

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.REV.P 702/2016

Order reserved on: 17th November, 2017

Order pronounced on: 21st November, 2017

JCL SHAHWAZ KHAN

...Petitioner

Through: Mr. Rajiv, Advocate.

versus

STATE (GOVT OF NCT OF DELHI)

...Respondent

Through: Mr. Arun Kumar Sharma,
APP for the State

CORAM:

% **HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

1. The present Revision petition is filed by the petitioner under Section 397 and 401 read with Section 482 of The Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') to *set aside the order dated 13.10.2016* passed by the District and Session Judge, Karkardooma in CA No. 240/16, confirming the judgment dated 28.05.2016 and order on sentence dated 31.05.2016 passed by the Principal Magistrate, Juvenile Justice Board (hereinafter referred 'JJB') Courts, whereby the petitioner was convicted and sentenced under Section 324/342/506/34 of the Indian Penal Code, 1860 (hereinafter referred 'IPC') and was sent to Special Home for a period of two weeks.

2. The brief facts of the present case are the FIR No.331 dated 15.05.2016, was registered against the present petitioner by one Mohd. Raja alleging that on 24.05.2015, the petitioner along with his father in furtherance of their common intention caused hurt to him with the use of knife and danda, wrongfully confined him and thereby, threatened to kill him. On purview of which, judgment dated and order on sentence dated 31.05.2016 was passed by the Trial court wherein the petitioner was found guilty under Section 324/342/506/34 IPC and was ordered to be sent to Special Home for a period of two weeks as he was a minor. An appeal was filed by the petitioner against the said order under Section 52 of Juvenile Justice Act, 2000, before the District and Session Judge wherein the said order was upheld. Hence, the present petition.
3. The learned counsel for the petitioner contended that the Trial Court has erred in passing the order dated 13.10.2016, as the same is based on conjectures and surmises; that the present case is filed on account of family dispute existing between the parties and two FIRs are already been filed regarding the said dispute and is pending trial; that there are contradiction between the FIR and the subsequent statements made during the recording of evidence of the prosecution witnesses; that the present case was not proved beyond reasonable doubt as no weapon was recovered as well as no doctor was examined in order to prove the MLC, which is on record; that the Trial Court further erred in not granting benefit of

probation to the petitioner. In these circumstances, the order dated 13.10.2016, need to be set aside.

4. Per contra, the learned APP for the state has vehemently opposed the present petition thereby stating that there is no error in the order dated 13.10.2016 and the same needs to be upheld.
5. The submissions made by the both the parties have been considered and the records have been perused.
6. After considering the facts and circumstances of the present case and perusal of record(s), it is seen that PW-2/Md. Raza @ Mohd. Miyan/ victim, has clearly deposed that the petitioner was holding a long knife and he was stabbed by him on his left hand as well as on his back. The same was corroborated by the testimonies of PW-3/Mohd. Habib/father and PW-8/ Mohd. Tariq/ brother who deposed on similar lines and remained consistent regarding the date, time and place of incident.
7. The contention of the counsel for the petitioner that the present case was not proved beyond reasonable doubt as no weapon was recovered as well as no doctor was examined in order to prove the MLC, which is on record cannot be accepted. PW-5/ HC Rajbir Singh, during his deposition has categorically stated that “...Thereafter, I along with Ct. Amit went to JPC Hospital and on reaching there I obtained the MLCs of injured namely Mohd. Miya and Mohd. Pyare Miya..”. It is seen that the same was never asked to him during the time his testimony was recorded and therefore, it stands admitted. It was stated in the MLC that “...stab over chest

*lower side of about 3cm. Width and 4 cm. deep.....CLW at left 'T' region 2x3 cmsmultiple lacerated wound on left arm.... Stitches done on scalp and left arm wound...". It was also stated in the MLC report that the nature of injury was simple. The MLC No. 494 dated 24.05.2015, fully supports the case of the prosecution and stands proved beyond reasonable doubt. Further, it is also well settled law that if the injury has been proved by the ocular evidence, then non-recovery of weapon is immaterial. The version of complainant that injuries were inflicted with a knife is also corroborated by the evidence of other prosecution witnesses as well as by the MLC report where the nature of injury on the body of the person itself shows that it has been inflicted by a sharp object. In **Rajvir and Anr. Vs. State** reported in **Crl.A. 630/1999**, it has been held by this court that “..40. Recovery of weapon of offence being doubtful, nature of injury has reflected in the MLC and the broad features of the case not ruling out a sudden fight, intention has to be gathered from the nature of injuries as recorded in the MLC and no other evidence...*

... 43. Notwithstanding that the weapon of offence has not been linked to Rajvir, as noted, oral evidence is clear that he had used a knife when he attacked Gorakh. Case of voluntary causing hurt by a dangerous weapon is made out..”

8. From the facts and circumstances of the present case, it is found that the despite the injury caused by the petitioner being of grievous nature, a lenient view has been taken by the Trial Court

by sending him to the Special Home for two weeks keeping in view of the age of the petitioner. In this situation, no interference in the impugned order passed by the Trial Court is called for.

9. Hence, the petition is accordingly dismissed.

CRL.M(B) 1953/16 (Suspension of Sentence)

In view of the order passed in the main petition, the present application is rendered infructuous.

Application stands disposed of.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 21 , 2017 gr//



सत्यमेव जयते