

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 22nd August, 2014

+ **CRL.A. 46/2011**

HARENDER Appellant
Through: Mr. Samrat Nigam and Mr.
Rohit Singh, Advocates.
versus

STATE Respondent

Through: Mr. M.N. Dudeja, Additional
Public Prosecutor for the State
with SI Rajiv Kumar Gautam
Police Station Vivek Vihar

+ **CRL.A. 69/2011**

MAHENDER @ GUDDU Appellant
Through: Mr. Rohit Minocha, Advocate.
versus

STATE Respondent
Through: Mr. M.N. Dudeja, Additional
Public Prosecutor for the State
with SI Rajiv Kumar Gautam
Police Station Vivek Vihar

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. Appellants – Harender and Mahender impugn the judgment dated 02.12.2010 and order on sentence dated 06.12.2010 passed by

learned Additional Sessions Judge in Sessions Case No.37/10 arising out of FIR No.238/09 Police Station Vivek Vihar under Section 307/34 of Indian Penal Code by filing aforesaid two appeals. Since both the appeals arise out of a common judgment as such they are taken up and disposed of together.

2. A petty quarrel over a seat in the train took a ugly turn resulting in grievous and dangerous injuries to the complainant, which is borne out from the prosecution case which reflects that on 28.12.2009, DD No.8A was lodged in Police Station Vivek Vihar to the effect that Pawan Kumar son of Jagmal had been admitted in Dr. Hedgewar Hospital. On receipt of this DD, PW10 – ASI Bhgwat Prasad along with Constable Devender (PW9) reached at the hospital. Injured – Pawan (PW1) and eye witness Virender (PW3) met him. ASI Bhagwat Prasad recorded the statement of Pawan. Virender produced the weapon of offence i.e. a *sua* before PW10, who took the same into possession. PW10 prepared *rukka* and got the FIR registered. Subsequently, the investigation was handed over to SI Omkar Singh (PW8). Accused Mahender @ Guddu was arrested on the same day at about 8.30 pm near Loni Bus Stand on the identification of the complainant whereas accused Harender surrendered in the Police Station on 06.01.2010. After completing investigation, charge-sheet was submitted against the accused persons.

3. Both the accused abjured their guilt and claimed trial. In order to bring home the guilt of the accused persons, prosecution examined as many as 10 witnesses. The case of accused was one of denial

simplicitor. They did not prefer to lead any evidence in defence.

4. Vide impugned judgment, learned Additional Sessions Judge observed that the prosecution had succeeded in establishing the guilt of the accused on the basis of testimony of the injured duly corroborated by PW3– Virender and the medical evidence. As such, accused were held guilty of offence under Section 307/34 of Indian Penal Code and were sentenced to undergo rigorous imprisonment for three (3) years and to pay fine of Rs.1,000/- each and in default to undergo simple imprisonment for one month.

5. Feeling aggrieved, separate appeals have been preferred by the appellants. Mr. Rohit Minocha, Counsel for the appellant – Mahender @ Guddu submitted that there was no motive on the part of the accused persons to inflict any injuries on the person of complainant. Moreover, even if the case of the prosecution is accepted, the appellant was carrying *sua* and the injuries caused by *sua* were not grievous in nature. Five injuries were found on the person of injured and at the most injuries no.1 and 5 could have been caused by *sua* which were neither grievous nor dangerous. Moreover, the appellants did not share common intention with the co-accused, as such offence under Section 307 IPC is not made out against him.

6. Mr. Samrat Nigam, Counsel for the appellant – Harender submitted that as per prosecution version, there was a scuffle over seat in a running train and co-passengers pacified both the parties. Therefore, this scuffle on a petty matter cannot furnish a motive for

commission of crime. Moreover, the incident is alleged to have taken place at about 9.25 am. However, there is no public witness. Even PW3 – Virender did not come to the rescue of the injured till the accused left the place. As such, the incident, as setup by the prosecution is doubtful. Moreover, *sua* was used by co-accused Mahender and the knife with which injuries were alleged to have been inflicted by the appellant – Harender has not been recovered. Moreover, there was no common intention. The injured has been declared hostile. There are discrepancies in the testimony of the prosecution witnesses. As such prosecution has failed to substantiate its case. Alternatively, it was submitted that the accused was 21 years old at the time of incident, as such, he should have been released on probation. Even otherwise, he has remained in jail for a period of one year, as such a liberal view be taken.

