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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : SEPTEMBER 20, 2016
DECIDED ON : SEPTEMBER 29, 2016

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CRL.A. 61/2016

MANOJ KUMAR

..... Appellant

Through: Mr. Jivesh Tiwari, Adv.

versus

STATE

..... Respondent

Through: Mr. Kamal Kr. Ghai, APP for the
State alongwith SI Ombir Singh, P.S.
Welcome.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Present appeal is directed against the judgment dated 08.12.2015 of learned Additional Sessions Judge in Sessions Case No.06/15 arising out of FIR No.705/14 registered at Police Station Welcome whereby the appellant-Manoj Kumar was held guilty for committing offence punishable under Section 308 IPC. By an order dated 9.12.2015, he was sentenced to undergo Simple Imprisonment for five years with fine ₹25,000/-.

2. Briefly stated, the prosecution case, as set up in the charge-sheet, was that on 4.12.2014, at about 10.15 p.m. at Gali No.2, Subhash Park, near Namkeen Chowk, the appellant inflicted injuries to Manish with an intention to commit the offence of culpable homicide. On receipt of information, Daily Diary (DD) No.53B (Ex.PW8/E) came into existence at 10.32 p.m. at Police Station Welcome. The Investigating Officer after recording statement of the victim's brother Manoj Kumar (Ex.PW-1/A) lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. The victim Manish was taken to Guru Teg Bahadur Hospital, Shahdara, for medical examination. The accused was arrested. Upon completion of investigation, a charge-sheet was filed against him for committing offence punishable under Section 308 IPC. In order to establish its case, the prosecution examined eight witnesses in all. In 313 statement, the accused denied his involvement in the crime and pleaded false implication. He examined himself as DW-1. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Injuries sustained by the victim are not under challenge. The appellant's plea is that he was not the author of the injuries and these were inflicted by 'someone' else. Soon after the incidence, the victim was taken to GTB Hospital. MLC (Ex.PW4/A) records arrival time of the patient at 10.50 p.m. on 4.12.2014. PW-4 (Dr.Deovrat Kumar) examined the victim vide MLC (Ex.PW-4/A). The patient was referred to Neuro Trauma and ENT for further examination and management. PW-6 (Dr.Shivesh) conducted CT-scan vide form (Ex.PW-6/A) and submitted his

report (Ex.PW-6/B). The injuries suffered by the victim were 'grievous' in nature.

4. The occurrence took place at around 10.15 p.m. Incident was reported to the police immediately and DD No. 53B (Ex.PW-8/E) came to be recorded at Police Station Welcome at 10.32 p.m. In the complaint (Ex.PW-1/A), the complainant give detailed account as to how and in what manner, the injuries were caused to his brother Manish. The accused was specifically named in the complaint. The investigation was assigned to ASI Dharam Vir Singh. Since the FIR was lodged promptly and the appellant was named to be the perpetrator of the crime, there was least possibility to concoct a false story in such a short interval.

5. The victim, aged around 15 years, appeared in the court as PW-3. The learned Presiding Officer put various preliminary questions before recording his statement to ascertain if he was a competent witness and able to give rational answers to the questions put to him. After recording his satisfaction that the statement being given by the victim was voluntary, without any fear or pressure, the learned Presiding Officer recorded his statement. The victim disclosed that on 04.12.2014 at around 9.45 p.m., he was present at Namkeen Chowk, Gali No.2, Subhash Park where a 'party' was going on. He was picking up the coins thrown by the individuals present there. When his brother Manoj arrived the spot at about 10.30 p.m., he accompanied him to the house. At a distance of 10/12 steps, the accused who was known to him before tried to snatch his money. On his resistance, the accused picked up a brick lying at the spot and hit him on his head, as a result of which, he started bleeding from his right ear and became unconscious. He was discharged from the hospital next day in the evening.

In the cross-examination, he fairly admitted that he was not an invitee in the function. He denied that he was thrashed by the public persons present there due to picking of pocket of 'someone'. He disclosed that he had collected about ₹130/- from the spot.

6. On scanning the testimony of the victim, it reveals that despite searching cross-examination, nothing material could be extracted to suspect his version. No suggestion was put if the victim had sustained injuries due to fall as reflected in the alleged history recorded in the MLC (Ex.PW4/A). It was not suggested as to whose pocket was allegedly picked by the complainant. No such complaint for picking-pocket was lodged by any individual. The accused did not deny his presence at the spot at the relevant time. In the absence of prior animosity or ill-will, the child victim is not expected to implicate an innocent one and to spare the real offender(s). He must be interested to bring the real culprit to book. Testimony of an injured witness is accorded a special status in law. Testimony of an injured witness should be relied upon unless there are strong grounds for its rejection on the basis of major contradictions or discrepancies therein.

7. PW-1 (Sonu) whose name finds mention in the MLC (Ex.PW4/A) and PW-2 (Manoj), the complainant aged around 17 years, have corroborated the victim's version in its entirety without any major variation. There is no conflict between the ocular and medical evidence. Needless to say, the prosecution was able to establish without reasonable doubt that the appellant was the author of the injuries caused to the victim.

8. Regarding the offence committed, I am of the considered view that ingredients of Section 308 IPC are lacking. Both the victim and the accused were acquainted with each other prior to the incident and they lived

in the same locality. Nothing has emerged on record if there was any previous serious quarrel or enmity between the two forcing the accused to make an attempt to take victim's life. An unexpected quarrel had taken place over a trivial issue of collecting coins being thrown by the public persons in the function. There was no pre-planning to inflict injuries upon the victim. The accused was not armed with any 'deadly' weapon. The crime weapon i.e. brick was allegedly lying at the spot. No repeated blows were caused to the victim.

All these circumstances reveal that there was no intention of the appellant to make an attempt to commit the offence of culpable homicide. It was a case of voluntarily causing 'grievous' hurt by a blunt object and is squarely covered under Section 325 IPC. Accordingly, conviction under Section 308 IPC is altered to Section 325 IPC.

9. The appellant was sentenced to undergo Simple Imprisonment for five years with fine ₹25,000/-. Nominal roll dated 4.9.2016 shows that he has already undergone one year, eight months and twenty eight days incarceration besides remission for two months and sixteen days as on 02.09.2016. He is not a previous convict and is not involved in any other criminal case; his overall jail conduct is satisfactory. Sentence order records that the appellant is HIV positive and is a patient of Hepatitis B. He is the sole bread earner of the family and has old parents to support. Considering the mitigating circumstances and the fact that the conviction has been altered to Section 325 IPC, the sentence order is modified. The appellant shall undergo Simple Imprisonment for three years with fine of ₹5,000/- for committing offence under Section 325 IPC and default sentence for non-payment of fine shall be Simple Imprisonment for one month.

10. The appellant shall deposit compensation of ₹15,000/- within two weeks in the Trial Court. The compensation amount of ₹15,000/- shall be released to the victim Manish.

11. The appeal stands disposed of in the above terms. Trial court record be sent back forthwith along with the copy of the order. Intimation be also sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

SEPTEMBER 29, 2016/sa