

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : February 15, 2017

+ CRL.A. 766/2002
DINA NATH & ORS. Appellants
Through: Mr.R.P. Tripathi, Advocate.

versus

STATE Respondent
Through: Mr.Sudershan Joon, Additional Public
Prosecutor for the State with Sub-
Inspector Ramesh Kumar, PS Sultan
Puri, Delhi.

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

P.S.TEJI, J.

1. The present appeal has been filed by the appellants being aggrieved by the judgment of conviction dated 03.09.2002 passed by the learned Additional Sessions Judge, Delhi convicting the appellants for the offence punishable under Section 304/307/323/34 of Indian Penal Code (hereinafter referred to as I.P.C.), and order on sentence dated 05.09.2002, whereby the appellants have been sentenced to undergo rigorous imprisonment for a period of three years and fine of Rs.1,000/- each for the offence under Section 304 of IPC and in default of payment to further undergo rigorous imprisonment for six months. They were also sentenced to undergo rigorous imprisonment for a period of three years and fine of Rs.1,000/- each for the offence under Section 307 of IPC and in default of payment to further undergo

rigorous imprisonment for six months. For the offence punishable under Section 323 of IPC, the appellants were separately sentenced to undergo simple imprisonment for one year.

2. The facts emerging from the record of the prosecution are that on 22.04.1997 at about 10.00 PM, when the informant – Mohinder Singh (PW-1) returned to his house at Agar Nagar, Kachcha Colony, he came to know that his neighbor Dina Nath had some altercation with his children during the day time. On this, Mohinder Singh asked Dina Nath and objected as to why he had quarreled with his children, the appellant – Dina Nath alongwith 2/3 more persons who were also living in the neighborhood gave beatings to Mohinder Singh and his uncle (mausa) Ashok with lathis and dandas. The appellant – Dina Nath gave blow in the abdomen with some sharp object as a result of which Mohinder Singh started bleeding. When Smt. Angoori (PW-2), who is mother in law of Mohinder Singh and one Banwari, came to save him, they were also beaten up. Thereafter, the accused persons ran away. An information was received at Police Station Sultanpuri, vide DD No.91B and investigation was taken over by HC Umed Singh. Police came and injured were taken to Hospital. HC Umed Singh visited the hospital and collected the MLCs of injured persons. Statement of Mohinder Singh was recorded and thereupon a case under Section 324/34 of IPC was registered. Place of incident was inspected, site plan was prepared, statement of other witnesses were also recorded and thereafter, Section 307/323 of IPC were added in the FIR. The appellants were arrested. Injured Ashok was treated in

various hospitals but ultimately he died on 10.07.1997. Inquest proceedings were conducted by Sub-Inspector Sanwar Mal and the post mortem of the deceased Ashok was conducted. Accordingly, Section 302 of IPC was added in the FIR.

3. After completion of investigation, the challan was filed in court and charges under Section 323/304/34 of IPC were framed against the appellants vide order dated 28.05.1999, to which the appellants pleaded not guilty and claimed trial. Appellant/accused Jainullah absconded during pendency of trial and was declared proclaimed offender and only three appellants faced the trial.

4. To bring home the guilt of the appellants, the prosecution examined as many as 11 witnesses. They are, Mohinder Singh (PW-1); Smt. Angoori Devi (PW-2); ASI Dharam Singh, Special Branch, CID (PW-3); Head Constable Satbir Singh, (PW-4); Sub-Inspector Manohar Lal (PW-5); J.S. Malik, SHO, Police Station Sultanpuri (PW-6); Dr. Ashok Jaiswal, CMO, Subzi Mandi, Mortuary, Civil Hospital Delhi (PW-7); Sub-Inspector Sanwar Mal, 4th Battalion, DAP (PW-8), Head Constable Umed Singh (PW-9), J.C. Vasisth, Record Clerk, DDU Hospital (PW-10), Dr. S.K. Sharma, DDU Hospital, Delhi (PW-11).

