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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MARCH 02, 2017

DECIDED ON : MARCH 29, 2017

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CRL.A. 765/2013

SUNIL KUMAR

..... Appellant

Through : Mr.Navin Sharma, Advocate with
Mr.Divyaa Garg, Advocate.

VERSUS

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through : Mr.Kamal K.Ghei, APP.
Mr.Sunil Ahuja, Advocate for
Respondent Nos.2 to 5 and 7.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal under Section 372 Cr.P.C. has been preferred by the victim/injured Sunil Kumar to challenge the legality and correctness of a judgment dated 13.12.2012 of learned Additional Sessions Judge in Sessions Case No.229/1/2010 arising out of FIR No.72/2010 registered at Police Station Ranholla whereby respondents No.2 to 7 (hereinafter referred to as respondents) were held guilty for committing offence punishable under Section 324/34 IPC. By an order dated 19.01.2013, they were released on

probation of good conduct; they were directed to pay ₹7,000/- each as compensation to the victim. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. After recording victim's statement (Ex.PW-3/A) on 11.3.2010, the Investigating Officer lodged First Information Report. The victim was medically examined. The respondents were arrested; certain recoveries were effected at their instance. Upon completion of investigation, a charge-sheet was filed against the respondents for commission of offences punishable under Sections 307/452/427/34 IPC. By an order dated 14.9.2010 the respondents were charged under Sections 308/452/427/34 IPC. To establish its case, the prosecution examined twelve witnesses. In 313 Cr.P.C. statement, the respondents denied their involvement in the crime and pleaded false implication. They examined DW-1 (Ramesh Kumar), DW-2 (Suresh Chand) and DW-3 (Sunil Dutt) in defence. On appreciation of the evidence and after considering the rival contentions of the parties, the Trial Court held all the respondents guilty under Section 324/34 IPC.

3. It is relevant to note that one of the assailants Mohit Sharma was juvenile and by an order dated 29.07.2011, he was acquitted of the charge by Juvenile Justice Board. The said acquittal has not been challenged. It is pertinent to note that respondents have not challenged their conviction under Section 324/34 IPC. It is informed that the probation period is already over.

4. Learned counsel for the victim urged that the Trial Court committed grave error in convicting the respondents only for commission of offence under Section 324/34 IPC. The victim had sustained 'grievous' injuries on vital organs; had suffered 42 stitches on his head. The

respondents in furtherance of common intention in a pre-planned manner with the sole intention to kill the victim had inflicted injuries with deadly weapons. The appellant had sustained injuries on his scalp; had fracture on his arm and knee. There were no sound reasons to release the respondents on probation.

5. Learned counsel for the respondents urged that there was no cogent evidence on record to base conviction even under Section 324/34 IPC. The complaint lodged by the victim was motivated and he himself was involved in a criminal case.

6. In the initial complaint (Ex.PW-3/A) forming basis of the FIR, the complainant disclosed that the assailants had inflicted injuries on his head as a result of which he became unconscious. At that time, nothing was revealed if the injuries were also caused on hand or knee resulting in fracture. PW-1 (Inderjeet), victim's father took him to Deen Dayal Upadhyaya Hospital. As per the testimony, the injured was referred to Safdarjung hospital. From there, he got his son admitted at Jai Prakash Trauma centre where medical treatment was given to him. PW-1 (Inderjeet) did not reveal as to on which body parts, the victim had suffered injuries. In the cross-examination, he admitted that no medical document was prepared at DDU hospital for the initial treatment given to the victim. In his examination before the court as PW-3, the victim Sunil Kumar disclosed that the respondent Ashwani had wielded iron rod on his head and the other assailants had given beatings to him. He further disclosed that due to injuries sustained by him on his hand, he was not in a position to put signatures. A rod was inserted in his right hand and left leg; he received 42 stitches on his head.

7. On perusal of the entire evidence on record, it does not reflect if the victim had sustained any visible injury on his head or 42 stitches were given on the head. PW-8 (Dr.Nitin Jagtiyani) in X-Ray report noticed fractures in the left knee and right elbow. The prosecution produced PW-12 (Dr.Suman Karmakar) to prove MLC (Ex.PW-12/A) prepared by Dr.Vishal Kaushal. I have scrutinized the MLC (Ex.PW-12/A) minutely. The victim was taken to Jai Prakash Narayan Apex Trauma Center at 4.45 p.m. on 11.3.2010. He did not name the assailants. There was no history of loss of consciousness. It does not reflect if the victim was admitted in the hospital for treatment. It does not disclose if any visible injury was there on the head and 42 stitches were given. It rather records that there was no visible injury or wounds. Injuries on the scalp were opined as 'lacerated'. It further records that the injuries suffered by the victim were 'grievous' by blunt object. No firm evidence has, however, been produced to show as to when and by whom this opinion regarding the nature of injuries to be 'grievous' was given. PW-12 (Dr.Suman Karmakar) expressed inability to opine about the nature of injuries sustained by the victim as he had not treated the patient. He was not able to disclose that the injuries mentioned in the MLC could be opined 'grievous'.

8. X-ray report (Ex.PW-8/A) proved on record by PW-8 cannot be faulted. It, however, discloses fracture on hand and knee. The appellant in appeal file has placed on record photocopies of the medical papers (from page 78 to 90). Page No.82 records the date of admission of the patient as 12.3.2010 and date of discharge as 18.3.2010. It records 'alleged history of RTA with injury to left knee and right elbow on 12.3.2010'. Apparently, this MLC at page No.82 and 87 pertains to appellant's admission in

orthopedics on 12.3.2010. Specific query was raised to ascertain from the appellant's counsel as to how it has been shown to be road accident in the alleged history at pages 82 and 87. The appellant's counsel was unable to answer it. The appellant has, thus, failed to prove beyond reasonable doubt that fractures suffered by him on left knee and right elbow were due to injuries inflicted on his body on 11.3.2010. There is nothing on record to show if at any time because of the injuries sustained on 11.3.2010, the victim was admitted in the hospital, if so for how many days. Statements of material prosecution witnesses on this aspect are wavering.

9. No repeated blows were inflicted on the vital organs of the victim at the time of incident. The victim was oriented and conscious. He seemingly was discharged on the same day without admission in the hospital. The nature of injuries opined in the MLC (Ex.PW12/A) were on the basis of fracture suffered on knee and hand which the prosecution has failed to connect with the commission of crime on 11.3.2010. Acquittal of co-accused Mohit Sharma has not been challenged by the appellant.

10. Considering the facts and circumstances of the case, it was not a fit case where the respondents could be held guilty for the commission of offence under Section 307/308 IPC as urged by the appellant's counsel.

11. Admittedly, all the respondents had remained in custody for certain duration before grant of bail during trial. They were not previous convicts. Reasonable compensation at the rate ₹7,000/- each has been ordered to be paid to the victim. The probation period is already over. Considering these aspects, Sentence Order requires no intervention.

12. The appeal lacks in merit and is dismissed.

13. Trial Court record (if any) be sent back forthwith along with the copy of the order.

(S.P.GARG)
JUDGE

MARCH 29, 2017/sa

