

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

+ CRL.A. 536/2001
KASIM & ANR. Appellant
Through: Mr.M.L. Yadav, Advocate

versus

STATE Respondent
Through: Mr. Pannal Lal Sharma, Additional
Public Prosecutor for the State with
Inspector Ram Avtar Tyagi, SHO,
with Sub-Inspector Manoj Tomar,
Police Station Seelampur, Delhi.

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

P.S.TEJI, J

1. By this appeal filed under Section 374 of Cr. P.C., the appellants seek to challenge the impugned judgment dated 21.05.2001, passed in SC No.164/1999 in a case registered as FIR No. 548/1998 under Section 307/308/186/353/34 of IPC read with Section 25/27/54/59 of Arms Act, at Police Station Seelampur, Delhi. The appellant also seeks to challenge the order on sentence dated 24.05.2001, whereby they have been sentenced as follows:

- a) Appellant – Kasim is sentenced to undergo rigorous imprisonment for a period of 7 years for the offence under Section 307 of IPC with fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous

imprisonment for three months;

- b) Appellant – Yunus is sentenced to undergo rigorous imprisonment for a period of 5 years for the offence under Section 308 of IPC and payment of fine of Rs.3,000/-, in default, to undergo rigorous imprisonment for three months each; and
- c) Appellants – Kasim and Yunus were further sentenced to undergo rigorous imprisonment for three months each for offences under Section 186/353/34 of IPC and rigorous imprisonment for three months for the offence under Section 25/27/54/59 of Arms Act.

All the sentences were ordered to run concurrently.

2. The facts as emerging from the impugned judgment are that on 06.08.1998 at about 11.10 AM near red light, Constable Ripu Daman who was on beat patrolling duty in E. F, G, H Block, Shastri Park, Kaithwara, found that the accused Yunus was beating one rickshaw puller – Shakeel Ahmed. Ripu Daman intervened, whereupon accused Yunus started pulling out a country made pistol from his armpit. Ripu Daman gave him a danda blow. Thereafter, accused Kasim who was standing at a distance, shot a fire from another country made pistol held by him which hit against the back of Ripu Daman. When Ripu Daman turned back and found that Kishan Lal was trying to apprehend accused Kasim. Accused Yunus came there running and shot a fire at Kishan Lal but it did not strike him. Thereafter, Yunus

gave a blow with the butt of his country made pistol on the head of Kishan Lal. In the meantime, other public persons and vehicle of PCR arrived at the spot and accused Kasim was overpowered by Kishan Lal alongwith one country made pistol, eight live cartridges, one empty cartridge, besides one dagger. Inspector Maharaj Singh, of PCR apprehended the accused Yunus alongwith country made pistol, one cartridge, one fired cartridge. The officials of PCR took Ripu Daman to GTB Hospital. In the meantime, Inspector Tej Pal Singh, SHO of Police Station Seelampur arrived at the spot. Both the accused were arrested and challened for offences under Section 307/308/186/353/34 of IPC, to which they pleaded not guilty and claimed trial. The facts as emerging from the impugned judgment are that at about 11.10 AM near red light, Constable Ripu Daman who was on beat patrolling duty in E. F, G, H Block, Shastri Park, Kaithwara, found that the accused Yunus was beating one rickshaw puller – Shakeel Ahmed. Ripu Daman intervened, whereupon accused Yunus started pulling out a country made pistol from his armpit. Ripu Daman gave him a danda blow. Thereafter, accused Kasim who was standing at a distance, shot a fire from another country made pistol held by him which hit against the back of Ripu Daman. When Ripu Daman turned back and found that Kishan Lal was trying to apprehend accused Kasim. Accused Yunus came there running and shot a fire at Kishan Lal but it did not strike him. Thereafter, Yunus gave a blow with the butt of his country made pistol on the head of Kishan Lal. In the meantime, other public persons and vehicle of PCR arrived at the spot and accused Kasim was overpowered by Kishan Lal alongwith one country made pistol, eight

live cartridges, one empty cartridge, besides one dagger. Inspector Maharaj Singh, of PCR apprehended the accused Yunus alongwith country made pistol, one cartridge, one fired cartridge. The officials of PCR took Ripu Daman to GTB Hospital. In the meantime, Inspector Tej Pal singh, SHO of Police Station Seelampur arrived at the spot. Both the accused were arrested and challened for offences under Section 307/308/186/353/34 of IPC, to which he pleaded not guilty and claimed trial.