7. Countering the submissions of learned Counsel for the appellants, it was submitted by learned Additional Public Prosecutor for the State that PW1 – Pawan is an injured witness. He sustained five injuries on vital part of his body. Testimony of injured witness stands on a higher pedestal than any other witness inasmuch as his presence at the spot is not doubtful. Furthermore, his testimony finds due corroboration from PW3 – Virender and the medical evidence. As regards submission that there was no other eye witness to the incident, it was submitted that it is the quality and not the quantity of the witness which matters. The testimony of injured himself is sufficient to convict the accused. Further, in the instant case, same finds

corroboration from PW3 and the medical evidence. The common intention on the part of the accused persons is reflected from the fact that a minor scuffle over seat had taken place on 26.12.2009 while the incident took place on 28.12.2009 when both the accused armed with weapon came and inflicted *sua* and knife blows resulting in grievous and dangerous injuries on the person of injured as such the impugned judgment does not suffer from any infirmity. As regards quantum of sentence is concerned, it was submitted that although serious injuries were caused by the accused persons, however, considering their age, they were sentenced only for a period of three years and the compensation was granted to the extent of Rs.1,000/- only. As such, no further leniency is warranted.

8. Police machinery swung into action on an information given to Police Station regarding admission of Pawan son of Jagmal in Dr. Hedgewar Hospital by his cousin whereupon DD No.6A was recorded and assigned to ASI Bhagwat Prasad, who along with constable Devender reached hospital where injured was declared fit for making statement and as such he recorded his statement Ex.PW1/A which became bedrock of investigation.

9. Injured – Pawan stated that he was working in a factory at Shahdara where mobile chargers are manufactured. On 26.12.2009, after his duty at about 8 pm he was going in a train. In the train, he was sitting in a seat. Both the accused caught hold of him from his shirt and asked him to leave the seat. He objected. Thereupon they

hurled abuses to him. Co-passengers intervened and the matter was pacified. Accused threatened him with dire consequences. On 28.12.2009 at about 8.10 am, he boarded the train from Kharkari Railway Station along with his cousin Virender for Delhi. At about 9.15 am they reached at Shahdara Railway Station. When they reached at Mukesh Nagar, both the accused came from behind. Accused Guddu attacked him with *sua* on his back and exhorted Harender “*Sale Ko Khatam Kar Ke Jayenge*” and thereafter both the accused had assaulted him with *sua* and knife. He sustained injuries on his back, chest, left hand and ribs. In order to save himself, he ran for about 15/20 steps and then fell down on the road and got unconscious. He regained consciousness in Dr. Hedgewar Hospital where police met him and recorded his statement Ex.PW1/A. The accused were known to him prior to the incident as they used to travel in the same train. Accused used to board the train from Loni whereas he used to board the train from Kharkari. The witness could not identify the *sua* and as such he was cross examined by learned Additional Public Prosecutor for the State and in cross examination he admitted that *sua* was lifted by Virender which was thrown by accused Guddu while running. He, however, denied that the *sua* was handed over to the police by Virender in his presence in the hospital or that the sketch of *sua* or its seizure memo was prepared in his presence. He identified his blood stained clothes comprising sweater, black t-shirt and vest of white colour Ex.PW1/2 to PW1/4 which he was wearing at the time of incident. In cross examination, he deposed that Virender was ahead of about 8-10 steps from him while they were

moving towards factory. He had called Virender, but he did not come to save him. He was discharged from Dr. Hedgewar Hospital on the same day and thereafter he was taken to St. Stephan Hospital by his family members where he remained admitted for five (5) days. He reiterated that the accused were known to him for about one and a half years prior to the incident as they used to travel in the same train once or twice a week in which he used to travel.

