

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

RESERVED ON : 21st FEBRUARY, 2014

DECIDED ON : 24th FEBRUARY, 2014

+ CRL.A. 518/2012 & CRL.M.B. 317/2014

MOHD. SALEEM & ORS.

..... Appellants

Through : Mr.Sunil Ahuja, Advocate.

VERSUS

THE STATE (GOVT. OF NCT DELHI)

..... Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Mohd. Saleem (A-1), Mohd. Shehzad (A-2) and Mohd. Sadav (A-3) were convicted under Sections 452/307/34 IPC by a judgment dated 17.04.2012 of learned Addl. Sessions Judge in Sessions Case No. 86/11 arising out of FIR No. 337/11 PS Sarai Rohilla. They were awarded RI for five years with fine ₹ 10,000/-, each by an order on sentence dated 21.04.2012. The prosecution case as projected in the charge-sheet was that on 23.09.2011 at about 08.15 P.M. in jhuggi No. N-95/22, behind Tentwali Masjid, Shehzada Bagh, Inder Lok, Delhi, the appellants in furtherance of common intention inflicted injuries to Saanu
CRL.A. 518/2012

in an attempt to murder him after committing house-trespass. The Investigating Officer lodged First Information Report after recording statement of Ijran @ Munna (Ex.PW-2/A). Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellants; they were duly charged and brought to trial. The prosecution examined 11 witnesses to substantiate the charges. In 313 statements, the appellants pleaded false implication and examined DW-1 (Abdul Gaffar) in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeal.

2. The incident took place at around 08.15 P.M. Daily Diary (DD) No. 35 (Ex.PW-7/A) was recorded at 08.40 P.M. at police post Inder Lok on getting information regarding the quarrel. Another Daily Diary (DD) No. 36 (Ex.PW-7/B) was recorded at 08.42 P.M. to the same effect. The investigation was assigned to HC Medha Lal who with Const. V.Ramu went to the spot. The victim – Saanu was unfit to make statement. Complainant - Ijran @ Munna, in his statement (Ex.PW-2/A), implicated the appellants for inflicting injuries with ‘churi’ to Saanu in his jhuggi. He gave detailed account of the occurrence and attributed specific role to each of the assailants. Since the First Information Report was

lodged in promptitude, there was least possibility of the complainant to concoct a false story in a short interval. MLC (Ex.PW-5/A) records the arrival time of the patient at the hospital at 09.15 P.M. The rukka (Ex.PW-1/B) was sent at 12.40 A.M. on the night intervening 23/24.09.2011. In his Court statement, PW-2 (Ijran @ Munna), proved the version given to the police at the first available opportunity without deviation and deposed that earlier at about 08.00 or 08.15 P.M. a confrontation had taken place between the victim and A-2. On their intervention, the matter was pacified and he took Saanu to his jhuggi. When Saanu was taking water in the jhuggi, A-2 armed with two 'churies' in his hands came and stabbed Saanu on his arm. A-1 and A-3 also entered the jhuggi; A-1 and A-3 caught hold hands of Saanu and A-1 exhorted him to stab, "Main aa gaya hu, ab maar". On that, A-2 stabbed Saanu on abdomen, as a result he fell down and all the three assailants fled the spot. He took Saanu to the hospital where his statement (Ex.PW-2/A) recorded. In the cross-examination, he admitted that Saanu had consumed liquor before the incident. He volunteered to add that A-2 was also under the influence of liquor. At the time of initial quarrel, he had not called the police. He further stated that A-2 had not sustained any injury in the incident. He denied the suggestion that he along with Nazakat and Saanu had assaulted

and injured A-2. Needless to say, despite searching cross-examination, no material discrepancy could be extracted to doubt the version narrated by the witness. His presence at the spot was not challenged. No ulterior motive was assigned to him for falsely implicating the appellants for the injuries sustained by the victim. He denied his relationship of any nature with the victim. There are no sound reasons to disbelieve the testimony of this independent witness who lived in the neighbourhood of the victim. PW-3 (Saanu), the victim, is a crucial witness who corroborated the version of the complainant and implicated all the appellants to have caused injuries to him sharing common intention. He also assigned specific role to each of the accused. Despite lengthy cross-examination, his testimony remained un-shattered. He revealed that prior to the incident, no quarrel had taken place between him and A-2 and there was no enmity. He admitted that he had taken liquor on that day. He denied the suggestion that he along with Nazakat and Ijran @ Munna had attacked Shehzad, as a result of which he sustained injuries. He denied the suggestion that they had dragged A-2 to the jhuggi and caused injuries to him. Again, no specific motive was attributed to the injured witness to implicate the appellants for the 'grievous' injuries on the vital organ sustained by him. The material facts deposed by the witness remained

unchallenged in the cross-examination. PW-4 (Smt. Guddo) has deposed somewhat on similar lines. The ocular testimonies of PW-2 (Ijran @ Munna) and PW-3 (Saanu) is entirely in consonance with medical evidence. MLC (Ex.PW-5/A) records that Saanu was brought at Hindu Rao hospital by ASI Jaswant Singh of PCR at 09.15 P.M. PW-5 (Dr.Sumit Mor) medically examined him and proved MLC (Ex. PW-5/A). The injuries were 'sharp' in nature. He observed the following injuries on his body :

