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

% *Judgment reserved on : 16.11.2015*
Judgment delivered on : 23.11.2015

+ CRL.A.1101/2013 & CRL.M.A.13149/2014

SHANKAR

..... Appellant

Through Mr. R.S.Juneja, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr.Kewal Singh Ahuja, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 02.7.2013 and 24.7.2013 respectively wherein the appellant stood convicted under Sections 307/324 of the IPC. He had been sentenced to undergo RI for a period of 6 years and to pay a fine of Rs.2000/- in default of payment of fine to undergo SI for 2 months for his conviction under Section 307 of the IPC. For his second conviction under Section 324 of the IPC he had been sentenced to undergo RI for a

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period of 2 years and to pay a fine of Rs.500/- in default of payment of fine to undergo SI for 15 days. Benefit of Section 428 of the Cr.P.C. had been granted to the appellant.

2 Nominal roll of the appellant has been requisitioned. This reflects that as on date the appellant has undergone incarceration of 3 years and almost 6 months which includes the remissions earned by him.

3 The version of the prosecution is that on 03.6.2011 at about 7.00 p.m. when Azim (PW-2) was crossing gali No.8, Dharampura, Gandhi Nagar, Delhi the dog of the appellant who was tied on the street crossed the foot of PW-2. The appellant got enraged and he and his accomplice Vijay gave beatings to PW-2. The brother of PW-2, Ashu (PW-1) and his cousin Adib (PW-8) came to save PW-2 but they were also beaten. Meanwhile the appellant went back into his house and brought out a knife and gave knife blows to PW-2 and PW-8; so much so that the intestines of PW-2 came out. He was also given a blow on his chest. FIR was registered on the complaint of PW-1. Investigation was set into motion.

4 The injured was medically examined by Dr. Saurav Anand (PW-7). Dr. Manoj Kumar was another doctor who had also examined

PW-2 opined the injuries of PW-2 to be dangerous; his MLC was proved as Ex.PW-9/A. PW-1 and PW-8 also suffered injuries; their MLCs were also proved as Ex.PW-6/A and Ex.PW-13/A respectively. The parents of the victims (PW-1 and PW-2) were also examined. Idrish (their father) was examined as PW-3 and Rukshana (their mother) was examined as PW-4. Investigating Officer SI Asha Ram was examined as PW-10. On the basis of the aforementioned evidence which had been collected by the prosecution both oral and documentary the appellant and two other persons were charge sheeted. The aforementioned two persons namely Kamal and Vijay, however, stood acquitted. The appellant was convicted as noted supra.

5 On behalf of the appellant, it has been pointed out that there are inherent contradictions in the versions of PW-1, PW-2 and PW-8 all of whom had allegedly witnessed the incident. The knife which was the alleged weapon of offence was not relied upon as there was a distinct difference in the sketch of the knife and the knife which had been sent to the FSL for examination. This was the reason why the appellant was acquitted for the offence under Section 25 of the Arms Act. The recovery was clearly doubtful. Additional submission being that the

incident had occurred at the spur of moment and the intention on the part of the appellant to cause any injuries upon the victim knowing that by his act death would have occurred is not made out. Accordingly, ingredients of Section 307 of the IPC do not stand established.

6 Needless to state that these submissions have been refuted. Learned APP for the State points out that the injuries suffered by PW-2 were grievous. He had suffered injuries on his intestines as also on his chest by a sharp knife. His intestines were oozing out; he had to undergo a surgery. The opinion on the nature of his injuries was dangerous. This is clear from the version of the doctor who was examined as PW-9. MLC of PW-2, has been proved as Ex.PW- 9/A.

7 Arguments have been heard. Record has been perused.

8 The complainant was PW-1. He has deposed that on the fateful day i.e. on 03.6.2011 at about 7.00 p.m. when his brother Azim (PW-2) was passing in the gali the foot of his brother probably touched the dog of the appellant. The appellant was enraged and asked PW-2 as to why he had beaten his dog. PW-2 replied that it was only by an accident that his foot had touched the dog. The appellant and his brother Vijay

started beating PW-2. PW-1 and his cousin Adib (PW-8) who were also present in the gali and had witnessed the incident rushed to save PW-2. Kamal Prasad (the father of the appellant) also reached the spot. All three of them i.e. Kamal Prasad, Vijay and the appellant started beating PW-1, PW-2 and PW-8. Meanwhile the appellant brought a knife from his house and gave knife blows on PW-2 as also PW-8. Intestines of PW-2 had come out. PW-2 was also given a knife blow on his chest. On this complaint, FIR was registered. In his cross-examination PW-1 stuck to his stand. It was admitted that there were residential houses near the spot but he could not say whether any members of the locality were present to witness the incident which had occurred at about 7.00 p.m. on the fateful day. His father also reached the spot. He also stated that he was doing the business of selling fruit at Gandhi Nagar. He denied the suggestion that he is deposing falsely.

