

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

RESERVED ON : 30th MAY, 2016

DECIDED ON : 11th JULY, 2016

+ CRL.A.1628/2014

NAIM ALI

..... Appellant

**Through : Mr.Tarun Khanna, Advocate with
Mr.Hemant Singh, Advocate.**

versus

STATE (GNCT OF DELHI)

..... Respondent

Through : Mr.Raghuvinder Varma, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant appeal has been preferred by the appellant – Naim Ali to challenge the legality and correctness of a judgment dated 15.07.2014 of learned District & Sessions Judge in Sessions Case No.70/2013 arising out of FIR No.169/2013 PS Mayur Vihar by which he was held guilty for committing offences punishable under Sections 307/506 IPC. By an order dated 16.07.2014, he was sentenced to undergo RI for five years with fine ₹20,000/- under Section 307 IPC and RI for two years with fine ₹5,000/- under Section 506 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as unfolded in the charge-sheet was that on 14.05.2013 at around 05.00 p.m. at backside of Parwana Apartments, Mayur Vihar-I, Delhi, the appellant inflicted injuries to Tahir in an attempt to commit murder; he also criminally intimidated the

complainant. Daily Diary (DD) No.31A (Ex.PW-1/A) came into existence at 17.35 hours at Police Station Mayur Vihar on getting intimation from Duty Const.Pradeep at LBS Hospital about admission of one Tahir stabbed by a knife by an unknown person in the hospital. After recording Tahir's statement (Ex.PW-2/A), the Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. The appellant was arrested. Upon completion of investigation, a charge-sheet was filed against the appellant for committing offences punishable under Sections 324/307/506 IPC. To establish its case, the prosecution examined twelve witnesses. In 313 Cr.P.C. statement, the appellant pleaded false implication and denied his involvement in the crime. He examined DW-1 (Mumtaz Ali) and DW-2 (Ruksar) in defence. The trial resulted in his 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. It has come on record that DW-2 (Ruksar) was married to the appellant on 05.11.2012. Prior to that, negotiations for her marriage had taken place with the victim but it could not materialise. It has, however, come on record that the complainant used to have conversation with Ruksar on phone even after her marriage to the appellant. Apparently, the appellant nurtured a grudge against the victim to have familiarity with his wife. The prosecution was able to establish the appellant's motive to inflict injuries to him.

4. In his statement (Ex.PW-2/A) the victim gave detailed account as to how and in what circumstances injuries were inflicted to him on various body parts by a knife. Strange enough despite having acquaintance,

the complainant did not name the appellant to be the perpetrator of the crime. In his Court statement as PW-2, the complainant proved the version given to the police without major variations and identified the appellant to be the individual who had inflicted injuries by a knife to him when he was instructed on phone to reach the spot on the pretext to sell him scrap items of brass. Specific and definite role was assigned to the appellant in the commission of the crime. In the cross-examination, the complainant admitted that he had received proposal of marriage with Ruksar who subsequently was married to the appellant. He further admitted that he used to have conversation with Ruksar on telephone since 06.04.2013. He further admitted that Ruksar had made complaint against him in the Police Station Mayur Vihar. He denied that the appellant was not the assailant or that the injuries were self inflicted.

5. Injuries sustained by the victim are not under challenge. Appellant's plea that the injuries were self inflicted was not supported by medical evidence. PW-10 (Dr.Rohan Gupta) proved the MLC (Ex.PW-9/A) where nature of injuries was opined as simple vide endorsement (Ex.PW-10/A). In the cross-examination, he categorically denied if the injuries suffered by the victim were self inflicted. The complainant had no occasion to self inflict number of injuries on his various body parts merely to implicate the appellant. The complainant being the injured witness is not expected to spare the real offender and to implicate the appellant for the injuries sustained by him. PW-3 (Shahdab), a witness to the incident, has corroborated his version without any major inconsistency. He too implicated the appellant to be the perpetrator of the crime. Material facts deposed by him have remained unchallenged in the cross-examination.

Nothing was suggested to him if the injuries suffered by the victim were self inflicted. Medical evidence is in consonance with ocular evidence. The victim was taken to LBS Hospital and was medically examined vide MLC (Ex.PW-9/A). Arrival time of the patient recorded therein is 05.30 p.m. Four incise wound of various dimensions were found on various body-parts as narrated by the complainant in his Court statement. There is, thus, no conflict between the ocular and medical evidence. Non-recovery of the crime weapon is not material. The prosecution was able to establish that the appellant was the author of the injuries caused to the complainant / victim.

6. On perusal of the record, it, however, reveals that ingredients of Section 307 IPC are not attracted / proved. The appellant and the victim were acquainted with each other. The complainant used to have conversation with DW-2 (Ruksar) – appellant's wife even after her marriage with him. The injuries suffered by the victim were 'simple' in nature. MLC (Ex.PW-9/A) shows that at the time of medical examination the victim was conscious and oriented; he was not even admitted in the hospital for medical treatment. Soon after the incident, the complainant was taken to LBS Hospital by his friend - PW-3 (Shahdab). No harm was caused by the appellant to PW-3 (Shahdab) – victim's friend though he too was present at the spot. No repeated blows were caused on the vital organs of the victim. Only one incise wound measuring 1 cm x 0.5 cm was found present on 'chin'.

7. Considering these circumstances, it can be inferred with certitude that it was a case of quarrel where simple hurt was voluntarily caused by the appellant to the complainant by a sharp object. Apparently, the injuries inflicted were not with the avowed object or intention to cause

death. The prosecution was thus able to establish commission of offence under Section 324 IPC. Conviction under Section 307 IPC is accordingly altered to Section 324 IPC.

8. Nominal Roll dated 01.02.2016 reveals that the appellant has already suffered custody for one year, seven months and six days besides remission for six months and three days as on 01.02.2016. He is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. At the time of commission of crime, he was aged around 24 years. Sentence Order records that he had a minor daughter aged around six months to take her care besides his wife. He is the sole bread earner of the family. Considering the mitigating circumstances, the appellant is sentenced to undergo RI for two and a half years with fine ₹10,000/- under Section 324 IPC; default sentence for its non-payment shall be SI for one month. Sentence under Section 506 IPC is altered to RI for one year with fine ₹1,000/-; default sentence for its non-payment shall be SI for fifteen days. Both the sentences shall run concurrently. Of course, the appellant will be entitled of benefit under Section 428 Cr.P.C.

9. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

JULY 11, 2016 / tr