

\$~11

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

+ CRL.A. 434/2015

MOHD. ASIF

..... Appellant

Through :Mr. Manish Kumar and Mr. Anif
Kanwar Tanwar, Advs.
Mr. Ankur Sood, Advocate, Delhi
High Court Legal Services
Committee

versus

STATE

..... Respondent

Through : Mr. Sudershan Joon, APP

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **27.09.2016**

Since appellant has engaged a private counsel, Mr. Ankur Sood, Advocate, who is a legal aid counsel is discharged from the brief.

Vide judgment dated 26th February, 2014 appellant has been convicted under Sections 307/34 IPC and vide order on sentence dated 28th February, 2014 he has been sentenced to undergo rigorous imprisonment for four years with fine of ₹5,000/- for the offence under Sections 307/34 IPC and in default of payment of fine, to undergo simple imprisonment for three months.

Aggrieved by his conviction as also the sentences handed down to

him by the trial court, appellant has preferred this appeal.

FIR was registered under Sections 307/34 IPC, on the statement of injured PW1 Javed @ Babban, who alleged in the FIR that he had come to Salim's factory to meet his uncle at about 5/5:30 PM on 16th May, 2010. Appellant and co-accused Shammi @ Pandey, who were known to him, quarrelled with him in the gali and left. After some time, they came in the factory and the appellant who was having a knife in his hand, stabbed him on his neck and abdomen by uttering that he would kill him that day; while Shammi @ Pandey caught hold of him. On his raising alarm, his uncle Rashid Alam @ Tusa (PW2) came there and on seeing him, appellant and co-accused ran away. He along with his uncle came out in the gali, where constable Ali Naved met them and removed him to Hindu Rao Hospital.

In the Hospital, PW1 Javed @ Babban was medically examined and treated, vide MLC No. 3788/2010. His injuries were opined as "dangerous" by Dr. Om Prakash Prasad. Appellant and co-accused were arrested. Appellant made a disclosure statement that he had thrown the knife in *Idgaah* but same could not be recovered. Blood stained underwear of PW1 Javed @ Babban was seized and deposited in the Malkhana and later on, was sent to FSL and its report was obtained. After completion of

investigation, appellant and co-accused were sent up to face trial.

Charge under Sections 307/34 IPC was framed against the appellant and co-accused Shammi @ Pandey on 17th August, 2010 to which they pleaded not guilty and claimed trial. Prosecution examined 12 witnesses. During the course of trial, co-accused Shammi @ Pandey died and proceedings against him stood abated.

Material witnesses, in this case, are PW1 Javed @ Babban and PW2 Rashid Alam @ Tusa. Other witnesses are either doctor and police officials. Dr. Om Prakash Prasad was examined as PW3, who has proved the MLC as Ex. PW3/A. Constable Ali Naved, who had taken the injured to hospital, was examined as PW5. Inspector S.R. Mavi is the Investigating Officer and was examined as PW10. All other witnesses are formal in nature.

PW1 Javed @ Babban is the injured and PW2 Rashid Alam @ Tusa is eye-witness. They have supported the prosecution version completely. PW1 has categorically deposed that appellant and his co-accused came in the factory and appellant stabbed him on his neck and abdomen, while co-accused caught hold of him. PW2 Rashid Alam @ Tusa has corroborated the version of PW1. He has deposed that he saw appellant stabbing his nephew Javed @ Babban (PW1) while co-accused had caught hold of him.

MLC Ex. PW3/A corroborates the version of PW1 that he had sustained injuries caused by a sharp weapon. Trial court has found the testimonies of above witnesses to be trustworthy and reliable and has concluded that appellant had stabbed the injured, resulting in “dangerous injuries” to him. It has been further held that from the nature of injuries and the circumstances in which the same were caused, attracted the ingredients of offence under Section 307 IPC.

After arguing for some time, learned counsel for the appellant has given up challenge to the conviction of appellant on merits. He has only prayed for reduction of sentence. It is contended that appellant is aged about 26 years and belongs to economically weaker section of the society. He has a family comprising of his wife and two minor children. His aged parents are also dependent upon him. Appellant has no past criminal record. Appellant and injured were known to each other. A quarrel ensued between them on some trivial matter, wherein in a fit of rage the incident of stabbing occurred. Jail conduct of the appellant is satisfactory. Appellant has reformed himself. He is in incarceration for more than 3½ years.

In my view purpose of awarding substantive sentence of imprisonment is twofold. It is punitive as well as reformatory. Out of the

sentence of four years appellant has already completed more than three and a half years. His jail conduct is satisfactory. Keeping in mind the facts and circumstances of the case, while upholding the conviction of appellant under Section 307/34 IPC, his sentence is reduced to the period already undergone by him. Appellant be released from the jail, if not required in any other case.

Appeal is disposed of in the above terms.

A.K. PATHAK, J.

SEPTEMBER 27, 2016

rb