

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

Reserved on: 15.07.2015

Date of decision: 17.07.2015

+ **CRL.A. 417/2011**

MOHD. MEHBOOB ALAM Appellant

Through: Ms. Rakhi Dubey, Adv.

versus

STATE (GOVT OF NCT) DELHI Respondent

Through: Mr. Yogesh Verma, APP for
the State with SI Vijay Singh,
P.S. Civil Lines

+ **CRL.A. 396/2014**

SALIM @ KALIYA Appellant

Through: Ms. Alpana Pandey, Adv.

versus

STATE Respondent

Through: Mr. Yogesh Verma, APP for
the State with SI Vijay Singh,
P.S. Civil Lines

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. Both the Appeals have been heard together and a common judgment is being delivered.

2. The appellants impugn the judgment and order of conviction dated 16.11.2010/ 24.11.2010 whereby they have been convicted under section 307/34 Indian Penal Code (IPC for short) and have been sentenced to undergo RI for 10 years, fine of rupees 10,000/- and in default SI for one month.

3. The appellants have been charged for attempting to kill Ramesh Bahadur (PW7) by means of knife. Ramesh Bahadur, injured (PW7) has deposed that on 20.08.2009 while he was coming to ISBT from Jahangir Puri on a public conveyance, the appellants met him on the way as they also boarded the same vehicle from Azad Market. The appellants are stated to have asked Ramesh Bahadur (PW7) to join them for drinks. After initial reluctance, PW7 along with the appellants got down from the bus at the red light of Baraf Khana. Appellant Mehboob purchased a bottle of liquor for which money was given by appellant Salim. PW7 admits to have been intoxicated. Appellant Salim asked PW.7 whether he was willing to work with him. PW7 refused such a proposal as appellant Salim and his associate had criminal background.

4. PW 7 has stated that he and Appellant Salim came on the road with their hand clasped together. It is alleged that at that time, appellant Mehboob gave a knife blow in his abdomen. The blade portion of the knife remained inside his stomach whereas the butt of the knife was left behind in the hand of Appellant Mehboob. The appellants, ignoring the entreaties of PW 7 of reaching him to the hospital, ran away from the place of occurrence. PW7 became

unconscious and regained his consciousness in the Trauma Center where his statement was recorded by the police.

5. Ramesh Bahadur PW7 remained in the hospital for one month.

6. Ruby Kumari (PW1) has deposed that on 20.08.2009 while she was posted as casualty medical officer in Aruna Asaf Ali Government Hospital, she examined one unknown patient brought by Constable Vijay (PW15) with the history of Patient being found on road side near Ashoka Market. The patient was drowsy and was responding poorly to the commands. He had a stab injury in his abdomen. After resuscitation measures, she referred the patient to a surgery specialist for further management. The MLC (Ex. PW1/A) was proved by PW1.

7. Dr. JK Basu (PW8) CMO, Sushruta Trauma Centre, has proved the complete case file (Ex. PW8/A) of PW7 which indicated that PW7 was operated by Dr. Mrinal (PW20) and Dr. Gaurav, Senior Residents of the Hospital.

8. From the testimony of Ruby Kumari, (PW1), Dr. JK Basu (PW8) and Dr. Mrinal (PW20), it stands established that Ramesh Bahadur (PW7) suffered serious injuries in his stomach by means of knife.

9. Ramesh Bahadur (PW7) has categorically deposed about the appellants being the perpetrators of the crime. He claims to know them from 6 months prior to the incident.

10. PW7 has denied the suggestion that after coming out from jail in connection with some case, he stayed at the house of Appellant Mehboob where some dispute had erupted forcing him to leave the house.

11. Head Constable Sube Singh (PW13) has testified to the fact that on pointing out of a secret informer appellant Mebhoob was apprehended from the first floor of the house in Vijay Colony. At the same time appellant Salim also came there and he too was arrested (Arrest memo Ex PW13/A and PW13/B).

12. Rajender Singh, ASI (PW2) has deposed that he was in-charge of PCR van and on being instructed from the control room, he reached Aruna Asaf Ali Government Hospital and removed PW7 (Injured) to Trauma Center.

13. The deposition of witnesses during trial clearly made out a case against the appellants under Section 307/34 IPC.

14. In their statements recorded under Section 313 of the Code of Criminal Procedure (Cr. PC. for short), the appellants denied their participation in the crime and claimed false implication because of old enmity.

15. Appellant Salim @ Kalia led a defence witness namely Sh. Salman (DW1) who has stated before the Trial Court that on the day of the occurrence the appellant Salim @ Kalia was with him and no

quarrel had taken place. Appellant Salim is stated to be a tea vendor at Chandni Chowk.

16. There is no gainsaying that the appellants inflicted such bodily injury on PW7 which they knew that it could cause death and otherwise also, the injury was sufficient in the ordinary cause of nature to cause death. The appellants were identified by PW7.

17. Prosecution, through the 20 witnesses examined on their behalf proved the prosecution case beyond all reasonable doubts.

18. Defending the cases of the appellants, the learned advocates submitted that the deposition of PW7 was highly redolent with doubts and suspicion as he had become unconscious and during his unconsciousness, he was brought to the hospital. No one was found by the police personnels at the place of occurrence. It has been further submitted that in the event of the appellant being so well known to PW7, there was no reason or motive for inflicting such bodily injury on him. Admittedly the appellants and PW7 consumed liquor together. The testimony of PW7, it has been argued, does not indicate any serious fight or dispute so as to lend credence to the prosecution version that on heated exchange of words, Appellant Mehboob stabbed PW7 whereas appellant Salim @ Kalia held the hands of PW.7.

19. It has been submitted that there is no eye witness to the occurrence and no public person has come forward to support the

prosecution version. The appellants, as submitted by the learned Advocates, have being convicted on the solitary testimony of PW7.

20. This court finds no reason to disbelieve PW7.

21. Motive does not play any relevant role in a criminal case. The motive, impelling commission of a crime is perhaps only known to the perpetrator of the crime. Ramesh Bahadur (PW7) does not appear to have any motive or reason for falsely implicating the appellants. Assuming the statements of the appellants under Section 313 of Cr.P.C. to be ex-facie true, then also there is no reason to falsely implicate the appellants.

22. The learned Advocates appearing for the appellants have, in the alternative, argued for modification of the sentence imposed on the appellants, considering their age, vocation, poor economic background and they being the bread earners for their respective families, keeping in mind the reformatory aspect of sentencing a convict.

23. As a result of the above noted discussion, this court finds no fault with the judgment of conviction for the offence under Section 307 with the aid of Section 34 of IPC. The conviction, therefore, is sustained and affirmed.

24. The appellants, it is stated, have remained in jail for more than 5 years.

25. Considering the mitigating circumstances in favour of the appellants namely their age at the time of the occurrence, absence of

any preparedness for commission of crime, intoxication, nature of commission of crime that is lack of depravity and suddenness of fight over a petty squabble, the sentence imposed upon the appellants is modified and reduced to the period of custody which they have already undergone.

26. The appeal is dismissed but with the modification in the sentence as stated above.

ASHUTOSH KUMAR, J

JULY 17, 2015

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