

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : July 04, 2017

+ CRL.A. 290/2002
 DHARMENDER

..... Appellant

Through: Mr. S.K. Rungta, Senior Advocate
 with Mr. Prashant Singh,
 Mr. Shivankur Shukla, Advocates

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
 Public Prosecutor for the State

+ CRL.A. 331/2002
 MANOJ

..... Appellant

Through: Mr. R.S. Malik, Mr. Kapil Dahiya Mr.
 Sahil Malik, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
 Public Prosecutor for the State

+ CRL.A. 342/2002
 KAMLESH YADAV

..... Appellant

Through: Mr. S.K. Rungta, Senior Advocate
 with Mr. Prashant Singh,
 Mr. Shivankur Shukla, Advocates

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
 Public Prosecutor for the State

+ CRL.A. 436/2002
SHIV PRASAD @ BHOLU & ORS.

..... Appellant
Through: Mr. R.S. Malik, Mr. Kapil Dahiya Mr.
Sahil Malik, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent
Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J

1. The present four appeals have been filed assailing the judgment dated 22.03.2002 vide which the appellants-Dharmender, Manoj, Kamlesh Yadav, Shiv Prasad @ Bholu, Shiv Bachan and Lal Bachan have been convicted under Section 307/34 IPC and sentenced vide order on sentence dated 27.03.2002. Therefore, all these appeals are being decided together.

2. The above captioned four appeals arise out of a common judgment dated 22.03.2002 passed by learned Additional Sessions Judge whereby the appellants have been held guilty for the offence punishable under Section 307/34 of Indian Penal Code (hereinafter referred to as I.P.C.) and vide order on sentence dated 27.03.2002, the appellants have been sentenced to undergo rigorous imprisonment for a period of five years each and fine of Rs.5,000/- each for the offence

under Section 307/34 of IPC and in default of payment of fine they were further sentenced to undergo rigorous imprisonment for three months.

3. The facts as emerging from the impugned judgment are that on 12.10.1996, an information was received at Police Station that one person had been stabbed on which ASI Partap Singh went to the spot and started investigation of this case. During investigation, the evidence was collected that all the accused persons alongwith complainant Roshan Lal had gone to play cricket at Surajmal Stadium where the accused persons started abusing the complainant. When it was objected to by the complainant he was stabbed by the accused persons, as a result of which he received injuries.

4. To prove the charges against the appellant, the prosecution examined 19 witnesses. They are; Roshan Lal (PW-1); Prahlad (PW-2); Parmod Kumar (PW-3); Naresh Kumar (PW-4); Constable Pawan Kumar (PW-5); Dr. A. Bhasin, Radiologist (PW-6); Dr. K.K. Kumra (PW-7); Constable Surinder Kumar (PW-8), Rajinder Singh (PW-9); Constable Jai Pal Singh (PW-10); Parvinder Singh, Photographer (PW-11); Sub-Inspector Ajit Singh (PW-12); Dr. K.K. Kamra (PW-13); Mr. Karamjogi (PW-14); Head Constable Munshi Lal (PW-15); Constable Silandera Singh (PW-16); Sub-Inspector Jarnail Singh (PW-17); ASI Pratap Singh (PW-18); and Constable Tara Chand (PW-19).

5. After examination of the prosecution evidence the statement of accused persons under Section 313 Cr.P.C. were recorded wherein all

the appellants claimed to be innocent. However, they did not produce any evidence in their defence.

6. Upon considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellants guilty for offence punishable under Sections 307/34 of IPC by impugned judgment dated 22.03.2002, and vide order on sentence dated 27.03.2002 the appellants were sentenced as indicated above. Hence, the appellants have filed the instant appeal against the impugned judgment and order on sentence passed by learned Additional Sessions Judge. During pendency of the present appeal, the sentence imposed upon the appellants was suspended.

7. The main grounds of challenge are that no independent witness supported the allegations that the appellants had caught hold of the complainant and then he was attacked with knives and hockey. There was no common intention between the appellants for making an attempt to commit the murder of the complainant. There was no dispute between the complainant and accused persons prior to the incident. Independent witnesses Pramod Kumar (PW3) and Naresh Kumar (PW4) did not support the case of prosecution or the version of the complainant. There is no sufficient evidence on record to convict the appellants. It has been submitted that the knives were never recovered and the recovery shown is the planted one. It was further submitted that the father of the complainant had not been made a witness by the prosecution. There is no opinion of the doctor with regard to use of recovered knife. It was further submitted that the

doctor who had given the opinion had not been examined to prove his opinion.

8. Per contra, argument advanced by learned Additional Public Prosecutor for the State was that the appellants were rightly held the guilty under Section 307/34 of the IPC inasmuch as the appellants with their common intention caused knife injuries on the person of the complainant/injured and the injured had duly supported the case of prosecution. It was further submitted that the medical evidence in the form of MLC of the injured had further corroborated the case of the prosecution that he received dangerous injuries. The prosecution has successfully proven the offence of the appellants beyond all reasonable doubts and in such circumstances, the impugned judgment and order on sentence passed by learned Additional Sessions Judge do not call for any interference and the same are liable to be upheld.

