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

+ CRL.A. 409/2011

Date of decision: 17.11.2015

UMESH

..... Appellant

Through: Mr. Chetan Lokur, Adv.

versus

STATE

..... Respondent

Through: Ms.Alpana Pandey, APP.
SI Om Parkash, P.S Badarpur.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Umesh was charged for the offence under Section 307/324/34 of the IPC but has been convicted only under Section 324/34 of the IPC and has been sentenced to undergo rigorous imprisonment for three years, fine of Rs.2000/- and in default of payment of fine simple imprisonment for 15 days for the offence under Section 324/34 of the IPC by judgment and order dated 8.12.2010/13.12.2010 passed by the Additional Sessions Judge/Fast Track Court, Patiala House Courts, New Delhi in S.C No.48/10 arising out of FIR No.441/06 (P.S.Badarpur).

2. Umesh (appellant) and one Om Shiv were handed over to the police by members of the public on 02.06.2006. An information was received in the police station on 02.06.2006 (DD No.89B) that some

persons have been injured. Pursuant to such an information, ASI Mohinder Singh (PW-22) along with Constable Bachu Singh (PW-10) reached the place of occurrence at Badarpur where the members of the public, after beating the appellant and co-accused, handed them over to the police. The police was informed that the aforesaid two persons had inflicted injuries on Balvinder Singh (PW-1); Ranjeet Singh (PW-2); Gurmeet Singh (PW-3), Rajender (PW-4) and Santosh Kumar (PW-5). A blood stained knife was recovered from the possession of Om Shiv whereas a farsa is stated to have been recovered from Umesh, the appellant.

3. The IO (PW-22), on learning that the injured persons have been shifted to hospital, visited the hospital and obtained the MLC of the injured persons.

4. Balvinder Singh (PW-1) gave his statement that a scuffle took place between the boys who were dancing in a marriage party. One of the miscreants hurled a knife blow on his person but he could manage to ward off that attack. Another person tried to inflict knife injuries but PW-1 caught hold of the butt of the knife. In the process, he injured himself. When his brother-in-law came to his rescue, he too was given a knife blow. Gurdeep, another friend of PW-1 was assaulted on his head by means of farsa by one of the miscreants. Other persons who were participating in the marriage party were also injured by the accused persons. Two of the miscreants, one being the appellant, was apprehended by the members of the public whereas others managed to run away.

5. On the basis of the aforesaid statement made by PW-1 (Ex.PW-1/A), FIR was registered and after investigation the appellant and another were chargesheeted.
6. As against the appellant, charge under Section 307, 324 and 34 of the IPC was framed on 29.07.2009.
7. In order to bring home charges against the appellant, 24 witnesses were examined on behalf of the prosecution.
8. Balvinder Singh (PW-1) and other injured persons namely Ranjeet Singh (PW-2); Gurmeet Singh (PW-3), Rajender (PW-4) and Santosh Kumar (PW-5) have supported the prosecution version.
9. The MLCs of Ranjeet Singh (PW-2) (Ex.PW-16/A); Balvinder Singh (PW-1) (Ex.PW-18/A); Prem Singh (Ex.PW-18/C); Kamal (Ex.PW-18/B); Gurmeet (PW-3) (Ex.PW-17/A); Santosh Kumar (PW-5) (Ex.PW-17/C) disclosed injuries on their persons. The injuries have been opined to be caused by sharp weapon but simple in nature. The MLC of Rajender (PW-4) (Ex.PW-17/B) shows signs of interpolation. Initially, the injury on Rajender was stated to be simple and caused by blunt substance but it was later changed to grievous and sharp.
10. Dr.Sunay Mahesh (PW-15) has deposed that he prepared the MLC of Ranjeet and Balvinder which are exhibited as Ex.PW-15/A & B. Dr.Akhilesh Tiwari (PW-16) has testified to the fact that he had examined Ranjeet and had prepared his MLC (Ex.PW-16/A), where he opined the injury to be simple caused by sharp cutting weapon. Similarly, Dr.Shaleen Prasad (PW-17) has stated that he had examined injured Gurmeet and Rajender and had prepared their MLCs (Ex.PW-17/A and B respectively). He has also examined Santosh Kumar and

has prepared his MLC which has been exhibited as PW-17/C. The injuries, according to PW-17 on the person of the aforesaid witnesses has been opined to be simple in nature. Dr.Ajay Gandhi (PW-18) has testified to the fact that Balvinder Singh (PW-1) and Kamal were examined by Dr.Rajeev who prepared their MLCs namely Ex.PW-18/A & B respectively whereas Dr.R.N.Sharma examined Prem Singh and his MLC is exhibited as Ex.PW-18/C.

11. Thus from the deposition of the injured persons and the doctors who examined the aforesaid witnesses and on perusal of the MLCs referred to above, it stands established that an altercation took place while dancing in a marriage party where the aforesaid witnesses and others were injured by the accused persons. The fact that appellant was one of the person who was apprehended by the members of the public and was found to be in possession of farsa clearly establishes the fact that the appellant was one of the members of the group which had inflicted injuries on the aforesaid witnesses and others.

