

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

DECIDED ON : 07th August, 2012

+ CRL.L.P.597/2011

STATE Appellant.
Through : Mr.Saleem Ahmed, ASC for the State

versus

NANHE BABU Respondent.
Through: Mr.Parven A.Siddiqui, Advocate.

CORAM:
MR. JUSTICE SANJIV KHANNA
MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (OPEN COURT)

Crl.M.A.Nos.19746/2011 (delay) & 19747/2011 (delay in re-filing)

1. These are applications for condonation of 27 days and 46 days delay in filing and re-filing of the leave petition, respectively. Learned counsel for the respondent does not have any objection if the delay is condoned. In view of the statement, the applications are allowed and the delay in filing and re-filing of the application for leave to appeal is condoned.

2. The applications are disposed of.

CRL.L.P.597/2011

3. We have heard the learned counsel for the parties on this application for leave to appeal. We have also perused the trial court's record. We are inclined to allow the application for leave to appeal. Let the appeal to be registered and numbered by the Registry.

4. Leave Petition is disposed of.

Crl.A.No. 894/2012

5. With the consent of the learned ASC for the State and learned counsel for the respondent, we take up the appeal for hearing and disposal today itself.

6. By the impugned judgment dated 18.04.2011 the respondent-accused-Nanhe Babu has been acquitted for the offence under Section 307 of Indian Penal Code (IPC for short) in Sessions Case No.259/2009 arising out of FIR 446/2009 registered at police station Mehrauli.

7. The prosecution case is that on 08.08.2009 at about 4:27 P.M., information was received regarding a quarrel at the main gate of Star Mall, MG-13, New Mangla Puri. On reaching the said Mall it was learnt that the injured was taken to a private hospital. Subsequently, at 10:00 P.M. information was received that the injured Pradeep Kumar was

admitted at Trauma Centre, AIIMS. On this information, DD No.44A was recorded. Head Constable Bane Singh (PW-7) was sent to Trauma Centre, AIIMS, where Pradeep Kumar was admitted and his statement (Ex.PW-5/A) was recorded.

8. Pradeep Kumar, injured, had appeared as PW-5 before the trial court. In his statement, PW-5 stated that on 08.08.2009 he was on guard's duty at Star Mall, New Mangla Puri, Delhi and was posted at the gate. The respondent-accused Nanhe Babu was identified by him in the court and it was stated that Pradeep Kumar had checked him and found one Chaursi (wood cutting instrument) with him. He questioned Nanhe Babu if the Chaursi belonged to him. Nanhe replied in affirmative. In the meanwhile his Supervisor Budh Pal came there. On checking the register it was found that there was no entry of Nanhe Babu for entering the mall. Nanhe Babu was asked not to leave until inquiry was conducted. Nanhe Babu, however, insisted on leaving. A quarrel took place and Nanhe Babu hit him with Chaursi on the right side of chest. Blood came out from the wound. Thereafter, he was taken to Bhagwati hospital in a three wheeler. From there he was removed to Trauma Centre, AIIMS where he was treated. PW-5 identified the chaursi and his blood stained shirt.

9. PW-2 (Bodh Pal Singh) was posted on the Mall on 08.08.2009. He was working as Security Supervisor of the guards posted there. He had stated that one Pradeep, Guard had found chaursi with a person whose name was Nanhe Babu. He was coming out of the Mall. On checking the Register, it was noticed that Nanhe has not made any entry for entering the Mall. Pradeep asked Nanhe to call his employer. Nanhe refused and in the anger, he gave a blow to Pradeep with the chaursi below the chest on the right hand side, due to which Pradeep started bleeding. Nanhe was apprehended at the spot. Pradeep was taken to Bhagwati hospital and then to AIIMS. He identified the shirt worn by Pradeep as well as the chaursi.

10. PW-6 (Ct.Hans Raj) stated that he was in emergency duty and on receiving DD No.26A had reached the Mall. Thereafter, he went to Bhagwati hospital and then to the Trauma Centre, AIIMS where he met Pradeep. Pradeep's statement was recorded by the IO.

11. PW-9 (ASI Ramphel) has stated that he along with Ct.Hansraj has reached at MG-13 Star Mall where HC Bane Singh met him and produced before him the accused Nanhe and one witness Budh Pal Singh. Site plan (Ex.PW-9/A) was prepared. Head Constable Bane

Singh gave him to sealed pulandas and two seizure memos which had already been prepared.