9. I have heard the submissions made on behalf of the State and gone through the appeals, impugned judgment and order on sentence and the material available on record. To test the impugned judgment and order on sentence on the touchstone of the evidence led by prosecution, let the statement of material witnesses be scrutinized first.

10. The impugned judgment is based on the statement of the main witness, i.e., complainant Roshan Lal (PW-1). He deposed before the court that on 08.10.1996, it was Sunday and he was present at his house. Lal Bachan, Shiv Bachan, Kamlesh came to his house and invited him to play cricket. He went to Suraj Mal Stadium with those persons where he met Bholu, Dharmender and Manoj. He further

deposed that they reached the Stadium at 3.30 PM. He was asked to pick the wickets and he fixed the three wickets. All the accused started accusing him as to why he had fixed the wickets on which he stated that all of them had suggested to do so. Thereafter they started abusing him. When he asked as to why they were abusing him, Lal Bachan, Shiv Bachan and Kamlesh stated that they will teach him a lesson. Thereafter, all the three persons, armed with knives, stabbed him with their respective knives. He further deposed that the accused Bholu and Dharmender caught hold of his hands and Manoj hit him with a hockey. Thereafter, all the accused ran away by jumping the stadium wall. It is further deposed that **Pramod and Naresh** were also present in stadium. His father came there and took him to the hospital. His statement was recorded by the police on 08.10.1996. He became unconscious as a result of the multiple injuries he received. The clothes worn by him were taken into possession by the hospital and handed over to the police. In his re-examination he deposed that Kamlesh was the first person who stabbed him, thereafter Shiv Bachan and Lal Bachan stabbed him and at that time Bholu and Dharminder caught hold of his hands. It is further deposed that there was no dispute between him and any of the accused persons prior to the said incident. In his cross-examination, he deposed that there was no enmity between him and any of the accused persons in the past.

11. Pramod Kumar (PW-3) deposed in his statement that on 06.10.1996 he was in Suraj Mal Stadium at about 2.30 to 3.00 PM, where a number of boys were playing in the stadium. He did not see

the person who actually assaulted the injured but he saw the injured. The injured Roshan was taken near the gate of the stadium where after some time his family members came and took him to the hospital.

12. PW3 Pramod Kumar was declared hostile and was cross-examined by the learned APP for the State. During his cross-examination, he stated that he knows all the six accused persons because they all were living in the same locality. He stated that he did not give any statement to the police. He denied that accused Lal Bachan, Shiv Bachan and Kamlesh assaulted Roshan Lal with knife and chhuries in his presence and Manohar had beaten Roshan Lal with hockey or that accused Dharmender and Bholu caught hold of Roshan Lal. He further stated that he had seen the accused running but he did not see any knife or any object with any of the accused. He further stated that he did not see knife in the hands of any of the accused or any hockey with any of the accused.

13. Naresh Kumar (PW-4) is the other independent witness. He had deposed that on 06.10.1996, he was at Suraj Mal Stadium to play cricket. The accused persons also came to play cricket. Roshan was also there in the stadium. This witness was in the visitor gallery side and he saw the accused persons quarrelling with Roshan. He went to the house of Roshan to call his family members. He deposed that one of the accused assaulted Roshan with the wickets. When he returned from the house of Roshan, he found him lying outside the Stadium and he was bleeding. His father took him to the hospital. Police came to the stadium but police did not record his statement.

14. PW4- Naresh Kumar was declared hostile and during his cross-examination by the learned APP, he deposed that none of the accused persons assaulted the injured with any knife or hockey stick in his presence.

15. Dr. K.K.Kamra, CMO, DDU Hospital (PW-7) had deposed that on 06.10.1996, he was on supervisory duty as CMO, when the patient named Roshan was brought to casualty of the hospital at about 4.20 PM with alleged history of assault. The MLC Ex.PW7/A was prepared by Dr. Archana Mishra. He further deposed that the final opinion given by the Dr. Mukesh, Sr. Resident Surgery as being dangerous and caused by sharp edged weapon. Since both the doctors have left the services of the hospital, he identified the hand writing and signatures of both the doctors having seen them during the course of the duty.

16. Sub-Inspector Ajit Singh (PW-12) deposed before the court that on 09.10.1996, he was posted at Police Station Nangloi and he had conducted the investigation of this case. He had stated that PW Ram Bachan stated that he has brought his brother to surrender before the police and they were surrendered in a taxi stand and at his instance three accused Manoj, Lal Bachan and Shiv Bachan were arrested. Their search memos were prepared and they were interrogated and their disclosure statement was recorded. Thereafter they came to the Suraj Mal Stadium where at the instance of Lal Bachan from near the bushes of cremation ground near the stadium one Chhura was recovered, sketch for the place of recovery was also prepared. In his

cross-examination he deposed that only Prahlad met them at New Delhi Station and he came with them in the bus alongwith the accused to the stadium. He further deposed about the length of the knife being of 13.6 cm., having blade of 8.8 cm.

