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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 477/2004
VIJAY @ MUKESH Appellant
Through: Mr. Sumeet Verma, Adv.

versus

THE STATE (GNCT OF DELHI) Respondent
Through: Ms. Kusum Dhalla, APP for State
IO SI Shiv Prakash, PS Anand Parbat.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **04.06.2018**

Vide the present appeal, the appellant Vijay @ Mukesh, s/o Shri Chaman Lal assails the impugned judgment dated 10.03.2004 in SC No.22/2002 in relation to FIR No.280/2000, PS Anand Parbat, registered under Section 307/34 Indian Penal Code, 1860 qua which the appellant herein was convicted under Section 324/34 Indian Penal Code, 1860 along with co-convict Riyayt Ali @ Anwar the commission of an offence punishable under Section 324 r/w 34 Indian Penal Code, 1860 apart from the co-appellant Riyayt Ali @ Anwar having also been convicted for the offence punishable under Section 25 of the Arms Act, 1959. The appellant also assails the impugned order on sentence dated 24.03.2004 whereby the present appellant and the co-convict Riyayt Ali @ Anwar both had been sentenced to undergo Rigorous Imprisonment for a period of three years qua the offences punishable under Sections 324/34 Indian Penal Code, 1860 with the co-convict Riyayt Ali having been sentenced to a further sentence to

Rigorous Imprisonment for one year for the offence punishable under Section 25 of the Arms Act, 1959, though the sentences imposed were directed to run concurrently.

The Trial Court Record had been requisitioned, has been received and produced.

Arguments have been addressed on behalf of the Appellant by Shri Sumeet Verma, learned DHLSC, counsel for the appellant and by Ms. Kusum Dhalla, learned Addl. PP for the State.

The testimony of PW-6, the injured/ complainant in the instant case corroborates substantially all averments made in the FIR in relation to the incident having taken place on the date 30.08.2000 wherein in the bus bearing no. DL 1P 3449 which departed on route no.918 from Harijan Basti, New Rohtak Road onwards, in which the complainant Constable Dayanand, posted on duty at PS Anand Parbat for execution of summons, boarded to go to ITO and was standing at the rear side of the bus when four boys came near him and he apprehended that they would pick his pocket. As per the averments in the FIR i.e. PW-6/A and as brought forth through the testimony of PW-6 i.e. Constable Dayanand, the complainant, that when he, Constable Dayanand requested them to stay away from him in view of his apprehension that they would pick his pocket, one of those boys gave him a fist blow and another boy caught hold of him from his collar and the complainant testified to the effect that those two boys were not present facing trial at the time when his testimony was recorded on 14.01.2004 as PW-6. He also testified to the effect that when he tried to free himself, the co-accused Riyayt Ali took out his knife and attacked on the head and face

of the complainant with his knife and the complainant received injuries due to these knife blows on his head as well as on his left cheek and at that time one of the boys held him by his neck and one of them exhorted that “Iska kam tamaam kar do”. The complainant identified that exhorter to be the appellant herein Vijay @ Mukesh and stated further that at that time the accused Riyayt Ali tried to cause injuries on his abdomen with the knife but PW-6 Constable Dayanand saved himself by bringing his left hand in between and received knife injuries on his left hand. Riyayt Ali was apprehended by Constable Dayanand, PW-6 whereas Vijay, the appellant fled away from the spot and is indicated to have been arrested on 07.09.2000 on the identification of the PW-6.