10. It is settled law that testimony of an injured witness stands on a higher pedestal than any other witness, inasmuch as, he sustain injuries in the incident. As such, there is an inbuilt assurance regarding his presence at the scene of the crime and it is unlikely that he will allow the real culprit to go scot free and would falsely implicate any other persons. In *Abdul Sayeed v. State of Madhya Pradesh* [(2010) 10 SCC 259], the Supreme Court held as under:

*“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide **Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P., Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.**]*

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab*, 2009(9) SCC 719 where the Court reiterated the special evidentiary status accorded to the testimony of an injured accused and

relying on its earlier judgments held as under:

*“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In **Shivalingappa Kallayanappa v. State of Karnataka**, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.”*

*30. In State of **U.P. v. Kishan Chand**, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide **Krishan v. State of Haryana**). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.*

31. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

11. A perusal of testimony of Pankaj reflects that he had given a graphic description of the entire incident including the role played by both the accused. His testimony is consistent, cogent, trustworthy and reliable. The incident took place at about 9.25 am. Thereafter, the police was informed who reached hospital and recorded his statement Ex.PW1/A. At that time also, he had given minute details of the

incident as well as the role played by both the accused. As such at the very first available opportunity, the injured had not only named both the accused but also specified the role played by them. The witness was subjected to cross examination by learned Counsel for the appellants, however, nothing material could be elicited to discredit his testimony. Both the accused were known to him before as they used to travel in the same train in which the injured used to travel. Except for the quarrel on 26.12.2009, which was also pacified by the co-passengers, there is absolutely no animosity which may provoke the injured to falsely implicate the accused in this case and allow the real culprits to go scot free. Under the circumstances, his testimony is sufficient to convict the accused persons. Mere fact that he was declared hostile by the prosecution on the point of seizure memo of sua is not sufficient to discard his testimony because it is settled law that merely because a witness is declared as hostile, there is no need to reject his evidence in toto. The evidence of hostile witness can be relied upon at least to the extent, it supports the case of prosecution as held in *Sathya Narayanan v. State rep. by Inspector of Police*, (2012) 12 SCC 627.

12. In the instant case, his testimony finds substantial corroboration from the other material on record. PW3 – Virender was travelling along with PW1 – Pawan on the fateful day. This witness has also deposed that on 28.12.2009 at about 8.10 am, he along with his cousin Pawan boarded a train from Kharkari Railway Station and reached Shahdara Railway Station at 9.15 am. They used to work in the same factory at Shahdara. They were going to factory from the station.

They had just covered a distance of 15/20 paces when both the accused attacked Pawan from behind. Pawan was walking 8-10 steps behind him. Pawan called him by name and when he looked backward, he saw both the accused assaulting him. Accused Guddu was assaulting Pawan with a *sua* while accused Harender was assaulting him with a knife. Virender got scared that they will also attack him and due to his reason he did not come to save Pawan. Pawan ran into the street to save himself. He was followed by both the accused. He fell down on the road and became unconscious. Both the accused ran away from the spot. Guddu had thrown the *sua* in the drain. He picked that *sua* from the drain. Pawan had sustained injuries on his backside, behind abdomen, on the left side of his chest and left side of his elbow. He took Pawan to Dr. Hedgewar Hospital in a *rickshaw*. Police met him in the hospital and he handed over *sua* Ex.P1 to the police which was taken in possession vide memo Ex.PW1/PX2. He joined investigation. He was brought to the spot by the police and police prepared the site plan Ex.PW3/A at his instance. Thereafter, they returned back to the hospital. He along with the police went to Ram Vihar, Banthia near Loni where accused Guddu used to reside but he was not available at his house. When he was returning to his village, he found Guddu at the bus stand and then he informed the police. Police immediately reached the spot and apprehended Guddu and arrested him vide memo Ex.PW3/B. He further deposed that on 06.01.2010, he received a call from police informing him that accused Harender had been apprehended. He went to Police Station and identified him. He was arrested vide memo

Ex.PW3/C.