5. After conclusion of the prosecution evidence, entire incriminating material on record was put to the appellants, and their statements under Section 313 of Cr.P.C. were recorded, in which they denied the charge and claimed trial. The appellants examined four

witnesses in their defence, being Jaishri Lal (DW-1), Surinder Tiwari (DW-2), Channu Tiwari (DW-3) and Amar Nath (DW-4).

6. After considering the facts, evidence led on behalf of both the sides and the material on record, the learned Additional Sessions Judge held the appellants guilty for an offence punishable under Section 304/307/323/34 of IPC vide judgment and sentenced the appellants vide order on sentence, as indicated above. Hence the present appeal has been preferred against the impugned judgment and order on sentence.

7. While dealing with the deposition of material witnesses, the counsel for the appellants highlighted the material contradictions in the prosecution case while contending that as per prosecution story the quarrel took place between children of PW-1 and the appellant – Dina Nath but PW-1 deposed that his children went to Mangolpuri; PW-1 admitted in his cross-examination that the time of incident is a day time, however as per prosecution story the incident was of 10 PM; PW-1 deposed that he was assaulted with some sharp edged weapon/instrument and blood came out from his stomach but the prosecution has not recovered any blood stained cloth or blood from earth; as per prosecution story, PW-1 went to house of Dina Nath for enquiry regarding quarrel with the children in day time, but PW-2 has deposed that the appellant had quarreled with his sister. However, PW-2 has not supported the prosecution case; PW-2 had deposed in her cross-examination that number of persons gathered at the time of incident but the prosecution has not examined any independent

witness; and PW-3 has not supported the case of prosecution and made contradictory statements. So far as the deposition of Dr. Ashok (PW-7), who had conducted the post mortem of deceased Ashok Kumar is concerned, it is urged that as per the story and history, the deceased was first admitted in DDU Hospital and discharged; thereafter re-admitted in AIIMS Hospital and discharged, then admitted in Jaipur Golden Hospital and discharged. Therefore, the doctor cannot definitely say that the deceased had died due to the incident dated 22.04.1997, especially since the deceased died after two and half months. It is further contended on behalf of the appellants that the constable Umed Singh (PW-9) has not supported the prosecution case, as the time of incident was 10.00 PM and as per statement of PW-9, he reached the spot at 7.30/8 PM after receiving DD No.91-B. So far as statement of Dr. S.K. Sharma (PW-11), it is urged that he was present in the office being CMO and had identified the signatures of Dr. Priti, but he was not present at the time of treatment of deceased and he cannot depose definite opinion about the cause of death, therefore his testimony has no value. More so, the Prosecution has not examined the doctor who had examined the injured. Blood stained clothes were not sent to CFSL, therefore a doubt was casted on recovery of weapon of offence; name of appellants was not mentioned in FIR; TIP was not conducted; FIR was lodged on the next day at about 6.50 AM, and the delay is not explained by prosecution; the prosecution has not proved the motive and even the prosecution witnesses have not supported the prosecution case.

8. Per contra, learned Additional Public Prosecutor for the State has submitted that the deceased Ashok had died because of the blows of lathis and dandas by the appellants – Dina Nath and other accused/appellants and the appellant – Dina Nath had also used the sharp edged weapon on the abdomen of the deceased Ashok. The injuries sustained by the deceased and the injured persons have duly been corroborated by medical evidence. Therefore, the judgment and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order, therefore, the same is not liable to be interfered with.

9. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on record.

10. The whole case of the prosecution is that on 22.04.1997, when Mohinder Singh (PW-1) returned to his house at about 10 PM, he came to know that his neighbor Dina Nath had altercation with his children during the day time. When he asked Dina Nath as to why he had quarreled with his children, Dina Nath alongwith two-three persons living in the neighbourhood gave beatings with lathi and dandas to him as well as his Mause – Ashok. It is alleged that the appellant – Dina Nath gave a blow with a sharp object on the abdomen of Ashok, as a result of which he started bleeding. When mother in law of Mohinder Singh, i.e., Angoori (PW-2) came to save him she was also beaten up by the appellants. Thereafter, they ran away.

