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

+ Crl. A. No. 421/2011

Decided on 29th May, 2015

ASAD SIDDIQUI

..... Appellant

Through: Mr. K.K. Sud, Sr. Adv. with Mr.
Jayant K. Sud, Ms. Asha and Mr.
Arjun Drona, Advs.

versus

STATE

..... Respondent

Through: Mr. Yogesh Verma, APP for State
with SI Kishor Prasad, P.S. Sangam
Vihar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Appellant has been convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years with fine of ₹5,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of three months, by the trial court.
2. Aggrieved by his conviction and also the sentence handed down by the trial court, appellant has preferred this appeal.

3. The only argument canvassed by the learned senior counsel for the appellant is that trial court has erred in convicting the appellant under Section 307 IPC even though the ingredients of the said offence are not attracted in the facts and circumstances of this case.

4. It is contended that MLC Ex. PW12/A of PW2 Anand Gupta has been proved by PW12 Dr. Sugandha Arya by identifying the signatures of Dr. Amit Kumar, who had prepared the same. Dr. Amit Kumar did not step in the witness box to prove the opinion given by him. Even the Radiologist who had given the report that there was fracture in 4th metacarpal shaft of left hand of PW2 Anand Gupta was not produced in the witness box. Instead radiological report was proved by PW13 Dr. Yatish Aggarwal as Ex. PW13/B. Since the doctors, who had given the report/opinion, were not produced, the injury of PW2 Anand Gupta has to be taken as 'simple'. Other injured PW1 Vishal Gupta had sustained only simple injury, as per the MLC Ex. PW15/A on his parietal region by a blunt object, that is, an iron punch, which is not a dangerous weapon. He further contends that injury on the person of PW2 Anand Gupta was allegedly caused by a small sword which was not even recovered. It cannot be said that injury was caused by a dangerous weapon. No evidence was led before the trial court to prove that

weapon of offence was a dangerous weapon as dimension of the alleged sword was not given. It was also not proved that the small sword allegedly used was having sharp edges. There is nothing to suggest that weapon used was capable of causing death of a person.

5. Further that, as per PW1 Vishal Gupta and PW2 Anand Gupta, appellant had taken out a small sword from his bag and tried to hit PW1 Vishal Gupta when PW2 Anand Gupta caught hold of it resulting in injury to him in his palm. It is not the case that repeated blows were given. The nature of injuries, sustained by PW1 Vishal Gupta and PW2 Anand Gupta coupled with the circumstances in which same were inflicted on non-vital part of the body, makes it clear that appellant neither had an intention to cause death of PW1 or PW2 nor had knowledge that by his such acts he would have caused their death. Reliance has been placed on Chaman Lal vs. State MANU/DE/0470/2010, Narender Kumar Vs. State of Delhi, MANU/DE/0246/1980, Ashok Kumar vs. State, 1994 JCC 522 and Rajesh and Ors. Vs. State MANU/DE/0620/2010.

6. Prosecution case, as unfolded, is that appellant along with his accomplice Tarun Sharma came to the shop of PW1 and PW2 on 11th March, 2005 at about 2:45 PM and started abusing PW1. They also gave

fist and leg blows to him. Thereafter, appellant gave blows on the face and head of PW1 by an iron punch. On hearing cries of PW1, his father PW2 arrived there and caught hold of appellant from behind. At that stage, appellant took out a small sword from his bag and attempted a blow on his neck but PW2 caught hold of the sword from both his hands resulting injuries in both the palms of PW2. Thereafter, appellant along with his accomplice ran away.

7. A perusal of MLC Ex. PW15/A of PW1 indicates that he had sustained CLW measuring 2 X 1.5 cm on left parietal region besides swelling around the left eye and bruises on the face. Doctor has opined his injuries as “simple” caused by a blunt object. A perusal of MLC Ex. PW12/A of PW2 indicates that he had sustained CLW 10 X 1 cm on his right palm and left thumb. His injuries have been opined as “grievous”. It has also been mentioned in Ex. PW12/A that there was a fracture in 4th metacarpal shaft of left hand. No doubt, it is true that doctor, who had opined the injuries of PW2 Anand Gupta to be “grievous”, was not produced in the witness box and the MLC has been proved by PW12 Dr. Sugandha Arya by identifying the signatures of Dr. Amit Kumar, who is author of MLC Ex. PW12/A, but still the injuries of PW2 Anand Gupta cannot be

taken as “simple” in this case since prosecution has succeeded in proving that PW2 had suffered fracture in his left hand. PW12 Dr. Sugandha Arya has deposed that the nature of injury was “grievous” as there was fracture in 4th metacarpal shaft of the left hand. PW13 Dr. Yatish Aggarwal, Senior Specialist, Department of Radiology has categorically deposed that fracture of 4th metacarpal shaft was seen from a perusal of x-ray plate no. 1085 dated 11th March, 2005 regarding left hand of PW2 Anand Gupta. He has not only proved the X-ray report by identifying the handwriting and signatures of the author of report but has also perused the X-ray plate in the court and has given his personal opinion in this regard, which is sufficient to prove that PW2 had sustained a fracture in his left hand.

