

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.Appeal No.774/2001

Date of Decision: 21st July, 2017

MOHD.HARUN

..... Appellants

Through Mr.Mir Akhtar Hussain,
Mr.Amit Alok,
Mr.Pragyesh Nigam, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through Mr.Panna Lal Sharma,
APP for the State.

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

P.S.TEJI, J.

1. The present appeal has been filed under Section 374 Cr.P.C. against judgment dated 20.09.2001 and order on sentence dated 25.09.2001 whereby the appellant has been found guilty and convicted for offences punishable under Section 307 and 324 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.4,500/- in default to undergo rigorous imprisonment for one month under

Section 307 IPC and to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to payment of fine, to undergo rigorous imprisonment for one month under Section 324 IPC.

2. The facts of the case, as per the case of the prosecution, in a nutshell are that Rishi Sachdeva (PW-1) and Vishal Sachdeva (PW-3) are real brothers. On 15.02.1997 at about 5 P.M., PW-1 Rishi Sachdeva had gone to one Badshah (PW2) who was having his thiya in gali no.24. The appellant/accused came there and enquired from PW-1 as to why he had taken money from his brother. It was denied by PW-1 and he asked the appellant to get this fact confirmed from Sahid. Sahid also corroborated the version of PW-1. Thereafter, the appellant slapped Sahid. The appellant/accused started giving beatings to PW-1 after which PW-1 started running. When PW-1 reached near the hotel of Shafiq, his brother Vishal @ Kamal came there and tried to intervene. The appellant/accused lifted a danda from the hotel and assaulted Kamal. Thereafter he whipped out a knife from his back pocket and stabbed Kamal on

the right side of his chest. When the appellant/accused wanted to give another blow to Kamal, he caught hold of the hand of the appellant. PW-1 then gave a danda blow on the head of the appellant/accused. Local people who had gathered there saved PW-1 and PW-3. PW-1 and PW-3 were removed to hospital, FIR was recorded and after completion of investigation, challan was filed.

3. Vide order dated 06.09.1999, charge was framed against the accused under Secitons 307/324 IPC to which he pleaded not guilty and claimed trial.

4. The prosecution examined eleven witnesses in support of their case i.e. PW-1 Rishi Sachdeva, PW-2 Badshah @ Suresh Kumar, PW-3 Vishal Sachdeva, PW-4 Kirti Ram Uniyai, PW-5 Syed Ahmed, PW-6 HC Anand Prakash, PW-7 Ashok Kumar, PW-8 Const.Ghanshyam, PW-9 Const.Vee Das, PW-10 HC Mohd.Naeem and PW-11 SI Chanderrup Singh. Statement of accused under Section 313 Cr.P.C. was recorded and he examined DW-1 Nasiruddin in his defence.

5. In support of the appeal, the appellant/accused has taken

the grounds that there was no legal evidence in the case against the appellant justifying his conviction; that the learned ASJ has observed in the impugned judgment that 'had brother of Harun told him that Rishi had taken the money from him peacefully, it would not have given a cause to Harun to assault Rishi', that the learned ASJ has not appreciated this fact that the prosecution agency has failed to produce the doctors who had prepared the MLC and x-ray report; that non examination of the concerned doctor inspite of the fact that PW-4 had furnished the addresses of the concerned doctors had caused prejudiced to the right of the appellant; that the learned ASJ has not appreciated this fact that PW-2 and PW-5 who are independent public witnesses have not supported the prosecution version, that the learned ASJ has not considered this fact while passing the impugned order that no offence punishable under Section 307 IPC is made out as PW-1 was discharged from the hospital after some time on the same day; that the learned ASJ has not considered this fact while passing the impugned order that PW-1 has admitted the presence of some independent persons at the spot, but none of them was

produced as a witness by the prosecution before the Trial Court; that the learned ASJ has not considered this fact that the danda allegedly impounded by the police was used by the injured Rishi Sachdeva for inflicting head injury to the appellant and the same was not recovered at the instance of the appellant, as such recovery of the danda cannot be read against the appellant in any manner whatsoever; that the learned ASJ has not appreciated this fact that PW-11 SI Chanderrup Singh has deposed before the learned Trial Court that 'the accused had disclosed about the knife used by him in the occurrence, but the same could not be recovered' as per prosecution case, the police reached at the spot just after the incident and removed the injured persons to the hospital including the appellant, meaning thereby that the appellant was apprehended from the spot but the recovery of knife was not effected from his possession; that the learned ASJ has not appreciated this fact that the appellant is not a previous convict, he is a married person having three minor children to support, he is the sole bread earner of family comprising five sisters and two brothers; he is facing the agony of trial for the

last so many years.

6. Per contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the judgment of conviction 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.

