

\$~12.

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

+ **Date of Decision: 13.03.2015**

% **CRL.A. 179/2015**

SAFIQ @ SIPLIAN

..... Appellant

Through: Mr. Birendra Kumar Jha &
Mr. Manish Kumar, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Lovkesh Sawhney, APP along
with SI Sumer Chand, PS-Nabi
Karim, for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present appeal assails the judgment dated 17.11.2014 passed by Ms. Hemani Malhotra, Additional Sessions Judge-05 (Central), Tis Hazari Courts, Delhi in Sessions Case No.61/2014 arising out of First Information Report (FIR) No.116/2010 registered at Police Station Nabi Karim under Sections 307/ 324 I.P.C. titled *State Vs. Shafiq @ Siplian*; and the order on sentence dated 19.11.2014.

2. By the aforesaid judgment, the appellant was convicted under Section 307 I.P.C., and, thereafter, sentenced to undergo Rigorous Imprisonment (RI) for a period of four years.

3. The case of the prosecution is that the injured Niyaz is engaged in the business of manufacturing belts at A-375, Amar Puri. The appellant Shafiq was working in the factory of the injured/ complainant. Khalikul, brother of the appellant, who was a habitual drunkard, was also working in the factory of Niyaz. On 11.09.2010, injured Niyaz terminated the services of Khalikul, due to which appellant Shafiq was annoyed with the complainant. On 14.09.2010, at about 11:30 p.m., the appellant Shafiq after consuming alcohol came to the complainant and demanded Rs.500/- to consume more alcohol. Niyaz asked the appellant to go to sleep and promised to give Rs.500/- in the morning. On refusal to give money, appellant Shafiq broke two tube lights and picked up a scissor lying on the ground and stabbed the complainant on his abdomen. On hearing the commotion, Badrujawa, cousin of appellant Shafiq came to the spot, slapped him, snatched the scissor from him and threw it on the table. Upon seeing the blood oozing out from the injuries suffered by the injured, the appellant Shafiq fled from the spot. The injured was, thereafter, removed to Lady Hardinge Medical College (LHMC) for his medical treatment with the assistance of his employee, Mohd. Shamsheer, who had also witnessed the incident. The injured was given treatment at LHMC and discharged on the same day. The first information statement of the injured was recorded on the following day. The appellant was, thereafter, apprehended.

4. The prosecution examined the injured/ complainant as PW-1, and the eye-witness Shamsheer as PW-2. They fully supported the case of the prosecution, and apart from trivial and immaterial discrepancies, their testimonies could not be shaken in their cross-examination.

5. The prosecution also examined the doctors, who attended to the injured and conducted investigation. The MLC recorded the injury on the injured as 'simple'. The patient was conscious oriented. His vitals were stable. There was a stab wound over the upper abdomen on the right side. The injured was relieved from the hospital after treatment and asked to report for follow-up after a week. As per the findings of the CT Scan, *"there was an irregular linear tract suggestive of stab injury within the subcutaneous tissue in the anterior abdominal wall with bulky appearing underlying rectus muscle. The visualized liver spleen, kidney, pancreas and bowel loops appear unremarkable"*.

6. The submission of learned counsel for the appellant is that the offence under Section 307 I.P.C. was not made out in the facts & circumstances of the case since, even according to the prosecution, the incident took place at the spur of the moment while the appellant was in an intoxicated state, and there was no prior design or pre-meditation to cause the death of the injured. He was not carrying any weapon and the injury was caused by picking up the scissor, which was picked up from within the factory premises. The injury was also not inflicted with the intensity so as to cause any grievous hurt, and the injury was found to be 'simple'.

7. The aforesaid circumstance, in my view, rule out any prior pre-meditation or design on the part of the appellant to cause the death of the injured. It cannot be said that the appellant had the intention to murder the injured. In view of the aforesaid, in my view, the conviction of the appellant under Section 307 I.P.C. is not made out. However, considering the circumstances, it is evident that the offence under Section 324 I.P.C. is

clearly made out in the facts of this case. Learned counsel for the appellant has also not contested this position.

8. Accordingly, the conviction of the appellant is converted to one under Section 324 I.P.C. The appellant has already undergone nearly one year and two months incarceration. Since the appellant is a young man with a family to support, the appellant is sentenced to the period already undergone. The appellant be released forthwith, unless he is required to be detained in any other case.

9. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

MARCH 13, 2015

B.S. Rohella