3. The appellant - Kasim before the learned Additional Sessions Judge, in his statement recorded under Section 313 Cr.P.C. deposed that he had been lifted from his brother's house situated at Seelampur and the alleged recoveries were planted upon him. On the other hand, Appellant – Yunus explained that he had come to Seelampur for playing, where a quarrel took place and he received injuries. He went to his uncle's house wherefrom he was lifted by the police. However, both the appellants did not lead any defence evidence in their support.

4. To prove the charges against the appellant, the prosecution examined 19 witnesses. They are; Head Constable Jabar singh (PW-1); Constable Charan Lal (PW-2); Dr. B.Narain, CMO GTB Hospital, Delhi (PW-3); Kishan Lal (PW-4); Head Constable Dinesh (PW-5); Constable Mohar Singh (PW-6); Constable Inderjeet Singh (PW-7); Rajiv Jain, LDC (PW-8), Constable Ripudaman (PW-9); Inspector Maharaj Singh, (PW-10); ASI Samander Singh (PW-11); Constable Rishi Pal (PW-12); Constable Karamvir Singh (PW-13); Inspector Tej Pal Singh (PW-14); Dr. R. Dayal, CMO, GTB Hospital, Delhi (PW-

15); Shakeel (PW-16); Sh. A.R. Arora (PW-17); Dr. Satish Mishra, Surgery Sr. Resident, GTB, (PW-18); and Dr. S.D. Bisht, Sushrut Trauma Centre, LNJP Hospital (PW-19).

5. Upon considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant – Kasim guilty for offence punishable under Sections 307 of IPC read with Section 25/27/54/59 of Arms Act and appellant – Yunus guilty for the offence under Section 308 IPC read with Section 25/27/54/59 of Arms Act, by impugned judgment dated 21.05.2001, and vide order on sentence dated 24.05.2001 and 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 vide order dated 10.10.2002.

6. The main grounds of challenge are that there are contradictions in the statement of the prosecution witnesses and the prosecution has miserably failed to prove its case beyond reasonable doubts. Even the prosecution witness Shakeel (PW-16) who was allegedly being beaten by the appellant has been declared hostile; Constable Ripu Daman (PW-9) in his cross-examination deposed that he could not see the faces of the appellants and on the other hand he deposed that he had seen Yunus first time in the hospital. Even the star witness Kishan Lal (PW-4) has denied having made any statement before the police and in his cross-examination stated that he had caught the accused Kasim at a

distance of 15 minutes running. It is further contended that as per the prosecution case the appellants were arrested at the spot, but the DD No.11A states that an information was received from wireless Operator through intercom that somebody had fired a shot on a police constable, he was taken to the hospital and the assailants had run away. It is further contended that the Head Constable Dinesh (PW-5) who belongs to PCR and arrived at the spot first of all and deposed that one public witness had told him that one constable had been fired. He stated that they found the constable at the spot lying and removed him to the hospital, but he nowhere stated that accused were arrested on the spot. It is further argued that PW-6 Constable Mohar Singh who was accompanying with Inspector Maharaj Singh (PW-10) to the spot, did not state a word regarding the arrest of the appellants on the spot. Learned counsel for the appellant has further contended that the Investigating Officer of the case had made an application dated 18.09.1998 for sending the appellants to JC, mentioning the date of arrest of the appellants as 07.08.1998, whereas the incident as well as the arrest of the accused was shown as 06.08.1998. In that application, the Investigating Officer had made a request to the learned court to recover the katta from the house of the brother of accused Kasim on 07.08.1998. It is further argued that no documentary evidence was produced to show that constable Ripudaman was on duty at the place of incident. Regarding medical evidence, it is argued that Dr. R. Dahal (PW-15) and Dr. S.D. Bisht (PW-19) who medically examined and gave their opinion regarding Constable Ripudaman in his cross-examination, Dr. R. Dayal admitted that he had not removed the

pellets, rather he admitted that there would be blackening and tattooing on the body if the shot is fired from a short distance. The X-ray taken is also not on record. Similarly, Dr. S.D. Bisht in his cross-examination deposed that he could not remember the length and breadth of the injuries received by the patient and without going through the records, he could not give an opinion about the nature of the injuries as the same were made simple or grievous. He further deposed that without record, he could not tell the distance of firing. Therefore from the deposition of the doctors, it is clear that the prosecution is of a simple hurt, which falls at best within the purview of Section 323 of IPC. Therefore, in such a situation, the appeal filed by the appellants be allowed and they be given the benefit of doubt.

7. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the accused/appellants were rightly held guilty, the appellant – Kasim under Section 307 of the IPC inasmuch as he had inflicted a gun shot at the complainant and the appellant – Yunus for the offence under Section 308 of IPC as he had given a blow with the butt of his country made pistol on the head of Kishan Lal. More so, there is recovery of pistol, eight live cartridges, one empty cartridge, one dagger at the instance of the appellants. Therefore, 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.

8. I have heard the submissions made on behalf of the State and gone through the petition, 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 statements of material witnesses be scrutinized.

9. Constable Ripudaman (PW-9) had deposed in his statement that on the date of incident i.e. 6.8.1998 at about 11.40 am, he was present near Red light, Shastri Park and while on patrolling duty, he saw a boy being beaten by another boy. He tried to separate them and rescue the boy, but the boy who was bearing the other one, took out a desi katta from one side of his body. He immediately gave a danda blow to him. Another boy who was standing near by, had fired at him from a desi katta of which the bullet hit him on his back. When he looked to the boy who had fired at him, he saw one other person trying to apprehend the assailant. At the same time, the boy whom he had seen beating another boy – fired a shot on the person who was trying to apprehend the second assailant (who had fired on him) but the fire shot did not hit that man. Thereafter, that boy hit the katta butt (handle) on the head of that person. The crowd gathered there succeeded in holding him down. The other assailant had already been apprehended by the person who had earlier been hit with butt of the katta. Thereafter, PCR van came and removed him to GTB Hospital. It was subsequently revealed that the person who had been hit on his head was Kishan and the boy who was beating that boy was Yunus. During his deposition, he identified both the assailants in the hospital, who fired a shot on

him and had hit Kishan on his head and beaten another boy.

10. Kishan Lal (PW-4) who was the eye-witness to the incident had deposed in his statement before court that on 6.8.1998 at about 11/11.30 AM, he was standing outside his house and heard a sound of DHAMAKA. He looked to the right side of the road and saw one constable falling. He went there and enquired as to what had happened. He was told that two boys had run after firing a shot on the constable. He further deposed that one of the accused was having katta in his hand and pointed out towards the appellant – Kasim. He deposed that he held Kasim and snatched the katta from his hand. When he was snatching the katta, he shouted and told the other accused – Yunus to kill him whereupon the witness pointed out towards the appellant – Yunus. He deposed that the appellant – Yunus took out a katta and fired a shot aiming at him but he fell down and was saved from the shot and thereafter Yunus hit the butt of the katta on his head. He further deposed that he handed over accused Kasim to the SHO as well as the katta. It has further come in his deposition that from the search of appellant – Kasim, eight live cartridges from his pocket were recovered. Apart from this, appellant – Kasim was having one chhura kept in his leg with the help of his socks. He deposed that he had sustained injury on his head on being hit with the katta butt by accused Yunus. He alongwith two accused were taken to GTB hospital and he was medically examined by the police.

11. Dr. B.Narain, CMO GTB Hospital, Delhi (PW-3) deposed in his statement that he had examined Kishan Lal and prepared his MLC

(Ex. PW-3/A). He had opined the injuries as being simple in nature with a blunt object. Dr. S.D. Bisht, (PW-19) from Sushrut Trauma Centre, LNJP Hospital, Delhi deposed in his statement before the court that on 12.10.1998, while working in GTB Hospital as Sr. Resident Surgery, he had given the opinion on the MLC (Ex. PW-15/A and Ex. PW-18/A) as being grievous.