12. The prosecution has also placed on record the FSL report (Ex.PW-9/D&E) which states that blood was detected on exhibits 1 and 2 i.e the weapon of offence and uniform shirt. However, grouping of the blood could not be done on the weapon of offence and there was no reaction for grouping of the blood on the uniform shirt. The MLC of Pradeep Kumar has been marked as Ex.PW11/A. In the said MLC it is mentioned that the patient (PW-5) was admitted in the hospital with a stab injury at 3:00 P.M.on 08.08.2009.

13. In the cross-examination of PW-2 it was suggested and stated that accused Nanhe was present at the spot at the time of occurrence. It was also put to PW-2 that accused-Nanhe was carrying a chaursi in his hand and has not hidden the same in his pocket. It was, however, denied that the accused had hit Pradeep with chaursi. It was stated that accused Nanhe had tried to run but was apprehended by him and had gone with injured Pradeep to the hospital in TSR. Similarly, in the cross-examination of PW-5 (Pradeep Kumar) it was suggested that Pradeep was taken to the hospital by Bodh Pal as well as by Nanhe along with two other persons namely Sandeep and Agnesh. It is also clear from the cross-

examination of PW-6 (Ct.Hansraj) that the accused was apprehended at the spot and was produced by PW-2 (Bodh Pal Singh) when the police reached the spot. No doubt, PW-8 (Mohd.Wasid Khan) has not fully supported the prosecution case and had stated that he does not know the accused present in court but the testimonies of PWs 2 and 5 and cross-examination of the said two witnesses shows that the accused Nanhe did not dispute his presence at the spot. There is no personal motive or enmity of PW-2 (Bodh Pal Singh) and PW-5 (Pradeep Kumar) with the accused. There is no reason or cause for them to falsely implicate and name the accused as the person who has caused the said injuries. In the statement under Section 313 Cr.P.C. the respondent-accused denied the allegations made against him on the ground that the witnesses were interested witnesses, he was innocent and was falsely implicated.

14. The next question which arises is whether the accused should be punished and convicted under Section 307 or under Section 324 IPC. We have examined Ex.PW-9/C (sketch of chaurasi). The said instrument is normally used by carpenters to chisel and shape wood. It has a wooden handle with an iron/steel attachment with a sharp edged. The chaurasi in question had a sharp edge of 2.9 cm. We have also examined MLC (Ex.PW-11/A) of PW-5 (Pradeep Kumar). In the MLC it is mentioned

that the patient was conscious and his BP was 80/110. However, the doctor had opined that the nature of injury as grievous. The said report was prepared by Dr.Rajiv Kumar. The two doctors namely Dr.Chiranjeev Kumar (PW-1) and Dr.Purnima Dhar (PW-11) had appeared as witnesses. PW-1 (Dr.Chiranjeev Kumar), Sr.Resident, AIIMS had examined the X-Ray plate of the chest portion of the PW-5 (Pradeep) and after examination had given his report as no bony injury was seen. PW-11 (Dr.Purnima Dhar), Jr.Resident, AIIMS had stated that Dr.Rajiv Kumar had left the services of hospital and his whereabouts were not known. In the cross-examination, a specific question was put to her about the nature of injury. On the basis of injuries mentioned in the MLC, she stated that the injuries mentioned in the MLC (Ex.PW11/A) were simple in nature. MLC does not state how long PW-5 (Pradeep Kumar) had remained in the hospital. As per the discharge report, the patient was admitted on 08.08.2009 at 20.53 P.M. and was discharged on 09.08.2009 at 3:20 A.M. i.e. he remained under treatment and observation for four hours. There was also no previous dispute or enmity between the accused Nanhe and PW-5 (Pradeep Kumar). It is a case of sudden quarrel or dispute wherein the accused was carrying chaursi with him and had hit PW-5 (Pradeep Kumar). In these circumstances, we feel that offence under

Section 307 IPC is not made out and the respondent-accused has committed offence under Section 324 IPC. He is accordingly convicted under Section 324 IPC.

15. The next question is regarding the sentence. We find that the respondent has remained in detention from 08.08.2009 to 27.11.2009 i.e. for three months and nineteen days. It is clear from the testimony of PWs 2 and 5 that the respondent accused had taken the injured to the hospital in a three wheeler. He did not run away from the spot and apparently realized his mistake. He is not a previous convict and is not involved in any other case. In these circumstances he is sentenced and released on the sentence already undergone.

16. The appeal is disposed of.

(SANJIV KHANNA)
JUDGE

(S.P.GARG)
JUDGE

AUGUST 07, 2012

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