

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : July 18th, 2017

+ CRL.A. 991/2001
MOHD. ALI ASGHAR@ASGHAR ... Appellant
Through: Mr. M.T. Malik, Mr. A.F. Faizi,
Advocates

versus

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

+ CRL. REV. P. No.90/2002
GULAM RASOOL ... Appellant
Through: Mr. M.T. Malik, Mr. A.F. Faizi,
Advocates

versus

STATE & ORS. Respondents
Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

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

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant – Mohd. Ali Asghar @ Asghar being aggrieved by the judgment of conviction dated 14.12.2001 passed by the learned Additional Sessions Judge, Delhi holding the appellant guilty for the offence punishable under

Section 307 of the Indian Penal Code (hereinafter referred to as I.P.C.), and vide order on sentence dated 18.12.2001, he was sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of Rs.2,000/-, in default he was ordered to further undergo simple imprisonment for three months.

2. On the other hand, the petitioner – Gulam Rasool, filed a revision petition under Section 397/401 of Cr.P.C. against the same order on sentence for enhancement of the sentence awarded to respondent No. 2 – Ali Asghar.

3. Since the challenge is laid by the appellant as well as the revisionist to the common judgment, therefore, arguments in both these cases are heard together and with the consent of both the parties, the same are being disposed of with by this common order.

4. The present case was registered on the statement of Rafia Begum, wife of injured wherein she had stated that on 25.01.2000 she came with her husband to distribute food to poor people when she alongwith her sister Kheruneesa and Bhabhi Shaheen reached at tiraha where their car was parked, her husband was known to Raju and he on the basis of some document got released a loan and Raju was demanding their documents and pressing her husband. He stopped her husband in the way and threatened him. Her husband tried to pacify him but he started beating him with his three friends. In the meantime, brother of Raju came running and while abusing said that today they will finish Ghulam Rasool and fired at her husband. Her husband

received gunshot injury on his neck whereafter, he fell down. Asghar Ali, Raju and his three friends ran away inside basti Hazrat Nizamuddin. Thereafter, her husband was taken to AIIMS hospital where he remained admitted. Accordingly, FIR was registered, site plan of the place of incident was prepared, intimation with regard to firing Ghulam Rasool was sent to Police Station. Vide another DD No.16A, at about 8.16 PM an information was received that Ghulam Rasool who was injured at H.N. Din Dargah had been admitted in injured condition in the hospital and he was admitted by one Yameen. MLC was prepared. Thereafter, investigation of the case started, accused were arrested and the case property was seized and charge sheet was filed against the accused persons.

5. A charge under Section 307/324/325/34 IPC was framed against the appellant by the trial court to which they pleaded not guilty and claimed trial.

6. To prove its case, the prosecution had examined 14 witnesses, namely; Rafia Begum (PW-1); Injured - Gulam Rasool (PW-2); Constable Khalil Ahmed (PW-3); Kherunisa (PW-4); Head Constable Chinta Ram (PW-5); Dr. Ashu Seth, Senior Radiologist, AIIMS (PW-6); Md. Yameen Khan (PW-7); Constable Sansar Singh (PW-8), Sub-Inspector Mukesh Soni (PW-9); Constable Rambhool Singh (PW-10); Head Constable Inder Pal (PW-11); Dr. Sunil Sharma (PW-12); Sub-Inspector Vikram Singh, Investigating Officer (PW-13).

7. After conclusion of prosecution evidence, statements of the

appellants under Section 313 Cr.P.C. were recorded in which they denied the entire case of prosecution and claimed innocence.

8. After completion of trial, the appellant was held guilty for the offence with which he was charged and vide order on sentence, he was awarded the sentence as indicated above. Aggrieved by the aforesaid judgment and order on sentence, the appellant has preferred the instant appeal. During the pendency of the appeal, the sentence of the appellant was suspended vide order dated 09.01.2002.

