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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : May 06, 2016

DECIDED ON : May 09, 2016

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CRL.A. 441/2014

BUDH PAL @ BUDH RAM

..... Appellant

Through Mr. Harsh Prabhakar and Mr. Anirudh
Tanwar, Advs.

versus

STATE

..... Respondent

Through Mr. Vinod Diwakar, APP with SI Shri
Gopal.

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CRL.A. 444/2014

VIJENDER @ KALU

..... Appellant

Through Ms. Suman Chauhan, Advocate.

versus

STATE

..... Respondent

Through Mr. Vinod Diwakar, APP with SI Shri
Gopal.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 09.01.2014 of learned Additional Sessions Judge in Sessions Case No.73/2012 arising out of FIR

No.246/2011 registered at Police Station Shakar Pur whereby the appellants Budh Pal @ Budh Ram (A-1) and Vijender @ Kalu (A-2) were held guilty for committing offence punishable under Sections 307/34 IPC, they have filed the instant appeals. By an order dated 17.01.2014, they were sentenced to undergo Rigorous Imprisonment for four years with fine ₹5,000/- each.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 09.05.2011 at around 11.15 p.m. near Government Shauchalay main Market Shakar Pur Delhi, the appellants in furtherance of common intention attempted to murder Hari Singh, the complainant, by inflicting injuries on his neck. The incident was reported to the police and DD No.46/A (Ex.PW10/A) came into existence at 23:45 hours at Police Station Shakar Pur. PCR arrived at the spot and took the victim to Lal Bahadur Shastri Hospital. The Investigating Officer after recording victim's statement (Ex.PW-3/A) lodged First Information Report. Statements of witnesses conversant with the facts were recorded. The accused persons were arrested. Upon completion of investigation, a charge-sheet was filed against the appellants for committing offences under Sections 307/34 IPC. In order to establish its case, the prosecution examined 11 witnesses. In 313 statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been filed.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place on 09.05.2011 at around 11.15 p.m. The police machinery was set in motion promptly when information was conveyed at 100 by PW-4 (Vipin Gupta). PW-1 (HC Kuldeep) posted

as Head Constable in PCR rushed to the spot at 11.41 p.m. and shifted the victim Hari Singh, who was bleeding from his neck, to Lal Bahadur Shastri Hospital and got him admitted there. In the complaint (Ex.PW-3/A), the victim gave detailed account as to how and in what manner injuries were inflicted to him by the accused persons by a knife. Both the accused persons were named in the FIR. Since the FIR was lodged without any delay, there was least possibility of the complainant to have concocted a false story in such a short period.

4. In his Court statement as PW-3, the complainant, proved the version given to the police at first instance without any variation. He deposed that on 09.05.2011, both A-1 and A-2 met him at about 10-11.00 p.m. near Sanjay Park Shauchalaya, Shakarpur. A-2 caught hold of him and A-1 stabbed him on his neck after taking out a vegetable knife from the right pocket of his pant. On his raising alarm, the assailants fled the spot. He came to his House at G-26, Shakarpur, Delhi and narrated the incident to his landlord Vipin Gupta (PW-4), who informed the police at 100. He was taken to Lal Bahadur Shastri Hospital and his statement (Ex.PW-3/A) was recorded. In the cross-examination, he stated that many passersby were present near Sanjay Park but none had gathered at the spot on hearing his cries. Though he was having a mobile, he did not inform the police at 100. His house was at a distance of 10/15 minutes walk. He fairly admitted that no quarrel had taken place between him and the accused persons before the said incident. A-2 was acquainted with him for about two or three years prior to the incident. He denied to have sustained injuries due to fall from a rickshaw.

5. On scrutinizing the testimony of the injured witness, it transpires that despite searching cross-examination, no material discrepancies or infirmities could be extracted. No ulterior motive was assigned to the victim for falsely implicating the accused persons for the injuries sustained by him. Being an injured, victim's statement inspires implicit confidence. He is not expected to let the real offenders go scot free and to falsely implicate innocent ones for the injuries suffered by him. Both these accused were acquainted with him before the incident. There was no previous history of hostile relations between them. The victim elaborated that few days before the incident about two years back, he had employed A-1 at the residence of one Dhannu where due to his committing theft of water taps in the house, he had to pay ₹1400/- which he used to demand from him. In order to avoid the payment of ₹1400/- it appears that injuries were caused to the victim. Injuries suffered by the victim as such are not under challenge. Appellants' plea that the victim sustained injuries due to fall from rickshaw inspires no confidence. No such suggestion was put to PW-2 (Dr.Wasim Ahmad) and PW-9 (Dr.Parmesh Sharma). Both the accused persons were named in the FIR and specific role was attributed to them. The accused persons did not deny their presence at the spot. They did not claim themselves to be present at any other specific place at that point of time.

