

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

Date of Decision: 8th August, 2014

+ **CRL.A. 1037/2013 & Crl. MA 8317/2014**

TARUN KANT

..... Appellant

Through: Mr. Dinesh Malik and Mr.
H.Sharma, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. M.N. Dudeja, Additional
Public Prosecutor for the State.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment and order on sentence dated 25.10.2012 in Sessions Case No.20/12 in case FIR No.521/10., P.S. Hari Nagar u/s 307/498A IPC whereby the appellant was convicted for offence u/s 307 IPC and was sentenced to undergo Rigorous Imprisonment for four years and fine of Rs. 5,000/-, in default to undergo Rigorous Imprisonment for five months.

2. Police machinery was set in motion on receipt of DD No.6A regarding quarrel at 22/5 Prem Nagar, Double Storey, Janakpuri, New Delhi on which SI Ajay Kumar Gupta along with Constable Sita Ram went to the spot where father of the accused met the SI and informed him that his son Tarun Kant had injured his wife Seema with axe and his neighbour Gurvinder Singh had taken her to DDU hospital for treatment. The bed sheet and pillow stained with blood were lying on the floor of the room

along with some hairs. After leaving the Constable for preservation of the spot, SI Ajay Kumar went to DDU hospital and found injured admitted over there. SDM Ms. Anju Mangla was informed who came to the hospital. The doctor declared the injured fit for statement. On the instructions of the SDM and in her presence, SI Ajay Kumar Gupta recorded the statement of the injured which became the bed rock of investigation. FIR was registered. The blood stained articles were taken into possession. MLC and X-ray of the report of the victim were collected. During the course of investigation, accused was arrested. He was got medically examined. Exhibits were sent to FSL. After completing investigation, charge sheet was submitted against the accused. Charge for offence u/s 307 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. In order to substantiate its case, prosecution examined 16 witnesses. The statement of accused was recorded u/s 313 Cr.P.C which was one of denial simplicitor. After weighing the relevant evidence led by the prosecution, the learned Additional Sessions Judge convicted the appellant for offence u/s 307 IPC and sentenced him as mentioned above.

4. Aggrieved, present appeal has been preferred. I have heard Mr. Dinesh Malik, Advocate for the appellant and Mr.M.N.Dudeja, learned APP for the State. The appellant sent an application bearing No.8317/14 from jail submitting that he is not challenging the appeal on merits. However, according to him he has remained in jail for almost 3-1/2 years and as such he be released on the period already undergone by him in jail. Learned counsel for the appellant reiterated that he is not challenging the conviction of the appellant but keeping in view the period of incarceration, he be released on the period already undergone. On the other hand learned

APP for the State opposed the submission of learned counsel for the appellant on the ground that the victim is none else but the wife of the appellant to whom grievous injuries were caused by the appellant. It was by chance that she survived. However the accused had left no stone unturned to inflict so many injuries on her person with axe that she would have died. Under the circumstances, in view of the peculiar circumstances of the case, no leniency is warranted in the matter.

5. The appellant has not challenged his conviction and rightly so in view of the voluminous evidence which has come on record. PW1 – Mr. Suraj Bhan is the father of the accused/appellant and he had deposed that the appellant got married to Seema on 26.01.2004 and it was his second marriage. Out of the wedlock, one son was born who was aged about four years at the time of the incident. The appellant and his wife were having strained relations from second month of their marriage. When the son was born in October, 2006, the appellant took his wife to DDU Hospital on motorbike, but left her outside the hospital on road. She was taken to hospital by the witness and his wife. Thereafter the appellant did not visit his wife after delivery and whole expenses of delivery were paid by the witness. He further deposed that appellant/accused was in the habit of taking liquor and used to quarrel with his wife regularly. Ten/thirteen days prior to the incident, the accused/appellant brought an axe and sword to the house. On enquiry, he replied that he had brought the same for performing *pooja* of *Mata*. He took the axe and sword to the house of his neighbour Tinku and handed the same over to him. The accused/appellant brought another axe from the market. However, he did not come to know about the same. On the fateful day i.e. 29.12.2010 at about 4.30/5 pm on hearing the cries of his grandson Govind “*mere maa ko maar diya*”, he came out of his room and opened the room of the accused/appellant and saw that accused

was attacking his wife with axe. She was trying to save herself. When he reached there, accused/appellant had already attacked 4/5 times and was still attacking her with axe. He tried to save Seema but accused/appellant pushed him. He opened the door of his house and went outside and raised noise and called for help. In the meantime, Seema also reached the main door of the house. Accused/appellant again attacked her with axe two times and ran away. Neighbours took Seema to DDU Hospital. His testimony was substantially corroborated by the victim Seema who in addition deposed that the accused used to take her entire salary for the home expenses and quarrel with her. In the year 2008, accused gave beatings to her and damaged her ear drum for which she remained under treatment for about one month in DDU Hospital. She further deposed that accused kept on attacking her with axe till he was sure that she was finished. Despite cross examination nothing could be elicited to discredit the testimony of both these witnesses who were none else but the father and wife of the accused respectively.

