

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

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Decided on: January 11, 2018

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CRL.A. 865/2016 & Crl.M.A. 14384/2017

DHEERAJ @ SONU

..... Appellant

Represented by: Mr. Imran Khan, Advocate

versus

STATE

..... Respondent

Represented by: Mr. Amit Gupta, APP for the
State with ASI Naveen,
PS Subzi Mandi

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Vide impugned judgment dated February 20, 2015, appellant, along with 12 other co-convicts, was convicted for the offences punishable under Sections 307/186/332/353/148/342/440/120-B IPC. Vide order on sentence dated March 27, 2015, he was awarded sentence to undergo rigorous imprisonment for a period of nine years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment for a period of one month for the offence punishable under Section 307 IPC besides varying sentence of rigorous imprisonment for other offences. Appeals of nine co-convicts were disposed of by this Court vide judgment dated May 31, 2016. Appeal of co-convict Rihan @ Gaon Wala was dismissed as withdrawn vide order dated January 12, 2017. Since two other co-convicts namely Dharam

and Satpal Bedi have not filed their appeals, this Court is now concerned with the present appeal filed by appellant Dheeraj @ Sonu.

2. Brief facts of the prosecution case are noted in the judgment of this Court dated May 31, 2016 as under:

"2. The sequence of events leading to the registration of FIR No.118/2011 at PS Subzi Mandi under Sections 307/186/333/353/148/342/440/120-B IPC exhibited as Ex.PW-2/A are that one FIR No.207/2011 was registered at PS Uttam Nagar under Sections 307/34 and 27 Arms Act wherein Bimla the informant, mother of Ajay @ Ajju suffered a firearm injury on her right thigh. In the said FIR Khalil Ahmed PW-6 and Akbar Khan PW-7 besides Aftab and Neeraj Gupta were arrested which led to animosity between appellant Ajay @ Ajju and witnesses Khalil Ahmed and Akbar Khan, all three of whom were lodged in Jail. On June 06, 2011 Khalil Ahmed, Akbar Khan and Ajay @ Ajju were to be produced in Tis-Hazari Court from Tihar jail and Rohini Jail. Thus they were taken to Tis-Hazari lockup. At around 12.30 PM HC Om Prakash PW-5 and Constable (in short „Ct.“) Tej Prakash returned with Ajay @ Ajju to the lockup after producing him before the Court. As soon as the door of High Risk kharja was opened, 9-10 Under Trial Prisoners (in short „UTPs“) forcibly rushed out of the said kharja. In the meanwhile UTPs, namely, Gomti @ Manoj (co-accused), Anil (co-accused) and Deepak (co-accused) also returned to the lockup after attending the proceedings of their respective cases. Thereafter all of them started yelling that they would kill Khalil Ahmed PW-6 and Akbar Khan PW-7 as they had fired at the mother of Ajay @ Ajju (co-accused). The accused persons bolted the main entry gate of the lockup from inside in order to prevent the police officials from entering. Further, they broke an iron bench which was lying in the lockup and grabbed the iron pieces of the bench. The accused persons tore the warrants. They broke open the lock of SAG kharja in which Akbar Khan PW-7 was kept with the iron rods/pieces of the bench. Khalil Ahmed PW-6 was not present in the said SAG kharja at the said time as he had been taken to attend the

proceedings of the case in which he was arrayed as accused. The accused persons started beating Akbar Khan PW-7 with the broken iron rods/pieces of the bench. When Ct. Tej Prakash PW-3 along with other police officials tried to intervene, co-accused Gomti @ Manoj struck on the head of Ct. Tej Prakash PW-3.

3. In this regard DD No.16 Ex.PW-1/A was received at Police Post Tis Hazari where after SI Satbir Singh PW-21 and Ct.Pawan Kumar PW-16 reached Tis Hazari lockup. Ct.Tej Prakash PW-3 was admitted in Aruna Asaf Ali hospital and had suffered a linear cut injury on the right temporal region. Akbar Khan PW-7 was taken to Sushruta Trauma Centre and as per MLC Ex.PW-8/A he suffered the following injuries:

- “i) Six contused lacerated wounds over parietal, B/L temporal and occipital region of skull.*
- ii) A contused lacerated wound admeasuring 3 cm over forehead.*
- iii) An incised wound admeasuring 3 x 1 cm over chin.*
- iv) An incised wound admeasuring 1 cm over right postero-superior of neck.*
- v) Swelling along with a laceration admeasuring 2 cm over right mid forearm.*
- vi) An incised wound admeasuring 3 cm over left little finger [partial amputation].*
- vii) Deep abrasion over right heel pad.*
- viii) Abrasion over the right shoulder joint and swelling over left elbow joint.*
- ix) Abrasion over right ...(illegible) region of abdomen and ...(illegible) aspect of chest.”*

4. Injuries No. 1, 2, 5, 7, 8 & 9 on Akbar Khan were opined to be caused by blunt object whereas injuries No.3, 4 & 6 were caused by sharp object. The nature of injuries was opined to be grievous. Since Ct.Tej Prakash was declared fit for statement, his statement was recorded on the basis of which FIR No.118/2011 was registered at PS Subzi Mandi.

