

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : May 25, 2017

+ CRL.A. 347/2001

SATISH KUMAR & ORS.

..... Appellants

Through: Mr.Ramesh Gupta, Senior Advocate
with Mr.Bharat Sharma, Advocate
with appellants in person.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State.
Mr.A.K. Tripathi, Advocate for the
Complainant.

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

JUDGMENT

P.S.TEJI, J.

1. By this appeal filed under Section 374(2) of Cr.P.C., the appellants, namely, Satish Kumar, Bhram Singh Parkash, Sanjeev Kumar @ Sanjay and Jaheer Ahmad seeks to challenge the judgment dated 23.04.2001, passed in S.C. No.83/1997 in a case registered as FIR No.194/1993 under Section 307/34 of IPC, at Police Station Maya Puri, Delhi whereby the appellants have been convicted under Section 307/34 IPC and order on sentence dated 01.05.2001 vide which they have been awarded the rigorous imprisonment for a period 3 years and fine of Rs.5,000/- each, in default of payment of fine to further

undergo rigorous imprisonment for 6 months.

2. The facts emerging from the record are that injured Roshan Lal owned a shop in Nangal Rai, Delhi Cantonment Area and adjacent to his shop was the shop of accused Satish and Bhram Parkash etc. On 19.09.1993 at about 10.45 p.m., accused Satish, Bhram Parkash, Sanjay and Jaheer were standing in front of their shop and were abusing Roshan Lal by saying that they would force him to leave the shop. On hearing the same, Roshan Lal and his brother Ashwani asked the accused persons not to do so, upon which accused persons started beating them. Accused Jaheer, Satish and Bhram Parkash were armed with knives, while accused Sanjay was armed with an iron rod. On hearing the noise, father of Roshan Lal and Ashwani, namely, Om Prakash came there. Accused Satish gave knife blow to Om Prakash; accused Jaheer gave a knife blow to Roshan Lal; their worker Raju was assaulted by accused Bhram Parkash and Sanjay. When Ashwani tried to intervene, accused persons continued to threaten them.

3. After the incident, all the injured i.e. Roshan Lal, Om Prakash and Raju were removed to hospital. Statement of Roshan Lal was recorded on the basis of which, FIR of the present case was registered. Accused persons were arrested. After completion of investigation, charge sheet was filed in the Court.

4. Charge under Sections 307/34 IPC was framed against the accused persons. Accused persons pleaded not guilty and claimed a trial.

5. The prosecution had examined as many as 11 prosecution witnesses, including PW1 Roshan Lal, PW2 Om Prakash, PW3 Ashwani, PW9 SI Hari Ram, PW10 Dr. M.N. Mansoor and PW11 Dr. Manish.

6. After conclusion of prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C.

7. Upon considering the facts, evidence led and the material on record, the appellant was held guilty by the learned Additional Sessions Judge, Delhi and by an order dated 01.05.2001, the appellant were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo rigorous imprisonment for 6 months under Section 307/34 of IPC.

8. During the pendency of the present appeal, the appellant Sanjeev Kumar @ Sanjay expired and proceedings against him stood abated vide order dated 29.04.2014.

9. The main grounds of challenging the impugned judgment of conviction are that there is no iota of evidence on the record to connect the appellants with the commission of the alleged offence. The MLC of the injured had been tampered with. It contains cutting and word “blunt” has been changed to “sharp” in a different ink. Neither the MLC prepared by the doctor had been placed on record nor the doctor was examined. It is further submitted that one of the injured-Raju was not examined by the prosecution. There are contradictions in the testimony of witnesses. The appellants have

been falsely implicated as there was previous enmity between them and the complainant and the said fact has been admitted by the complainant.

10. Per contra, learned Additional Public Prosecutor for the State has opposed the aforesaid contentions raised on behalf of the appellants and submitted that there is no illegality or infirmity in the impugned judgment and order on sentence as passed by learned Trial Court. The public witnesses including the injured had duly supported the case of prosecution and identified the appellants being the assailants. From a joint reading of testimony of witnesses and the medical evidence, it was duly proved that an attempt was made by the appellants to commit the murder and they have rightly been convicted.

