

\$~R-10 & R-11

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

Judgment Reserved on: July 25, 2017

% *Judgment Delivered on: July 28, 2017*

+ **CRL.A. 76/2002**

MUKHTIAR AHMED & ANR. Appellants

Through: Mr.D.K.Mathur, Advocate.

versus

STATE Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State with Insp.
Mohinder Singh, PS Gandhi
Nagar, Delhi

AND

+ **CRL.A. 149/2002**

JUBER AHMED Appellants

Through: Mr.M.Tarique Siddiqui,
Mr.Tanveer Ahmad & Reetika
Gupta, Advocates

versus

STATE OF DELHI Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State with Insp.
Mohinder Singh, PS Gandhi
Nagar, Delhi

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellants Mukhtiar Ahmed (expired during pendency of this appeal), Naseem Ahmed and Juber Ahmed have preferred these appeals under Section 374 (2) Cr.P.C. assailing the judgment and order on sentence dated 23rd January, 2002 passed by the learned Addl. Sessions Judge, Delhi, vide which the appellants have been convicted for committing the offence punishable under Sections 307/323/34 IPC and sentenced to undergo RI for five years with fine of ₹1000/- each and in default of payment of fine, to undergo RI for one month for the offence punishable under Section 307/34 IPC and further to undergo RI for six months for the offence punishable under Section 323/34 IPC. Both the sentences were ordered to run concurrently.

2. Briefly stating, the case of the prosecution is that the complainant/injured Suresh was doing the business of 'Kabadi'. He was residing as tenant at H.No.1203, near Masjid, Yamuna Pushta, Multani Mohalla, Gandhi Nagar, Delhi. His landlord had been repeatedly asking him to vacate the tenanted premises. On 25th September, 1991 at about 2.30 pm, while he was returning from the market, appellants Juber and Naseem Ahmed @ Guddu met him and abused him. They asked him about his decision regarding vacation of tenanted premises as had been asked by the landlord Ibrahim. In the meantime, appellant Mukhtiar (since expired) and accused Dabar (since expired), who were armed with dandas, also reached there. Appellant Mukhtiar uttered the words '*Ab Dekhte Kya Ho, Aaj Iska Kaam Kardo*', Juber caught hold of him and appellant Naseem @

Guddu took out *churri* from his pant and attacked him (complainant) with *churri* which hit on left side of his chest. When he tried to run, accused Dabar gave him a *danda* blow and caught hold of him. Then Naseem @ Guddu again attacked him with *churri* but he (complainant) managed to snatch the *churri* from Naseem @ Guddu. On this, all the four accused caught hold of him and when Naseem @ Guddu tried to snatch *churri* from him, the blade of the *churri* caused injuries on the right hand of Naseem. Sh.Madan Lal, who also used to work as Kabadi, raised alarm and on this, all the accused persons caught hold of Madan Lal and gave a *danda* blow on the head of Madan Lal due to which he (Madan Lal) received injuries. The matter was reported to the police and the injured was taken to the hospital.

3. Both the injured were discharged on the same day. Although initially the opinion regarding the injuries suffered by injured/complainant Suresh was not given, later on the nature of injuries was opined as 'simple' caused by sharp and blunt objections. As per the MLC of injured Madan Lal, the nature of injuries was opined as 'simple' caused by blunt object.

4. On the basis of statement made by injured/complainant Suresh, FIR No.220/1991 under Section 307/323 IPC and under Section 27/54/59 Arms Act was registered at PS Gandhi Nagar. The accused persons were arrested and after completion of investigation, the chargesheet was filed.

5. On the basis of material placed on record by the prosecution, all the accused persons were charged for having committed the offence punishable under Section 307/323/34 IPC. Accused Naseem was

additionally charged for committing the offence punishable under Section 27 of Arms Act. All the accused persons pleaded not guilty and claimed trial.

6. The learned Trial Court after concluding the trial held the appellants guilty for committing the offence punishable under Section 307/323/34 IPC and sentenced them in the manner aforesaid.

