

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

% Decided on: 19th December, 2016

+ **CRL.A. 900/2016 & Crl.M.B. 1719/2016**

DIN MOHD. @ DINU Appellant
Represented by: Mr. Azhar Qayum, Advocate.

versus

STATE Respondent
Represented by: Mr. Ravi Nayak, APP with SI
Mohd. Faizan Ghani, PS
Ghazipur.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Convicted for offence punishable under Section 307 IPC Din Mohd. @ Dinu challenges the impugned judgment dated 17th March, 2016 and the order on sentence dated 29th March, 2016 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹10,000/- for offence punishable under Section 307 IPC.

2. Assailing the conviction, the Learned Counsel for Din Mohd. @ Dinu submits that the injuries were simple in nature which could not have caused death in ordinary course of nature. Thus the appellant could not have been convicted for offence punishable under Section 307 IPC. It was further submitted that PW-3 Kamran is not a reliable witness as there are many contradictions and discrepancies in his statements. Alternatively, it was prayed that the appellant be released on the period already undergone.

3. Learned APP for the State on the other hand submits that the impugned judgment suffer from no illegality.

4. Process of law was set into motion on 18th February, 2013 when DD entry number 67B was received at about 11:40 P.M. stating that "*mere ladke ki gardan kat di gayi hai*". On the receipt of DD entry, PW-10 SI Arvind Kumar along with PW-1 Ct. Nikhil reached House number C-310, Gali No. 13, Mulla Colony, Delhi. On reaching the spot, he came to know that the injured has been taken to LBS Hospital by his father. PW-1 Ct. Nikhil recorded the statement of Kamran Ahmad vide Ex. PW-3/A. Kamran stated that on 18th February, 2013 around 11:00 P.M. when he had gone to ease himself, Din Mohd. who is the brother-in-law of his neighbour Kamil Hussain came there and insisted to first ease himself. When he stated that he came first, Din Mohd. started hurling abuses. When he asked Din Mohd. not to abuse he got infuriated and picked up a kitchen knife lying there and started attacking him. The appellant attacked him on his neck and arms. On raising alarm, his father Munish Ahmed PW-4 reached the spot. Din Mohd. pushed Kamran and his father and ran away from there. On the basis of this statement, FIR No.86/2013 was registered under Section 307 IPC at PS Gazipur. Blood stained baniyan of Kamran was seized. On 27th November, 2013, the appellant was apprehended by PW-5 Ct. Upender.

5. Kamran Ahmad deposed in Court in sync with his statement made before the police. During his cross examination, he stated that the appellant picked up quarrel with him on 11th February, 2013 also.

6. PW-4 Munish Ahmad, father of Kamran, corroborated his testimony.

7. PW-6 Dr. Vinay Kumar Singh, Specialist, Forensic Medicine, LBS Hospital deposed that when PW-3 Kamran was brought for expert opinion

regarding nature of injuries, after going through his MLC Ex. PW-6/A, he opined that the nature of injuries was simple.

8. Considering the evidence on record and the nature of injuries being simple in nature, which were caused by a kitchen knife and that the injuries were caused on a sudden quarrel, Section 307 IPC is not attracted. The offence proved to have been committed by the petitioner fulfils the ingredients of Section 324 IPC as the injuries inflicted were not with an intention to cause death. Similar view was expressed by this Court in the decision reported as (1997) 68 DLT 454 Phool Mohd. Vs. State; 1976 PLR (Delhi Section) 69 Mohinder Singh v. The State; 17 (1980) DLT 302 Narinder Kumar v. The State and 1995 (2) C.C.Cases 57 (HC) Rajesh alias Vimal. Kumar & Anr. v. State. Thus the conviction of the appellant is converted from the offence punishable under Section 307 IPC to Section 324 IPC.

9. The appellant who has already undergone nearly 1 year 8 months, is directed to be released on the period already undergone. Superintendent Tihar Jail is directed to release the appellant if not required in any other case.

10. Appeal and application are disposed of.

11. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

12. TCR be returned.

(MUKTA GUPTA)
JUDGE

DECEMBER 19, 2016
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