9. Learned counsel for the appellant contended that at the time of admission of the injured in the hospital he was in conscious state and he had not named the appellant before the doctor, who examined and prepared the MLC. Even the name of Rafia Begum who claimed that she had taken the injured to the hospital, is not in the column of patient admitted by. Contradictions in the statement and facts as narrated by Rafia Begum (PW-1) in her cross-examination have also been shown. The complainant Rafia Begum has admitted in her cross-examination that her clothes were sustained with blood, but her clothes were not sealed nor sent to the CFSL by the prosecution. Even the clothes of the injured were not sent to the CFSL nor the same were produced before the court. Attention of the court was drawn to the statement of injured wherein he had deposed that three pellets of the bullet were in his neck, while PW-12 doctor Sunil Sharma stated in his cross-examination that there was no pellet injury to the injured. It is further contended that Kheru Nisa (PW-4) in her cross-examination stated that she had seen the appellant firing from one hand after

holding him close while the MLC of the injured has no sign of close range firing. It is also stated by PW-4 that many shops were open at the time of incident, but no shop keeper was examined as prosecution witness. It is further argued that the statement of injured (PW-2) to the effect that the appellant gave him beatings with fist and legs and Raju traced his head and broke three of his teeth, is not corroborated by the MLC of the injured. It is further urged that the version of the alleged eye witnesses is not supported by the medical evidence adduced by the prosecution.

10. On the other hand, learned Additional Public Prosecutor for the State has argued that there is sufficient evidence on record in the form of testimony of the injured as well as the complainant to hold the appellants guilty under Section 307 of the IPC inasmuch as the complainant remained consistent on his statement regarding narration of the incident before the police as well as before the court and for convicting the accused for the offence with which they were charged. It is further stated that the testimony of injured witness is sufficient to hold the appellant guilty for the offence. Therefore, the State argued that the prosecution has successfully proven the offence of the appellant beyond all reasonable doubts and in such circumstances, the impugned judgment and order on sentence passed by learned Additional Sessions Judge to not call for any interference and the same are liable to be upheld.

11. 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. This court finds that the learned Additional Sessions Judge had held the appellant guilty on account of the injured witness, complainant and two eye-witnesses.

12. Since the present case has been registered on the complaint of Rafia Begum (PW-1), let the same be scrutinized. First, she had deposed that on 25.01.2000 she had gone to Dargah of H.N. Din to distribute food amongst poor people. On her way brother of Asghar Raju met her. There were three other boys. Raju asked to return his document and warned if not returned it will not be good for them. She further deposed that she was also accompanied with her sister Kharunisa and her husband. When Raju started taunting, her husband tried to pacify him and requested him to come later and the matter will be resolved. Thereafter, he abused her husband. Thereafter, Raju alongwith his three friends started beating her husband. She as well as her sister tried to intervene. In the meantime, Raju's brother Asghar (appellant herein) came and immediately shot at her husband which hit his neck. Thereafter her husband fell down on the ground and started shouting and crying. Her bhanja reached at the spot and removed her husband to hospital.

13. Gulam Rasool (PW-2) is an injured witness to the present case, who in his statement before the court deposed that on 25.01.2000, he had gone to distribute biryani to the poor at Dargah H.N. Din. His wife and children had already left and he was behind. He met them before Lukman Guest House gate. When he reached at Mehboob Hotel Gate, on the way, Raju @ Ali Akhtar came around 7.30 pm and

told him to give papers of the plot otherwise he will have to face grave consequences. He further told that he was warning him. He talked with Raju in an affectionate manner and he told him that he is like his son and he can talk to him and sit with him. He further deposed that the matter was in between him and accused's brother and they will resolve it. Thereafter, all of sudden, he caught him with his collar and called his friends, Muzib, Akhtar Ghari wala and one Vicky and they started beating him with fist and leg. Accused - Raju thrashed his head and broke three of his teeth. Thereafter, he felt giddiness and tried to save him. He further deposed that his sister in law Kherunisa and her husband Sarhaj Shaheen came to rescue him. Mujib and Akhtar caught hold of him and Vicky gave him beatings. In the meantime appellant – Ali Asghar came and fired at him. His wife came to his rescue and when Ali Asghar fired at him, she cried that her husband had been fired and because of that fire, people ran away and he fell down and fell unconscious. Thereafter, he identified the appellant in court, who fired at him. It is further deposed that his bhanja Mohd. Yameen and two other bhanjas took him to the hospital. In his cross-examination, he deposed that he helped poor and gave money to Ali Asghar as loan. He further deposed that Asghar fired from a katta and three pellets of bullet were still in his neck.