11. Injured were taken to Hospital. Information of the occurrence was received at Police Station Sultanpuri vide DD No.91B and investigation was taken over by HC Umed Singh (PW-9). He recorded the statement of PW-1 and registered a case under Section 324/34 of IPC. Place of incident was inspected and site plan was prepared, and based on the statement of other witnesses, Section 307/323 IPC were added. Appellants were arrested in the case. Injured Ashok was treated in various hospitals and ultimately he died on 10.07.1997, therefore, section 302 IPC was added.

12. From the aforesaid narration of incident in question, let us check the veracity of the deposition of relevant witnesses. First informant – Mohinder Singh (PW-1) had deposed in his statement that on the date of incident, i.e., 22.04.1997, when he came back to his house after work, he heard noise outside his house and on reaching there, he saw that the accused were beating his mausa Ashok. One of the accused persons had a piece of wood fitted with iron rod and the other had an iron rod. Accused attacked his mausa Ashok as well as on his person. He further deposed that accused – Dina Nath assaulted his stomach with some sharp edged instrument and blood came out from his stomach. His mother in law Angoori Devi and Nand Lal reached the spot, but no other person arrived there. Thereafter, he became unconscious. Police took them to hospital in PCR Van.

13. During cross-examination by learned Additional Public Prosecutor for the State, he admitted that his mother-in-law Angoori Devi also received injuries due to attack given by the accused persons.

He also admitted the arrest of accused persons on his identification. He also deposed that he forgot these facts due to lapse of time. PW-1 further deposed that his mausa Ashok received injuries on his head. He also received injuries on his back bone.

14. From the aforesaid deposition of PW-1, the incident in question is admitted, lathi and danda blows are alleged and in addition, blow with a sharp edged weapon is also alleged. Apart from this fact, it is stated by PW-1 in his statement that when he was given blow on his stomach with a sharp edged weapon, blood came out. He has specifically stated that he was assaulted on his stomach by the appellant Dina Nath with a sharp edged instrument.

15. Angoori Devi (PW-2), who is the mother-in-law of PW-1 had deposed in her statement that at about 10 PM the appellants were quarrelling with her sister. The appellants were beating her son-in-law Mahender and Ashok. She reached there and was also assaulted on her back upon intervening. She had deposed that she saw the injured in injured condition, visiting of police at the spot and regarding her own medical examination alongwith her son in law Mahinder. She also deposed that Ashok had received injuries on his back bone and had expired after two and a half months. She also deposed that the deceased Ashok received injuries on the back portion of his shoulder. She also deposed that the deceased had sustained injuries on his head and was beaten mercilessly and received injuries on several parts of his body.

16. During cross-examination by the learned APP for the State, PW2 has admitted having stated before the police that the accused Dina Nath had assaulted her son-in-law Mohinder with some sharp edged weapon i.e. Bhala, which was a pointed one. She further admitted that when Nand Lal and Ashok tried to intervene, the accused persons also assaulted them with lathis and dandas and iron rods. She also stated that she herself saw the three accused persons and one other person assaulting Ashok and Mohinder. She admitted the fact that the deceased Ashok was her jeeja and she used to visit their house.

17. From the aforesaid deposition of PW-2, the occurrence of incident and the facts regarding giving lathi and danda blows to deceased Ashok and blow on the stomach of Mohinder Singh with sharp edged weapon is corroborated with the statement of PW-1. She was also one of the injured persons and her testimony is equally relevant so far as the prosecution case is concerned.

18. Head Constable Umed Singh (PW-9), the first investigating officer of the case had deposed in his statement that after receipt of DD No.91B, he reached the spot, where he came to know that injured were taken to DDU Hospital and when all the injured persons were declared fit for statement, he recorded the statement of Mohinder Singh and sent the same to Police Station for registration of the case. He himself prepared the site plan and recorded statements of all the injured persons-Angoori (PW-2), Ashok Kumar and Nand Lal. This court observes from the facts of the case that initially the case was

registered under Section 324/34 of IPC and after inspection of the place of occurrence, recording of statement of other witnesses and the medical record, section 307/323 IPC were added and when the injured Ashok died on 10.07.1997, section 302 of IPC was added. After completion of investigation the challan was filed under Sections 307/323/304/34 of IPC and the appellants were convicted for the offence under Section 304/307/323/34 of IPC.