7. Feeling aggrieved, the appellants have challenged their conviction and sentence by filing these two appeals.

8. In this case, accused Dabar had expired during the trial and accused/appellant Mukhtiar Ahmed has expired during the pendency of this appeal.

9. During the course of hearing, learned counsel for the appellants Naseem Ahmed and Juber Ahmed submitted that appellant Juber Ahmed was a tenant of Ibrahim (DW-3) and running a business of embroidery work at the first floor of the building bearing H.No.1203, Yamuna Pushta, Multani Mohalla, Gandhi Nagar. The complainant/injured Suresh and injured Madan Lal were also tenants of Ibrahim (DW-3) in the same building and doing the business of *kabadi* from the godown of the said building. Learned counsel for the appellants further submitted that more than a quarter century has passed when this occurrence has taken place. Though the nature of injury suffered by Madan Lal and Suresh were simple in nature, however, the appellants Naseem Ahmed and Juber Ahmed are not challenging their conviction under Section 307/323/34 IPC and pray for a lenient view, only on the quantum of sentence.

10. Learned counsel for the appellant Naseem Ahmed has

submitted that the appellant Naseem Ahmed was 17 years 11 months old on the date of occurrence and was yet to attain the age of majority. It has been further submitted that the school certificate showing the age of the appellant at the time of occurrence has been duly verified by the State. The appellant was tried as an adult accused for the reason that he was above 16 years of age on the date of occurrence and was not a juvenile. The occurrence had taken place on 25th September, 1991 i.e. almost 26 years ago and except this case the appellant has no criminal antecedent.

11. Learned counsel for the appellant Juber Ahmed has submitted that the appellant is critically ill as he is suffering from kidney failure, he is on dialysis and has been advised kidney transplant. It is submitted that role attributed to Juber Ahmed is that he caught the injured. He is also having clean antecedents with only this criminal case registered against him which was about 26 years ago.

12. Learned counsel for the appellant Juber has submitted that even prosecution case against Juber is that he caught hold of the injured. Hence in view of the role attributed to both the appellants, the fact that they had never misused their liberty during the last 26 years and their age at the time of occurrence, a lenient view may be taken against them.

13. Learned APP for the State submits that on verification the age of Naseem Ahmed was below 18 years but as at that time he was above 16 years of age, he was not tried as juvenile. It is not disputed that except this case the appellant had no other criminal antecedents.

14. So far as the appellant Juber is concerned his medical record has

been verified from Sir Ganga Ram Hospital. It is also verified that he is undergoing treatment at Sri Ganga Ram Hospital in the category of 'Economically Weaker Section' (EWS) and needs urgent kidney transplant.

15. Taking into consideration the facts and the mitigating circumstances and the submissions made on behalf of the appellants Naseem Ahmed and Juber Ahmed, while maintaining their conviction under Section 307/323/34 IPC, their substantive sentences awarded for committing the offence punishable u/s 307/34 IPC and u/s 323/34 IPC are reduced to the period already undergone by them in judicial custody in this case. However, the fine imposed on the appellants Naseem Ahmed and Juber Ahmed is enhanced from ₹1000/- (each) to ₹20,000 (each). In default of payment of enhanced fine amount, they shall undergo simple imprisonment for three months.

16. It is informed that fine of ₹1000/- imposed by the learned Trial Court vide impugned order on sentence has already been deposited and receipts are also placed on record.

17. The appellants are directed to deposit the balance fine amount with the Registrar General of this Court by 1st August, 2017 and place on record the proof of depositing the fine amount within two days thereafter. However, if the appellants fail to deposit the balance fine amount by 1st August, 2017, they shall surrender before the concerned Jail Superintendent for undergoing the sentence awarded in default of payment of fine.

18. Both the appeals are partly allowed and impugned order on sentence is modified to the extent aforesaid.

19. Copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.
20. TCR be sent back alongwith copy of this order.
21. As prayed, copy of the order be also given dasti to learned counsel for the appellant under the signature of Court Master.

**PRATIBHA RANI
(JUDGE)**

JULY 28, 2017
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