

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

+ CRL.A. 86/2003

% Decided on: 6th May, 2013

PREMRAJ @ PREMU

..... Appellant

Through Mr. K.P. Mavi, Adv.

versus

STATE GOVT. OF N.C.T. OF DELHI

..... Respondent

Through Mr. Manoj Ohri, APP with SI Deepak
Kumar, PS Kotla Mubarak Pur.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CrI.M.A. 1242/2003

Exemption allowed subject to just exceptions.

CRL.A. 86/2003

1. This appeal has been preferred by the Appellant against the judgment dated 16th December, 2002 whereby he has been convicted for offence punishable under Section 307 IPC and the order on sentence dated 17th December, 2002 whereby he was directed to undergo rigorous imprisonment for 7 years and a fine of Rs. 1000/- and in default of payment of fine to undergo simple imprisonment for 2 months. Along with the Appellant one Laxmi Narian @ Lakki was also convicted for offence under Section

307/109 IPC and awarded the same sentence. Since the co-convict Laxmi Narian @ Lakki in the meantime was arrested in other case under Section 302 IPC, he withdrew the bail bond in the present case and thus he was released from jail in the present FIR after having undergone the sentence. Laxmi Narian @ Lakki who appeared in person before this Court in Crl.A. 310/2003 stated that he does not wish to pursue the appeal any more.

2. The case as set up by the prosecution is that the complainant Rajesh Avasthi alleged that he resided in H.No. 477, Nanak Chand Basi, Kotla Mubarak Pur, New Delhi and works in the shop of one Jain Saheb who had a godown also, which the complainant was using for the purposes of his residence as well. On 10th September, 2001 at about 6.30 PM they were present in a room over the godown when they heard the noise of a quarrel. One of the boys who was quarreling called Lakki by saying he should come as quarrel had taken place. Lakki came at the spot with 1 - 2 other boys including the Appellant herein Prem Raj @ Premu. The complainant knew both these convicts prior to the incident. Laxmi Narain allegedly asked the complainant as to who he was to stop the people from quarreling and gave a fist blow on his face. When the brother of the complainant stopped him from beating, Appellant along with other boys caught hold of the injured and co-convict Lakki asked Appellant to give blow to the injured, on which the Appellant inflicted injuries on his person with sharp edged object. They also beat both the brothers with kicks and fist blows and thereafter fled away. Since the injuries on the person of the injured were opined to be dangerous, charge-sheet was filed under Section 307/34 IPC and the Appellant has been convicted for the said offence.

3. To bring home the charge against the Appellant, the prosecution examined 10 witnesses including PW8 Rajesh Avasthi the complainant and PW9 Rakesh Avasthi the injured. Both of them reiterated their statements made to the Police in the Court. PW9 also stated that the Appellant was armed with a razor and gave razor blows on his nose, temple of the left side, eyebrow, neck and finger. He also identified his blood stained clothes Ex.P1 and P2. Prosecution also examined PW1 Dr. Yash Aggarwal who prepared the MLC Ex.PW1/A of injured Rakesh Avasthi. According to PW1 injured received 5 injuries i.e. on the right eye-brow, incised wound of 2 cm present over left side of the face near left ear and bleeding profusely, degloved injuries right side of nose, incised wound of 5 cm anterior part of neck and incised wound 1 cm left ring finger. PW1 opined the injuries to be caused by sharp edged weapon and dangerous because the patient was in shock, profusely bleeding and could have been fatal if it had not been attended immediately.

4. The main ground for assailing the impugned judgment of conviction is that IPC does not define a “dangerous” injury and merely because the doctor has opined the injury to be dangerous without even giving the depth of the injury, the Appellant cannot be convicted for an offence under Section 307 IPC. Reliance is placed on *Piara Singh and Ors. Vs. State of Punjab 1996 CRL.LJ 4333*. I do not find any merit in this contention of learned counsel for the Appellant. To determine whether an injury is caused with an intention that if death ensues the same would amount to murder, the Court has to consider the weapon of offence used, the manner in which the injuries

are inflicted etc. In *State of M.P. Vs. Kashiram and Ors. (2009) 4 SCC 26* it was held:

“9. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

10. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

5. The Appellant who is the main assailant used a sharp edged weapon. According to PW1 Dr. Yash Aggarwal injury No. 2 i.e. incised wound of 2 cm size present over left side of the face near left ear and was bleeding profusely was dangerous in nature. In the cross-examination the doctor stated that the injury must have cut some of the arteries which could have only caused such heavy bleeding. Learned counsel for the Appellant emphasizes that PW1 has not stated which artery was cut, as there are only two main arteries i.e. the pulmonary artery and the aorta and no opinion has been given that these two arteries have been cut. Thus, PW1 erred in coming to the conclusion that an important artery was cut. This contention is misconceived. The area below the ear also forms part of scalp region and is a vital part of the human body. Though the exact measurement as to how deep the injury was has not been given, it is amply clear if an artery has been cut the injury was deep and caused by a sharp weapon. Further the Appellant did not stop by giving one blow. Appellant has given number of blows on the face besides near the left ear on the nose, neck etc. Further the doctor has opined that the injury could have been fatal, if not treated immediately. It is thus apparent that the injury was inflicted with an intention that the same was likely to cause death. In *Piara Singh* (supra) relied upon by the learned counsel for the Appellant it was held that the doctor should opine that the injury was sufficient to cause death in the ordinary course of nature. It may be noted that this is one of the requirements of Section 300 IPC and not the only requirement. In case an injury is caused with an intention that it is likely to cause death, then also the offence committed would fall under Section 307 IPC. Thus the Appellant was rightly held guilty by the learned Trial Court for having caused an injury

with the intention that if death ensued, the same would have amounted to the offence of murder. Hence I find no infirmity in the impugned judgment of conviction.

6. As regards the quantum of sentence, as per the nominal roll the Appellant has undergone 5 years imprisonment out of the 7 years awarded. Learned counsel for the Appellant states that the Appellant has not been involved in any incident and is ready to adequately compensate the victim. In this background keeping in view the facts and circumstances and the nature of injuries suffered by the victim, and the Appellant having not indulged in any anti-social activities in this intervening period, I find it fit to modify the order on sentence. The sentence is thus modified to the period already undergone and a fine of Rs. 20,000/- to be deposited within four weeks with the learned Trial Court. In case of default of payment of fine, the Appellant will undergo simple imprisonment for six months. In case the fine is deposited, the learned Trial Court would release the same as compensation to the injured Rakesh Avasthi.

7. Appeal is accordingly disposed of.

(MUKTA GUPTA)

MAY 06, 2013
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