

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

RESERVED ON : January 08, 2013

DECIDED ON : February 05, 2013

+ CRL.A. 917/2011

VIKAS

..... Appellant

Through : Mr.L.K.Verma & Mr.Dinkar
Verma, Advocates.

VERSUS

THE STATE (NCT OF DELHI) & ORS

..... Respondents

Through : Mr.M.N.Dudeja, APP.
ASI Sham Sunder, PS Defence
Colony.

+ CRL.A. 1055/2011

NANAK & ORS

..... Appellants

Through : Mr.Ashok Mahipal, Advocate.

VERSUS

THE STATE OF (NCT OF DELHI)

..... Respondent

Through : Mr.M.N.Dudeja, APP.
ASI Sham Sunder, PS Defence
Colony.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Nanak, Gir Raj and Sunil Kumar were arrested in case FIR

No.192/2006 and challaned to the court of trial for committing offence under Section 308/34 IPC. Allegations against them were that on 15.11.2005 at about 05:45 A.M. at House No.376, Masjid Moth, they in furtherance of common intention, voluntarily caused injury to Vikas and attempted to commit culpable homicide not amounting to murder. The prosecution examined eight witnesses. Statements of the accused under Section 313 Cr.P.C. were recorded and they pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties by the impugned judgment all the three accused persons were convicted for committing offence under Section 323/34 IPC. They were sentenced to undergo imprisonment till the Rising of the Court (TRC) with fine ₹1,000/- each.

2. The convicts have preferred Crl.A.No.1055/2011 challenging their conviction and sentence under Section 323/34 IPC. The complainant has preferred Crl.A.No.917/2011 challenging acquittal of the accused persons under Section 308 IPC. The victim further challenged the sentence awarded to the accused persons which was not sufficient.

3. I have heard the learned APP for the State and learned counsel for the appellants in both the appeals and have examined the Trial Court record.

4. On scrutinizing the statement of witnesses including the complainant coupled with medical evidence I find no illegality in the findings of the Trial Court whereby the accused persons were held responsible for causing injuries to Vikas in furtherance of their common intention. Complainant-Vikas has filed complaint case. Under Section 156(3) Cr.P.C., the Metropolitan Magistrate directed the police to register case under Section 308 IPC. While appearing as PW-1 the complainant categorically named the accused persons for causing injuries to him on his head with a brick. He attributed specific role to the accused persons. PW-2 (Sri Kishan), complainant's father, admitted him in AIIMS. He also deposed that the accused Sunil Kumar, Gir Raj caught hold Vikas and Nanak gave a brick blow on his head. PW-4 (Smt.Savitri), PW-5 (Ramwati) have also corroborated the oral testimony of complainant-PW-1 (Vikas). All these witnesses were cross-examined at length but no material contradictions/discrepancies emerged in their statements to disbelieve them. The accused did not deny their presence at the spot. The accused Sunil Kumar and Nanak also sustained some injuries in the incident and were medically examined. It further ensures their presence at the spot and lends credence to the prosecution story that a quarrel took place between the two parties on the said date. On receipt of DD No.35A

from PCR on 15.11.2005 around 05:00 A.M., PW-6 (SI Nizamuddin) reached the spot. Accused Nanak, Gir Raj and Sunil were arrested and Kalandra under Section 107/151 Cr.P.C. was prepared against them. Copies of the DD No.35A and DD No.4A were exhibited as Ex.PW6/A and Ex.PW6/B respectively. Copy of the Kalandra is exhibited as Ex.PW6/C. PW-7 (Dr.Prem Parkash) proved MLC (Ex.PW7/A) prepared by Dr.Ram Niranjana Sharma. One injury i.e. cut and lacerated wound was found on the left temporal region. There is no conflict between the ocular and medical evidence. There was no delay in lodging the First Information Report when Kalandra under Section 107/151 Cr.P.C. was lodged soon after the incident. The complainant was taken to AIIMS and was medically examined at 05:17 A.M. i.e. within half hour of the occurrence. Injuries were opined simple caused by blunt object. Injuries sustained by Sunil Kumar and Nanak were only abrasion and were possible during quarrel. On appreciating the evidence, the Trial Court held the accused persons perpetrators of the crime. I find no reasons to deviate from these findings. The Trial Court has convicted the accused, and rightly, under Section 323 IPC. Admittedly, the complainant and the accused persons were close relatives. They were residing in the same premises. It is undisputed that property dispute was going on between them and civil

litigation was pending about the partition of the property. The quarrel had taken place over a trivial issue when the motor-cycle was parked in the passage by complainant's relative. The accused persons were not armed with any deadly weapons. Only a single brick blow was inflicted on the temporal region of the complainant and as per the MLC (Ex.PW-7/A) it was a mere cut and lacerated wound. Its dimensions were not given in the MLC. Within a few hours the complainant was discharged from the hospital. He was not admitted for medical treatment for the injuries sustained by him. It is not clear from where the brick was taken to inflict injury. The brick was not seized from the spot. No attempt was made to inflict repeated blows with the brick. No harm was caused to any other family member of the complainant who reached the spot. All these facts and circumstances categorically rule out that there was intention of the accused persons to cause injuries which could be fatal. PW-7 (Dr.Prem Prakash) in the cross-examination stated that normally an injury of this nature would not cause death.

5. In the light of the above discussion, conviction of the accused persons under Section 323 IPC is maintained. Regarding the order on sentence the convicts have been sentenced to imprisonment till the Rising of the Court (TRC) with fine of ₹1,000/- each. The convicts have prayed

for release on probation as two of them are government servants and any such conviction and sentence would affect their service career. There is force in the submissions of the convicts. The incident had taken place all of a sudden over a trivial issue of parking of the motor-cycle in the passage. The parties are related to each other. The accused are not previous convicts. Two of them are government servants. The accused were also arrested under Section 107/151 Cr.P.C. They remained in custody for some period after their arrest under Section 308 IPC.

6. Considering all these facts and circumstances the order of sentence requires modification and instead of sentence till TRC and fine of ₹1,000/- each, the convicts are given benefit of probation. Considering their age, character, antecedents and the fact that two of them are government servants, instead of sentencing them at once to any punishment, they are ordered to be released on probation of good conduct on their furnishing personal bond in the sum of ₹20,000/- each with one surety each in the like amount to the satisfaction of the Trial Court for a period of one year, to appear and receive sentence when called upon and in the meantime they shall keep peace and be of good behavior.

7. The appeal filed by the victim-Vikas i.e.Crl.A.No.917/2011 is dismissed.

8. Crl.A.No.1055/2011 filed by the convicts is disposed of while maintaining the conviction under Section 323/34 IPC and modifying the order on sentence as stated above.
9. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

February 05, 2013
sa