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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.A.1539/2011**

**Date of decision: 20.07.2015**

VIKAS @ MONU & ANR ..... Appellants  
Through: Mr.Vinod Puggal, Advocate.

versus

STATE (GOVT OF NCT OF DELHI) ..... Respondent  
Through: Mr.Lovkesh Sawhney, APP.  
SI Kailash Kumar, P.S.Mangolpuri.

**CORAM:**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ORDER**  
**20.07.2015**

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**ASHUTOSH KUMAR, J. (ORAL)**

1. The appellants herein have challenged the judgment and order of conviction dated 24.11.2011 and 1.12.2011 whereby they have been convicted for the offence under Section 307 with the aid of 34 of the IPC and have been sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs.2500/- each with the default stipulation of rigorous imprisonment for three months.

2. According to the prosecution version, the appellants had uttered indecent language about the sister of the complainant when she was being accompanied by the complainant to her home. The prosecution case, further, is that the complainant came back after dropping his

sister at home and enquired from the appellants as to the reason for such unruly behaviour. He was accompanied by his uncle, Pintu, who had met him on way when he was approaching the appellants.

3. On such accost, appellant Vikash is said to have given a sword blow on the forehead and mouth of the complainant. When Pintu, uncle of the complainant came to his rescue he was given a sword blow on his head. They exhorted each other to kill the complainant and his uncle.

4. Pursuant to the complaint, FIR bearing No.575/2005 was registered at Police Station Mangolpuri. Investigation ended in submission of a report under Section 307/34 of the IPC.

5. The Trial Court after examining 7 witnesses on behalf of the prosecution, convicted the appellants under Section 307/34 of the IPC and sentenced them to undergo the imprisonment as aforementioned.

6. Learned counsel for the appellants, while assailing the judgment of conviction and sentence submitted that PW.2 and PW.6 namely the complainant and his uncle are the injured witnesses but their statements do not inspire confidence. During their cross-examination, PW.2 and PW.6 have made statements which demolishes the prosecution version.

7. Vicky (PW.2) in his deposition before the Court stated that Vikash, one of the appellants, was a friend of his brother and that the quarrel took place in the night and it was witnessed by 5-10 persons

who were present there. PW.2, because of darkness could not ascertain as to who was the author of the injuries on his person. Similar statement has been made by Pintu (PW.6). The injuries on the person of PW.2 and PW.6 have been proved by the witnesses.

8. Learned counsel for the State submits that the factum of assault has been established by the deposition of PW.2 and PW.6. Whatever inconsistencies crept in their cross examination was because of time gap between the examination-in-chief and the cross examination of the witnesses. It has further been submitted that for such inconsistencies the entire deposition of PW.2 and PW.6 cannot be thrown away (Refer: *Khujji @ Surendera Tiwari vs. The State of Madhya Pradesh*, 1991 AIR 1853).

9. Injuries on the person of PW.2 (Ex.PW.3/A) have been stated to be grievous because of scars on the left cheek and eye brow, by Dr.Brajesh Singh (PW.3). He has proved the MLC (Ex.PW.3/A) of Vicky (PW.2). He has also proved the MLC (Ex.PW.5/A) of Pinto (PW.6). PW.6 has suffered lacerated wound over left fronto parietal region.

10. From the deposition of the witnesses it appears that there was a fight between the appellants and the complainant. The fight took place because of use of foul language by the appellant No.1 regarding the sister of the complainant (PW.2). The nature of injuries suffered by PW.2 and PW.6 do not make out a case under Section 307 of the IPC. There were no supervening circumstances and nobody came to the

rescue of PW.2 and PW.6 when they were assaulted by the appellants. Thus there does not appear to be a requisite intention warranting conviction under Section 307/34 IPC.

11. That apart, the sword which was used for attacking the complainant and his uncle was seized on the showing of appellant No.1. The fingerprint over the sword was not taken nor was the weapon sent for forensic examination for ascertaining whether the sword was used by the appellants. The other aspect of the matter which merits attention is that the occurrence took place, according to the prosecution version while the complainant and his sister, were going home. It does not appear to be probable that the appellants would wait for the complainant to come back to settle scores with them or they, in particular, PW-1 would be armed with the sword to ward off the expected attack.

12. However, considering the fact that PW.2 and PW.6 have testified that they suffered injuries at the hands of the appellants but the injuries even though held to be grievous not being sufficient to warrant a presumption of any intention required for attracting the mischief of Section 307 of the IPC, this Court is of the view that the appellants have made themselves liable to be convicted and sentenced for the offence under Section 324 of the IPC.

13. Considering the nature of the offence, the circumstances in which it was committed and the relationship between the appellants and the complainant, this Court is of the opinion that the interest of

justice would be sub-served if the appellants are sentenced for the period that they have already undergone in custody but subject to both the appellants paying a sum of Rs.35,000/- each, to be given to PW.2 and PW.6 in equal measure.

14. The appellants are, therefore, convicted under Section 324/34 of the IPC and are sentenced for the period which they have undergone already.

15. The complainant (PW.2) and his uncle (PW.6) are present in the Court. The appellants have paid Rs.35,000/- each and the amount has been accepted by PW.2 and PW.6.

16. The appeal is partially allowed. The conviction and the sentence stand modified as aforesaid.

17. Copy of this order be transmitted to the superintendent of the concerned jail for information.

**ASHUTOSH KUMAR, J**

**JULY 20, 2015**

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