

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

+ **Crl.A. 1278/2012**

% Judgement Reserved on: 18th February, 2014

Judgement pronounced on: 20th February, 2014.

WASIM @ PASSA (IN J.C.) Appellant

Through: Mr. M.L. Yadav, Advocate
Appellant in person from J/C.

versus

STATE OF DELHI Respondent

Through: Mr.O.P.Saxena APP for the State
with Inspector Anand Lakra,
P.S. Shastri Park.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The appellant along with two other persons was tried for the offence punishable under Section 307/34 IPC. The appellant was convicted for the offence punishable under Section 307/34 IPC vide judgment dated 19th July, 2012 and was sentenced to undergo R.I. for seven years and fine of Rs.5000/- and in default S.I. for six months vide order dated 23rd July, 2012. The other co-accused were however

convicted for the offence under Section 323/34 IPC and sentenced for a period already undergone.

2. The incident had taken place on 29th November, 2009 at 7.50 p.m. in Auto Parking Shahdara Metro Station. The injured PW1 Firoz was declared fit to make the statement by the doctor in the hospital and the FIR for the offence under Section 324/34 IPC was registered on the statement of the injured PW1 Firoz. The doctor who had examined the injured had opined the injuries of simple nature. Subsequently, during the investigation another doctor had given the opinion on the MLC of the injured PW1 and opined that the injuries were of grievous nature and supplementary statement of PW1 was also recorded by Investigative Officer and accordingly the charge sheet was filed by the prosecution for the offence under Section 307 IPC. All the three accused (including the appellant) were charged for offence under Section 307/34 IPC. On the basis of the evidence recorded during the trial, while appellant was convicted for the offence under Section 307/34 IPC, the other two co-accused were convicted only for the offence under Section 323 IPC.

3. The conviction has been challenged by the appellant mainly on the ground that there is no evidence on record to prove that the appellant had any intention to kill PW1 Firoz. It is also argued that the knife, allegedly used by the appellant was the knife which is used for cutting vegetables and fruits and it was not a dangerous weapon. He has relied upon the sketch of the knife Ex.PW2/F. It is submitted that the length of the blade 7.5 c.m., width of the blade is 2 c.m. and length of handle is 10 c.m. Total length of knife is 17.5 c.m. It is further argued that the injuries were on the face, finger and left dorsal side of thigh and no injuries had been received by the injured PW1 Firoz on any vital portion of his body and it clearly shows that there is no intention on the part of the appellant to kill PW1. It is also argued that the quarrel had taken place on the spur of moment and there was no pre meditated act on the part of the appellant. It is argued that the appellant cannot be convicted for the offence under Section 307/34 IPC when his co-accused have been convicted for the offence under Section 323/34 IPC.

4. It is argued on behalf of learned APP for the State that weapon

used is a knife and is a dangerous weapon and that there were all intentions to kill PW1 and the conviction under Section 307 IPC of the appellant is justified.

5. I have heard arguments and perused the record.

6. Section 307 IPC contemplates an intention or knowledge of causing death and also doing an act towards it. Intention is a state of mind and can be gathered only from all the circumstances of the case. The nature of weapon used, the place where the injuries were inflicted, the motive for the crime, severity of blows and preparation for the crime are few of the important factors that may be taken into consideration for determination of factum of intention to cause death.

7. In the present case, it is an established fact that the injured PW1 was found fit for making the statement on the day of incident when the investigating officer had approached him in the hospital. On the basis of the statement of injured PW1, the FIR was registered for the offence punishable under Section 324 IPC. Injured PW1 Firoz has deposed as under:

“I was sitting in the parking of aforesaid metro

station after closing my day work. I noticed, accused Wasim @ Passa present in the court (correctly identified) was coming towards parking, who is known to me previously being the resident of same locality, I called him and demanded a sum of Rs.150/- against selling of fruits to him for Rs.100/- and had borrowed Rs.50/- from me three months prior of this incident. Accused Wasim @ Passa refused to pay Rs.150/- and abused me.... I was caught hold by accused – Harish Pathania and Sagar Sharma @ Vishwa Kirti Sharma and accused-Wasim @ Passa took out one sharp-edge object and caused me injuries by using that object on my face, left hand and back side of left thigh with an intention to kill me.”