13. The testimony of this witness has been assailed by learned Counsel for the appellants on the ground that despite the fact that he is a close relative of the injured and was called by him to save him but he did not go to save Pawan and, therefore, his presence at the spot is highly doubtful. I find the submission devoid of any merit inasmuch as mere fact that the witness did not go to help the injured while he was being attacked by the accused persons does not cast any doubt about his presence at the spot or witnessing the incident. In ***Rana Pratap and others v State of Haryana*** [(1983) 3 SCC 327], Hon'ble Supreme Court observed that every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. Similar view was taken in ***Abu Thakur and Ors. Vs. State of Tamil Nadu***, (2010) 2 SCC (Cri) 1258 wherein it was held by the Apex Court that behavioural pattern of individual differs and response of each individual may not be similar. In that case, after witnessing ghastly attack on deceased, witnesses fled away from place of occurrence and did not report the matter to police, it was held that presence of

witnesses at place of occurrence cannot be disbelieved on that ground.

14. Under the circumstances, the mere fact that this witness did not come to the rescue of injured while he was being attacked by the accused persons does not cast any doubt on his presence at the spot or witnessing the incident inasmuch as after the accused ran away from the spot, it was he who removed the injured to hospital which finds corroboration from MLC Ex.PW4/A wherein in the column of '*brought by*', the name of Virender son of Rich Pal has been mentioned. Further, according to this witness, accused Guddu had thrown *sua* in the drain which he had picked up from the drain. When the police officials came to the hospital, he handed over *sua* to the police which was taken into possession vide memo Ex.PW1/PX2. Not only that accused Mahender @ Guddu was arrested on the information given by him to the police and the arrest memo Ex.PW3/B bears his signatures. It has also come in the testimony of this witness that both the accused were known to him from before as they used to travel in the same train for the last one and half years in which they used to travel. There was no altercation with them prior to the incident. Under the circumstances, the witness has no animosity, ill-will or grudge against any of the accused for which reason he would falsely implicate them in this case.

15. As regards the submission that there is no other eye witness to the incident although the same had taken place at 9.15 am, this submission deserves outright rejection inasmuch as it is settled law

that the court is concerned with the quality and not with the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on the value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. That is the logic of Section 134 of the Evidence Act [Vide *Sunil Kumar v State of Govt. of NCT of Delhi* (2013) 11 SCC 367, *Namdev v State of Maharashtra* (2007) 14 SCC 150].

16. At the cost of repetition, it may be mentioned that testimony of injured himself is sufficient to sustain conviction, but, in the instant case, the same finds substantial corroboration from the testimony of PW3 – Virender. There is nothing on record to show whether the incident was witnessed by any other person and even if so non-examination of any other independent witness does not cast any doubt on the testimony of injured duly corroborated by PW3–Virender.

17. Furthermore, their ocular testimony finds substantial corroboration from medical evidence. PW4 – Dr. Abhishek Biswas was on duty as causality medical officer on 28.12.2009 when the injured – Pawan was brought to hospital by Virender with alleged history of assault. He was medically examined by him vide MLC Ex.PW4/A, and found that the injured had sustained five injuries. The patient was conscious and oriented, his vitals were stable. On local examination, he found following injuries:

- (i) Incised wound about 8 cm x 1 cm over back about 2 cm from vertebral LI on right side.

- (ii) Stab wound about 2 cm x 1 cm over back about 2 cm from vertebral LI on right side.
- (iii) Stab wound about 2 cm x 1 cm left side of chest, about 2 cm inferio-lateral to left nipple.
- (iv) Stab wound 2 cm x 1 cm in left subcostal region in anterior axillary line.
- (v) Incised wound about 7 cm x 2 cm over left elbow, joint capsule open.

18. According to him, injuries no.1 and 5 were incised wound while injuries no.2,3 and 4 were stab wound. The blood stained clothes of the injured were seized by him and handed over to police officials. PW5 – Dr. Yoel Dewa Paljor from St. Stephan Hospital, Delhi went through the treatment record of the patient – Pawan and gave certificate Ex.PW5/A opining the nature of injuries to be grievous and dangerous. One injury has perforated the left lung leading to leakage of air into the chest cavity and subcutaneous tissue. As such, the oral testimony of prosecution witnesses finds substantial corroboration from the medical evidence. The weapon of offence i.e. *sua* used by accused Mahender was seized from the spot whereas the *chura* (knife) could not be recovered. It is a matter of record that accused Harender was arrested on 06.10.2010. He made a disclosure statement that he had thrown the knife in the bushes. However, the same could not be recovered. The non-recovery of weapon of offence does not cast any dent on the prosecution version.