11. I have heard the submissions made by the learned Senior Counsel for the appellants as well as learned APP for the State and have gone through the material available on record.

12. It is a matter of record that the record of the trial court could not be attached with the file of the appeal as the same could not be reconstructed despite best efforts by the Courts below.

13. Section 386 of the Cr.P.C. provides for powers of the Appellate Court while deciding an appeal. It provides that after perusing such record and hearing the appellant or his pleader, the Appellate Court may dismiss the appeal or reverse the finding and sentence and acquit or discharge an accused, in an appeal from a conviction.

14. In the instant case, despite several attempts, the record of the trial court including the testimonies of witnesses examined before the trial court could not be reconstructed. Even otherwise, a perusal of the impugned judgment of conviction does not throw any convincing light on the testimony of prosecution witnesses.

15. In the present case, as per the medical evidence brought on record, the injured Roshan Lal as per his MLC Ex.PW5/2 received simple injuries. Injured Roshan Lal had received CIW of 2 cms. This injury was simple in nature as per the opinion of the doctor.

16. So far as injured Om Prakash is concerned, his MLC Ex.PW10/1 shows that he received stab wound over left arm; stab wound over right forearm and another stab wound over right palm and dorsum of right hand. As per the opinion of the doctor, the nature of injuries sustained by him was of grievous nature.

17. The Hon'ble Apex Court in the case of *State of Karnataka v. Siddgowda and Another* 1995 SCC (Cri) 931 has observed as under :

“There were two persons who were subjected to assault in the incident. One was Marigowda PW3, who on examination by Dr.S.D. Eswara PW7, was found to be having two injuries. Injury 2, undeniably, was simple in nature through caused with a sharp-edged instrument. Injury 1, however, was described as an incised clear-cut gaping wound measuring three inches in length, muscle deep one inch wide, situated obliquely from above downwards right to left, three inches above the right wrist joint in the front. Under that wound

tender muscle nerve had been cut clearly. The doctor opined that the said injury was grievous in nature as the tender muscle nerve had been cut. It is this injury which attracted conviction under Section 326 IPC. It appears that the courts below did not go into the question of nature of injury. We have grasped its description carefully. In our view, the injury does not fall within the ambit of Section 320 IPC to be called a grievous one. It has to be termed as a simple injury like the other one. Thus, we have on the person of Marigowda, two simple injuries and on Vishakantegowda, PW1, the other injured person, two simple injuries found on examination by Dr. H.K. Basavaraju PW8. The conviction of the respondent would thus, if at all, have to be under Sections 324/34 IPC alone.”

18. From a careful examination of the medical record of the injured Om Prakash i.e. his MLC Ex.PW10/1, the injury was not on any of his vital organ. He had also not sustained cut of any of his bone. He had received only stab wounds on his arms, palm and dorsum of right hand. As per Section 320 IPC, none of the injuries sustained by injured Om Prakash can be said to be grievous in nature and in the considered view of this Court the same were simple in nature.

19. As per the case of the prosecution, injured Roshan Lal received simple injuries and the injuries sustained by injured Om Prakash have already been observed to be simple in nature. Injured Om Prakash was the only person for whose injuries, the appellants have been convicted for the offence punishable under Section 307/34 IPC. Since this Court has observed that the injuries sustained by the injured Om Prakash were simple in nature, the conviction of the appellants would

thus have to be under Sections 324/34 IPC alone.

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

21. In view of the above mentioned facts and circumstances, the sentence awarded to the appellants is also modified to the extent of period already undergone by them. Their bail bonds and surety bonds stand discharged.

22. In view of the aforesaid, the present appeal filed by the appellants is partly allowed to the extent indicated above and is disposed of as such.

MAY 25, 2017
dd

(P.S. TEJI)
JUDGE

