

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

Judgment delivered on: October 07, 2013

+ CRL.A. 1337/2010
LALIT RAI & ANR

..... Appellant
Through: Mr. Mukesh Kalia, Mr. Hansraj
Singh, Mr. Varun Jamwal,
Advocates for Vijay Sharma and
Karan Sachdeva.

versus
STATE NCT OF DELHI

..... Respondent
Through: Mr. Sunil Sharma, Additional
Public Prosecutor for the State
with Sub-Inspector Giriraj, Police
Station Nabi Karim, Delhi.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT

%

KAILASH GAMBHIR, J.

1. The present appeal under Section 374 of Code of Criminal Procedure has been preferred by the appellants to assail the judgment dated 12th October, 2010 and order on sentence dated 18th October 2010, whereby the appellants have been convicted for committing an offence punishable under Section 307/34 of IPC and sentenced to undergo life imprisonment with fine of Rs. 5,000/- each and in case of default thereof,

to further undergo rigorous imprisonment for a period of six months.

2. At the very outset, Mr. Mukesh Kalia, learned counsel for the appellant made a submission that he was not challenging the conviction of the appellants but would confine his arguments so as to challenge the order on sentence.

3. Addressing arguments to challenge the order on sentence, Mr. Mukesh Kalia, learned counsel for the appellant submitted that the sentence of life imprisonment as awarded by learned trial court is highly excessive and disproportionate to the nature of injuries suffered by the victim. Learned counsel for the appellant also argued that the learned trial court did not appreciate that both the appellants had also received injuries at the hands of the victim as per MLCs placed on record by the prosecution. Learned counsel for the appellant further submitted that the learned trial court also did not appreciate the fact that cross case vide FIR No. 20/08, under Section 324/34 of IPC was also registered against the victim – Umed Kumar and his brother with the Police Station Nabi Karim. Learned counsel for the appellant further argued that so far as appellant No.1 Lalit Rai is concerned, he had received lacerated wound over scalp which was stitched by six stitches while appellant No.2

Dharam Pal had received number of injuries on his person. Learned counsel for the appellant further argued that neither the prosecution has produced the doctor, who had conducted the MLC of the victim nor the prosecution has produced the weapon of offence before the doctor to take his opinion as to whether the victim could suffer such injuries by the use of such recovered weapon. Learned counsel for the appellant further argued that as per the MLC report of the victim, proved on record as Ex. PW-3/A, he had received injuries in his right lower abdomen which is 4.9 centimetres deep lacerated wound by sharp edged weapon. Learned counsel for the appellant also argued that no evidence was placed on record to prove as to how long did the victim remained in the hospital. Learned counsel for the appellant also argued that the prosecution has also failed to establish as to what kind of surgery was performed on the victim and how long did he remain in hospital after the performance of the alleged surgery.

4. Learned counsel for the appellant further argued that as per own deposition of the victim –Umed Kumar, he remained admitted in Lady Harding Hospital for nine days.

5. Learned counsel for the appellant also pleaded for taking a lenient

view on the ground that both the accused are married person with small children and they being the sole bread earners of their respective families. Learned counsel for the appellant also pleaded that both these appellants otherwise have clean antecedents with no other criminal record.

6. The aforesaid submissions made by learned counsel for the appellant have been strongly refuted by Mr. Sunil Sharma, Additional Public Prosecutor for the State. Mr. Sharma, learned APP submitted that the order on sentence passed by the learned trial court is a well reasoned order and thus the same does not warrant any interference by this court. Learned APP also argued that the weapon of offence used by the appellant – Lalit Rai was not an ordinary knife but a sword and the grievous injury was caused on the abdomen of the victim, which ultimately resulted in the surgery of the victim and therefore, with such kind of serious injury caused by the appellants, they cannot claim that the life sentence is a harsh or excessive punishment. Learned Additional Public Prosecutor further submitted that the nature of injuries suffered by the victim could have been proved to be really dangerous and fatal to the life of the victim but he could survive only on account of his immediate removal to the hospital and with the prompt medical intervention.

7. We have heard learned counsel for the appellant as well as learned Additional Public Prosecutor for State at a considerable length and perused the documents and evidence on record.

