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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : AUGUST 05, 2016

DECIDED ON : AUGUST 22, 2016

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CRL.A. 301/2016 & Crl.M.B. 645/2016

JAVED

..... Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Gupta, APP for the State
along with ASI Ajit Singh, Police
Station Welcome.

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CRL.A. 295/2016 & Crl. M.B. 639/2016

SHAHID

..... Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Kamal Kumar Ghei, APP for the
State along with ASI Ajit Singh P.S.
Welcome.

+ **CRL.A. 302/2016 & Crl. M.B. 4982/2016**

SHAKIR Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Amit Gupta, APP for the State
along with ASI Ajit Singh, Police
Station Welcome.

+ **CRL.A. 296/2016 & Crl. M. B. 640/2016**

RASHID Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Kamal Kumar Ghei, APP for the
State along with ASI Ajit Singh P.S.
Welcome.

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

S.P.GARG, J.

1. Challenge in these appeals is a judgment dated 25.02.2016 of learned Additional Sessions Judge in Sessions Case No.112/12 arising out of FIR No.450/11 registered at Police Station Welcome by which the appellants Javed (A-1), Shahid (A-2), Shakir (A-3) and Rashid (A-4) were held guilty for committing offences punishable under Sections 452/307/341/34 IPC. By an order dated 27.02.2016 they were sentenced to undergo Rigorous Imprisonment for two years with fine ₹1,000/- each under Section 307 IPC; Rigorous Imprisonment for one year with fine ₹500/- each under Section 452 IPC; and Simple Imprisonment for one month each under Section 341 IPC. All the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 05.12.2011 in between 9.30 a.m. to 10.30 a.m. at House No.B-213, Gali No.5, Kabir Nagar, Delhi, the appellants in furtherance of their common intention inflicted injuries to Kishan Veer and Rajbir in an attempt to commit murder after committing house trespass and wrongfully restraining them. The police machinery came into motion when DD No.25-B (Ex.PW12/A) came into existence at 11.02 a.m. on getting information about the quarrel at the spot. The Investigation was assigned to SI Rizwan who after recording Rajbir's statement (Ex.PW-1/A) lodged First Information Report. Statements of witnesses conversant with the facts were recorded. The injured persons were taken to hospital for medical examination. The accused persons were arrested. Upon completion of investigation, a charge-sheet was filed against all of them in the court. In order to establish its case, the prosecution examined twelve witnesses. In 313 statement, the accused

persons denied their complicity in the crime and pleaded false implication. They examined Hasib (DW-1) in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, these appeals have been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and material discrepancies and infirmities emerging in the statements of the prosecution witnesses have been ignored without cogent reasons. The appellants had no intention to commit murder and were not the authors of the injuries. The FIR was lodged on Rajbir's statement (PW-1) who was not even present at the spot; he did not take the injured, his brother, to the hospital. No blood was detected on the crime weapon i.e. scissor. Delay in lodging the FIR has remained unexplained. Name of the individual who had come to get ₹500/- is not clear. Defence version has not been given any weightage. Recovery of the weapon of offence is doubtful. Learned Additional Public Prosecutors urged that there are no sound reasons to disbelieve the testimonies of the injured witnesses who have corroborated the testimony of each other on material aspects.

4. The occurrence took place on 5.12.2011 at around 9.30 a.m. to 10.30 a.m. DD No. 25-B (Ex.PW12/A) about the quarrel taken place at the spot came into existence at 11.02 a.m. The Investigating Officer after recording victim's statement sent rukka at 2.30 p.m. In the complaint (Ex.PW-1/A), the victim Rajbir gave graphic account of the occurrence and disclosed as to how and in what manner injuries were inflicted to them by the appellants. Specific and definite role was assigned to each of the

appellants in the complaint. Since the FIR was lodged promptly and the appellants were named therein, there was least possibility of the complainant to have concocted a false story in such a short period.

5. Victim Kishan Veer who had sustained 'grievous' injuries on his vital organ was taken to Guru Teg Bahadur Hospital, Shahdara for medical examination soon after the incident. MLC (Ex.PW-10/A) records arrival time of the patient at 11.45 a.m. brought by HC Narender of PCR. Kishan Veer had suffered incised wound on upper abdomen; lacerated wound over frontal head. PW-10 (Dr.Amit Bansal) proved the MLC prepared by Dr.Indu Bhushan Dubey. The nature of injuries sustained by the victim was 'grievous'. PW-11 (Dr.Sangeeta) proved the MLC (Ex.PW-11/A) whereby PW-1(Rajbir) had sustained 'simple' hurt. In fact, injuries sustained by the victims are not under challenge. Appellants' contention is that they were not the perpetrators of the crime and PW-3 (Kishan Veer) had suffered injuries at the hands of PW-1 (Rajbir) who intended to inflict knife blow to Rashid (A-4). As Kishan Veer intervened in between, he suffered knife injuries. Specific suggestion was put to PW-1 (Rajbir) in the cross-examination which was denied by him.

