

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

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Reserved on: 26th February, 2018

Decided on: 11th September, 2018

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CRL.A. 354/2017

RIYASAT

..... Appellant

Represented by: Mr. Dinesh Malik, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Riyasat challenges the impugned judgment dated 4th March, 2017 convicting him for the offence punishable under Section 307 IPC in FIR No. 563/2014 registered at PS Nabi Karim and the order on sentence of even date directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹1,000/- and in default, to undergo simple imprisonment for a period of one month for the offence punishable under Section 307 IPC.

2. Learned counsel for the appellant contends that no reason for the quarrel has been stated either by Mohd. Alam (PW-1) or Mohd. Anis (PW-2). Appellant should not have been convicted on the sole testimony of interested witnesses who have also not supported the prosecution version. Statement of the appellant under Section 313 Cr.P.C. has been ignored. In the alternative it is contended that the sentence awarded is too harsh and the same be modified.

3. Learned APP for the State on the other hand contends that the impugned judgment of conviction and the order on sentence suffers from no illegality and the appellant has been rightly convicted on the basis of the testimony of Mohd. Alam and Mohd. Anis duly corroborated by the MLC.

4. Process of law was set into motion on 8th December, 2014 at 6:14 A.M. when information was received stating '*H.No. BB-67, Gali No.2, near Vinay dudh wale ki dukan Nabi Karim Paharganj caller ko chor ne chaku mar diya hai. Caller ne chor pakad rakha hai.*' Aforesaid information was recorded vide DD No.10A (Ex. PW-7/A) and was assigned to SI Giriraj. Another information was received at 6:15 A.M. stating '*H.No. 557, Kacha Rasta, Nabi Karim caller ko churi mar diya hai aur caller RML Hospital ja raha hai*'. This information was recorded vide DD. No.11A (Ex. PW-7/B) and was also assigned to SI Giriraj (PW-12) who along with SI Sombir (PW-8) reached the spot and came to know that the injured persons had already been taken to RML Hospital. Thereafter, they went to the hospital. Both the injured were found unfit to give their statements. In the hospital, one eye witness namely Mohd. Sharif (PW-3) was present.

5. Statement of Mohd. Sharif was recorded who stated that he resides at A-603, Krishna Basti, Nabi Karim, Delhi as a tenant and is a permanent resident of Village Nawaz Madargarh, PS Bazar Shukur, District Amethi, Uttar Pradesh. He runs a dhabba in Amarpuri, Nabi Karim. Mohd. Alam is his younger brother and Mohd. Anis is the resident of his village and both of them reside at A-557, Krishna Basti, Nabi Karim, Delhi. Mohd. Alam works in the Dhabba on the ground floor of A-557, Krishna Basti, Nabi Karim, Delhi and Mohd. Anis works in a meat shop. On 7th December, 2014, at night, Riyasat, who was the resident of their village came and

stayed with them. On 8th December, 2014, at around 5:30 A.M., Mohd. Alam's worker Mohd. Izraul called him and asked him to come as Riyasat had stabbed Mohd. Anis with a knife. He rushed to A-557, Krishna Basti and saw that Mohd. Anis was lying on the floor whose vest was soaked with blood and blood was oozing out from his back. Thereafter, he heard voices and went to 1st Floor of A-557. He saw that Riyasat was holding a knife in his hand and was about to stab Mohd. Alam. When he asked Riyasat not to stab, Riyasat came towards him to stab him. When he moved two-three steps back on the stairs, Riyasat stabbed Mohd. Alam in his lower abdomen. As Mohd. Alam shouted, he went up the stairs, Mohd. Alam pushed Riyasat and he fell down. He then snatched the knife from Riyasat's hand and threw it on a side. In the meantime, people came up and started beating Riyasat as a result of which he sustained injuries. Thereafter, he took Mohd. Alam and Mohd. Anis to RML Hospital, both of whom were not in a position to give their statements. Thus, legal action be taken against Riyasat who has stabbed Mohd. Alam and Mohd. Anis with a knife on the back and abdomen with the intention to kill them. On the basis of the aforesaid statement (Ex.PW-3/A), FIR No.563/2014 (Ex.PW-6/A) was registered at PS Nabi Karim for the offence punishable under Section 307 IPC.