5. Ct.Tej Prakash stated that he was posted at Vikas Puri Lines and on June 06, 2011 he along with HC Om Prakash high

risk Guard had brought high risk UTPs to the lockup at Tis Hazari. He along with HC Om Prakash had produced UTP Ajay S/o Ram Kishore in Court No.152 before the learned Metropolitan Magistrate in FIR No.64/2011 under Section 325 IPC PS Hari Nagar. After completion of proceedings before the Court, he along with HC Om Prakash brought Ajay to the lockup and the moment they entered the high risk kharja after opening the door suddenly 9-10 high risk prisoners who were locked inside, came out of the kharja forcibly. In the meantime high risk UTPs Gomti, Anil and Deepak who had also attended their proceedings reached the kharja. They all started shouting that Khalil and Akbar Khan have got fired Ajay's mother and they would be killed. These accused persons closed the latch of the main entry gate of the kharja from inside so that Police staff could not enter in and broke the iron bench in the gallery of the kharja. They held the pieces of the iron bench lying in their hand. They tore the warrants in the hands of the Police staff. From the iron pieces of the bench they broke open the lock of SAG kharja where Khalil and Akbar Khan were locked. He clarified that Khalil was not in the kharja as he had been taken for the proceedings before the Court. The accused assaulted Akbar Khan with the iron pieces from the bench with an intention to kill him and stated that they would finish him. When he and other police staff entered to stop the scuffle, UTP Gomti inflicted an injury on his head and others also beat him. The UTPs also injured themselves deliberately. He was brought to the hospital and discharged after treatment. According to him Ajay and his companions in a pre-planned manner attacked Akbar Khan to kill him.

6. SI Satbir Singh PW-21 took into possession and seized samples of blood found near the gate of high risk kharja, torn government papers (warrants), two iron handcuffs with chain, two pieces of broken iron bench, a piece of blood stained newspaper, sample of blood collected near SAG kharja, a blood stained piece of commode, a pair of blood stained slippers, two pages of blood stained handwritten letter, sample of blood present on a register over the warrant table, hair found outside SAG kharja, one broken lock and a blood stained white kurta

vide Seizure Memo Ex. PW 3/B in the presence of Ct. Pawan Kumar PW-16 and Ct. Tej Prakash PW-3.

7. *After Akbar Khan was declared fit for statement at 6.15 PM on June 06, 2011 his statement under Section 161 Cr.P.C. was recorded. SI Satbir Singh sought opinion with regard to the weapon of offence by filing an application to the Sushruta Trauma Centre on which Dr.J.K.Basu after examining the two hollow iron rods Ex.P-4 opined that the possibility of injuries No.1, 2 & 5 mentioned in Ex.PW-8/A, the MLC of Akbar Khan PW-7 having been sustained due to the impact of aforementioned weapon could not be ruled out.*

8. *At the time of framing of charge Vikram was discharged whereas Naim passed away during trial. Thus the present appeals before this Court."*

3. The testimony of the relevant witnesses as noted in judgment of this Court dated May 31, 2016 is as under:

"17. Before dealing with the rival contentions, it would be appropriate to note the testimony of the relevant witnesses before the Court. Ct.Tej Prakash PW-3 deposing in sync with his statement on the basis of which FIR was registered stated that when Ajay was sent inside the high risk lockup, at that time 4-5 UTPs of the high risk lockup forcibly came out of the door of the kharja and UTPs Gomti, Anil and Deepak also came in the kharja after their peshi and they started shouting that they would kill Khalil and Akbar Khan as they have got fired on the mother of Ajay. The above-named UTPs bolted the latch of the kharja so that the Police personnel could not enter the kharja. They picked up the pieces of iron after breaking the bench and proceeded towards SAG kharja and broke the lock of the same. UTP Akbar was inside the kharja and the above-named UTPs along with others started beating Akbar Khan with the pieces of iron bench by threatening him. He along with other Police Personnel intervened to save Akbar Khan when UTP Gomti hit him on the head with the piece of iron bench. They were controlled by the other Police personnel. In Court he identified the accused involved in the incident by saying "the other

accused persons present in Court today are the same Under Trial Prisoners who were attacking Akbar Khan". In cross-examination he admitted that he could not identify each of the UTP by their name and that he could also not identify Deepak, Anil and Ajay @ Ajju by their name.