9 PW-2 was the injured/victim who had suffered dangerous injuries. He was a 12 year old child. Preliminary round of questions was put to him before he was put into the witness box. He had also detailed the incident in the manner in which it had occurred. He stated that his feet had accidentally hit the dog of the appellant; the appellant was enraged

and he along with his brother and father started beating him. His brother Ashu (PW-1) and his cousin Adib (PW-8) who were present in the gali had come to save him. Appellant Shankar gave him knife blows on his stomach as also on his chest. He was treated in the hospital. After 15-20 days his statement was recorded. PW-2 was subjected to a lengthy cross-examination. He became unconscious after the incident. He did not know if his brother had also become unconscious. He did not know how he was taken to hospital by his father since he was unconscious. He regained consciousness after two days. He denied the suggestion that he was deposing falsely.

10 The next eye-witness who was examined was Adib (PW-8). He has also supported the version of the prosecution and detailed the incident in the manner in which it was described by PW-1 and PW-2. He deposed that appellant Shankar gave knife blows on his stomach and left side of his leg as also on the abdomen and chest of PW-2. Thereafter all the accused ran away. This witness was also subject to a lengthy cross-examination. He also stuck to his stand.

11 Parents of PW-1 and PW-2 were also examined as PW-3 and PW-4. They were admittedly not eye-witnesses to the incident and

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reached the spot after the incident was over. The medical reports of the injured persons i.e. PW-1, PW-2 and PW-8 were proved through the concerned doctor. PW-7 had examined MLC of PW-2 aged 12-13 years along with the medical papers proved as Ex.PW-7/B. PW-9 (Dr. Manoj Kumar) had opined that these injuries were dangerous. The patient had been subject to an operation. As per the operative notes he had got multiple small gut perforations. PW-1 and PW-8 also suffered injuries. Their injuries were noted to be simple.

12 The injuries suffered by PW-2 were described by Dr.Jitendra (PW-13). There were four injuries. They read herein as under:

- 1.incised wound of 1 cm on the right side of abdomen.
- 2.incised wound of 2 cms on the left hypochondria.
- 3.incised wound of 2 cms x 1cm on the left thigh
- 4.incised wound of 2 cms on left side of trunk.

13 Record thus establishes the fact that PW-1, PW-2 and PW-8 had been injured at the hands of the appellant. The Trial Judge had discharged the brother and the father of the appellant noting that there was no sufficient evidence to connect them with the offence. The fact that PW-2 suffered dangerous injuries on his abdomen thus stand established. Ocular testimony of PW-1, PW-2 and PW-8 were also

fully corroborative of these documents. The conviction of the appellant under Section 324 of the IPC is fully established.

14 However, the question which arises for decision is whether the conviction of the appellant under Section 307 of the IPC was called for or not.

15 Section 307 of the IPC clearly evidences an intention or knowledge that by the act which has been caused by the appellant he would be guilty of murder and in such eventuality the offender would be punishable for an imprisonment for a period which may extend to 10 years and shall also be liable to fine and if hurt is caused to any person by such an act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned.

16 The ocular and the documentary evidence thus persuades this Court to hold that even presuming that there was no intention on the part of the appellant, there was knowledge that by his act by using a knife and causing the injuries on the abdomen and chest of PW-2 which were vital parts of PW-2 he would be guilty of murder. In this view of the matter, the offence under Section 307 of the IPC also stands established.

It was not the single injury which has been caused by the appellant to
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the victim at the spur of moment. The evidence shows that the appellant after giving beatings to PW-2, PW-1 and PW-8 had in fact gone back inside the house to bring out a knife with which he had given repeated blows (four injuries) on the abdomen and the chest of PW-2. PW-2 had to undergo an emergent surgery and he remained in the hospital for 10-12 days. He regained consciousness after two days. Nothing has been dented on the version of the witnesses of the prosecution. Thus the act of the appellant was clearly capable of causing death of PW-2 and this was well within the knowledge of the appellant. Conviction of the appellant under Section 307 of the IPC also remains unaltered.

17 However, noting the fact that the appellant is a first time offender; he is young in years aged about 25 years as on date and would be in his early twenties at the time when the offence was committed and he already having suffered incarceration for 3 years and six months, this Court deems it fit to modify the sentence. It has additionally been pointed out that he is probably the only bread earner of his family as in the course of incarceration his brother has died. Learned counsel for the petitioner under instructions from his client states that although the

family of the appellant is very poor yet is ready to compensate the complainant and is willing to pay a sum of Rs.20,000/- to PW-2 which amount shall be paid within a period of one week from today. In this background this Court is of the view that the period of incarceration i.e. 3½ years already suffered by the appellant be treated as the sentence imposed upon him. He be released forthwith if not required in any other case subject to payment of compensation.

18 Appeal is disposed of in the above terms.

INDERMEET KAUR, J

NOVEMBER 23, 2015

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