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

% *Date of Decision: May 18, 2016*

+ **CRL.A. 439/2014**

DEV RAJ @ DEVENDER Appellant
Represented by: Mr.Ajit Sharma, Advocate
(DHCLSC) with Mr.Mayank
Aggarwal, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+ **CRL.A. 806/2014**

NEERAJ PAL Appellant
Represented by: Mr.Ajit Sharma, Advocate
(DHCLSC) with Mr.Mayank
Aggarwal, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Whereas counsel appears for appellant Dev Raj in Crl.A.439/2014, none appears for the appellant in Crl.A.806/2014. It is unfortunate that counsel does not appear in Crl.A.806/2014 in spite of the fact that Neeraj Pal, the appellant thereof, is still in jail.

2. Learned counsel for appellant Dev Raj states that he has prepared the appeals keeping in view the role assigned to Neeraj Pal as well and thus he is in a position to argue CrI.A.806/2014 and therefore, I appoint Sh.Ajit Sharma, Advocate who is the lawyer for co-appellant Dev Raj to argue in CrI.A.806/2014. His fee shall be paid by the Delhi High Court Legal Services Committee as per its fee schedule.

3. Statistical data show that on the eve of the new year rowdiness takes place and sometimes incidents turn ugly. Instant incident is one of the kind.

4. At around 10.00 P.M. on December 31, 2009, DD No.66B, Ex.PW-7/B was recorded at P.S.Mandawali to the effect that near a liquor shop in Railway Colony, Mandawali, stabbing had taken place. Copy of the DD entry was entrusted to SI Hari Ram PW-7 who, in the company of Ct.Sunil (not examined) left for the spot and on reaching learnt that the injured had been removed, to the hospital and the assailants had ran away. SI Hari Ram had deposed in Court that he had met one Vijay, an eye witness But surprisingly, his statement was not promptly recorded, for if it had been, said statement would have been the statement attracting Section 154 Cr.P.C. Be that as it may, SI Hari Ram proceeded to Lal Bahadur Shastri Hospital where the injured had been admitted by one Manoj PW-4 and had been examined by Dr.Ramesh Kumar, who authored the MLC Ex.PW-5/A. Since Dr.Ramesh Kumar left employment, Dr.Rakesh Singh PW-5, who had worked with Dr.Ramesh Kumar and was acquainted with his writing and signatures, proved the MLC. The MLC records : 2.5cm x 1cm incised wound over left iliac fossa - omentum 1 bowel exposed. On the MLC at point 'B' one Dr.Santosh Tiwari gave the opinion that the injury was serious. Said writing has been proved at the trial by Dr.B.K.Jain PW-6, who

had worked with Dr.Santosh Tiwari.

5. Since the injured named Sharad Kumar who had been brought to the hospital by Manoj was not in a position to make a statement, the day next after the incident i.e. on January 02, 2009, SI Hari Ram went to the hospital and found Sharad Kumar fit for making a statement and therefore he recorded Sharad's statement Ex.PW-2/A. Making an endorsement Ex.PW-7/A beneath Sharad statement the rukka was sent to the police station and FIR Ex.PW-1/A was registered by SI Nand Kishore PW-1.

6. The investigating officer had a clue. The same was the statement Ex.PW-2/A made by the injured himself in which he disclosed that at about 9.30 P.M. on December 31, 2009 he had gone to the liquor shop at Kalyan Market, Mandawali, where in front of Vijay Juice Corner he saw 3-4 boys standing, of whom one named Madan was known to him. Madan told him to buy liquor for the group. He purchased a bottle and handed over the same to the group and then one boy demanded more. He refused. At that Madan caught him and that boy who had asked for more liquor hit him on his head with a beer bottle which broke and thereafter that boy struck the broken beer bottle in his stomach. All the boys ran away. If brought before him, he can recognize the boys who were there and in particular the one who hit him with the beer bottle.

7. Manoj PW-4 the person whose name is recorded in the MLC Ex.PW-5/A as the one who brought Sharad to Lal Bahadur Shastri Hospital deposed that at about 9.30 P.M. on December 31, 2009 while he was passing by Mandawali area he saw a gathering at a liquor shop. He stopped a TSR and took injured Sharad to Lal Bahadur Shastri Hospital where he was medically examined.