6. Thereafter, SI Giriraj along with Mohd. Sharif went to the spot where Mohd. Sharif produced the knife used in the incident. SI Giriraj prepared the sketch of the knife (Ex. PW-3/B). He took the measurement of the knife, its total length was 21.04 cm and its blade was 11.8 cm long. He seized the knife vide seizure memo Ex.PW-3/C. He recorded the supplementary statement of Mohd. Sharif. He recorded the statement of the injured persons namely Mohd. Anis and Mohd. Alam when they were declared fit

for statement. He seized the items pertaining to Mohd. Alam vide seizure memo Ex. PW-8/A and that of Mohd. Anis vide seizure memo Ex. PW-12/B. He also obtained the MLC of Riyasat who was found admitted in the same hospital and was left under the supervision of Ct. Birender Singh (PW-11). Riyasat was arrested from the hospital on 10th December, 2014 vide arrest memo Ex. PW-11/A and his personal search was conducted vide search memo exhibited as Ex. PW-11/B. His disclosure statement was recorded vide memo Ex. PW-11/C. After the completion of investigation, charge sheet was filed.

7. Mohd. Alam deposed that on 8th December, 2014, at around 5:00 A.M., a quarrel took place between Riyasat and Mohd. Anis. He got up and saw that Riyasat was inflicting injuries on the back of Mohd. Anis with a knife. Mohd. Anis ran downstairs, Riyasat rushed towards him and inflicted injury on the right side of his abdomen. Blood started oozing from the wound. His brother Mohd. Sharif came upstairs. He became unconscious and was taken to the hospital where he was under treatment for 20-25 days. In his examination-in-chief he identified the clothes he was wearing at the time of incident which were seized as also the knife used by Riyasat by which he inflicted the injury.

8. During his cross-examination, he denied the suggestion that he and Riyasat received injuries from a thief who entered in their house. He also denied a suggestion that he wanted to oust Riyasat from the house so he falsely implicated him. He also denied the suggestion that Riyasat suffered a fit on the day of incident or that he never met the police who recorded his statement. He stated that he was not having any enmity with the accused and that he was familiar with the accused. The knife was of Mohd. Anis and

the accused was not having any weapon. He further denied the suggestion that Riyasat attacked on him. He also denied the suggestion that he received injuries in an assault and he had not named Riyasat as he had not sustained injuries on him.

9. Mohd. Anis corroborated the testimony of Mohd. Alam given by him in his examination-in-chief. He further stated that on 8th December, 2014 around 5:00A.M., when he got up and started the motor for water, Riyasat also got up and without any reason, inflicted injuries on his back with a knife. The said knife belonged to them and was used as a meat chopper. He also identified the clothes and the knife used for inflicting injuries.

10. Mohd. Sharif deposed in sync with his statement made before the police.

11. Mohd. Izraul (PW-4) stated that he used to work at the dhaba with Mohd. Alam and Mohd. Anis. Riyasat had come to the dhaba in the evening of 7th December, 2014 and had stayed over for the night. He was sleeping on the ground floor of the dhaba whereas Mohd. Alam, Mohd. Anis and Riyasat were sleeping on the first floor. At about 5:00 A.M., he woke up hearing the noise '*Bachao Bachao*' coming from the first floor. In the meantime, Mohd. Anis came running downstairs who had a stab wound on his back, bleeding injury on his neck and his shirt was soaked with blood. He made a call to Mohd. Sharif (owner of the dhaba) who came to the dhaba. They went to the first floor and saw Riyasat having a knife. Riyasat showed the knife to them. He got frightened and came downstairs. In the meantime, Riyasat stabbed Mohd. Alam.