Though during the trial and as per averments made in the appeal there is a dispute of identity also raised, on behalf of the appellant, the same has not been so urged during the course of the present appeal. In relation to the said aspect of identification of Vijay, the appellant herein, a perusal of the impugned judgment brings forth and also in view of the testimonies on the record, the identity of Vijay, the appellant is established. The contention of the appellant that as he had put in appearance before the learned trial Court of the ASJ, Mr. SK Kaushik, his appearance at the spot in the bus at around 9:30 was incorrect, cannot be accepted. In view of the testimony of PW-6 and the testimonies of the other prosecution witnesses, examined during trial i.e. Constable Naval Kishor and SI Praveen Kumar, the Investigating Officer of the case, the identity of the appellant is established as being the exhorter in the instant case, as a consequence of which, the co-convict Riyayt Ali was instigated to inflict the knife injury on the abdomen of the complainant but

in the process, the complainant put forth his left hand to prevent the said injuries and the knife blow hit his left forearm. Thus, as regards the aspect of the infliction of the injuries on the forearm of the injured due to exhortation of the appellant is concerned, the same is borne out conclusively from the record. The common intention thus in relation to the commission of the offence punishable under Section 324 of the Indian Penal Code, 1860 between the co-convict Riyayt Ali to the injured with the common intent of the appellant is also established, *inter alia* apart from the two other persons who are indicated to have fled away, stands established.

As rightly observed by the learned trial Court, the injuries have not been inflicted on any vital part of the injured and thus it is apparent that the ingredients of the alleged commission of the offence punishable under Section 307 Indian Penal Code, 1860 were not brought forth as also indicated vide the MLC No.107582/2000, Ex.PW2/A of the RML Hospital, Delhi in relation to which the testimony of Dr. Padma of the RML Hospital, who had examined the injured, has remained unchallenged bringing forth that the injuries sustained by the complainant mentioned at serial no.1-3 thereon are to the effect that:

- (a) CLW 1.5x5 cm on the left side occipital region. No active bleeding present.
- (b) Incised wound 1x .3 cm on left zygoma with clear cut margins.
- (c) Incised wound 1x.3 cm on the dorsal aspect of the left forearm. No active bleeding present,

of which the injury at serial no.1 was caused by a blunt object and was a simple injury and the injuries at serial no. 2 & 3 were injuries caused

by a sharp object and are simple in nature.

On behalf of the State it has been submitted that the testimonies of the prosecution witnesses establish the case of the appellant beyond a reasonable doubt inasmuch as there is nothing on the record to indicate any prior enmity between the complainant and the convicts which is so borne out from the record.

On behalf of the appellant it has been submitted that the appellant had been in custody since 2 years, 4 months and 13 days, which aspect is not refuted on behalf of the State by the learned APP for State and as rightly contended on behalf of the appellant that the role of the appellant and the co-convict Riyayt Ali, the main assaulter was apparently different inasmuch as the only injury which is indicated to have been sustained by the injured pursuant to exhortation of the appellant, was the injury only on the forearm and that the other injuries i.e. on the zygoma and occipital region had already been sustained by the injured by the assault by Riyayt Ali as brought forth through the original FIR PW-6/A and also through the testimony of the injured Constable Dayanand examined as PW-6.

In the interest of justice, the prayer that has been made on behalf of the appellant that the period of incarceration of two years, four months and thirteen days in the instant case would suffice qua the conviction of the appellant Vijay @ Mukesh, s/o Chaman Lal for the offence punishable under Section 324 r/w 34 Indian Penal Code, 1860 though not conceded on behalf of the State, in the facts and circumstance of the instant case, is held to suffice to meet the end of the justice.

Thus, whilst upholding the conviction of the appellant vide the

impugned judgment dated 10.03.2004 in SC No.22/2002 in relation to FIR No.280/2000, PS Anand Parbat for the offences punishable under Section 324/34 Indian Penal Code, 1860, the impugned order on sentence dated 24.03.2004 sentencing the appellant to undergo a period of incarceration of three years of Rigorous Imprisonment is modified to the period of incarceration that the appellant has already undergone Rigorous Imprisonment of two years, four months and thirteen days.

The appeal is disposed of accordingly.

The copy of the judgment be sent to the appellant at his address through post and a copy be also sent to the Superintendent Jail, Delhi.

ANU MALHOTRA, J

JUNE 04, 2018

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