

for the commission of offence under Section 324/34 IPC in the case arising out of FIR No.86/2004, Police Station Kotla Mubarakpur.

3. With regard to an incident dated 25th February, 2004, FIR No.86 of 2004 was registered against six persons –five brothers namely Sanjeev alias Sonu; Birender @ Boya; Yad Ram; Babloo; Rajiv @ Raju and their sister Manju. The State filed a charge-sheet against all these persons. The respondent herein was admitted to bail on 24th May, 2005 while the trial was underway. However, he absconded thereafter at the stage of recording of his statement under Section 313 of the Cr.P.C. The trial court passed an order dated 22nd December, 2008 declaring the respondent as a proclaimed offender.

4. So far as the other co-accused were concerned, the trial was completed against accused Yad Ram; Babloo; Sanjeev @ Sonu, Birender @ Boya and Manju wife of Yad Ram. After considering the evidence which was led by the prosecution; the defence evidence and hearing the submissions of the parties, the trial court by order dated 28th May, 2010 convicted Yad Ram and Babloo under Section 302/34 IPC and acquitted them for commission of offences under Section 307/34 IPC. Virender @ Boya and Sanjeev @ Sonu though convicted under Section 307/34 IPC, stand acquitted for offences under Section 302/34 IPC. Co-accused Manju (who is the wife of Yad Ram and sister

of the other appellants) stood acquitted for all the charges for which she was tried.

5. It is noteworthy that the other brothers of the respondent herein namely Sanjeev alias Sonu & Birender alias Boya; filed Crl.Appeal No.897/2010. Yad Ram & Babloo filed Criminal Appeal No.900/2010.

6. During the course of hearing of these appeals, the factum of abscondance of Rajiv @ Raju was brought to the notice of this Court. An order was consequently passed by this court on 12th January, 2012, directing Sh. Hari Chand (who had stood surety for Rajiv @ Raju) who was present in the court to ascertain the whereabouts of Rajiv @ Raju. The surety was also directed to produce Rajiv @ Raju.

7. Pursuant to the order passed on 12th January, 2013, Rajiv @ Raju was rearrested on 25th February, 2013. He was thereafter produced before this court and by an order dated 28th February, 2012 directed to be produced before the concerned trial court on 2nd March, 2012.

8. After production before the trial court, Rajiv @ Raju stood trial from the stage of recording of his statement under Section 313 of the Cr.P.C. at which stage he had absconded. The charge was also amended under Section 302/34 and 307/34 IPC by the trial court on 3rd March, 2012. The trial court considered the evidence on record and heard the arguments of the learned

counsel appearing for Rajiv @ Raju. By a judgment dated 27th March, 2012, the trial court held Rajiv @ Raju not guilty for offences under Sections 302/34 and 307/34 IPC and acquitted him for the same. However, the trial court held him guilty for commission of an offence under Section 324/34 IPC by the same judgment and Rajiv @ Raju was awarded a sentence for rigorous imprisonment of two years and fine of Rs.1,000/- and in default of payment of fine, simple imprisonment of one month by order of sentence dated 29th March, 2012.

9. It is noteworthy that Rajiv @ Raju assailed the judgment dated 27th March, 2012 and order of sentence dated 29th March, 2012 by way of Crl.A.No.487/2012.

10. The judgment dated 28th May, 2010 assailed by way of Crl.Appeal Nos.897/2010 and 900/2010 as well as the judgment dated 27th March, 2012 challenged by way of Crl.Appeal No.487/2012 were passed on a consideration of the same evidence in respect of one incident.

11. The above appeals were heard at length and decided by the judgment dated 24th May, 2013. The findings therein bind the present adjudication. So far as the case of the prosecution against Rajiv @ Raju (the respondent herein) is concerned, in the judgment dated 24th May, 2013 in Crl.A. Nos.897/2010; 900/2010 & 487/2012, we had held as follows:-

“112. We therefore hold that the conviction of Sanjeev @ Sonu, Birender @ Boya for commission of an offence under

Section 307/34 of the Indian Penal Code is not sustainable and is hereby set aside and quashed. They are held guilty for commission of the offence under Section 324 of the Indian Penal Code and each of them is held guilty for commission of offences under Section 324 of the IPC.

The conviction of Rajiv@Raju for the commission of offence under Section 324 of the IPC is unassailable.

113. As discussed above, there is also no evidence of common intention being nursed by Rajiv @ Raju. His conviction for commission of offence punishable under Section 34 of the Indian Penal Code is therefore unsustainable. However there is sufficient evidence to support his conviction for commission of offences punishable under Section 324 of the Indian Penal Code.”

12. On the appeal of the present respondent, after a detailed discussion, it was directed as follows:-

“115. We are further required to modify the judgment dated 27th March, 2012 finding Rajiv @ Raju guilty of commission of an offence under Section 324/34 IPC. The appellant Rajiv @ Raju shall stand convicted for commission of an offence under Section 324 of the Indian Penal Code.

116. The challenge to the order of sentence dated 29th March, 2012 by Rajiv @ Raju is hereby rejected.”

13. So far as the present petition seeking leave to appeal against the judgment dated the 27th of March, 2012 is concerned, we are bound by the findings returned by us in the judgment dated 24th May, 2013 which would guide the adjudication herein as well. The present petitioner was duly represented before us and was heard before pronouncement of the judgment.

The judgment dated 27th March, 2012 finding the respondent guilty of

commission of offence under Section 324/34 IPC stands modified by us in the judgment dated 24th of May, 2013 and he has been found guilty of commission of the offence under Section 324 of the IPC.

14. In this background, the present petition seeking leave to appeal has to be rejected.

It is ordered accordingly.

(GITA MITTAL)
JUDGE

(V.K. SHALI)
JUDGE

NOVEMBER 01, 2013

aa