6. Moreover, testimony of PW1 – Suraj Bhan that accused had brought axe and sword 10/15 days prior to the incident which he handed over to the neighbour for safe custody finds corroboration from PW3 – Parvidner Singh Gulati who has deposed that 10/15 days prior to the incident, father of accused Suraj Bhan came to his office-cum-house and handed over one sword and axe for safe custody and told him that the same had been brought by his son Tarun Kant and he was fearing that his son might not do something wrong with his daughter-in-law. After the incident, he handed over the sword and axe to the police officials which were seized vide seizure memo Ex.PW3/A.

7. Further, PW5 – Gurusharan Singh and PW6 – Gurvinder Singh corroborated the testimony of PW1 by deposing that on coming to know

about the quarrel at the house of Suraj Bhan, they went there and saw Seema – wife of accused – lying on the floor and she was bleeding heavily. They were informed by father of accused that accused had hit Seema with axe and after attacking her accused had run away. They removed Seema to DDU Hospital. On receipt of information, SDM Ms. Anju Mangla reached the hospital and recorded statement of Seema Ex.PW2/A wherein she narrated the entire incident about inflicting injuries on her person by the accused. Further when the Investigating Officer of the case reached the spot, he found blood lying on the ground as well as on the bedsheet and pillow. Blood-stained axe was also lying outside the house. As such, blood stained bed sheet, pillow, axe, earth control, blood stained earth control, marble from the bedroom and outside, blood stained hair and cotton from the spot were seized.

8. Moreover, ocular testimony of the prosecution witnesses find due corroboration from the medical evidence, which reflects that injured Seema was removed to hospital where her MLC Ex.PW8/A was prepared and the injuries on her person were opined to be grievous. The testimony of injured that accused kept on attacking her with axe till he was sure that she was finished shows *actus reus* on the part of accused and proves *mens rea*. Learned Additional Sessions Judge rightly observed that the prosecution had proved its case beyond reasonable doubt and the accused was rightly convicted for offence under Section 307 of Indian Penal Code.

9. As regards the submissions of learned counsel for the appellant that the appellant be sentenced to the period already undergone inasmuch as he has remained in jail for a period of more than three years and six months, this submission does not hold water inasmuch as Section 307 IPC provides for attempt to murder and the punishment for attempt to murder. Different

punishments have been prescribed therein. Section 307 of IPC reads as under:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]

10. A bare perusal of this section goes to show that it can be classified in three parts:

- (i) If the accused does any act with such intention or knowledge and circumstances that if he by that act caused death, he would be guilty of murder then he is to be punished with imprisonment of either description which may extend to ten years and fine.
- (ii) If hurt is caused to such person then punishment is harsher and the offender is liable either to imprisonment for life or imprisonment for ten years and fine.
- (iii) If hurt is caused by convict on life, then the punishment is upto death or imprisonment for ten years and fine.

11. In the instant case, grievous injuries have been caused on the person of victim by none else but her own husband. Learned ASJ has already taken a very liberal view by sentencing him for a period of four years and

fine whereas the punishment could have been extended upto imprisonment for ten years and fine.

12. The conduct of the appellant also reflects that although grievous injuries were caused by him on the person of his wife on 29.12.2010, after inflicting injuries he fled away from the spot. After registration of FIR, he could not be arrested. As such, after initiating proceedings against him, he was declared as proclaimed offender. He could be arrested only on 08.04.2012 and thereafter supplementary *challan* was filed against him, which also goes to show that after inflicting such severe injuries on the person of his wife, the accused neither bothered to inquire about her well being, so much so, he was not even concerned with the welfare of his minor child Govind who was only aged about four years at the time of incident.

13. Keeping in view the facts and circumstances of the case, no further leniency in the matter is called for. Under the circumstances, the appeal being bereft of any merit is hereby dismissed.

A copy of this judgment be sent to Superintendent Jail for information. Appellant be informed through Superintendent Jail.

Trial Court record be sent back forthwith along with a copy of this judgment.

The appeal stands disposed of.

(SUNITA GUPTA)
JUDGE

AUGUST 08, 2014

as/rd