6. The ocular testimony of the victim is in consonance with medical evidence. Soon after the incident, he was taken to Lal Bahadur Shastri Hospital in PCR by PW-1(HC Kuldeep). MLC (Ex.PW-2/A) reveals that he was admitted in the said hospital at 12.10 a.m. The injury sustained by him was an incise wound over neck measuring 5X0.5 c.m. in size.

Nature of injury was opined 'simple' caused by sharp object. There is, thus, no conflict between the ocular and medical evidence. PW-4 (Vipin Gupta) has also corroborated the victim's version and informed that at about 11-11.15 p.m., Hari Singh came to him when he was sitting outside his house and he was bleeding from his neck. On being asked, Hari Singh informed him that someone had stabbed him.

7. In 313 statements, the accused persons did not give plausible explanation to the incriminating circumstances proved against them. They did not examine any witness in defence to falsify the statement of the victim. The impugned order whereby both the accused persons were held guilty for inflicting injuries to the victim cannot be faulted.

8. Both these accused persons were convicted for committing offence under Section 307/34 IPC. However, on perusal of the entire materials on record, it cannot be inferred with certainty that the accused persons had intended to commit victim's murder by inflicting injuries to him. The victim and the accused persons were familiar with each other since long and were in the same profession. A dispute had arisen between the victim and A-1 over stolen of taps in the house in which he was provided job by the victim. On demand of ₹1,400/- paid by him to the house owner for the loss suffered by him due to taps stolen by A-1, the victim used to ask for its payment which irritated A-1 and to avoid its payment, he picked up a quarrel with the injured and in the said quarrel inflicted injuries by a vegetable knife on his neck. Apparently, the occurrence had taken place without any pre-planning. Assailants were not aware if the victim would arrive at the spot at that odd hours. A-2 was not armed with any weapon. The injury was caused on the body by a sharp object which could not be

recovered. As per MLC (Ex.PW-2/A) only one blow was inflicted. Nature of injury opined is 'simple'. After inflicting the first blow, no attempt was made by any of the accused persons to take undue advantage of the loneliness of the victim or to inflict repeated blows to eliminate him. The injury sustained by the victim was not 'grievous' or 'dangerous' in nature and as per victim's own saying, he was able to walk and cover a distance of 10/15 minutes walk to reach at Vipin Gupta's residence. At the time of medical examination, the victim was conscious and oriented. He was discharged from the hospital same day. For avoiding payment of ₹1,400/-, the accused persons were not expected to make an attempt on victim's life. It was a simple case of quarrel where hurt was caused by a sharp object. Conviction under Section 307/34 IPC is altered to Section 324/34 IPC.

9. A-1s nominal roll dated 25.02.2015 reveals that he has remained in custody for one year, three months and nineteen days besides remission for four months and twenty three days as on 23.02.2015. By an order dated 03.09.2015, A-1's substantive sentence was suspended. Nothing has emerged if after the suspension of sentence, A-1 indulged in any such criminal activity. No useful purpose will be served to send the appellant in jail particularly when the offence has been altered to Section 324/34 IPC. The period already undergone by A-1 in this case shall be taken as his substantive sentence. He shall, however deposit the fine (if unpaid) imposed by the Trial Court within two weeks failing which he shall undergo default sentence of Simple Imprisonment for ten days. He shall also deposit ₹10,000/- in the Trial Court within two weeks. This payment shall be released to the complainant as compensation after due notice.

10. Vide order dated 12.02.2015, the substantive sentence of the A-2 was suspended. Order dated 12.02.2015 reflects that A-2 had undergone two years and nine months incarceration. It appears that A-2 could not furnish the required surety bond and was released on reduced surety amount of ₹10,000/- by order dated 26.03.2015. Considering the facts and circumstances of the case, the period already undergone by A-2 in this case shall be taken as his substantive sentence. He shall, however, deposit the fine (if unpaid) imposed by the Trial Court within two weeks failing which he shall undergo default sentence of Simple Imprisonment for ten days.

11. The appeals stand disposed of in the above terms. Trial Court record be sent back forthwith along with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MAY 09, 2016/sa