

\$~25

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

+ **CRL. A. No. 1429/2011**

Reserved on 23rd February, 2015

Decided on 4th March, 2015

NURUDDIN @ NURA & ANR

..... Appellants

Through: Mr. Arun Sharma, Adv.

Versus

STATE

..... Respondent

Through: Mr. Yogesh Verma, APP for the State
with SI Sweta Nand, P.S. Chandni
Mahal.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Appellants have been convicted under Sections 308/34 of the Indian Penal Code, 1860 (IPC) by the trial court and sentenced to undergo rigorous imprisonment for three years with fine of Rs.20,000/- and in default of payment of fine, simple imprisonment for six months. Benefit of Section 428 of the Code of Criminal Procedure, 1973 has also been given to the

appellants.

2. Aggrieved by their conviction as also the sentence awarded to them, appellants have preferred this appeal.

3. Prosecution story as unfolded, is that on 13th December, 2008 at about 2:10 AM, an information was received in the Police Station Chandni Mahal, Delhi from Head Constable Kailash Kumar, posted at JPN Hospital, that one Anishur Rehman S/o Shri Abdul Latif (PW-3) was admitted in the hospital in an injured condition by his brother, namely, Mohammad Shafiq (PW4). This information was recorded as DD No. 3A (Ex. PW9/A) and handed over to Sub Inspector Noor Mohammed (PW9), who along with Constable Siya Ram reached JPN Hospital and obtained MLC (Ex. PW2/A) of PW3. After PW3 was declared fit for statement, Sub Inspector Noor Mohammed recorded his statement (Ex. PW3/A), wherein he stated that on 12th December, 2008 at about 10 PM he reached his house after his release from Central Jail, Tihar. At about 10:30 PM he was standing in the gali in front of house of Gama Pahlwan, where appellants were also present. A verbal altercation took place between them. All of a sudden, appellants caused injuries on his neck by some sharp objects. He does not remember as to what happened thereafter. He was removed to JPN Hospital by his elder

brother Safiq. Sub Inspector Noor Mohammad wrote a rukka (Ex. PW9/B) and sent the same to the Police Station for registration of FIR under Sections 324/34 IPC per hand Head Constable Balwan Singh (PW7). Pursuant to the rukka, FIR No. 145/2008 under Sections 324/34 IPC (Ex. PW1/A) was registered by Duty Constable Narender Singh (PW1).

4. Dr. Deepak Varshney (PW2) opined the injuries of PW-3 as grievous. Accordingly, offence was converted from Section 324/34 IPC to Section 307/34 IPC and investigation was handed over to Inspector Narsi Lal Meena (PW8), who recorded supplementary statement of injured on 14th February, 2009. Appellants were arrested on 26th February, 2009, vide arrest memos Ex. PW5/C and Ex. PW5/D. Disclosure statements (Ex. PW-5/A and Ex. PW-5/B) of appellants were recorded but weapons of offence could not be recovered. During the investigation, site plan (Ex. PW9/C) was prepared on the pointing of Shafiq. After completion of investigation, charge-sheet was filed in the Court of Metropolitan Magistrate, Delhi under Sections 307/34 IPC, who after making compliances under Section 207 Cr.P.C., committed the case to Sessions Court since offence under Section 307 IPC is exclusively triable by the Sessions Court.

5. Charges under Sections 307/34 IPC were framed against both the

appellants on 29th September, 2009 by the Sessions Court to which they pleaded not guilty and claimed trial. Accordingly, trial commenced. Prosecution examined nine witnesses in all to prove its case. Material witness to prove the incident is Anishur Rehman (PW3). There is no eye witness to the incident. Statement of PW4 Shafiq is relevant to corroborate the statement of PW3 with regard to the presence of appellants at the spot with him as PW4 had seen the appellants standing with PW3 outside the house of Gama Pahlwan before the incident. Statements of PW6 Dr. Narender Singh and PW2 Dr. Deepak Varshney are relevant to prove that injuries were indeed sustained by PW3 on his neck were grievous in nature. PW6 Dr. Narender Singh has proved the MLC (Ex. PW2/A), which he had prepared initially when PW3 was brought in the hospital in injured condition by PW4 Shafiq. Injuries mentioned in the MLC (Ex. PW2/A) corroborate the statement of PW3 Anishur Rehman that appellants gave blows on his neck by sharp objects.