19. Perusal of the impugned judgment passed by the learned Additional Sessions Judge reveals that the appellants have been convicted for 307/34 IPC on the basis of statement of PW-1 Mohinder Singh only, according to which he was assaulted on his stomach with some sharp edged instrument.

20. This court also finds the deposition of Dr. S.K. Sharma (PW-11), DDU Hospital, Delhi, who has deposed in his statement before court that the patient Mohinder was admitted on 23.04.1997 and was discharged on 30.04.1997. As per his MLC Ex.PW11/A, he had received dangerous injury with sharp weapon. He further deposed that as the injured had incised wound over the abdomen of the size 2-3 cms with sharp weapon, the injury was rightly opined as dangerous with sharp weapon. During cross-examination by the defence counsel, witness affirmed to his statement that as the injury was on the vital part of the abdomen and was with sharp cut, he was certain to say that it was dangerous. He further deposed that except the sharp edged weapon like knife etc. no such injury was possible from any other weapon.

21. To justify a conviction under Section 307 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 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 as mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

22. In the facts of the present case, the injured – Mohinder Singh (PW-1) has specifically deposed before the court that he was assaulted by appellant – Dina Nath with some sharp edged weapon/instrument and blood came out from his abdomen. To corroborate the injuries on the person of Mohinder Singh, Dr. S.K. Sharma (PW-11), DDU Hospital, Delhi, has deposed that as per the MLC Ex.PW11/A of the injured Mohinder, he received clear incised wound measuring 2-3 cms long over his abdomen (left side). As per the opinion of the doctor on the MLC Ex.PW11/A, the injuries sustained by the injured Mohinder were dangerous.

23. 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.”

24. From the evidence and the material placed on record, it has been established that on the day of incident, the injuries were caused to Mohinder Singh (PW-1) by the sharp edged weapon by the appellant – Dina Nath. The other appellants have been convicted for offence under Section 307 of IPC only under the aid of Section 34 of IPC but there are no allegations against the appellants-Chandreshwar Giri and Ravinder Tiwari of causing any injury to the injured Mohinder with any weapon. In such a situation, this court does not find any basis to convict the appellants-Chandreshwar Giri and Ravinder Tiwari for the offence under Section 307/34 of IPC, especially when there is no specific role attributed to them. Accordingly, the impugned judgment thereby convicting the

appellants for the offence under Section 307/34 of IPC is modified to the extent that only appellant – Dina Nath is held guilty for the offence under Section 307 of IPC. Appellants-Chandreshwar Giri and Ravinder Tiwari are accordingly acquitted for the offence under Section 307/34 IPC.

25. So far as convicting the appellants for the offence under Section 304/34 of IPC, this court observes that initially the appellants were booked for the offence under Section 324/34 of IPC and only after death of injured – Ashok, they were booked for offence under Section 302 of IPC. It has come in the deposition of injured Mohinder Singh (PW1) that when he asked the appellant - Dina Nath and objected as to why he had quarreled with his children, the appellant – Dina Nath alongwith other accused persons who were also living in the neighborhood, started beating Mohinder Singh and his uncle (mausa) Ashok with lathis and dandas. During this scuffle, the appellant – Dina Nath gave blow on the abdomen of Mohinder Singh with some sharp object as a result of which he started bleeding. When Smt. Angoori (PW-2), who is mother in law of Mohinder Singh and one Banwari came to save him, they were also given beatings by the appellants with lathis and dandas. Due to these acts on behalf of all the appellants, the injured - Ashok, died on 10.07.1997.

26. Post mortem report of deceased Ashok is perused, which reveals that there was an old healed fracture with deformity involving D2 and D3 vertebra and he had suffered from traumatic paraplegia. The doctor had opined that at the time of death, the deceased had

multiple infected bed sores and cause of death was due to septicaemic shock associated with pneumonitis as sequel of traumatic paraplegia.