12. Dr. Durgesh (PW-5), Sr. Medical Officer, RML Hospital, Delhi stated that he had medically examined Mohd. Alam on 8th December, 2014 at

about 6:50 A.M. and prepared the MLC (Ex. PW-5/A). On examination, a clean cut /sharp wound measuring 4 X 2.5 cm oblique was found over the right inguinal area through which bowel was coming out. He referred him to Surgery Emergency for treatment. He also medically examined Mohd. Anis on the same date at about 6:55 A.M. and prepared the MLC (Ex. PW-5/B). On examination, a transverse cut wound with sharp margin at middle of upper back measuring 3 X 1 cm and a long reddish bruise measuring 5 X 2.5 cm at the right thigh were found. He was also referred to Surgery Emergency for treatment. He further medically examined Riyasat on the same day at about 7:20 A.M. and prepared the MLC (Ex. PW-5/C). On examination, bilateral ecchymotic eyes (blackening around eye) with sub-conjunctival hemorrhage, swelling over both cheeks, another swelling of 4 X 3 cm on right forehead, linear lacerated wound over the right parietal area of scalp, a cut wound over anterior neck 1.5 cm with sharp margins and laceration over right hand and palm were found. He too was referred to Surgery Emergency for further treatment.

13. Dr. Rajinder (PW-9), Sr. Resident (Surgery Department), Dr. Ram Manohar Lohia Hospital, Delhi stated that he was deputed to depose on behalf of Dr. Zuber Khan as he had left the services of the hospital. He identified the handwriting and signatures of Dr. Zuber Khan who had given the surgical opinion on the MLCs of Mohd. Anis and Mohd. Alam. He opined that Mohd. Anis had sustained simple injury whereas Mohd. Alam had sustained injuries dangerous to life.

14. Learned counsel for the appellant contends that the witnesses having not supported the case of the prosecution, his conviction is required to be set aside. As noted above, in his examination-in-chief Mohd. Alam deposed

about the sequence of events which he stood by even in his cross-examination, however, in the later part of his cross-examination he did say that it was wrong to suggest that Riyasat attacked him or that he received injuries in an assault and that he had not named Riyasat as he had not sustained injuries to him. The said statement cannot be read in isolation and the testimony of the witness has to be read in entirety. It was when repeated suggestions were made contrary to the prosecution case and in the midst one or two positive suggestions were made that the witness apparently fumbled. Further, Mohd. Alam is not the only injured. Besides Mohd. Alam, Mohd. Anis also sustained injuries in the incident and has stood by the cross-examination. He denied the suggestion that he had sustained injuries from the hands of some thief during scuffle who had come to commit theft at the dhaba or that Riyasat had not inflicted any injuries on his person. He however admitted that he did not like stay of accused Riyasat in the dhaba. Be that as it may, even if Mohd. Anis did not like the stay of Riyasat in the dhaba the same was no reason to have inflicted injuries as noted above to Mohd. Anis and Mohd. Alam. The evidence of Mohd. Alam and Mohd. Anis is duly corroborated by Mohd. Sharif, the elder brother of Mohd. Alam who was the owner of the dhaba and as Mohd. Alam clarified, he was residing in the vicinity and immediately reached the dhaba.

15. Testimony of injured witnesses cannot be discarded by labeling the same as testimony of interested witnesses. The testimony of the injured witnesses namely Mohd. Sharif and Mohd. Izraul is duly corroborated by the MLCs of the two injured. The witnesses have also explained that Riyasat was apprehended at the spot, beaten by the persons in public and the injuries on Riyasat corroborate the said fact for the reason he had blackening around

the eyes, swelling on the cheeks and forehead and lacerated wound on the skull besides the hand and palm.

16. Explanation of Riyasat in his statement under Section 313 Cr.P.C. was that he was falsely implicated in the case however, he led no evidence. As noted above, he gave the suggestions to the witnesses that they sustained injuries in a scuffle with the thief and that they did not like Riyasat's staying with them. The former fact has been denied by both Mohd. Alam and Mohd. Anis whereas the latter fact has been admitted by Mohd. Anis. However, the same does not absolve Riyasat of the offence committed by him.

17. Considering the testimony of the injured witnesses besides Mohd. Sharif and Mohd. Izraul duly corroborated by the medical evidence, this Court finds no error in the impugned judgment of conviction. The appellant has been awarded sentence of imprisonment for a period of seven years and to pay fine as noted above. Considering the nature of injuries caused to Mohd. Alam which were dangerous in nature resulting in the bowel coming out, this Court finds no ground to modify the sentence of the appellant.

18. Appeal is accordingly dismissed.

19. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

20. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 11, 2018

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