14. Kherunisa (PW-4) is the eye-witness to the incident, who in her statement deposed that on 25.01.2000 she alongwith her sister Rafia and Shaheen (Bhabi) and brother in law (behnoi) Ghulam Rasool were walking. She alongwith Shaheen came from mela and her sister Rafia

had come from her house with her husband and children. It was about 7 PM, when they reached upto Mahboob Hotel where Raju alongwith his three accomplices was there. Raju asked for the papers from Ghulam Rasool on which Ghulam Rasool (injured) said that “Ha bête we will sit and talk.” On this, Raju told that he wanted the papers there and started maltreating Ghulam Rasool and started abusing him. When Ghulam Rasool objected to it as to why he was abusing, all the four persons grappled with him and gave beatings to him with fists and legs. She further deposed that she tried to intervene but Raju was saying that he will not spare Ghulam Rasool and will kill him. In the meantime, brother of Raju – Asghar Ali came and shot at Ghulam Rasool saying that he will finish him today. She also identified the appellant.

15. So far as recovery of weapon is concerned, the impugned judgment records that all the three witnesses with one voice have uttered that all the four accused gave beatings to Ghulam Rasool and the accused Mohd. Ali Asghar came and fired at PW-2 which hit on his neck. All the three public witnesses were not expert witnesses and they could not explain by which weapon the injury was caused, as the weapon was not recovered. They only saw the appellant having a fire arm and no question was put to them as to what kind of fire arm accused was having, they saw the fire arm, heard a noise of its use and the result was on the neck of injured (PW-2). Non-recovery of weapon of offence was not fatal as all the three public witnesses had deposed that the accused Mohd. Ali Asghar came at the spot and immediately

fired at injured Ghulam Rasool. Even the presence of three metallic specks in the neck at present also proves that there was an injury on the neck from a shot fired from a fire arm used by the appellant.

16. Perusal of the impugned judgment passed by the learned Additional Sessions Judge reveals that the appellant has been convicted for 307 of IPC on the basis of statement of injured and public/eye-witnesses. 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."

17. After carefully perusing the MLC of the injured, this court finds that the treating doctor has opined the injuries as being simple in nature by the sharp object. 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 the 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 mentioned in the Section.

18. 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 a 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.

19. In the considered opinion of this court, to justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. It is also 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 exists an intent coupled with some overt act in execution thereof.

20. This court further finds that the complainant/injured as well as other public/eye-witnesses who remained consistent in their statements recorded before the court. They have corroborated with the statement of the complainant and have specifically deposed before the court that the appellant had caused the fire arm injury to the injured on his neck.

21. The Hon'ble Apex Court, while dealing with the reliability of testimony of injured witness in ***Abdul Sayeed vs State Of M.P, (2010) 10 SCC 259***, has held that only the statement of injured is sufficient to prove the guilt of the accused. The relevant extract is reproduced hereinbelow:

“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.”

22. In the facts of the present case, the appellant had caused injuries on the injured Gulam Rasool with firm arm which is also corroborated by the deposition of his wife Rafia Begum (PW-1) and Kherunisa (PW-4). All the three witnesses have identified the appellant. This court further observes that in the present case, the alleged weapon of

offence was not recovered, and the impugned judgment has dealt with the aspect of non-recovery of weapon of offence properly.

23. What is clear from the facts of the present case are that the injured had suffered injuries, appellant had caused injuries with fire arm, and the appellant at the time of firing on the injured with the fire arm/katta was having knowledge that by firing a gun shot may cause death of the injured – Gulam Rasool. Identity of the appellant is also established by the complainant, injured and the public/eye-witness.

