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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : 12th June, 2017

+ CRL.A. 408/2016

RAMJAN

..... Appellant

Through: Mr. O.P. Saxena, Adv.

versus

STATE

..... Respondent

Through: Mr. Tarang Srivastava, APP for
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant and one another (Sheikh Hasan) stood trial in the court of Additional Sessions Judge-03, North West, Rohini Courts, New Delhi in Sessions Case No. 59/2013. It concluded with judgment dated 27.01.2016 whereby the co-accused Sheikh Hasan was acquitted while the appellant was held guilty and convicted for offence under Section 307 read with Section 34 of Indian Penal Code, 1860 (IPC). It may be mentioned here that in the incident which is the subject matter of the case at hand allegations have been made also against a third accused Ajju, son of Saddik, who could not be arrested and was declared proclaimed offender, the case being subject matter of investigation on the basis of first information report (FIR) No. 217/2011 of police station Jahangir Puri. The trial court by subsequent order dated 02.02.2016 awarded rigorous imprisonment

for five years with fine of Rs. 50,000/- and in default simple imprisonment for further period of three months as the punishment, the fine if realized to be paid as compensation to the victim Imran (PW-1).

2. The gravamen of the charge on the basis of which the appellant was tried primarily was that on 11.07.2011 at about 4.15 p.m. at D Block, opposite Gali No.7, Jahangir Puri within the jurisdiction of police station Jahangirpuri, he with the other accused (Ajju) had voluntarily assaulted on the person of PW-1 with knife in an attempt to commit the offence of murder under Section 307 IPC read with Section 34 IPC.

3. The prosecution examined thirteen witnesses, they being Imran (PW-1); HC Hari Ram (PW-2); Ajam (PW-3); Dr. Gopal Krishna (PW-4); ASI Ram Phal (PW-5); Dr. Sushant Verma (PW-6); Dr. Gopal Krishna (PW-7); Ct. Vikas (PW-8); L/Ct. Reena (PW-9); HC Jagbir (PW-10); HC Shripal; (PW-11); HC Phool Kumar (PW-12) and SI Sandeep Kumar (PW-13). The statement of the appellant was recorded under Section 313 Cr.P.C. in which he claimed to be innocent having been falsely implicated. He, however, did not lead any evidence in defence.

4. The learned trial judge, after appraisal of the evidence led by the prosecution, found that the guilt of the appellant for offence under Section 307 IPC read with Section 34 IPC had been brought home and thereby convicted him.

5. At the hearing on the appeal, the learned counsel for the appellant, on instructions, submitted that the appeal is not pressed on

merits insofar as the findings returned by the trial court holding the appellant guilty and convicting him are concerned, the prayer being only for reduction in the punishment that has been awarded.

6. This court being the court of first appeal and, therefore, the final forum on facts, however, is duty bound to consider and re-appreciate the evidence to satisfy itself as to the correctness of the conclusions reached by the trial court.

7. Having heard the learned counsel for the appellant and learned additional public prosecutor for the State and having gone through the trial court record, it is found that the learned trial judge has correctly appreciated the evidence and has returned appropriate conclusions thereupon holding the appellant guilty.

8. The FIR (Ex.PW-2/A) in the case was registered with all promptitude at 20.10 hours on 11.07.2011, after the incident had occurred at 4.15 p.m. and had come to the notice of the police at 5.49 p.m. vide DD No. 85 B (Ex.PW-9/A). The victim Imran had been taken to Babu Jagjivan Ram Memorial Hospital at 6.15 p.m. on 11.07.2011 and the MLC (Ex.PW-4/A), which was prepared, duly proved by Dr. Gopal Krishna (PW-4), indicates he having suffered four injuries they being stab wound 4 x 1 x 1cm (horizontal) on forehead; stab wound 3 x 1 x 0.5 on (Lt) side of neck; stab wound 3 x 2 x ? cm on epigastrium and stab wound 1 x 0.5 x 0.5 cm over (Rt) iliac fossa.

9. The victim appeared, at the trial, as PW-1 and his statement finds corroboration from the eye witness account of his brother Ajam (PW-3). Read together, their testimonies show that the appellant and

his associates (including absconder Aju) are rag pickers and were trying to persuade PW-3 to accompany him, he not being interested because of their wayward ways. His refusal to accompany the appellant and his associates provoked the appellant and his companions who first statedly had caused injuries to him wherein Hasan had attacked him (PW-3), with a knife. Sometime immediately thereafter the said three persons, including the appellant, waylaid PW-3 and his brother (PW-1) wherein the absconder (Aju) caught hold of PW-1 while the appellant inflicted a series of stab wounds on his person, the injuries described in the FIR, based on statement (Ex.PW-3/A) of the eye witness (PW-3), as indeed in the court testimony, being corroborated by the MLC (Ex.PW-4/A).

10. Having regard to the nature of injuries, and the manner in which they were inflicted, particularly, the *situs* of second injury (neck), it is clear that the learned trial court's view that the attempt was to cause such injuries as the assailant knew could prove fatal, cannot be said to be erroneous. In these circumstances, there is no case for disturbing the findings returned by the trial judge holding the appellant guilty for the offence under Section 307 read with Section 34 IPC.

11. Having regard to the poor strata of society from which the appellant hails and the record of learned trial court, it is clear that it is impossible for him to pay the fine of Rs.50,000/-. The fine has been imposed without any inquiry. The substantive sentence of rigorous imprisonment for five years, in the opinion of this Court, however, appears to be just and proper, the only reduction justified being on the subject of fine.

12. In these circumstances, while maintaining the conviction under Section 307 IPC, the order on punishment is modified. The appellant is sentenced to rigorous imprisonment for five years with fine of Rs. 500/- in default simple imprisonment for fifteen days. Needless to add, as directed by the trial court, the appellant will be entitled to set off for the period of detention already undergone in terms of Section 428 Cr.P.C.

13. The appeal is disposed of in above terms.

14. Copy of this judgment shall be sent to the superintendent jail for necessary compliance.

15. Trial court record shall be returned with copy of the judgment.

R.K.GAUBA, J.

JUNE 12, 2017

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