12. This court also perused the MLC of Krishan (Ex.PW-3/A) and according to that, injured had swelling and tenderness in occipital area of skull and the injury was opined by the doctor to be of simple in nature with blunt object. Another MLC of Constable Ripu Daman (Ex.PW-15/A) was also perused by this court, which shows that the patient was having injury of gun shot with multiple pellets, one and half inch diameter at lower back; no blackening and tatowing of area. The doctor has opined the injury to have been caused by gun shot.

13. Perusal of the impugned judgment passed by the learned Additional Sessions Judge reveals that the appellant – Kasim has been convicted for 307 IPC on the basis of statement of injured and eye-witness as well as of independent witness Kishan Lal and on the basis of the MLC of the injured upon which the doctor has opined the injuries being inflicted through gun shot. For ready reference, Section 307 of the IPC which reads as follows is provided hereunder:

"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be

liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned."

14. To prove the guilt of the accused for the offence under Section 307 of IPC, what the court needs to ascertain is the fact whether the act committed by the accused person had an intention to commit the offence or not. This court is also of the considered opinion that for holding a person guilty for the offence under Section 307 of IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances so as to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.

15. This court is further of the view that whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of the given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is *intention or knowledge*, as the case may be, and not the

nature of injury. From the facts of the present case, when the appellant – Kasim took out the desi katta and pointed it towards the injured and even made a shot therefrom, he must have knowledge that it may cause death of the injured. The facts of the case have been corroborated by the deposition of the injured – constable Ripu Daman as well as independent witness Kishan Lal, who was also inflicted a blow by the butt of the gun by the appellant – Yunus. Even the recovery of pistol, knife, live cartridges from his possession strengthens the guilt of the appellant.

16. To substantiate and prove the guilt of the appellants, only the statement of injured is sufficient. In this regard, it would be relevant to mention that in *Abdul Sayeed vs State Of M.P.*, (2010) 10 SCC 259, the Hon'ble Apex Court, while dealing with the reliability of testimony of injured witness, has held as under:

“The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

17. In the light of the aforesaid discussion, this court is of the considered opinion that the prosecution has proved the offence under Section 307 IPC against the appellant – Kasim. Likewise, vide

impugned judgment the appellant – Yunus has been held guilty for the offence under Section 308 IPC and Section 25/27/54/59 of Arms Act on the premise of the statement of Kishan Lal who in his deposition specifically stated that appellant - Yunus gave a blow with a butt of his country made pistol on the head.

18. In view of the evidence produced on record, as discussed above, this court finds that there is sufficient evidence on record to convict the appellant – Kasim for the offence under Section 307 of IPC; the appellant – Yunus guilty for the offence under Section 308 of IPC; and additionally holding both the appellants guilty for the offence under Section 25/27/54/59 of Arms Act and this court does not find any irregularity or infirmity in the impugned judgment. Accordingly the impugned judgment dated 21.05.2001 passed by learned Additional Sessions Judge is upheld.

19. Now on the quantum of sentence, this court observes that the learned Additional Sessions Judge has awarded the sentence of 7 years rigorous imprisonment to the appellant – Kasim for the offence under Section 307 IPC and 5 years rigorous imprisonment to the appellant – Yunus for the offence under Section 308 of IPC. Considering the peculiar facts and circumstances of the present case, and the fact that the incident in question is of the year 1998 and the appellants have faced the agony of trial for the last more than 19 years, this court is of the considered opinion that the interest of justice would be met if the sentence imposed upon the appellant – Kasim is reduced to the period of 5 years for the offence under Section 307 of IPC and the sentence

imposed upon the appellant – Yunus is reduced to the period of 3 years for the offence under Section 308 of IPC years. However, the sentence under Section 25/27/54/59 of Arms Act awarded to both the appellants shall remain the same with direction of running all the sentences concurrently. It is ordered accordingly.

20. Resultantly, finding no merit in the appeal, the appeal filed by the appellants is dismissed thereby upholding the impugned judgment dated 21.05.2001 and modifying the order on sentence dated 24.05.2001 to the extent indicated above.

21. The appellants are on bail. They are directed to surrender before the trial court concerned within a period of 15 days to serve the remainder of the sentence of imprisonment.

22. A copy of this order be sent to the Trial Court for information and necessary steps.

23. With aforesaid directions, the present appeal is disposed of.

JULY 04, 2017
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(P.S.TEJI)
JUDGE