8. Section 320 IPC defines “grievous hurt”. Relevant it would be to refer to and rely upon the Section 320 IPC, which reads as under:

“Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

(First) — Emasculation.

(Secondly) —Permanent privation of the sight of either eye.

(Thirdly) — Permanent privation of the hearing of either ear,

(Fourthly) —Privation of any member or joint.

(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.

(Sixthly) — Permanent disfiguration of the head or face.

(Seventhly) —Fracture or dislocation of a bone or tooth.

(Eighthly) —Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

9. A perusal of aforesaid Clause seventhly of Section 320 IPC shows that fracture or dislocation of a bone or tooth, would amount to “grievous hurt”. Thus, prosecution has succeeded in proving that appellant had caused “grievous hurt” to PW2. However, prosecution has failed to prove that “grievous hurt” was caused by using a ‘dangerous weapon’. As per the FIR, a small sword was used. Dimensions of the ‘small sword’ have not been given in the FIR nor such weapon was recovered nor any evidence is there to prove that weapon used was a dangerous one. The injury of the PW2 Anand Gupta has been opined as “grievous” only on account of fracture suffered by him in 4th metacarpal shaft of the left hand and for causing such injury, it is not necessary to use a dangerous weapon. Thus, in my view,

ingredients of offence under Section 325 IPC are attracted and not of Section 307 IPC, in the peculiar facts and circumstances of this case.

10. Section 307 IPC envisages that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to, or to such punishment as is hereinbefore mentioned. It is, thus, clear that to bring home the guilt of an offender within the ambit and scope of Section 307 IPC, prosecution has to prove that offender had intention to cause murder and had knowledge that by his such act he could cause death of the person to whom he attacks. Intention and knowledge has to be gathered from the nature of weapon used, the number of the injuries inflicted, manner in which the weapon was used, seriousness of the resultant injury, severity of the blow, part of the body where injuries are inflicted and antecedent and subsequent conduct of the accused.

11. In *Rajesh* (supra), a Division Bench of this Court has held as under:

“To bring an offence within the ambit of Section 307 IPC the prosecution must establish actus reus and mens rea. The requisite intention be of any of the kinds referred to in Section 300 IPC and that knowledge being the alternative to intention in clause "fourthly" of Section 300, if established, it too would be sufficient. How do we gather the intention? It has to be gathered from the nature of weapon used, the number of the injuries inflicted, manner in which the weapon was used, seriousness of the resultant injury, severity of the blow, part of the body where injuries are inflicted and antecedent and subsequent conduct of the accused”

12. In Chaman Lal (supra), a Division Bench of this Court has held as under:

“It is settled law that to establish the charge punishable under Section 307 IPC it has to be established that the act of the accused was life threatening. It has to be proved that if by the act death would have resulted the offence would be that of murder, only then, upon the victim surviving is the offence of attempt to murder made out.”

13. Now coming back to the facts of this case, it is apparent that repeated blows were not given on the vital part of the body of PW2 Anand Gupta, who has suffered injuries on his left hand only. PW2 sustained fracture in left hand because of which his injuries have been opined as “grievous”. As

regards weapon of offence is concerned, it was not recovered, inasmuch as, no evidence is there to prove that it could have caused death of PW2. PW1 Vishal Gupta has sustained simple injury by blunt object as is evident from the MLC Ex. PW15/A, inasmuch as, he was discharged from the hospital after the medical aid was provided to him. From the nature of injuries coupled with the circumstances as narrated above, ingredients of offence under Section 307 IPC are not attracted.

14. For the foregoing reasons, appellant is acquitted under Section 307 IPC and convicted under Section 325 IPC.

15. Appellant was about 22 years of age at the time of incident. He has no previous criminal record. During the trial as also the pendency of the appeal, appellant has not involved himself in any other crime. During the course of hearing it has surfaced that father of the appellant has died last year due to the cancer. Wife of appellant is ailing from cancer. Appellant has responsibility of looking after his mother as well. Appellant has suffered incarceration for more than three months. Keeping in mind the totality of circumstances, appellant is sentenced to the period already undergone by him besides fine ₹30,000/- and in default of payment of fine to undergo

simple imprisonment for one year. Fine be deposited within six weeks. Out of the fine so deposited, ₹25,000/- be released to PW2 Anand Gupta.

16. Appeal is disposed of in the above terms.

A.K. PATHAK, J.

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