17. PW-19 Constable Tara Chand deposed before the court that on 12.10.1996, he was posted at Police Station Nangloi. On that day he alongwith Constable Jaipal joined the investigation with Ajit singh Sub-Inspector and went to New Delhi Railway Station towards Ajmeri Gate where at the instance of Ram Bachan, they apprehended three accused namely Shiv Bachan, Lal Bachan and Manoj. Their personal searches were taken and they were interrogated and made their disclosures. Thereafter all of them came to the place of occurrence and accused Lal Bachan got recovered chhura from cremation ground near Surajmal Stadium for which sketch was prepared. The chhura was put into parcel and sealed and seized vide memo Ex. PW-2/E. Sketch of recovery memo was signed by him alongwith Constable Jaipal and PW-Prahlad.

18. In the facts of the present case, the appellants have allegedly caused injuries on the person of injured Roshan Lal with knives. Dr. K.K. Kamra (PW-7) had proved the MLC of the injured as Ex.PW7/A prepared by Dr.Archna Mishra. He also proved the opinion of Dr.Mukesh regarding nature of injuries sustained by the injured as dangerous caused by sharp edged weapon. Dr.K.K. Kamra (PW7) had deposed that Dr.Archna Mishra and Dr.Mukesh had left the services of the hospital. Herein, it would be relevant to discuss the case laws on

this point. In **Amar Singh Singh v. State 1994 (29) DRJ** relied upon by the appellants, it was stated that since the doctor who found the injuries on the victim to be of a grievous nature, never entered the witness box and whose whereabouts were not known, the prosecution could not take advantage of the opinion given by him on the nature of injuries of the victim.

19. Moreover, this court in the matter of **Rajvir & anr. v. State (Cr.A 630/1999 decided by this court on 04.01.2005)** found that the MLC of one of the two injured was proved by a person who did not examine the said injured person and that the same was prepared by another doctor. The said witness in that case had proved the MLC being of a colleague and the court opined that the *“the witness has obviously deposed callously and the learned Trial Judge too has been negligent”*. The court thus did not place any reliance on the same.

20. In the case of **Rajesh @ Vimal Kumar & Anr. v State (Del Admn) 1995 JCC 148** the ground taken by the appellant was that the doctor who had examined the injured and opined that the injuries were dangerous in nature had not been examined. This court in that case observed that, *“though the medico-legal report has been placed on record, it was never thought of examining the doctor who had opined that the injuries were dangerous in nature. Since that particular opinion has not been proved through the doctor who gave it and since we do not know on what basis he formed that opinion, and keeping also in view the medico-legal report placed on record, I do not feel that in the present case the conviction shall have to be only under*

Section 324 read with Section 34 of the Indian Penal Code. The appeal with regard to conviction is accepted to that extent.”

21. Resultantly, as per the ratio laid down in the judgments referred to above and in the facts and circumstances of the present case it is explicitly clear that it was for the prosecution to prove conclusively by producing not only the medical record relating to the treatment given to the injured but also by producing the doctor who had attended on the injured and examined him with respect to the said injury being of such a depth or of such a nature which could be opined as dangerous or simple. In the present case though the injuries of the injured Roshan Lal have been labeled as dangerous by Dr.Mukesh, the same have neither been corroborated by him at a later stage during trial nor has he given any reasons for forming the said opinion, inasmuch as he was not produced as a witness by the prosecution. In the light of the same, the opinion leveled by him cannot be taken into consideration.

22. As per the discussions made above and the facts and circumstances of the present case, the prosecution cannot take advantage of the opinion of the Doctor by which the injuries of the injured Roshan Lal have been labeled as “dangerous”. And once this position is accepted, the ground for convicting the appellants under Section 307 is washed away.

23. From the evidence discussed above, it has been established on record that all the appellants in furtherance of their common intention had caused hurt to Jeet Pal and that too with a sharp edged object i.e. knife and thus the acts of the appellants squarely fall under Section

324/34 IPC. Since the prosecution has failed to establish the offence committed by the appellants under Section 307 IPC, their conviction is liable to be converted into Section 324/34 IPC.

24. In view of the above observations, the appeal is partly allowed. The conviction is converted from Section 307/34 of the Indian Penal Code to one under Section 324/34 of the IPC.

25. The present matter is one of the occurrence of the year 1996; charge against the appellants was framed on 25.05.1999; the judgment of conviction was passed on 22.03.2002; order on sentence was passed on 27.03.2002; the present appeals were preferred in the year 2002 and now we are in the year 2017. Apparently, the appellants have faced the protracted trial for about 21 years.

26. In view of the above mentioned facts and circumstances of the present case and in order to meet the ends of justice, the sentence of the appellants is modified to undergo rigorous imprisonment for a period of two years each and fine of Rs.10,000/- each for the offence under Section 324/34 of IPC. In default of payment of fine they shall further sentenced to undergo rigorous imprisonment for six months.

27. In view of the aforesaid, the present appeals filed by the appellants is partly allowed to the extent indicate above and are disposed of as such.

(P.S.TEJI)
JUDGE

JULY 04, 2017
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