6. PW3 has fully supported the prosecution version. He has supported his earlier statement as contained in the FIR as also the supplementary statement. He has deposed that on 12th December, 2008 he reached his house at about 10 PM from Tihar Jail. After 10-15 minutes, he came out of

his house and was standing in the gali in front of house of Gama Pahlwan. Both the appellants were also present there. He further deposed that all of them went to a nearby garage of Anwar and consumed liquor. They had some hot talks while consuming liquor. He further deposed that he was attacked near the house of Gama Pahlwan by the appellants, where they had arrived from garage of Anwar while talking to each other. After sustaining injuries, he fell unconscious. His this statement is in line with what he had stated in the FIR and his subsequent supplementary statement. In his cross-examination, his testimony on the material points has remained unshaken. In his cross-examination he has even identified his T-shirt Ex. P-1, jacket Ex. P-2 and handkerchief Ex. P-3. He had denied that clothes were not blood stained. PW4 Mohd. Shafiq has corroborated the presence of appellants at place of incident as he had seen them standing there with PW3. He has further deposed that he found his brother Anishur Rehman (PW3) lying in injured conditions in front of house of Gama Pahlwan. He deposed that he lifted PW3 and took him to LNJP Hospital. His testimony on these points has remained unshaken in his cross-examination. In my view, Trial Court has rightly accepted their versions to be trustworthy and reliable.

7. Learned counsel for the appellants has vehemently contended that

testimony of PW4 that he had removed PW3 to hospital cannot be accepted since another DD No. 4-A was recorded on the same day, wherein wife of PW3 has claimed that she had removed the injured to hospital. I do not find much force in this contention. First of all DD No.4A has not been proved. Secondly, DD no. 3-A was recorded first on the basis of information sent by Duty Constable posted at JPN Hospital, wherein it has been categorically stated that injured was hospitalized by his brother Shafiq. A perusal of MLC (Ex. PW2/A) also supports this version. In the MLC, it has been mentioned that injured was brought by his brother. MLC was prepared by Dr. Narender Singh (PW6). There is no reason as to why Dr. Narender Singh would have made a wrong entry in the MLC. Thirdly, presence of wife of PW-3 is quite natural. There is every possibility that after some time wife had also sent an information to police station that her husband was admitted in the hospital having been assaulted, not knowing that duty constable had already sent information to police station. Since wife had made a call there is possibility of the person who received the call to record that injured was got admitted by his wife. However, this would not mean that DD No. 3-A (Ex.PW9/A) has to be disbelieved, more so, when the contents thereof are duly supported by the MLC (Ex. PW2/A), wherein

name of PW4 has been mentioned as the person, who got the injured admitted in the hospital. This contention of learned counsel, thus, is rejected.

8. Learned counsel has next contended that statement of injured was not immediately recorded by the Sub Inspector Noor Mohammad for which no explanation has been offered. Statement of injured was recorded between 12 Noon to 1 PM on 13th December, 2008, even though injured was hospitalised at about 2 AM. It is submitted that delay in recording the statement of injured creates a serious doubt about the veracity of his version as contained in the FIR, since sufficient time was available with him to falsely implicate the appellants. A perusal of MLC (Ex. PW2/A) clearly indicates that injured was declared 'unfit for statement' by Dr. Narender Singh. Thus, Sub Inspector Noor Mohammad could not have recorded his statement immediately on reaching the hospital. Injured was declared fit for statement at about 11:53 AM on 13th December, 2008 and immediately thereafter, statement of injured appears to have been recorded, since rukka was sent at 1 PM from the hospital. Delay has been suitably explained, in view of the endorsement made by PW6 Dr. Narender Singh to the effect that injured was 'unfit for statement'. PW6 Dr. Narender Singh has denied a

suggestion given by the appellants' counsel that he had written 'unfit for statement' due to the reason that patient was under intoxication. This argument of learned counsel is also rejected.

