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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 19th December, 2018

+ CRL. A. 673/2001

SANJAY & ORS.

..... Appellants

Through: Mr. Prag Chawla & Ms. Ruchi
Kapoor, Advs.

versus

STATE (N.C.T. OF DELHI)

..... Respondent

Through: Mr. K.S. Ahuja, APP for the
State with SI Badlu Ram.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The four appellants stood trial in the court of sessions (in Sessions Case no. 716/1996) on the basis of evidence gathered during investigation of first information report (FIR) no. 168/1992 of police station Janak Puri on the charge for the offence under Section 307 read with Section 34 of Indian Penal Code, 1860 (IPC), with additional charge under Section 25 Arms Act having been framed against appellant Bhupender Kumar (A-2). The gravamen of the charge of attempt to commit murder by acts in furtherance of their common intention, was essentially, that on 17.03.1992 at about 9.30 p.m. in the vicinity of house no. 25, Panchsheel Colony, Uttam Nagar Delhi, they had over-powered Hira Lal (PW-3) and, upon exhortation from appellant Sanjay (A-1), appellants Bhupender Kumar (A-2) and

Kamal Kumar (A-3) having caught hold of him, appellant Vijay Kumar had taken out a knife from his trousers and had given knife blows on the person of PW-3 statedly with the intent to cause death and with the knowledge that the resultant injuries would cause death, A-1 having also used the same very knife to inflict some injury on the same person after he had fallen on the ground upon assault with knife by A-4. It was also the case of the prosecution that knife was recovered from the possession of A-2 in the course of investigation, this leading to the separate charge under Section 25 Arms Act, 1959 being framed against him.

2. The trial court, by its judgment dated 01.08.2001, held that the charge under Section 25 Arms Act had not been proved against A-2 and, thus, he was acquitted on that score. The trial court, however, found that the prosecution had proved its case beyond all reasonable doubts against these appellants on the charge under Sections 307/34 IPC and, thus, convicted them. By subsequent order dated 24.08.2001, the appellants were sentenced to rigorous imprisonment for three years with fine of Rs. 5,000/- each, in default, further rigorous imprisonment for six months, the benefit of set off under Section 428 Cr.P.C. having been extended. It was also directed by the trial court that if the fine were to be released, Rs. 10,000/- would be paid to the victim Hira Lal.

3. The record of this appeal would show that the trial court record was requisitioned and added, to be placed before the Court. The previous proceedings recorded on the file of this criminal appeal also

show that the said trial court record went missing for reasons which have not been discovered or found out till date. Some administrative inquiries were initiated primarily with the objective of pinning down the responsibility on the official(s) responsible for the loss of the record, the same, however, not taking the matter anywhere. Be that as it may, pursuant to certain directions given by this Court, in the wake, *inter alia*, of reports being called, amongst others, from the Registrar General of this Court, an administrative committee of two Hon'ble Judges of this court, is stated to have been constituted by the Chief Justice for taking steps so that such losses do not recur in future.

4. Meanwhile, directions were given by the registry to the trial court to re-construct the record. The entire record unfortunately could not be re-constructed, the medico lego certificate (MLC) of the victim (PW-3) being one of the crucial documents which are not available. It is noted from the record, reconstructed to the extent possible by the trial court, that the examining medical officer who had prepared the MLC had also not been brought to the trial court for his deposition to be recorded. In his lieu, another medical officer Dr. B. Mishra (PW-8) was examined, he only narrating the contents of the said document as also proving, in the process, his opinion as to the nature of injuries as had been recorded by him on 05.06.1992. The evidence of the first informant Savitri and her husband, the victim (PW-2 & PW-3), copies of deposition of Brij Nath Pal (PW-5) and Inspector Mahesh Kumar (PW-9) are mercifully available besides testimonies of certain other witnesses, this in addition to some of the documents filed with the charge-sheet.

5. Against the above backdrop, both sides have agreed that no useful purpose would be served by sending the case for *de novo* trial, inasmuch as issues that arise can be examined and addressed on the basis of the available re-constructed record.

6. The submissions of both sides have been heard and the record presented, after reconstruction by the trial court, has been perused.

7. It is clear from the copy of the FIR that PW-2, wife of the victim, had informed the victim on his arrival from his duty, at the end of the day, that the reason for there being no electricity available in the household was because of certain acts of commission or omission on the part of the appellants, she accusing them of disruption by meddling with the electric supply lines in the area. The evidence of PW-2 and PW-3, however, on being closely examined, also brought out that there was no regular electric supply lines in the locality or to the household of first informant, apparently such supplies having been procured by the neighbourhood by unauthorized extraction of electrical energy from the overhead power lines.

8. Be that as it may, it is clear from their testimony that upon PW-2 informing PW-3 that it was the appellants who were responsible for the disruption of the electrical supply to his house, PW-3 proceeded to confront A-1. He is on record to state that he had gone straight to the house of A-1 and had questioned him as to the reasons why he had done so. This questioning clearly was uncalled for as PW-2 has admitted during her testimony in the court that she had not seen any of the appellants meddling with the supply lines in such a way that it

would disrupt the power supply to her house, she having made some inferences or assumptions because she had seen them moving around. These assumptions and inferences were wholly improper and unfair. Nonetheless, when PW-3 started improperly questioning A-1 as to his role in the matter it admittedly led to a scuffle. This is what both PW-2 and P-3 have narrated in their deposition. It does appear that the witnesses would also state that the members of the family of A-1 were present at such point of time. But then, no role was attributed to them, their presence not being mentioned in the FIR or in the statements made under Section 161 Cr.P.C. recorded during investigation. Reference was made to the presence of PW-5 at the time of assault with knife. But the said witness would not support the prosecution case, he only narrating the sequence of events from the time he arrived at the scene to find PW-3 lying on the ground in a pool of blood. The efforts of prosecutor to bring facts in support of the prosecution case by cross-examination of this witness did not bear fruit.

