the appellants on the date of the incident, went to the house of PW1 and PW2, in furtherance of their common intention to inflict

injuries upon both the injured persons. In the absence of any defence evidence in support of the plea raised by the appellants, the conviction of the appellants u/s 324/34 IPC is sustainable in the eyes of law. The Ld. Trial court, in my opinion, has examined the matter at length and has not erred in coming to the conclusion that a case is made out against the appellants u/s 324/34 IPC and thus, sentenced them to undergo RI for a period of 2 years.

12. However, in view of the fact that the appellants have no past or prior antecedents of a convict, I am inclined to modify the sentence of the appellants and deem it appropriate to direct that the sentence of the appellants be confined to a period of six months RI and hence the order of sentence of the trial court is modified to the aforesaid extent.

13. Appeal stands allowed in the aforesaid terms.

FEBRUARY 27, 2008
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SANJAY KISHAN KAUL, J.