

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

Judgment Reserved on: 16th December, 2009
% *Judgment Delivered on: 21st December, 2009*

+ **CRL.A.8/2008**

TAJUDDIN @ NANHE Appellant
Through: Mr.Rajesh Mahajan, Advocate/
Amicus Curiae.

Versus

N.C.T. OF DELHI Respondent
Through: Mr.Manoj Ohri, APP for State.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Appellant along with three other co-accused persons had been convicted on 21.11.2007 for an offence under Section 324/34 of the Indian Penal Code (IPC). Vide order of sentence dated 5.12.2007 he had been sentenced to undergo RI for two years and to pay a fine of Rs.1000/-, in default of payment of fine to undergo SI for two months. This judgment is the subject matter of the present appeal.

2. On 23.12.2000, Yoginder Singh PW-8 had gone to meet his brother Virender Singh. At about 7-7.15 PM while he was

CRL.A.8/2008

returning home the appellant Tajuddin @ Nanhe along with the other co-accused Gobind Ram, Dinesh Chand and Mahesh Chand accosted him; they beat him and threatened to kill him; Dinesh Chand and Mahesh Chand caught hold of his hands and arms. Babu @ Gobind Ram inflicted knife blows on his neck and head; the present appellant Tajuddin @ Nanhe caught hold of him by his waist and hit him with a rod on his head; PW-8 was given kick and fist blows; he fell down on the ground; he was again given knife blows by Gobind Ram @ Babu. On raising alarm all the accused persons fled away from the spot. PW-8 was removed to the residence of his sister in an injured condition.

3. It was this statement of PW-8 Ex.PW-8/A which had formed the basis of rukka which was taken by Const.Suresh Kumar PW-7 and the FIR was recorded by SI Musafir Shah PW-5 Ex.PW-5/A. Investigation was marked to ASI A.P.Singh who along with Const. Virender Kumar PW-2 reached the spot.

4. Version of the prosecution is hinged on the testimony of PW-8. He has corroborated his version on oath as is so stated by him in his complaint Ex.PW-8/A. He was subjected to a lengthy cross-examination; he has admitted that he was known to Anita who was the sister of A-1 Gobind Ram and with whom he i.e. PW-8 had visiting terms. PW-8 has denied the suggestion that he had kidnapped Anita or that she was taken to Kanpur by him; PW-8

however admitted that Anita was known to him; he denied the suggestion that he had any relationship or love affair with Anita.

5. Meena was the sister of PW-8. She has come into the witness box as PW-9; she has corroborated the version of PW-8 to the extent that her brother PW-8 had been brought to her residence in an injured condition; it was on her call that the police had reached the spot and removed her injured brother to the hospital.

6. Const. Raja Rao PW-1 was the duty constable at AIIMS at the relevant time MLC of PW-8 has been exhibited through the testimony of Dr. Shalini Giridhar PW-3 who had identified the signatures of Dr. Amit Goyal who had prepared the said document.

Ex. PW-3/A shows

- (i) Seven stab wounds suffered by the victim i.e. of the dimension of 1-2 cm on the back left buttock;
- (ii) 5 cm incised wound on the left side of the face and
- (iii) 1 cm incised wound on the left eye brow.

7. The medical evidence corroborates the ocular version of PW-8; PW-8 has deposed that he had been given repeated knife blows on his hip.

8. On behalf of the appellant it has been submitted that this was a clear case of revenge; appellant including the three other co-accused persons have been falsely implicated at the behest of the complainant as the complainant had relations with Anita, the sister of A-1 Gobind Ram and he had been accused of kidnapping

her; to vent out his frustration and grievance he has falsely implicated the appellant and the other co-accused in this case.

9. This submission advanced by the learned counsel for the appellant has been dealt with by the Trial Court. Motive is a double edged weapon; it can be used in either way, either to the advantage of the prosecution or to its disadvantage. In the instant case, although PW-8 had been cross-examined by the learned defence counsel that the accused persons have been falsely implicated by the complainant due to his enmity with Gobind Ram as he had been accused of kidnapping their sister Anita yet this has been categorically denied by PW-8. DW-1 and DW-2 have come into the witness box to substantiate the submission that Anita had been kidnapped by Yoginder and taken to Kanpur but neither has given any date, month or year; in their cross-examination both the witnesses have admitted that they are neighbours of the accused and they have no personal knowledge of the case; their testimonies were rightly disbelieved by the Trial Court.

10. On the other hand, the prosecution has been able to establish that the relations between the accused and the complainant had become strained because of the friendship of Anita, with the complainant and so much so that on the fateful day when the complainant was going to the house of his sister he was accosted by the accused, A-1 to A-3 being the brothers of Anita and A-4 i.e. the appellant being their friend and all of them in

furtherance of their common intention had at the point of knife beaten him and given him fist and kick blows; the weapon of offence used by the appellant was also a rod. This has come in the ocular version of PW-8 and he has not been shaken in his cross-examination. Rod has however not been recovered.

11. Section 324 of the IPC postulates the penalty for causing hurt by a dangerous weapon; knife and rod are both dangerous weapons; MLC has evidenced seven stab wounds on the left buttock of the victim besides two incised wounds on his left side of his face and left eye brow respectively. Conviction of the appellant calls for interference.

12. The penalty imposed for such an offence is punishment which may extend to three years or fine or both. The intention of the legislature can be gathered from the fact that this offence postulates a punishment of either an imprisonment for a period which may extend to three years or a fine. In deserving cases, the accused may be let off with a fine alone.

13. While imposing the sentence the Trial Court had recorded the fact that the appellant is not a previous convict and is in fact the only earning member of his family. Nominal roll of the appellant shows that as on the date of grant of bail, the appellant had suffered an incarceration of about 20 days of the period of sentence imposed upon him.

14. This offence relates to the year 2000 i.e. nine years from today. Offence is also compoundable. This further throws light on the intention of the legislature on the sentencing policy for such an offence which has to be kept in mind while imposing the sentence. In the view of this court, the sentence imposed upon the appellant i.e. a sentence of RI two years is on the higher side; appellant was a friend of A-1 to A-3, the brothers of Anita had a friendship with the complainant and which had ultimately become the cause of revenge leading the accused persons to commit the offence in the manner in which it was committed.

15. In this background, the sentence of the appellant is modified and RI two years is reduced to RI three months; the fine of Rs.1000/- is however enhanced to Rs.10,000/- of which Rs.9,000/- will be paid to the victim, in default of payment of fine the appellant will undergo SI for two months. Bail bond and surety bond of the appellant are cancelled; he be taken into judicial custody.

16. Appeal is partly allowed and with the abovestated modifications it is disposed of.

(INDERMEET KAUR)
JUDGE

21st December, 2009
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