

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

+ **CRL.A. 1403/2011 & CrI.M.B. 1976/2011**

% Reserved on: 16th April, 2012

Decided on: 11th July, 2012

JAVED @ ZUBAR Appellant
Through Mr. Anand P. Jain and Mr. Punit Jain,
Adv.
versus

STATE Respondent
Through Mr. Manoj Ohri, APP.

+ **CRL.A. 159/2012 & CrI.M.B. 264/2012**

MUKESH Appellant
Through Mr. Manoj Kumar Singh, Adv.
versus

STATE (GOVT OF NCT) OF DELHI Respondent
Through Mr. Manoj Ohri, APP.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these appeals the Appellants challenge the common judgment dated 13th September, 2011 whereby they have been convicted for offence punishable under Section 307/34 IPC and the order on sentence dated 19th September, 2011 whereby Appellant Javed has been directed to undergo rigorous imprisonment for a period of three years and a fine of Rs. 5000/- and in default of payment of fine to further undergo simple imprisonment for five months and Appellant Mukesh has been directed to undergo rigorous imprisonment for a period of four years and a fine of Rs. 1000/- and in

default of payment of payment of fine to undergo simple imprisonment for one month.

2. Learned counsel for the Appellant Javed contends that the name of the Appellant appeared for the first time in the charge-sheet with the aid of Section 34 IPC. All the material witnesses have turned hostile including the injured witness. Thus the present is a case of no evidence. The weapon of offence has not been recovered from the Appellant Javed. As per the FSL report no blood has been detected on the scissor i.e. the alleged weapon of offence. Further, no finger prints have been lifted from the weapon of offence. The recovery of weapon of offence has been disbelieved by the learned Trial Court as it was from an open public place. The motive of alleged offence has not been proved by the prosecution as it is alleged that there was an earlier FIR between the parties. Further, the said FIR had already been compromised.

3. Learned counsel for the Appellant Mukesh while reiterating the contentions made by the learned counsel for Appellant Javed further contends that there are two contradictory opinions with regard to the nature of injuries received by PW-1. PW-9 has opined the injuries to be dangerous in nature whereas PW-10 has opined the injuries to be grievous in nature. The injuries cannot be both dangerous and grievous at the same time as held by the learned Additional Sessions Judge. Further, PW-5 from whose shop it is alleged that the scissor was taken has turned hostile and has not supported the prosecution case. Mensrea has not been proved as there is no pre-meditation. The Appellants met suddenly and a quarrel took place, thus resulting in the injury if any. The Appellants had no intention to cause any

injury which was likely to cause death, which intention can be gathered from the kind of alleged weapon used. Thus, at best the case of the prosecution falls within the ambit of Section 308 IPC. Hence the Appellants be acquitted of the charges framed or in the alternative convicted for the lesser offence and the sentence be reduced to the period already undergone.

4. Learned APP for the State on the other hand contends that PW-1 Sonu Kumar, the injured has fully supported the prosecution case. He has stated that the Appellant Javed caught hold of him and Appellant Mukesh stabbed him. The incident occurred around 9.00 PM and as per the MLC the injured reached the hospital by 11.00 AM. There is no contradiction in the nature of injuries opined by the two doctors. Even PW-11 has partially supported the prosecution case as he states that he had called Police after the quarrel. In view of the cogent and convincing testimony of PW-1 the prosecution has proved its case beyond reasonable doubt against the Appellants. Hence, the appeals be dismissed.

5. I have heard learned counsel for the parties and perused the record. PW-1 Sonu the injured witness has stated that 6/7 months ago at about 9.00 PM he reached Prem Nagar - III near Shanni Bazar where both the Appellants were present and a quarrel ensued. The witness correctly identified the two Appellants as the accused. Appellant Javed caught hold of PW-1 and Appellant Mukesh stabbed him with scissors in his chest. PW-1 had previously made a complaint against the accused persons which was settled with the intervention of the local Police. After being stabbed PW-1 lost consciousness and remained in the hospital for 22 days with 10 days in ICU. His blood stained clothes and T-shirt were seized by the Doctors and

handed over to the Police. He identified his blood stained clothes and the scissor used for causing injury to him. This witness in his cross-examination by the Public Prosecutor admits that he had earlier lodged FIR No. 70/2006 under Section 279/327/323/34 IPC against both the co-accused persons on the 20th February, 2008. He has further stated that Appellant Mukesh picked up scissors from the shop of a Barber nearby and attacked him saying that he would teach him a lesson for his previous complaint and stabbed him in the abdomen. A suggestion was given to this witness that he misbehaved with a woman who was the fiancée of Appellant Javed, or that he compromised the FIR on the undertaking that he would not misbehave with the said woman. Besides the complainant, the other alleged eye-witness i.e. PW-8 Najma Khatoon has turned hostile. Though there is no dispute that the weapon of offence scissor has been recovered at the instance of Appellant Mukesh from an open public place, however the said weapon of offence has been identified by PW-1 as the one from which injury has been caused to him. The testimony of PW-1 is corroborated by the medical evidence.

6. The case of the Appellants is that no common intention can be said to be shared as it was a sudden flow of outrage. In the present case it may be noted that as many as 8 stab wounds were received by PW-1 on the various portions of the body i.e. chest, abdomen, sub-costal region, near eye-brow etc. Thus, the plea that there was no intention to cause any injury which was likely to cause death is incorrect. Both the Appellants shared the common intention because even after the first stab wound Appellant Javed continued holding the PW-1. The common intention can be formed on the spur of the moment as is evident in the present case. I am not in agreement with the

contention of the learned counsel for the Appellants that since scissor was used and it being not a deadly weapon no offence under Section 307 IPC is made out and at best Section 308 IPC is made out. The scissor is a sharp edged weapon and 8 incised punctured injuries have been caused by the said weapon to the extent that the air-pressure in the chest of the Petitioner decreased and he stayed in the ICU for 10 days. PW-1 was declared fit for statement only after 9 days of the incident. Further, as per the FSL report, the clothes of PW-1 and the soil contained human blood. In their statement under Section 313 Cr.P.C. the plea of the Appellants is only false implication. Further, I find no contradiction in the testimony of two doctors, as one has opined the injuries to be dangerous in nature and the other grievous. PW-10 is a forensic expert who after going through the entire MLC has given the expert opinion that the injuries were grievous in nature. Nothing material has been elicited from PW-10 in his cross-examination to show that the injuries caused were not grievous in nature.

7. I find no merit in the appeals. Appeals and applications are dismissed. The Appellants who are on bail will surrender to custody and undergo the remaining sentence. Their bail bond and surety bond are cancelled.

(MUKTA GUPTA)
JUDGE

JULY 11, 2012
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