27. From the deposition of Mohinder Singh (PW-1) and Angoori Devi (PW-2), it is revealed that the deceased Ashok was given lathi and danda blows on his back bone on backside of shoulder and the deceased had sustained injuries on his head and was beaten mercilessly and received injuries on several parts of his body. In the considered opinion of this court, there is sufficient evidence and material on record to establish that all the accused persons gave beatings to the deceased and the injuries sustained by him were the ultimate cause of his death. The injured eye witnesses examined by the prosecution have specifically stated the role of each and every accused/appellants in causing injuries to the person of the deceased.

28. While scrutinizing the case, this court cannot lose sight of the fact that the injured Ashok received injuries during the fight between the appellants and the injured persons and died after about 3 months of the incident. As per the post mortem report of the deceased Ashok, he was having injury on his spinal cord with old healed fracture with deformity involving D2 and D3 vertebra which as per the deposition of eye witnesses were given by the appellants on the back bone and on back side of shoulder of the deceased due to which he had suffered traumatic paraplegia.

29. In the facts of this case and in the considered opinion of this court, this is a fit case to convict the appellants for the offence under

Section 304/34 (Part II), as it has not been established that the appellants had any intention to cause the death of the injured but the acts of giving injuries by them on the person of the deceased shows that they had knowledge of the fact that their act of giving beatings to the deceased Ashok may cause his death. Accordingly, the judgment dated 03.09.2002 passed by the learned Additional Sessions Judge is modified by convicting the appellants under Section 304 (Part II) read with section 34 of IPC.

30. So far as the conviction of the appellants under Section 324/34 of IPC is concerned, the injured witness—Mohinder Singh, Angoori Devi and Banwari have categorically stated that they were also assaulted by the appellants during the quarrel. As per the deposition of Angoori Devi and Banwari, they received injuries on their person. As per the medical evidence, they received simple injuries and it has duly been established that they received such injuries at the hands of the appellants.

31. In view of the evidence produced on record, as discussed above, this court finds that there is sufficient evidence on record to convict the appellants for the offence under Section 323/34 of IPC and this court does not find any irregularity or infirmity in the impugned judgment.

32. In the light of the aforesaid discussions and facts and circumstances of this case, this court does not find any illegality or infirmity in the impugned judgment dated 03.09.2002 passed by the

learned Additional Sessions Judge thereby convicting the appellants for the offences under Section 323/34 of IPC. However, this court modifies the conviction of the appellants under Section 307/34 IPC and holds the appellant – Dina Nath guilty for the offence punishable under Section 307 IPC and finding no justification for holding the other accused/appellants guilty for offence under Section 307 IPC, all the appellants except Dina Nath are acquitted from the offence under Section 307 IPC. Simultaneously, in the facts of the present case, this court also modifies the conviction of the appellants for the offence under Section 304/34 IPC to 304 Part II read with section 34 of IPC.

33. Now, coming to the point of sentence, this court observes that the learned Additional Sessions Judge has sentenced the appellants to undergo rigorous imprisonment for 3 years with fine of Rs.1,000/- each, for the offence under Section 307/34 IPC. The said sentence is modified and restricted only qua the appellant – Dina Nath and the sentence awarded to him under Section 307 IPC is upheld and the other appellants/accused-Chandreshwar Giri and Ravinder Tiwari are acquitted from Section 307 IPC. So far as sentence awarded to the appellants for the offence under Section 304/34 IPC, this court modifies the sentence to offence under Section 304 (Part II) read with section 34 IPC from Section 304/34 IPC. All the appellants are sentenced to undergo rigorous imprisonment of 3 years with fine of Rs.1,000/- for the offence under Section 304 (part II) read with Section 34 IPC. In default of payment of fine, they shall further undergo simple imprisonment for six months. However, this court

does not find any irregularity or illegality in sentencing the appellants for the offence under Section 323/34 IPC and the same is accordingly upheld.

34. Accordingly, the appellants are directed to surrender before the trial court concerned within a period of 15 days to serve the remainder of sentence of imprisonment.

35. Resultantly, the appeal filed by the appellants is disposed of with aforesaid modifications.

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

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

FEBRUARY 15, 2017
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(P.S.TEJI)
JUDGE