9. Learned counsel has next contended that testimony of PW3 is not supported by any independent public witness, thus, cannot be relied upon, more so, when the injured was himself a bad character of the area. Accordingly to him, it is not safe to convict the appellant on the sole testimony of PW3. I do not find any force in this contention. First of all, incident took place past midnight, thus, chances of presence of public witnesses at the spot is remote. Even otherwise, no evidence has come on record to indicate that any public witness was present in the gali when the incident took place. Secondly, mere absence of independent public witness will not be sufficient to discard the otherwise trustworthy and reliable testimony of a victim or for that matter of an interested witness. Judicial notice of the fact that public witnesses in a metropolitan town like Delhi are reluctant to join the investigation in criminal cases can easily be taken. Public persons avoid to join the investigation to avoid their subsequent harassment by the accused and also to avoid their appearances in the Court. Accordingly, non-joining of independent public witness will not be

sufficient to discard the trustworthy and reliable version of victim PW3 Anishur Rehman.

10. Learned counsel has further contended that PW3 suffered only one injury in his neck, though he has deposed that both the appellants had caused injuries to him by sharp objects like blade, broken bottle and also by a katta. He further submits that in the FIR, PW3 had not given description of weapons of offence, though while deposing in Court he has stated that he was hit by the above referred objects. It is further contended that non-recovery of the weapon of offence also goes in favour of the appellants. I do not find much force in this contention either. Non-recovery of weapons of offence, which otherwise, is only corroborative piece of evidence, would not be sufficient to disbelieve the victim. In his supplementary statement victim had stated that he was hit by blades. A perusal of MLC clearly shows that PW3 had sustained more than one injury in his neck. He had sustained injuries on i) CLW at right side of neck and face (7X3 cm), ii) CLW on right parietic region and iii) CLW (3X2 cm) at backside of neck/left side. Though in the FIR, PW3 had not specified the nature of weapon of offence and had used the terminology “sharp object”. But in his supplementary statement, he had stated that appellants had used blades; while deposing in Court, he

deposed that he was given blows with the sharp weapons like blades, broken bottle and was also given katta blow. While verbal altercation was going on, appellants had hit PW3 Anishur Rehman on his neck, all of a sudden, while it was dark. There is probability of injured having not seen the nature of sharp object clearly. But the fact remains that he noticed that that weapon used was sharp in nature. Be that as it may, only on this count, appellants cannot derive much benefit, more so, when admittedly PW3 has sustained three injuries on his neck, which fact is duly corroborated from the MLC (Ex. PW2/A).

11. PW3 had received three injuries on his neck which is a vital part of body. Dr. Deepak Varshney has opined the injuries as grievous in nature. If injuries are caused on the neck of a person by sharp object it may result in fatal consequences. From the nature of injuries and the circumstances in which these have been caused it can be inferred that appellant had knowledge that by this act had they caused death of PW3, they would have been held guilty of culpable homicide not amounting to murder, thus, ingredients of offence under Section 308 IPC are attracted in this case. Since both the appellants had simultaneously attacked PW3 on his neck by sharp object it can be inferred that they were also sharing common

intentions to assault PW-3. Accordingly, Trial court has rightly convicted the appellants under Section 308/34 IPC.

12. Lastly, learned counsel contends that both the appellants are around 44 years of age and both of them are sole bread-earners in their respective family. Appellant Nuruddin's family comprises of his wife, five children and aged father. Old and ailing father of appellant Naseem Gulfam is also dependent upon him. Quarrel erupted all of a sudden inasmuch as victim as well as appellants were under the influence of liquor. Appellants have no other past criminal record, accordingly, a lenient view be taken while considering quantum of sentence to be awarded to them. Keeping in mind the above facts, sentences of the appellants are reduced to one year from three years. Sentence of fine is maintained.

13. Appeal is disposed of in the above terms.

A.K. PATHAK, J.

MARCH 04, 2015

rb