7. Arguments advanced by the learned counsel for the appellant as well as learned APP for the State were heard.

8. PW1 Rishi Sachdeva, who is an independent injured witness, has deposed that on 15.02.1997 at about 5 PM, he had gone to the dhobi, PW-2 and he was getting his clothes ironed. In the meantime, the appellant/accused came and enquired from him as to whether he had taken money from his brother. He told the appellant that he had not taken any money, but his brother had on his own given money to him. He told the appellant that if he does not believe him, he was at liberty to get this fact confirmed from Sahid who runs a VCR shop in Gali No.24. The

appellant/accused then took him to Sahid. Harun enquired from Sahid as to whether the money had been taken forcibly from his brother or not, to which he replied that PW-1 had not taken the money forcibly but it was given voluntarily by his brother. He slapped Sahid and also started giving beatings to PW-1 on which he started running. In the meantime, his elder brother Vishal Sachdeva came there. His brother wanted to intervene. PW-1 was lying on road, his brother tried to lift him, when accused Harun lifted a danda and hit his brother Vishal @ Kamal on his head. He then threw the danda and whipped out a knife from the back pocket of his pant and stabbed his brother on the right side of the chest. When he was trying to give another blow to the brother of PW-1, PW-1 caught hold of the hands of the appellant/accused. In the mean time, PW-1 lifted the danda and gave blow on the head of accused Harun. Harun then told him that he will not spare PW-1. He was trying to give a knife blow, but people intervened and saved him. Thereafter, accused Harun lifted the danda and started beating PW-1. He sustained injuries on his right shoulder and hand. This witness correctly identified

the accused being the person who had inflicted injuries upon him.

9. PW-3 Vishal Sachdeva @ Kamal has corroborated the testimony of PW-1. PW-3 has deposed that on 15.02.1997 at about 5.15 P.M., he was coming from the side of Gali No.26. When he was near the hotel of Shafiq, he noticed that an altercation was going on between Rishi and the appellant/accused Harun. When PW-3 tried to intervene, accused Harun lifted a danda lying there and hit the same on his head. Thereafter, accused threw the danda, took out a knife and gave its blow on the right side of the chest of PW-3. Accused tried to give another blow which PW-3 averted by catching hold of his hand. As a result thereof, he had sustained injuries on his left hand. In the meantime, his brother Rishi lifted the danda and gave its blow on the head of Harun. He tried to move, but after covering a distance of 10/12 steps, he had fallen and become unconscious.

10. From the testimony of PW-1, it has been duly established that on the day of incident, a quarrel between him and appellant

had taken place. The appellant asked PW-1 as to why he had not given back the money of his brother and when he confronted with Sahid, appellant gave a slap to Sahid and then started beating PW-1. It has also been established that PW-3 Vishal Sachdeva @ Kamal came there and on seeing that his brother PW-1 Rishi was being beaten by the appellant, he tried to intervene. In the meanwhile, appellant picked up a danda and gave a blow on the head of PW-3 Vishal. Thereafter, he took out a knife and gave its blow on the right side of the chest of PW-3 Vishal Sachdeva. Thereafter, the appellant gave beatings to PW1 Rishi due to which he received injuries on his person. As per the testimony of PW1, he is an eye witness and injured in the incident.

11. PW3 Vishal Sachdeva is another injured witness who has duly corroborated the testimony of his brother PW1 Rishi. PW3 has specifically deposed that on the day of incident when he had reached gali no.24, he noticed that an altercation was going on between his brother Rishi and appellant Harun. When he tried to intervene, firstly the appellant gave a danda blow on his head

and then gave the knife blow on the right side of his chest.

12. The testimony of PW1 Rishi and PW3 Vishal Sachdeva has further been corroborated by medical evidence. MLC Ex.PW4/1 of injured Vishal Sachdeva @ Kamal shows that he received 2 cm incised wound on the lateral aspect of chest wall, incised wound on the left hand and 4 cm CLW the scalp. As per the MLC, the injuries on the chest and left hand of injured Vishal Sachdeva @ Kamal were caused by a sharp edged weapon. As per MLC ExPW4/2 of the injured Rishi, he received LCW over left finger and incised wound over left thumb apart from abrasions. The medical evidence duly corroborates that injury caused on the person of injured Vishal was on his vital organ i.e. chest caused by a sharp edged weapon. Further, it has been corroborated that the injury caused on the person of injured Rishi was caused by a sharp edged weapon.

13. The intention and knowledge of the appellant in attempting to commit the murder of Vishal Sachdeva @ Kamal is apparent from the facts that firstly he hit him on his head with

a danda, then he took out a knife and gave its blow on his chest. Being armed with a deadly weapon i.e. knife and causing injury with the same, clearly brings the case of prosecution against the appellant that he was having intention to commit the murder of the injured and was having knowledge that by causing injuries with knife would result into death of the injured. Therefore the judgments relied upon by the learned counsel for the appellant in the case **Sumersinbh Umedsinh Rajput alias Sumersinh v. State of Gujarat**; (2007) 13 SCC 83, **Shiksha, SanjeevTyagi @ Chiddi Bose v. State**, 208 (2014) DLT 282, **Vikash Bhardwaj@ Sonu & Anr. V. State NCT of Delhi** 2014 (2) JCC 996, **Jagmohan @ Jagga v. State** 2014 VI AD (Delhi) 47 & **Rajvir & Anr. V. State** 2005(1) JCC 239 do not come to the aid of the appellant inasmuch as it has clearly been established from the evidence that the injury on the person of Kamal were caused by the appellant with intention and knowledge to commit his murder.

14. In view of the totality of evidence discussed above, there is no merit in the present appeal. Consequently, the judgment of

conviction and order on sentence are accordingly upheld.

15. The appeal is accordingly dismissed.

(P.S.TEJI)
JUDGE

JULY 21, 2017
dd

