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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : January 14, 2009

Judgment delivered on : January 19, 2009

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Crl. A. No. 623/2006

Sanjay Kumar @ Pradeep Kumar ... Petitioner
Through: Mr. Ashutosh Bhardwaj,
Advocates

versus

State of Delhi ... Respondent
Through: Mr. Amit Sharma, Additional
Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. For the offence of attempted murder, Appellant stands convicted and sentenced vide impugned judgment, which is assailed in this appeal.
2. The factual aspect of this case, emerging from the record, is as follows:-

“On the night intervening 01/02-10-1995 at about 11.30pm one Vijay Kumar along with his brother Shiv Sagar and one Rajesh went to see a fair at

Mela Ground, Kala Mandir, within the jurisdiction of PS Mangol Puri. While, they were roaming in the mela ground, the hand of Vijay Kumar incidentally touched one bearded boy. The said boy however upon this, started abusing Vijay Kumar and on the objection having been raised by Vijay Kumar, he even stabbed him with a knife on his left shoulder. Shiv Sagar, brother of Vijay Kumar when tried to intervene in the matter was also stabbed on the left side of his chest and left thigh by the said boy. The said boy thereafter ran away from the spot. Rajesh, who was however accompanying the two injured brothers removed them to hospital in a TSR. Subsequently, police met the two injured persons in the hospital and IO/SI Deen Dayal recorded statement of Vijay Kumar, Ex.PW1/A. The blood stained clothes of the two brothers were already taken into possession by the doctors and were sealed with the seal of hospital. The pullandas were taken into possession by the IO. SI-Deen Dayal thereafter prepared a rukka Ex.PW-8/B and got a case registered u/s 324/307 Indian Penal Code at PS Mangol Puri. In the meantime in the mela ground, one Ct. Sushil saw that public persons were giving beating to a boy. Upon inquiry, he was told by the public persons that the said boy has stabbed two other boys. SI CM Meena of PS Mangol Puri also happened to reach near the spot. Upon checking, one gararidar button actuated knite having blood stains upon its blade was recovered from the possession of said boy, who disclosed hisname as Sanjay Kumar. As the said boy Sanjay

was also having some injuries on his person on account of the beating given to him by the public person so, he was also taken to the DDU Hospital for his medical examination. At the hospital, both Vijay Kumar and Shiv Sagar identified him to be their assailant, who had stabbed them. Accused Sanjay Kumar, who was earlier arrested by SI CM Meena in the case under Arms Act after registration of the case for the offence u/s 25 of Arms Act, 1959 at PS Mangol Puri vide FIR No. 1040/95 was also arrested in the case u/s 307/324 IPC registered at PS Mangol Puri vide FIR No. 1041/95. Later on, during the course of investigation, the clothes of the injured persons and the knife alleged to have been recovered from the possession of accused were sent to CFSL for examination. After completion of investigation charge sheet for the offences under section 307/324 of Indian Penal Code and under Section 25 of the Arms Act was filed against the Appellant/ accused.”

3. Appellant/accused was put to trial on the aforesaid offences, as he had not pleaded guilty to the charges framed under the aforesaid provisions of law.

4. Out of the eight witnesses, who had deposed at trial, the crucial evidence is of two injured, i.e., Vijay Kumar (PW-1) and Shiv Sagar (PW-2). The medical record of this case stands proved by Dr. B.M. Nag (PW-7). SI C.M. Meena, (PW-5) and SI Deen Dayal, (PW-8) have conducted the investigation of this case. Appellant/accused in his statement under Section 313 Cr. P.C. before the trial court,

denied the prosecution case and had stated that at the time of alleged incident, he was present outside the mela ground and was detained there by SI C.M. Meena as on earlier occasions, he had some quarrel with the Beat Staff of the police and so he has been falsely implicated in this case. No evidence was led by the Appellant/accused in his defence before the trial court. After the trial, Appellant/accused has been sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- for the offence punishable under Section 307 Indian Penal Code and he has been directed to undergo for rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- for the offence punishable under Section 25 of Arms Act. These sentences have been ordered to run concurrently.