18. HC Gulab Singh was examined as PW-10 who claimed to be an eyewitness. According to HC Gulab Singh after Ajay and 2-3 other accused entered inside the kharja, other accused persons namely Shabir, Dharm, Naim, Rehan, Gomti, Deepak, Shukla and Jain came out of the lockup, they tore the warrants, broke the bench of the lockup, broke the lock of the lockup, entered inside SAG lockup and started beating Akbar Khan. Police officials intervened and controlled the accused persons and put them in separate kharjas. He identified that all the accused persons present in the Court except Naim who was not present, as the accused who had inflicted injuries to the Police officials who were on the duty in the lockup. In cross examination PW-10 admitted that he had never participated in a judicial TIP and had never identified any accused person before the investigating officer. He also admitted that his statement under Section 161 Cr.P.C. was recorded on July 04, 2011. He also admitted that CCTV was installed inside the lockup including SAG and other kharjas and was in an operative mode on June 06, 2011. Reliance cannot be placed on the testimony of HC Gulab Singh PW-10 for the reason his statement under Section 161 Cr.P.C. was recorded after nearly one month. He did not know the accused by name and only could identify them on being produced. He has identified the accused for the first time in Court on January 28, 2014 after a period of 2½ years and it was not possible for him to have known their faces so well except the one whom he would have produced in Court or had the occasion to sit with them for quite some time. This witness in his cross-examination admitted that he was outside the cell when the incident took place and what was happening inside the lockup was not visible from outside.

19. HC Rakesh PW-12 also deposed in sync with the testimony of HC Gulab Singh PW-10. He stated that when Ajay was being brought back into the lockup, Ajay, Shabir, Rehan,

Satpal Bedi, Dharm, Gomti, Sunil, Naim, Rahul Jain and some more persons started shouting and abusing. He narrated about the incident. In his cross-examination he stated that he had witnessed the incident in question, however he admitted that he was outside the cell at that time and from outside the cell what was happening inside the lockup was not visible. He also admitted that he never identified any of the accused in judicial TIP nor before the investigating officer and that his statement was recorded on the same day i.e. June 06, 2011. However, from the record it is evident that statement of HC Rakesh under Section 161 Cr.P.C. was recorded on July 04, 2011 and not June 06, 2011. Thus this belated statement of HC Rakesh with no judicial TIP or identification before the investigating officer and identification for the first time in the dock after a period of more than 2 and a half years cannot be relied upon. Moreover this witness himself admitted that he was outside and could not see what happened inside the lockup.

21. HC Rajeev PW-13 who was posted as MHC in ODI lockup Tis Hazari deposed about the incident and that both Akbar Khan and Tej Prakash received injuries and were taken to the hospital. He stated that he was inside the lockup and witnessed the incident. Though having witnessed the incident he does not name or identify any of the appellants present in the Court. Thus testimony of HC Rajeev is of no avail as he has neither named any of the appellants nor identified them in the Court.

22. HC Ram Bhajan PW-15 though in his examination-in-chief stated that on June 06, 2011 Ajay @ Ajju, Shabir Ali, Neeraj, Sunil, Rehan, Dharm, Naim, Rahul Jain, Shukla and Satpal Bedi were inside lockup of high risk kharja and when Ajay entered the lockup, Ajay along with these accused started abusing, the other accused started making noise and after using the force came out and tore the warrants. However in the dock he was able to identify only 4 accused namely Amit Shukla, Rehan, Rahul Jain and Anil. In cross-examination this witness stated that he had not seen the incident and was outside kharja and that on the day he was not performing his duty at harja. His duty was only to bring the accused persons from jail to kharja

lockup and thereafter to produce them in the Court. This witness has rightly not been relied upon by the learned Trial Court and discredited.

23. Akbar Khan was examined as PW-7. However he had not supported the prosecution case and stated that he was hit by somebody on his head from behind the back and he did not know who the persons were. He was confronted with his statement recorded under Section 161 Cr.P.C. by the learned APP which he denied.

24. HC Om Prakash who had brought Ajay from the Court Room No.152 Tis Hazari Courts along with Ct.Tej Prakash and re-admitted Ajay into the lockup when the incident took place stated that he had not witnessed who quarrelled with the UTPs and could not identify them."

4. From the testimony of the witnesses it is evident that the name of Dheeraj @ Sonu does not surface in the statements recorded immediately and thereafter as well. Thus appellant is entitled to grant of benefit of doubt.

5. The impugned judgment of conviction and order on sentence are therefore set aside. Appellant is directed to be released forthwith, if not required in any other case.

6. Appeal and application are disposed of.

7. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

8. TCR be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 11, 2018
‘anu/ga’