19. Hon'ble Supreme Court in *Umar Mohammad and Ors. Vs. State of Rajasthan* (2007)14SCC711 has held:

"In any event, non recovery of incriminating material from the accused cannot be a ground to exonerate them of the charges when the eye-witnesses examined by the prosecution are found to be trustworthy.

35. In *Krishna Mochi and Ors. v. State of Bihar* 2002 CriLJ 2645 , this Court held:

It has been then submitted on behalf of the appellants that nothing incriminating could be recovered from them, which goes to show that they had no complicity with the crime. In my view, recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in ocular account of the occurrence given by the witnesses, whose evidence has been found by me to be unimpeachable."

20. Similar view was reiterated in *Ram Singh vs. State of Rajasthan*, (2012) 12 SCC 339; *Amit vs. State of Uttar Pradesh*, (2012) 4 SCC 107; *Ambika Prasad Vs .State* 1997CriLJ2853; *Joginder Singh @ Mor vs. State of Delhi*, 2014(1)JCC51.

21. As regards submissions of learned Counsel for the appellants that there was no motive to commit the crime, it is settled proposition of law that when a case is based on eye witness account of the incident, the motive pales into insignificance. Moreover, the evidence regarding existence of motive which operates in the mind of accused is very often very limited and may not be within the reach of others. The motive drives the accused to commit offence will be known to him and to no other. In *Tarseem Kumar v. Delhi Admn.*, AIR 1994 SC 2585, the Hon'ble Supreme Court pointed out that where the case

of prosecution has been proved beyond all reasonable doubts on the basis of the materials produced before the Court the motive loses its importance. Moreover, when direct evidence regarding the assault is worthy of credence and can be believed, the question of motive more or less becomes academic as held in *Molu versus State of Haryana*, 1976 (4) SCC 362. Sometimes motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of eye witness is creditworthy and is believed by the court which has placed reliance on that, the question whether there is motive or not becomes wholly irrelevant. In the instant case, it has come on record that a quarrel had taken place on 26.12.2009 between PW1-Pawan on the one hand and both the accused on the other regarding seat in the train as the accused persons asked Pawan to leave the seat which he refused to vacate. Thereupon, accused persons hurled abuses to him and also threatened him of dire consequences. Therefore, the accused persons may have nurtured ill-will and grudge against Pawan and with that intent in view, on 28.12.2009 both the accused persons armed with weapons came and attacked Pawan and accused Mahender exhorted accused Harender to finish him that day. Thereupon, they inflicted grievous and dangerous injuries with *sua* and knife on vital parts of his body as a result of which he had to remain in hospital for a period of five days. As such, the motive to commit the crime in the instant case is duly proved.

22. A suggestion was given to the prosecution witnesses that the

injured sustained injuries by falling on the road where glass pieces were lying. This suggestion was not only denied by PWs Pawan and Virender but also by Dr. Abhishek Biswas as well as Dr. Yoel Dewa Paljor who went a step further by deposing that in such circumstances, the person will also suffer abrasion on other parts of the body which were not so in the instant case.

23. There is absolutely no substance in the submissions of learned counsel for the appellant Mahender @ Guddu that he was only armed with *sua* and at the most inflicted injuries no.1 and 5 as per the MLC and, therefore, he did not share common intention with accused Harender inasmuch as both the accused used to travel in the same train in which injured Pawan used to travel. The quarrel on 26.12.2009 had taken place between the complainant and both the accused and at that time they not only hurled abuses to him but also threatened him with dire consequences. Pursuant thereto, on 28.12.2009, both the accused persons armed with *sua* and knife came and attacked Pawan. At that time accused Guddu attacked Pawan with *sua* on his back and exhorted Harender “*Sale Ko Khatam Kar Ke Jayenge*” and thereafter they both assaulted him with *sua* and knife. As observed in ***Ashok Kumar v. State of Punjab*** (AIR 1977 SC 109), the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been

actuated by one and the same common intention in order to attract the provision. In fact, in *Chinta Pulla Reddy v. State of A.P.*, 1993 (Supp 3) SCC 134, the Supreme Court held that Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused. In the instant case, the injured was unarmed and there was absolutely no physical assault from his side and both the accused came together to the spot, armed with *sua* and knife and accused Mahender @ Guddu exhorted his co-accused to finish him. All these circumstances make it clear that both the accused shared common intention. Under these circumstances, the conclusion arrived at by the learned Trial Court holding both the accused guilty of offence under Section 307/34 Indian Penal Code does not suffer from any infirmity which calls for any interference.