8. The case would obviously therefore hinge on the testimony of the injured Sharad Kumar who appeared as PW-2. But before noting his testimony I need to note that Neeraj Pal, Dev Raj, Madan and Ayub were apprehended and sent for trial. During trial, Madan and Ayub absconded and therefore trial proceeded only against Neeraj Pal and Dev Raj.

9. In his testimony Sharad Kumar has deposed facts in sync with his statement Ex.PW-2/A, till he disclosed he reaching the liquor shop in question and saw Madan standing with some boys. Thereafter starts the discrepancies which are material qua the role of Dev Raj. In contradiction to his statement Ex.PW-2/A, in which he said that after he had got the first liquor bottle and one out of the three-four boys in group demanded another, and on his refusal Madan caught him and one boy in the group hit him first on the head and thereafter on the stomach with a beer bottle, he deposed that Dev Raj, Ayub and Madan caught him and Neeraj Pal present in Court inflicted the blow on his head followed by a jab on his stomach with the broken bottle.

10. This material improvement was got confronted with respect to his statement Ex.PW-2/A and he simply said that he does not remember whether he disclosed the participatory role of the three accused : of catching hold when Neeraj Pal struck him on the head.

11. Holding Dev Raj and Neeraj Pal guilty of the offence of attempt to murder, on account of the nature of injuries suffered by Sharad Kumar, vide impugned decision dated November 8, 2013, Dev Raj and Neeraj Pal have been convicted for the offence punishable under Section 307/34 IPC and vide order on sentence dated November 16, 2013 have been sentenced to undergo rigorous imprisonment for seven years and pay fine in sum of

₹25,000/-, in default, to undergo simple imprisonment for six months.

12. As regards appellant Dev Raj, he would be entitled to the benefit of doubt for the reason at the first available moment, the injured disclosed in his statement that whereas Madan exhorted and one out of the other three boys assaulted him with the beer bottle, which boy he can identify if brought before him, he never said that Dev Raj and Ayub caught him to facilitate the assault.

13. From the statement Ex.PW-2/A it is apparent that there is no pre-meditation. It happened at the spur of the moment. The act is one of hooliganism in which the participation was of Madan, who caught hold of the victim, and Neeraj Pal hitting the victim. Therefore, CrI.A.439/2014 filed by Dev Raj has to be allowed. Formal order to this effect would be passed a few paragraphs below.

14. Neeraj Pal's participatory role has emerged and the only question would be whether the offence would be one of attempt to murder or one of an attempt to cause a grievous injury with knowledge that death may ensue, for if the offence is later the punishment would be under Section 308 IPC and not 307 IPC.

15. The learned Trial Judge looked into the MLC and the opinion of Dr.Santosh Tiwari recorded thereon to the effect that the nature of injury is dangerous.

16. The nature of injury is indeed dangerous apparent from the fact that the broken beer bottle pierced into the illiac fossa and one bowel was exposed. Unfortunately, the investigating officer has not collected the discharge summary of Shard Kumar which could have thrown light on the duration of he being admitted. Nonetheless what assumes importance is the

fact that after the beer bottle was hit on the head, it was thrust into the stomach and the intensity of the thrust is apparent when I look at the injury. Indeed the injury was life threatening.

17. It was to the good luck of Sharad Kumar that timely medical aid was rendered to him.

18. I therefore concur that the act of Neeraj Pal constitutes the offence of attempt to murder punishable under Section 307 IPC.

19. CrI.A.806/2014 filed by Neeraj Pal is dismissed. His conviction and sentenced imposed is maintained.

20. CrI.A.439/2014 filed by Dev Raj is allowed. His conviction and sentence are set aside.

21. Appellant Dev Raj be set free if pursuant to the order dated May 02, 2016 he has not been released on bail. If he has been released on bail, surety bond in sum of ₹50,000/- furnished by his surety is discharged.

22. TCR be returned.

23. Copy of this order be sent to Superintendent, Central Jail Tihar for updation of his records and thereafter to be supplied to the appellants, if are in jail.

(PRADEEP NANDRAJOG)
JUDGE

MAY 18, 2016

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