12. The occurrence is said to have been witnessed by Din Dayal (PW-8); Pati Ram (PW-9); Harbhajan Singh (PW-12); Sri Lal Chand (PW-13) and Prem Singh (PW-14). Out of the aforesaid eye witnesses, PWs.8, 9, 12 & 13 did not identify the appellant even though they supported the case of the prosecution regarding quarrel, date of incident and the factum of the appellant and another having been apprehended at the spot.

13. Pati Ram (PW-9) is incidentally the person whose daughter's marriage was being solemnised on the day of the occurrence. He has supported the prosecution version to some extent and has stated that

the appellant was member of the barat and was also related to the groom. He has also admitted the fact that the accused persons were beaten up by the baratis.

14. The version of PW-9 regarding marriage of his daughter is lent credence by the marriage card (Ex.PW-9/A).

15. Din Dayal (PW-8) though has been declared hostile but he has admitted before the Trial Court that the occurrence took place on 02.06.2006 in the marriage party of the daughter of PW-9.

16. Harbhajan Singh (PW-12) has deposed before the Court that in the night of the marriage, a quarrel had taken place but he could not identify the assailants as he was standing behind a bus. As a result of such statement, he was also declared hostile.

17. Shri Lal Chand (PW-13) only testifies to the fact that the appellant and one Om Shiv were apprehended. He does not claim to have seen any weapon in the hand of the appellant.

18. Thus none of the aforesaid witnesses namely PWs.8, 9, 12 & 13 have assigned any role to the appellant in their deposition.

19. The testimony of injured Balvinder Singh (PW-1) has been supported by Prem Singh (PW-14) and Arjun Singh (PW-6), both of whom are the eye witnesses to the occurrence. The aforesaid witnesses have spoken about the appellant being armed with a farsa whereas Om Shiv was said to be carrying a knife. The aforesaid witnesses have categorically stated that the appellant and his associate caused injuries to several persons. The knife and the farsa have been seized vide seizure memo (Ex.PW-6/A). The act of assault by the appellant and others have been supported, as has been stated earlier, by the other

injured witnesses namely PWs.2, 3, 4 & 6, all of whom have assigned specific role to the appellant.

20. The injured witnesses are the surest witnesses and there cannot be any doubt about their having given a correct account of the occurrence before the Court. Though, in the deposition of some of the injured witnesses, there are some discrepant notes but those are over trivial details and such discrepancies do not damage the prosecution case in its entirety.

21. SI Mahender (PW-22) is the IO of the case. He has deposed that on receipt of DD No.89B through Constable Bachu Singh (PW-10), he reached the place of occurrence along with Head Constable Mansoor Ahmed (PW-7) and Constable Bachu Singh (PW-10). He learnt that the appellant and Om Shiv had caused injuries to some of the persons and thereafter they were beaten up by the members of the public. He recorded the statement of Balvinder Singh (PW-1) in the hospital and after making his endorsement (Ex.PW-20/A) got the case registered. The appellant was arrested vide memo Ex.PW-22/E. The version regarding the arrest of the appellant is supported by PWs.1, 7 & 10.

22. The Trial Court, therefore, on perusal of the MLCs of the injured persons and the deposition of the witnesses, rightly came to the conclusion that no case under Section 307 of the IPC can at all be made out and only Section 324/34 of the IPC was attracted as against the appellant.

23. No fault could be found with the opinion and the reasoning of the Trial Court for convicting the appellant under Section 324/34 of the IPC.

24. The occurrence allegedly took place on 02.06.2006. The charges against the appellant was framed in the year 2009. Many persons are said to have been injured in a marriage party over a dispute which arose out of a trifle. The injuries suffered by the witnesses are all simple in nature but for one namely Rajinder, which was opined to have been grievously hurt. But the MLC of Rajinder shows signs of interpolation. Admittedly, a quarrel took place in the heat and spur of the moment. For the aforestated facts, the sentence imposed on the appellant (RI for three years) appears to be harsh and excessive.

25. It has been submitted on behalf of the appellant that he comes from a poor strata of society and has to look after his old and ailing parents.

26. From the nominal roll, it appears that the petitioner has remained in custody for more than six months.

27. With regard to the process of sentencing, judicial precedents suggest that the relevant considerations would be the facts and circumstances of the case; nature of crime; the manner in which it was planned and committed; motive for commission of the crime; the conduct of the accused; and the nature of weapons used. The aforesaid considerations are not exhaustive but only illustrative. All the above factors individually and collectively ought to form part of the consideration of the Court while sentencing a convict.

28. The fact that the occurrence took place in a marriage party, in the heat of the moment over as trivial an issue as dancing in the marriage party and the nature of injuries hurled by the appellant as

well as the nature of the weapon wielded by the appellant are all indicative of the fact that there was no pre-meditation, no diabolical approach in executing the crime or exceptional depravity in inflicting harm to others.

29. This Court is thus of the opinion that the interest of justice would be sub-served if the appellant is sentenced to the period of custody which he has already undergone.

30. Thus, while maintaining the conviction, the sentence imposed upon the appellant is reduced from three years to the period which he has already undergone. The imposition of fine is waived.

31. The appeal is partly allowed.

32. Two copies of the judgment be transmitted to the Superintendent of the concerned jail for compliance and record.

NOVEMBER 17, 2015
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ASHUTOSH KUMAR, J