8. This testimony of the injured clearly indicates that appellant had approached the injured PW1 only when PW1 had called him and demanded his money. It is not a case where the appellant had approached the injured PW1 with intention to cause death. There is, also, no previous preparation on the part of the appellant. There is no evidence that appellant had reached the spot with pre-meditated plan to kill PW1. The motive or preparation is therefore absent. No doubt, a knife had been used in the incident, but the nature of injuries, suggest that knife was not used with intention to kill PW1. Following injuries were received by PW1:

1. Deep incised wound - 7 X 1.5 c.m. (left side of face)
2. Ample incised wound - 2 X 0.3 c.m. (left nostril)
3. Incised wound -
- Left hand's index finger - 1 X 0.5 c.m.
- Ring finger - 1.5 X 0.3 c.m.
4. Wound in Dorsal side of thigh - 4 X 1 c.m.

9. From the above, it is clear that none of the injury was on the vital part of the body of PW1. Injuries received were on left side of face, left nostril, left hand's index finger, ring finger and left dorsal side of thigh.

These facts clearly negate any intention on the part of the appellant to kill PW1.

10. The prosecution also does seem to be sure about the nature of injuries on the person of PW1. While Dr.Rajender Kumar had opined the nature of the injuries as simple, Dr.Animesh Basak opined the nature of injuries as grievous on 12.1.2010. Dr.Animesh Basak had been examined as PW11. He was not sure if before giving his opinion about the nature of injuries as grievous on MLC he had examined the patient Mohd. Firoz. He had certainly not examined the appellant Mohd Firoz PW1 on his admission in the hospital on the date of incident. As per his statement he had examined the patient only on

12.1.2010 and on the same date opined the nature of injuries as grievous. It is strange that the doctor who had initially examined the injured PW1, when the injuries were fresh on his body, had given his opinion about injuries as simple in nature, while a doctor who had examined PW1 after two and a half months has opined that the injuries were grievous in nature. There is no mention if the injuries had healed during this period or not. It is cardinal principle of criminal law that when there are testimonies of contrary nature, the evidence which is in the favour of the accused has to be accepted and the benefit goes to the accused. In the present case, the second opinion of the doctor regarding grievous injuries on the person of injured being found or observed after two and a half months of the incident is not acceptable to this court because it is not based on actual examination of injured on the date of incident. Opinion of the doctor who had examined the injured initially and immediately after the incident is more trustworthy and believable.

11. From the above discussion, it is apparent that at the time of the incident there was no preparation or motive on the part of the appellant to kill the injured PW1 and also injuries received by the injured were

simple in nature although caused with a sharp weapon. The appellant had not approached the injured PW1 with intention to kill. The appellant in fact approached the injured PW1, when PW1 demanded Rs.150. In view of the above, conviction of the appellant under Section 307 IPC is not sustainable. The conviction and sentence of appellant under Section 307/34 IPC is therefore set aside. I convict the appellant for the offence under Section 324 IPC as it stands proved on record that the appellant had voluntarily caused hurt with the help of a knife on the person of PW1.

12. The offence is punishable with imprisonment upto three years or with fine or both. In the facts and circumstance and in the view of the fact that the appellant has already undergone sentenced for about more than two years, I hereby sentence him for the period already undergone by him.

13. Copy of this order be sent to the trial court. Registry is directed to supply a copy of the order to the appellant.

14. The appellant be released forthwith, if not wanted in any other case.

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

(DEEPA SHARMA)
JUDGE

FEBRUARY 20 , 2014/rb