

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. Appeal No. 435/2001**

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Reserved on: 1st November, 2010

Decided on: 4th January, 2011

ASLAM & ORS.

..... Appellant

Through: Mr. B.S. Rana, Advocate

versus

STATE N.C.T. OF DELHI

..... Respondents

Through: Mr. Manoj Ohri, APP with
 SI Mahendra Singh, PS Narela, Delhi.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. The Appellant Nos. 1, 2 and 3 who are the sons of late Chatre along with Chatre were convicted for offences under Section 307 Part-II read with Section 34 IPC in case FIR No.479/1996 P.S. Narela by the impugned judgment and have been sentenced to undergo RI for a period of three years

and also a fine of ₹2,000/- each and in default of payment of fine to further undergo Rigorous Imprisonment for two months.

2. Briefly the prosecution case is that on 12th November, 1996 DD No.8A was received at P.S. Narela with regard to an injured being sent to Shiv Jivoday Janta Hospital, Narela. On the doctor opining the injured to be fit for statement, a case was registered on the statement of injured Rajesh Kumar who stated that he was driving a three wheeler scooter on 12th November, 1996 at about 10.30 a.m. and when he reached Ramdev Marg, Chatre and his sons Bhiku, Azam Ali and Aslam stopped his scooter and objected to the injured taking passengers on their number and that they would set him right. Thereafter, Aslam caught hold of the injured and dragged him out of the three wheeler scooter, Chatre caught hold of him. Aslam and Bhiku gave lathi blows to him on his leg and back side. Azam Ali who was having sword in his hand inflicted the same on his head. In view of the statement of the injured and on receipt of the result of the MLC wherein the doctor opined it to be a grievous injury on the scalp, the Appellants were arrested. On the disclosure of Aslam a lathi about 5½ feet in length was recovered.

3. Learned counsel for the Appellants contends that the MLC of the injured is from a private hospital and thus the same cannot be believed. The Appellant No.4 that is the deceased Chatre had also received injuries and his

MLC was prepared from a Government hospital and in this regard they have examined DW1 and DW2 to prove the MLC of Appellant No.2. In the absence of explanation of injuries to the Appellant No.4 Chatre (since dead), the statement of the injured is not credit worthy and no reliance can be placed upon it. The weapon of offence that is the sword has not been recovered. The statement of the alleged eye witness Harpal Singh was recorded after about three months and thus he is a planted witness. Moreover, there are major contradictions in the testimonies of PW1 and PW2 and hence the Appellants deserve to be acquitted. The complainant and the Appellants are three wheeler drivers and even as per the prosecution case, the incident had taken place in view of the sudden quarrel as the complainant took the passengers out of turn. Even if the case of the prosecution is to be believed at best an offence punishable under Section 324 IPC is made out and since the Appellants are not involved in any other case so they should be let out on probation.

4. Learned APP, on the other hand, contends that from the testimony of the witnesses the motive is clearly proved as the Appellants had an old grudge against the complainant since he was carrying the passengers out of turn. It is not a case of sudden quarrel but an intentional act with preparation as the Appellants were carrying lathi and sword with them. Consequent to the disclosure of Appellant No.1, a lathi has been recovered

and the doctor has opined the injury to be grievous on the scalp. In the MLC of Chatre no opinion has been rendered. Moreover, the incident is of 10:30 a.m. whereas MLC of Chatre has been prepared at 4.45 p.m. and thus has been got prepared belatedly to create a defence. There is no contradiction in the testimony of PW 1 and PW 2. PW 1 is an injured eye-witness. For an offence punishable under Section 307 IPC, the intention of the aggressor has to be seen and it is not essential that the injury should be caused to the victim. In the present case, besides injuries on the body there is a grievous injury on the scalp of PW 1 and hence the prosecution has proved its case beyond reasonable doubt against the appellants. It is thus prayed that the appeal be dismissed being devoid of any merit.

5. I have heard learned counsel for the parties and perused the record. PW 1 Rajesh is an injured witness. He has deposed that that while he was going from Maniyari Payau to Narela, on Ramdev Marg, the four appellants stopped his scooter; Aslam dragged him out; Chatre caught hold of him and Aslam and Bhiku gave lathi blows on his legs and waist. Azam Ali gave a blow with a sword on his head because of which he became unconscious and fell down. When he re-gained consciousness, he was at Shiv Jivoday Janta Hospital, Narela. The version of PW 1 is not only corroborated by PW 2 who had witnessed the incident but had also got him admitted in the

nursing home. Despite cross-examination nothing has been elicited by the defence contrary to the prosecution case. The version of PW 1 is further supported by his MLC Ex. PW3/A where the date and time of admission has been shown as 12:45 p.m. on 12th November, 1996. Besides grievous injuries on the scalp, the doctor observed injury by lathi on the back and right leg at six spots. Even in the MLC, the injured has named the second party as Aslam s/o Chatre. Since, the injured was opined to be fit for statement, immediately thereafter his statement was recorded. Ruqqa was sent vide Ex. PW1/A wherein all the four appellants have been named and the FIR is registered at 2:40 p.m. the same day. From the facts of the case, it is evident that it was not a sudden quarrel but a premeditated act as the dispute between the parties was about the injured taking the passengers out of turn in his TSR. The incident has not taken place at the TSR stand but after the injured travelled to a distance from the stand where the appellants waylaid the injured and attacked him with lathis and sword. In view of the cogent and convincing testimony of PW 1, the non-recovery of the sword does not affect the prosecution case as the charge has been proved beyond reasonable doubt by the testimony of PW 1 & PW 2.

6. The contention that the injuries of the appellants are not explained and thus the prosecution case is rendered unreliable is

misconceived. The MLC of Chatre was prepared at 4:15 p.m. on 12th November, 1996. Thus there is a gap of six hours between time of incident and the MLC of Chatre. The injuries cannot be thus said to be caused by the victim only. Moreover, no opinion has been rendered by the doctor on the MLC of Chatre as to whether it is simple or grievous. In *Takhaji Hiraji v. Thakore Kubersingh Chamansingh and Ors.* 2001 (6) SCC 145, the Hon'ble Supreme Court held:

“17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In *Rajender Singh v. State of Bihar*, *Ram Sunder Yadav v. State of Bihar* and *Vijayee Singh vs. State of U.P.*, all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witness or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

18. The High Court was therefore not right in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons. The High Court ought to have made an effort at searching out the truth on the material available on record as also to find out how much of the prosecution case was proved beyond reasonable doubt and was worthy of being accepted as truthful”

7. In view of the aforesaid discussion, I find no illegality in the impugned judgment. The appeal is accordingly dismissed.

8. This appeal was filed by all the four appellants however, Chatre, appellant no. 4 died during the pendency of the appeal and thus on 20th November, 2009 it was observed that the appeal qua appellant no. 4 has abated. The Appellant Nos. 1, 2 and 3 shall now undergo the remaining sentence. Their bail bonds and surety bonds are cancelled. They be taken into custody to undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

JANUARY 04, 2011
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