6. All the appellants were arrested at the spot. When PW-7 (Ct.Shashank) along with HC Narender (PW-6) on receipt of PCR call arrived at the spot, appellants' custody was handed over to them. When the Investigating Officer reached the spot, the appellants were arrested vide arrest memos Ex.PW-1/C (Rashid), Ex.PW-1/D (Javed), Ex.PW-1/E (Shahid), Ex.PW-1/F (Shakir). Personal searches were conducted by Memos (Ex.PW-1/G to Ex.PW-1/J). Their disclosure statements (Ex.PW-4/A to Ex.PW-4/D) were recorded. Admittedly, A-4 had gone to the

victim's place of work on 5.12.2011 at around 9.30 a.m. to demand ₹500/- due to him. Since the victims declined to pay the said amount of ₹500/- at that time, it annoyed A-4 and he left the spot extending threats. Subsequently, at around 10.30 a.m. he brought his other brothers (A-1, A-2 and A-3) and they started beating the victims. PW-1 (Rajbir) in Court statement disclosed that his brother Rajesh was caught hold by A-1 and A-2 and when his younger brother Kishan Veer arrived there, A-3 and A-4 caught hold of him. A-3 gave a scissor blow on the left-side abdomen to Kishan Veer and when he himself tried to intervene to save him, they also caught hold of him and A-4 attacked him with the scissor. He avoided the attack but in the process, sustained injuries on his right hand. A-3 gave him a danda blow on his left shoulder. Due to fear, he fled the spot and made a call at 100 after reaching in the street. The appellants were overpowered by the public at the spot. In the cross-examination, he admitted that Hasib and Gulfam used to work in their workshop. A-4 had come to their factory to get payment due to A-3. He fairly admitted that no report was lodged with the police at the time of threats extended by A-4 initially. He denied the suggestion that only A-4 had come in the factory. He denied that he and his brothers had inflicted injuries to the accused persons. Apparently, no material infirmities have been elicited to disbelieve the version of the injured witness.

7. PW-2 (Rajesh) another injured has corroborated PW-1's statement in its entirety without any major variation. He has also assigned a specific role to each of the assailants in the commission of the crime. Similarly, PW-3 (Kishan Veer) who had sustained 'grievous' injuries on the vital body organ implicated all the appellants for playing a definite role in

causing injuries to them. All these witnesses were cross-examined at length. No material discrepancies or contradictions could be extracted to disbelieve their version, no plausible motive has been assigned to the victims for levelling serious allegations against the appellants with whom they had no prior enmity. The appellants and the victims were having acquaintance with each other and had business transactions. On the trivial issue of non-payment of ₹500/- as demanded by A-4, a quarrel had taken place in which all the brothers caused injuries to the victims. The injured must be interested to bring the real culprit to book and are not expected to spare the real culprits. The accused persons did not sustain any injuries at the spot on their body. Initially, A-4 had arrived at the spot and when the payment of ₹500/- was declined, he brought his brothers who picked up a quarrel with the victims and caused injuries to them.

8. Minor discrepancies and contradictions highlighted by the appellants' counsel are inconsequential as they do not go to the root of the case and do not affect the core of the prosecution case. Ocular testimonies of the injured witnesses have been corroborated by medical evidence and there is no variance between the two. Needless to say, the prosecution was able to establish that the appellants were the authors of the crime.

9. The impugned judgment based upon the fair appreciation of the evidence deserves no intervention.

10. The Trial Court has already taken lenient view awarding the sentence of two years for commission of serious offence under Section 307 IPC. The victim Kishan Veer had sustained 'grievous' injuries on his abdomen. The medical report reveals that his omentum had come out and he remained admitted in the hospital for treatment for sufficient duration.

Apparently, the 'scissor' blow caused to the victim Kishan Veer was with great force indicating the actual intention of the assailants. The victims were not armed with any weapon. Conviction under Section 307 IPC cannot be faulted; the sentence order needs no modification.

11. The appeals lack in merit and are dismissed. All pending applications also stand disposed of. 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

AUGUST 22, 2016/sa