24. In the facts and circumstances of this court, this court is of the opinion that the prosecution has been successful in proving the identity of the appellant as well as case under Section 307 of IPC against the appellant beyond all reasonable doubts. Therefore, in the light of the evidence produced on record, as discussed above, this court finds no illegality or infirmity in the impugned judgment dated 14.12.2001 passed by the learned Additional Sessions Judge thereby convicting the appellant for the offence under Section 307 of IPC.

25. On the quantum of sentence, this court has perused the order on sentence passed by learned Additional Sessions Judge wherein the learned Judge observed that the person who causes hurt to any person and the offence is under Section 307 of IPC, in law, the imprisonment for life or imprisonment for 10 years or fine is provided. The act of the accused who came suddenly and fired at the injured in one way it was the good luck of the accused that the injured did not die. Therefore, he did not find it a fit case to release the accused as the act of the

appellant was so dangerous that it could have caused murder. And at last, the appellant was ordered to undergo rigorous imprisonment for a period of four years with fine of Rs.2,000/- in default, the appellant was ordered to undergo simple imprisonment for three months. This court does not find ground to modify the sentence as awarded to the appellant by the learned Additional Sessions Judge. Accordingly, the sentence imposed upon the appellant is also upheld.

26. Resultantly, the appeal filed by the appellant – Mohd. Ali Asghar @ Asghar lacks merit and the same is hereby dismissed.

27. The appellant is directed to surrender before the trial court concerned within a period of 15 days to serve the remainder of sentence of imprisonment.

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28. The petitioner – Gulam Rasool, who was injured by the appellant – Mohd. Ali Asghar has filed a revision petition under Section 397/401 of Cr.P.C. against the same order on sentence for enhancement of the sentence awarded to respondent No. 2 – Ali Asghar.

29. Counsel for the petitioner has contended that the injury caused by respondent No. 2 was so dangerous that the petitioner would have died. It is further contended that the act of respondent No. 2 was a calculated move on his part and he was only trying to find out a suitable time to attack the petitioner and on finding the proper opportunity, without any provocation attacked the petitioner and that

too on the vital part of the body.

30. Respondent No. 2, on the other hand, has preferred a separate appeal, being Crl. A. No. 991/2001 challenging the impugned judgment and order on sentence and prayed for quashing and setting aside of the judgment and order on sentence.

31. The contentions raised by learned counsel for the appellant/respondent No. 2 have already been noted herein before while deciding the appeal of respondent No. 2, wherein he had highlighted the contradictions in the deposition of the material witnesses. On the other hand, learned Additional Public Prosecutor for the State has urged that the impugned judgment and order on sentence does not call for any interference of this court as the respondent No. 2 has caused the injury to the petitioner with fire arm.

32. So far as revision of the impugned judgment and order on sentence is concerned, provisions for revision of any judgment or order under Section 397 is reproduced hereinbelow:

“Section 397: The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail

or on his own bond pending the examination of the record.”

33. After careful scrutiny of the case, impugned judgment, order on sentence, evidence recorded in the case, while dealing with the contentions so raised by respondent No. 2 in his appeal, this court has already dismissed the appeal filed by the appellant – Mohd. Ali Asghar (respondent No. 2 herein), and upholding the impugned judgment and order on sentence passed by learned Additional Sessions Judge. Even for revision of the case in hand, this court finds no illegality or infirmity in the impugned judgment and order on sentence and this court does not find anything on record showing that the learned Additional Sessions Judge has either lacked or exceeded his jurisdiction either in passing the impugned judgment or in passing the order on sentence.

34. In the light of the facts and circumstances of the present revision petition, the petitioner has not been able to show that the learned Additional Sessions Judge has either exceeded or lacked in exercising his power in passing the impugned judgment or order on sentence. Accordingly, the revision petition filed by the petitioner is dismissed.

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

36. With aforesaid observations, the appeal filed by the appellant (Crl. A. No. 991/2001) and the revision petition (Crl. Rev. P.

No.90/2002) filed by the injured – Gulam Rasool are dismissed and disposed of.

(P.S.TEJI)
JUDGE

JULY 18, 2017
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