9. There is one more crucial element which has been brought out during the court testimony of PW-2 and PW-3 and it is that when PW-3 had approached the house of A-1, he was alone, that is to say the other appellants were not present at the scene. They would arrive together, later, when the scuffle was on. They assumably and consequently would not know the background facts. From this perspective, it is safe to assume that A-2, A-3 and A-4 jumped into the ongoing scuffle between PW-3 on one hand and A-1 on the other mindlessly taking side. A-1 undoubtedly had a cause to be angry. He had been wrongly accused, without any foundation, of disrupting the

electricity supply to the house of the victim. He, thus, naturally would feel bad which is also how even PW-2 and PW-3 would describe his reaction. When this had resulted in a scuffle, it ended up in grappling, A-2, A-3 and A-4 having arrived at the scene after A-1 having caught hold of PW-3. It is at that stage when he is said to have called upon A-4 to attack PW-3. The exhortation cannot be read as one intended to persuade A-4 to use the knife to kill. From this reading of the evidence, the knife blow given by A-4, in which regard PW-2 and PW-3 are consistent and, therefore, their evidence being reliable, it being corroborated by the evidence of PW-8, intent to kill, leading to the offence of attempt to commit murder, cannot be established.

10. In the available evidence, the situs of the injury inflicted is loosely described as one on the chest region. It is not clarified in any manner, not even by PW-8, as to which specific part of the chest had been aimed at. Similarly, there is no description of the dimensions of the injury sustained. An opinion as to the nature and effect of the injury has to be formed by the court. For this, the situs of the injury and its dimensions are crucial in which regard there is deficiency in the material which has been presented.

11. From the above facts and circumstances, it cannot also be inferred that the stab wound that was inflicted on the person of PW-3 was one likely to cause death or that it was such wherein while intending to cause the injury the assailant was bound to know it to be likely to cause death.

12. Consequently, the conviction for the offence under Section 307 IPC cannot be upheld. The prosecution, however, has brought home its case for offence of the appellants having acted in furtherance of their common intention to voluntarily cause hurt to PW-3 by a dangerous weapon, a cutting instrument, which is an offence punishable under Section 324 IPC.

13. Thus, the impugned judgment is modified. Instead of they being held guilty and convicted on the charge under Section 307 read with Section 34 IPC, the appellants are held guilty and convicted on the charge under Section 324 read with Section 34 IPC.

14. The nominal roll shows that Vijay Kumar (A-4) has already undergone incarceration (including the remission earned) for one year seven months and fifteen days. Similarly, the appellant Sanjay (A-1) has already suffered incarceration (including remission earned) for a period of about nine months, the period of incarceration of Bhupender Kumar (A-2) and Kamal Kumar (A-3) being in the region of three months each.

15. The role of Bhupender Kumar (A-2) and Kamal Kumar (A-3) is distinct from that of other two appellants, in that they came on the scene later and they themselves did not inflict the knife injuries. They stand convicted because they had aided the other two in the incident. The prime assault was committed by Vijay Kumar (A-4), the role attributed to Sanjay (A-1) coming later. The incident occurred 26 years ago. These appeals are being decided 17 years after the judgment. In these facts and circumstances, it seems just and proper

that while restricting the substantive sentence of imprisonment to the terms of incarceration already undergone by each of the convicted persons, the amount of fine be suitably enhanced so that the complainant is thereby duly compensated.

16. Thus, the order on sentence is modified. Each of the appellants shall stand sentenced to imprisonment for the period of incarceration already suffered by them with fine of Rs.25,000/- each. In case of default in payment of fine, they shall suffer further simple imprisonment for six months each. The amount of fine, upon realization, shall be paid as compensation to the victim Hira Lal (PW-3).

17. The appellants Bhupender Kumar (A-2) and Vijay Kumar (A-4) have shown receipts dated 24.08.2001 and 03.09.2001 whereby they had deposited the fine amount earlier imposed with the trial court. Though the other appellants also claim that they have deposited the fine as earlier imposed (Rs.5,000/-) with the trial court, they are unable to muster copies of the receipts of such deposit.

18. The amount of fine as imposed by the trial court, if deposited, shall be liable to be adjusted. The trial court shall verify this from its own records before enforcing the modified order on sentence. The appellants are granted time to deposit the amount of fine, in terms of above directions, with the trial court, on or before 21.01.2019. In case of any default, the trial judge shall be duty bound to issue all necessary process in accordance with law to enforce the modified order on sentence. After the amount of fine has been realized, the trial judge

shall take steps to remit the payment of compensation to the victim as above.

19. The appeal is disposed of in above terms.

20. The Station House Officer of the police station Janak Puri shall render all assistance to the trial court.

DECEMBER 19, 2018

nk/yg

R.K. GAUBA,J.



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