8. The case of the prosecution in brief can be summarised as under:-

“Accused no.1, Lalit Rai and accused no.2 Dharampal are real brothers, son of Jagdish Rai. They are residents of house no. 10638, Jhandewalan, Nabi Karim, Delhi. It appears that Umed Kumar (PW-1) is also resident of same premises, though in a separate adjoining portions. On 27.01.2008 at about 07:30 p.m. in Gali Katra, opposite the said house accused no.1 and accused no.2, in furtherance of their common intention accosted PW1 Umed Kumar (victim) and on the instigation and assistance of accused no.2, accused no.1 caused an injury in his abdomen with a sword. The information of the above said incident was received in PS Nabi Karim at around 8:25 p.m. from the Police control room(PCR). On receiving the information PW9, the IO set out for the place of occurrence along with the constable Babu Lal (PW-6). Upon arrival, IO found at the place of occurrence three persons in injured state, they being accused no.1, accused no.2 and PW1. All the three injured person were sent with the two constables to Lady Harding Medical College and Sucheta Kriplani Hospital. In the hospital, the three injured persons were medically examined”

9. As per the MLC Report the victim Umed Kumar had suffered an injury on his abdomen which is 4.9 centimetres deep. The MLC further states that a sharp edged weapon was used by the assailant in inflicting

the said injury at the abdomen of the victim. The MLC also records that the victim was operated upon in the same hospital on 13th February 2008. The said MLC was proved on record as Ex.3/A in the deposition of PW-4 and we are not persuaded to accept the plea raised by learned counsel for the appellant that the MLC of victim was not properly proved in the absence of examination of the concerned doctor, who had examined the victim and prepared the said MLC. PW-4 Dr. Anita, Medical Officer, Lady Harding Hospital in her deposition clearly deposed that Dr. Riti Mala who had examined the victim had left the service and her present whereabouts are not known. She had also identified the signatures of Dr. Riti Mala on the MLC as she was conversant with her signatures having worked with her. In her cross-examination, when a question was put to her that whether an injury which was inflicted on the abdomen of the victim could be by a screw driver or not?, she categorically replied that this sort of injury can be inflicted by any sharp edged weapon.

10. The sword which was allegedly used by the assailant Lalit Kumar was recovered from his residence during the course of his disclosure statement and at the time of recovery of sword, blood stains were found at the tip of sword. Since we are not examining the merits of the case, as far

as the conviction of the appellants is concerned, therefore we will not comment upon as to whether the prosecution has succeeded in establishing the fact that the victim had sustained the injury with the use of a dangerous weapon in the nature of sword or not. However, from the nature of injuries, as sustained by the victim Umed and as opined in the MLC, we find that the victim had received a sharp edged injury on his abdomen to the extent of 4 x 9 centimetres and the same injury was described as subcutaneous tissue deep. With this nature of injury sustained by the victim on his abdomen, we are not persuaded to give credence to the prosecution version that the appellant had the intention to kill the victim. Certainly the use of sword with some little force would have caused more serious injury than the one which was found on the abdomen of the victim. As per the victim he remained in the hospital for a period of nine days. He had also undergone an operation but the prosecution has failed to bring on record as to for how long the victim remained in hospital on account of said surgery undertaken by him. In any event, the nature of injury he had sustained as opined in the MLC, the sentence of life imprisonment awarded by the learned trial court appears to us to be harsh and excessive. We cannot be oblivious of the fact that

both the appellants had received injuries and in fact the appellant Lalit Rai had received injuries on his scalp and got six stitches.

11. We also cannot lose sight of the fact that as per the victim of crime (PW-1) Umed as well as the defence taken by the appellants, a sudden quarrel had taken place between the parties in which both the parties had suffered injuries. As per the deposition of PW-1, the motive disclosed for such a sudden quarrel was that the appellant Lalit Rai abducted his niece Kimi and thereafter had married her though she was a minor at that time, due to which the relationship between the appellants and the victim became strained. It is also the case of the prosecution that on 27th January 2008, at about 7.30 PM both the accused persons hurled abuses at the victim and when the victim objected to the hurling of such abuses then quarrel took place between both the parties.

12. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. However there is no straightjacket formula for determining a just and appropriate punishment in each case as there are infinite variety of circumstances that may help in assessing the gravity of the crime such as the nature of offence, the manner in which the offence

is executed, the weapon with which offence is committed, the impact on the society, the repercussions on the victim, the proportionality of punishment etc. All these circumstances in which a crime has been committed are to be delicately balanced in a dispassionate manner by the Court and for this purpose law allows significant discretion to a Judge in arriving at a sentence depends on the fact of each case.

13. The Hon'ble Apex Court in the case of ***Gopal Singh v. State of Uttarakhand*** reported in **2013 (2) SCALE 533**, while dealing with the philosophy of just punishment which is the collective cry of the society, held as under:

“That just punishment would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors.”

14. In light of the above discussion, present appeal filed by the appellants is disposed of while holding the appellants guilty under Section 307 Indian Penal Code, 1860 for having committed the offence of

attempt to murder, we convert the sentence of life imprisonment imposed upon him by the Ld. trial court to the Sentence of rigorous imprisonment for a period of 5 years while maintaining the fine of Rs. 5000/- each and in case of default of payment, the appellants shall further undergo rigorous imprisonment for a period of six months each.

15. The appeal stands disposed of in the above terms.

KAILASH GAMBHIR, J

INDERMEET KAUR, J

OCTOBER 07, 2013

pkb