5. After having heard both the sides and upon perusal of the evidence on record, I find that the Appellant/accused does not dispute his presence at the mela ground. It emerges from the deposition of injured witnesses, (PW-1) and (PW-2), that when they had reached the mela ground, hand of Vijay Kumar, (PW-1) had touched the Appellant/accused, who started abusing him and when this witness (PW-1) asked the Appellant/accused not to abuse, he stabbed him on his left shoulder and when his brother, Shiv Sagar (PW-2) came to his rescue, he was also stabbed on his chest and thigh and thereafter, both the injured were removed to hospital by Rajesh, brother of injured (PW-1).

6. It has been contended on behalf of the Appellant/accused that aforesaid Rajesh has not been got examined. In the face of the evidence of injured witnesses, non-examination of above said Rajesh becomes immaterial. It has also been contended on behalf of the Appellant/accused that injured Vijay, (PW-1) has stated in his evidence that the accused was apprehended and was shown to him in the hospital and this falsifies the prosecution case of Appellant/accused being apprehended at the spot.

7. Aforesaid contention is fallacious for the reason that it has come in the evidence of Vijay (PW-1) that the Appellant/accused was caught at the spot and it has been also so stated by SI C.M. Meena, (PW-5) and in fact, he had found public persons were beating the Appellant/accused at the spot and upon apprehension of the Appellant/accused at the spot, blood stained knife was recovered from his pant pocket. The plea taken by the Appellant/accused is of false implication by SI C.M. Meena (PW-5).

8. Aforesaid plea of false implication has not been suggested to SI C.M. Meena (PW-5) and the same appears to be vague and an afterthought. Recovery of the weapon of offence from the Appellant/accused at the spot cannot be disbelieved merely because it is not witnessed by any public person. About non-joining of public witnesses, Investigating Officer, has not been questioned by the Appellant/accused. There was no occasion to hold Test Identification Parade as the Appellant/accused was arrested at the spot itself.

9. The ocular version of this incident and the apprehension of the Appellant/accused at the spot and recover of the weapon of offence from him at the spot only, stands firmly proved from the evidence on record and the trial court has rightly relied upon it. Simply because the blood group of the human blood detected on the weapon of offence is not available, it will not cast any doubt upon the veracity of the prosecution case. However, the last submission advanced on behalf of the Appellant/accused about the nature of the offence committed is required to be considered.

10. Reliance has been placed by learned counsel for Appellant upon decisions reported in **1995 JCC 148; AIR 1993 SC 2484; II (1996) CCR 160 (SC); 1998 Cri.L.J. 2622; 1995 (2) CC Cases 519 (HC); 2004 (3) JCC 1648; 2007 (3) RCR (Criminal) 793; 2007 (2) RCR (Criminal) 537; AIR 1959 J&K 119 (V 46 C 48)**, to contend that the present case is of sustaining simple injuries and the Appellant/accused had no intention to kill the injured and therefore, at best, the offence made out would be under Section 324 of the Indian Penal Code and not under Section 307 of the Indian Penal Code.

11. It is true that merely because the injuries are simple in nature, it cannot be said that the offence made out would not fall under Section 307 of Indian Penal Code. It would all depend upon the facts of a given case. Intention has to be seen. In the instant case, the incident took place on the spur of the moment and all of a sudden. There was neither any motive nor any previous quarrel. Hand of the injured (PW-

1) had accidentally touched the Appellant/accused at the mela, which led to abusing and incident of stabbing. It is evident from the evidence of injured persons that there was no intention on the part of the Appellant/accused to kill the injured and the nature of injuries also provide assistance to the court to gauge the intensity of the incident.

12. Upon taking an overall view of the entire evidence on record, this court is of considered opinion that the offence committed by the Appellant/accused falls within the ambit of section 324 of Indian Penal Code and not within the four corners of Section 307 of the Indian Penal Code. Correspondingly, the conviction of the Appellant/accused stands altered from section 307 to section 324 of Indian Penal Code. Accordingly, the substantive sentence imposed upon the Appellant/accused also stands reduced from seven years to three years. However, sentence of fine and the sentence imposed upon the Appellant for the offence under Section 25 of the Arms Act is maintained. Impugned judgment and order on sentence stands modified to the extent indicated above.

13. This appeal stands partly allowed in the aforesaid terms. The Appellant is in custody. He be informed of this order through the Jail Superintendant concerned.

14. With the aforesaid directions, this appeal stands disposed of.

SUNIL GAUR, J

January 19, 2008

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