- 1. incised wound on left side of abdomen, lower flank near about 9 cm x 1 cm x 0.5.*
- 2. incised wound on left side of abdomen near about 3 cm x 1 cm, depth unkonwn.*
- 3. incised wound on right hand palmer aspect near about 3 cm x 1 cm x 1 cm.*
- 4. linear abrasion on chin.*
- 5. Incised wound on left shoulder, near about 2 cm x 0.5 cm x 0.5 cm.*

In the cross-examination, he explained that there was a smell of alcohol. The patient was conscious but restless at the time of examination. PW-6 (Dr.Chauhan Vinod Kumar) conducted operation on the patient and the nature of injuries given by him vide report (Ex.PW-6/A) is 'grievous'. The victim was discharged on 05.10.2011 meaning thereby that he was hospitalized for about 12 days. Recovery of the crime

weapon i.e. churi (Ex.P1) and the FSL report showing blood of origin 'O' group further connect the appellants with the crime.

3. All the three appellants are brothers and were present at the time of incident inside the jhuggi. A-2 had inflicted injuries to the victim when A-1 and A-3 caught hold of him and A-1 exhorted to stab him. They all participated in the crime in one way or the other and facilitated the commission of crime by A-2. After the incident, they all fled together. These circumstances are enough to infer that they shared common intention to inflict injuries to the victim. It is well settled that common intention may develop at the spur of the moment. Initially, a quarrel had taken place between the victim and A-2 at kabab shop. Both were under the influence of liquor. Both of them were pacified due to the intervention of the public including PW-2 (Ijran @ Munna). When the victim was taken to his jhuggi nearby, A-2 armed with crime weapon chased him and inflicted injuries to him. A-1 and A-3, his brothers also followed him. A-1 and A-3 caught hold of the victim and on exhortation of A-1, again A-2 inflicted multiple stab wounds with 'churi' on the abdomen of the victim. Apparently, the appellants were annoyed due to the previous quarrel at 'kabab' shop where there was exchange of hot words between the victim and A-2. It is true that A-2 and A-3 had sustained injuries and were taken

to Hindu Rao hospital. They were medically examined but the Investigating Officer did not place on record their MLCs. During trial, these MLCs (mark 'A' & mark 'B'), on police file, were taken on record. MLC (mark 'A') pertains to A-3 and the arrival time at the hospital is stated to be 10.15 P.M. on 23.09.2011. He was also having the smell of alcohol. MLC (mark 'B') pertains to A-2 and he was taken to Hindu Rao hospital at 08.45 P.M. He also had smell of alcohol and the injuries were caused to him by sharp / blunt object. This aspect was considered by the Trial Court in the impugned judgment. It is true that the prosecution has not explained the injuries sustained by both A-1 and A-3. At the same time, the appellants did not produce any cogent evidence on record if the victim or his associate were authors of the said injuries. Nothing has come on record as to what was the nature of injuries sustained by them. They did not produce in defence the examining doctor to ascertain the nature of injuries. Omission of the prosecution to explain the injuries which were not serious in nature is not enough to discard the otherwise cogent and reliable testimony of PW-2 (Ijran @ Munna) and PW-3 (Saanu).

4. The victim was stabbed repeatedly with a deadly weapon on vital organ when he was unarmed. The nature of injuries was given as 'grievous'. He had to be operated and remained hospitalized for about 12

days. The appellants were annoyed with the initial confrontation and had chased the victim to his jhuggi. Apparently, the injuries were caused with the avowed object / intention to cause death. Conviction under Section 307 IPC cannot be faulted.

5. In the alternative, appellants' counsel prayed to modify the sentence order stating that the appellants have clean antecedents and are not involved in any other criminal case. The incident occurred suddenly at the spur of the moment. A-1 and A-3 were not armed with any weapon. The complainant himself is involved in number of criminal cases. The appellants have remained in custody for sufficient duration. Learned Addl. Public Prosecutor has no objection to consider the mitigating circumstances.

6. So far as A-1 and A-3 are concerned, in my view, their sentence requires modification as they were not armed with any deadly weapon. They did not cause any harm to the victim. At the time of initial confrontation between the victim and A-2, none of them was present at the spot. Only role attributed to them is that A-1 and A-3 caught hold of the victim and A-1 exhorted him to stab. Evidence has come that even prior to exhortation, A-2 had given a stab blow to the victim. A-1 and A-3 have no previous criminal record and have clean antecedents. They have

remained in custody for more than two years. A-3's nominal roll dated 14.11.2013 reveals that he had served detention for one year, eight months and twenty three days besides remission for five months and thirteen days as on 14.11.2013. His overall jail conduct was satisfactory. Considering these mitigating circumstances, the sentence order qua A-1 and A-3 is modified and they are awarded RI for three years with fine ₹ 10,000/-, each and failing to pay the fine to undergo SI for one month, each. A-2 is the main assailant who inflicted multiple stab wounds to the victim and deserves no leniency. While maintaining the sentence awarded to him the sentence order is modified to the extent that default sentence for non-payment of fine ₹ 10,000/- will be SI for one month instead of three months.

7. The appeal stands disposed of in the above terms. Pending application also stands disposed of being infructuous. Trial Court record be sent back immediately with the copy of the order. Copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

FEBRUARY 24, 2014/tr