24. Coming to the quantum of sentence, it was submitted by learned Counsel for the appellant – Harender that he was only 21 years old at the time of incident as such he should have been granted benefit of probation. Moreover, he has already remained in jail for a period of one year.

25. To appreciate the contention of learned Counsel for the appellant, it would be appropriate to extract the provisions of Section 4(1) of Probation of Offenders Act, 1958 which reads as under:

"Section 4(1) in The Probation of Offenders Act, 1958

(1) *When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by*

which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.”

26. Thus, it is evident that the provisions of Section 4 are attracted when a person is held guilty for an offence not punishable with death or imprisonment for life. In the instant case, admittedly the injured suffered grievous and dangerous injuries and as per the provisions of section 307 IPC, the offenders were punishable with imprisonment for life or imprisonment which may extend upto 10 years and with fine. The question for consideration is if one of the possible punishment in the instant case was imprisonment for life and fine, whether the case would be out of bound for the applicability of Section 4 of the Act of 1958.

27. The question came up for consideration before a learned Single Judge of this Court in ***Nadeem v State of NCT of Delhi and others***, [Crl. Appeal No.852/2011], wherein it was held as under:

“13. In Chaman Singh v. State, 1999(49) DRJ 182, the question directly fell for consideration before a learned Single Judge of this Court and while relying on Som Nath Puri v. State of Rajasthan, AIR 1972 SC 1490, State of Gujarat v. V.A. Chauhan, AIR 1983 SC 359 and State of Rajasthan v. Kailash Chandra, 1995 SCC(Cri) 249 it was held that where an accused is convicted of an offence

punishable under Section 307 IPC which is an offence punishable with life imprisonment, the offender is not entitled to the benefit of the Act of 1958. A Division Bench of this Court in Manoj Tyagi v. Gaurav @ Chotu & Anr., (Crl.A.37/2011) decided on 25.05.2011 observed that when an offender is held guilty under Section 307 IPC in case an injury has been caused on the person of the victim, the provision of Section 4(1) of the Act of 1958 will not be applicable. Thus, if a person is held guilty for the offence punishable under Section 307 IPC, he will not be entitled to the benefit of Section 4 of the Act of 1958.”

28. As such, appellant was not entitled to the benefit of probation. Moreover, the offence committed by the appellants is quite grave and serious in nature inasmuch as on a very trivial issue, grievous and dangerous injuries were caused by them on the vital parts of the body of injured, as such, the punishment extends up to imprisonment for life or ten years and fine. However, keeping in view the young age of the appellants coupled with their antecedents that they were not involved in any other criminal case, they were sentenced to undergo rigorous imprisonment for three (3) years and minimal amount of fine of Rs.1,000/-, which in the facts and circumstances of the case, cannot be said to be harsh which may warrant any further leniency. Under the circumstances, the order on sentence dated 06.12.2011 does not call for any interference.

29. The result of the aforesaid is that the appeals being bereft of any merits are hereby dismissed.

30. The sentence of the appellant–Harender was suspended vide order dated 21.07.2011 while that of Mahender @ Guddu on

01.08.2011. Both the appellants are directed to surrender before the learned Additional Sessions Judge within ten days to serve the sentence, failing which, necessary steps be taken by learned ASJ to get the appellants arrested for serving the sentence.

A copy of the judgment along with Trial Court record be sent back forthwith.

At the request of the counsel for the appellants, a copy of this judgment be given *dasti* under the signature of the Court Master.

(SUNITA GUPTA)
JUDGE

AUGUST 22, 2014
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