

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

+ **CRL.A. 1309/2011**

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Decided on: 11th January, 2013

RAVI KUMAR

..... Appellant

Through Ms. Nandita Rao, Adv.

versus

STATE

..... Respondent

Through Mr. Mukesh Gupta, APP with SI
Rajiv PS Najafgarh Colony.

+ **CRL.A. 1333/2011**

RAKESH @ DHILLO

..... Appellant

Through Ms. Anita Abraham, Adv.

versus

STATE OF THE NCT OF DELHI

..... Respondent

Through Mr. Mukesh Gupta, APP with SI
Rajiv PS Najafgarh Colony.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MS. MUKTA GUPTA, J (ORAL)

1. These appeals can be disposed of together as they challenge the common judgment dated 29th April, 2011 passed by the learned Additional Sessions Judge convicting the Appellants herein for offence under Section 307/34 IPC and Appellant Rakesh Kumar @ Dhillo for offence under

Section 25 Arms Act as well. Vide the impugned order dated 30th April, 2011 both the Appellants have been sentenced to undergo rigorous imprisonment for a period of 7 years and a fine of Rs 5000/- in default of payment of fine to undergo further simple imprisonment for six months for offence under Section 307/34 IPC. The Appellant Rakesh @ Dhillo has been further sentenced to the rigorous imprisonment for two years for offence under Section 25 Arms Act and to pay a fine of Rs. 500/- and in default of payment of fine to undergo simple imprisonment for one month.

2. Learned counsel for the Appellants contend that the conviction under Section 307/34 IPC cannot be sustained on the short ground that the prosecution has not proved the MLC before the learned Trial Court. Further the case of the prosecution is that the Appellants took the auto-rikshaw and got down at Kilokri and as they did not pay the fare, the injured fought with them, when the Appellant Rakesh caught hold of him and Appellant Ravi stabbed. Thereafter PW5 the complainant went to Police post Sunlight and then to AIIMS. Thus, the injuries cannot be said to be serious/ grievous in nature. Further, no blood was recovered from auto-rikshaw nor were the clothes of the injured seized. There is no evidence on record to prove that the injuries could have resulted in the death of PW5. The arrest of the

Appellants is also shrouded in mystery. According to the investigating officer search of the Appellants was made on private vehicle. The Appellants were arrested after two months of the alleged incident. No article was recovered at the instance of Appellant Ravi Kumar though his house was fully searched. In the cross-examination the investigating officer failed to give the description of the house, the timings when he made the search etc. Thus, the Appellants be acquitted of the charges framed and in any case even if the testimony of PW5 is to be believed, at best a case for conviction under Section 324/34 IPC is made out and the sentence of the Appellants be reduced to the period already undergone.

3. Learned APP on the other hand contends that though the MLC has not been exhibited inadvertently before the learned Trial Court, however PW5 has stated about the injuries received. Further PW1 Dr. Sushil Sharma has opined that the injuries mentioned on the MLC of PW5 were possible by the knife recovered from Appellant Rakesh @ Dhilllo. Thus, the testimony of PW5 stands corroborated sufficiently. There is no contradiction in the testimony of the investigating officer and he has stated about all material facts which transpired during investigation. Since no blood stains were visible on the blade of the knife when it is recovered, the same was not sent

to FSL. The Appellants have not been falsely implicated and have been duly identified by the complainant. Appellant Ravi refused TIP and Appellant Rakesh Kumar was duly identified by PW5 in the TIP proceedings. Further PW5 had correctly identified both the Appellants before the Trial Court which is the substantive identification.

4. I have heard learned counsel for the parties. Case of the prosecution is based on the statement of PW5 Naveen Kumar who stated that he used to drive TSR No. DL1RF-0625. On 29th January, 2009 at about 11.30 PM he was present in his TSR near Super Shine Chowk, Vinod Nagar East when two passenger came and asked him to go to Ashram. When PW5 reached Ashram with the passengers, they asked him to take them to Kilokri village. PW5 took them to Kilokri village and demanded night-charges, when both the passengers started quarelling with him. Thereafter one passenger i.e. Appellant Rakesh caught hold of him and the other passenger i.e. Ravi gave knife injury on his chest and abdomen. After the incident PW5 took his TSR to Police post Sunlight colony and narrated the incident to the Police officers and two Police officers took him to trauma centre, AIIMS for medical examination. PW5 identified Appellant Rakesh in TIP proceedings in Tihar jail. This witness was extensively cross-examined, however nothing

material could be elicited in the cross-examination. Appellant Rakesh joined the TIP and the PW5 correctly identified him both in the TIP and during the examination before the Court. Though in the statement of Ravi Kumar under Section 313 Cr.P.C. it is stated that he refused TIP because he was shown to the witnesses in the Police station, however when refusal was made in the TIP proceedings no such statement was made by the Appellant Ravi Kumar. Appellant Rakesh Kumar was duly identified among 11 persons. The testimony of PW5 suffers from no inconsistencies or improvements and thus can be safely relied upon to convict the Appellants.

5. However, the issue before this Court is whether in the absence of the MLC being exhibited can the Appellants be convicted for offence under Section 307/34 IPC. For an offence under Section 307 IPC which is a grave offence proof of mensrea is an essential ingredient. Mensrea can be inferred from the relevant facts proved during trial like the nature of injury caused, the situs of the injury, number of stab wounds given to the injured etc. To bring home a charge under Section 307 IPC the onus lies on the prosecution to prove that the accused caused an act with the intention or knowledge and under such circumstances that if by that act death was caused he would be guilty of murder. In the present case in the absence of proof of the MLC, the

nature of injuries, the number of stab wounds, the place where the stab wounds were inflicted have not been proved. Hence the necessary intention cannot be gathered, simplicitor from the statement of PW5 the injured. In the absence of proof of the MLC and any material to show that injuries caused were grievous/serious in nature so as to cause death, the Appellants cannot be convicted for offence under Section 307/34 nor 326/34 IPC as grievous injuries have not been proved.

6. Thus, in view of the facts proved before the learned Trial Court the conviction of the Appellants is altered to one under Section 324/34 IPC. Consequently, the sentence of Appellants is altered to rigorous imprisonment for period of three years and a fine of Rs. 5000/- each and in default of payment of fine to undergo simple imprisonment for six months for offence under Section 324/34 IPC. The sentence of Appellant Rakesh @ Dhilllo for rigorous imprisonment for two years for offence under Section 25 Arms Act and a fine of Rs. 500/- and in default to undergo simple imprisonment for one month is maintained. The sentences shall run concurrently and the Appellants will be entitled to the benefit under section 428 Cr.P.C. Thus, the impugned judgment of conviction dated 29th April, 2011 and the order on sentence dated 30th April, 2011 are modified accordingly.

7. Appeals are disposed of. Appellants be informed through Superintendent Tihar Jail.

(MUKTA GUPTA)

JANUARY 11, 2013
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