

\$~R-78 and R-79

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

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Date of Judgment: 03.09.2015

+ CRL.A. 658/2013
MANISH @ MANNI

..... Appellant

Through Mr.Dinesh Malik, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through Ms.Neelam Sharma, APP.

+ CRL.A. 659/2013
SUNNY

..... Appellant

Through Mr.Gurpreet Singh for Mr.Rajender
Chhabra, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through Ms.Neelam Sharma, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 These appeals have been directed against the impugned judgment and order of sentence dated 16.4.2013 and 20.4.2013 wherein the appellants Manish @ Manni and Sunny had been

convicted under Sections 307/34 of the IPC and each of them had been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.10,000/- in default of payment of fine to undergo SI for 6 months.

2 Nominal rolls of both the appellants Manish @ Manni and Sunny have been requisitioned. They reflect that as on date both the appellants have undergone incarceration of 3 years and 2 months which includes the remissions earned by them. Their jail conduct has been satisfactory.

3 Version of the prosecution was unfolded in the testimony of Juber examined as PW-2. The complainant was his friend Narender Kapoor examined as PW-1. As per the complainant, on 12.4.2011 at about 9.45 p.m. his friend (PW-2) came to his house in his motor cycle and asked him to have a dinner at a restaurant. The complainant sat on the pillion and they both reached opposite House No.4/460 where the appellant namely Manish @ Manni and Sunny were playing badminton. PW-2 blew horn asking him to give way but the appellant Manish asked him not to hurry. When PW-2 asked him again to give him way, appellant Manish held the handle of the motorcycle and started abusing PW-2. Manish slapped PW-2 as a result of which PW-2 fell down from the motorcycle. PW-1 tried to intervene but both the brothers (appellants) gave beatings to PW-1. Their mother and younger brother came out of their house and they tried to intervene. Manish went inside the house and brought out a knife and gave a blow to PW-2 on his chest; as a result of which PW-2 got injured and blood started to ooze out from his injury. The

accused persons managed to flee.

4 On the basis of the statement of PW-1 (Ex.PW-1/A) the rukka was sent and the FIR was registered. Statement of PW-2 was also recorded. The MLC of the victim was proved as PW-6/A where the injury noted upon his person was dangerous. There was an incised wound on his chest measuring 4 cm x 2 cm. The knife was recovered from the house of Manish and taken into possession vide memo Ex.PW-1/K. This knife was however not shown to the doctor to obtain an opinion on the MLC which as noted supra had opined the injury on the victim to be dangerous.

5 The plea of the appellants in their statement recorded under Section 313 Cr.P.C. was that they are innocent. On behalf of the appellants one witness was produced in defence. She was DW-1 (the mother of the appellants). She had deposed that two boys came into their house in a drunken condition. She had also received injuries. Her MLC was proved as Ex.DW-1/A which shows that she was medically examined on 12.4.2011 at about 10.42 p.m. and she had been advised X-ray of her elbow and right knee. No further medical record was produced.

6 On behalf of the appellants the main thrust of the learned counsel for the appellants is that the conviction of the appellants under Section 307 of the IPC is ill founded. There was no intention or knowledge on the part of the accused that by their act they could have caused the death of the victim; it was a sudden quarrel which had erupted while the appellants were playing badminton. The victim was coming on the motorcycle; there was no premeditation. The

injury suffered by the victim was also a minor injury. It was not even grievous. The conviction of the appellants can at best be under Section 324 of the IPC.

7 Needless to state that learned APP for the State has opposed these submissions. Submissions being that the impugned judgment calls for no interference.

8 Section 307 of the IPC reads as under:

“307. Attempt to murder.—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 [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—[When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death.]

9 To establish the ingredients of Section 307 of the IPC there must be intention or knowledge on the part of the accused that by their act they could have caused the death of the victim. This is a question of fact which has to be deciphered on the basis of the evidence which is collected by the prosecution. In a judgment of the Apex Court reported as AIR 1983 SC 305 State of Maharashtra Vs. Balram Bama Patil and Ors. the Apex Court had held that it is the

intention or the knowledge on the part of the accused to commit the act irrespective of its result which is the vital factor to establish whether the conviction under Section 307 of the IPC is justified or not. The following observations of the Apex Court in this context are relevant and reproduced as under:

“What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

10 In this context the Apex Court had also noted that this Section makes a distinction between the act of an accused and its result; such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It may also not be necessary in all cases that the injury should be sufficient to cause death of the person assaulted. It is in this context that the intention/knowledge on the part of the accused to commit the act which could lead to the death of the victim would become relevant.

11 The factual matrix as noted supra clearly shows that the incident had occurred at the spur of moment. There was a verbal altercation between the appellants and the victim; the appellants were playing badminton; the victim was going for dinner to a restaurant with his friend and had asked for way to lead his motorcycle; he was stopped; the verbal abuse became a physical fight. The mother of the

appellants also intervened; in the heat of the moment a vegetable knife was brought from the house and used by the appellant Manish to attack the victim. There was one single injury suffered by the victim which was of a dimension of 4 cm x 2 cm and cannot be termed as a fatal injury.

12 Moreover, the submission of the learned counsel for the appellants, that the intention/knowledge which is the essential ingredient of Section 307 of the IPC was missing; this is further established by the fact that there was only one injury caused to the victim; had there being an intention or knowledge to cause death of the victim, the injuries would have been more; these arguments cannot be brushed aside.

13 The MLC of the victim (Ex.PW-6/A) has been perused. It had noted a 4 cm x 2 cm stab wound on the chest of the victim. There is no other injury inflicted upon his person. He was conscious and oriented when he was taken to the casualty. His statement, however, was not recorded on that day as he was found unfit for the same.

14 In this background, it cannot be said that there was any mensrea/intention on the part of the accused to have caused the death of the victim. The MLC had opined the injury to be dangerous; it was not grievous.

15 Accordingly, conviction of the appellants is modified from Section 307 of the IPC to one Section 324 of the IPC.

16 The offence under Section 324 of the IPC is punishable with imprisonment which may extend up to 3 years or with fine or with both. As noted supra, the nominal roll of the appellants reflects that

they have undergone incarceration of about 3 years and 2 months which include remissions earned by them. They were also first time offenders and young in age i.e. 19-20 years at the time of offence. The mother of the appellants is also present. Her submission is that they were the potential bread earners of the family and they have already undergone incarceration of more than 3 years.

17 The appellants already having undergone the maximum sentence which may be awarded for a conviction under Section 324 of the IPC, both the appellants be released forthwith, if not, required in any other case.

18 Appeals are disposed of in the above terms.

19 Copy of this order be sent to Jail Superintendant for compliance.

INDERMEET KAUR, J

SEPTEMBER 03, 2015

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