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

% Date of Judgment: 17th July, 2017

+ **CRL.L.P. 378/2017**

STATE GOVT OF NCT OF DELHI Petitioner

Through: Mr. Rajat Katyal, APP

versus

SONU

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **17.07.2017**

CHANDER SHEKHAR, J.(ORAL)

Crl.M.A.10730/2017

Allowed, subject to all just exceptions.

Crl.M.A.10731/2017

For the reasons stated therein, the application is allowed. Delay of 23 days in filing the present appeal is condoned.

Crl.L.P.378/2017

1. The present leave to appeal has been filed by the State under Section 378 of the Code of Criminal Procedure, 1973 ('Cr.PC') against the judgment dated 17.03.2017 and the order on sentence dated 24.03.2017 by the Court of Additional Sessions Judge-02,

South District, District Court, Saket, New Delhi in SC No.36/2015 titled State v. Daljeet Singh & Anr. under Sections 307/120-B, Indian Penal Code, 1860 ('IPC'), whereby Daljeet was acquitted of the charges framed against him under Section 307/120-B IPC and accused Sonu was held guilty and convicted for the offence under Section 324 IPC. He was given the benefit of probation on furnishing a personal bond of Rs.20,000/- for a period of one year, with the condition that he would come and receive the punishment if and when such circumstance arise. The convict was also directed to pay a sum of Rs.1,000/- as fine, in default of which he would further undergo simple imprisonment for one week.

2. The case of the prosecution, as noticed by the Trial Court, is that, on receiving DD No. 47B dated 03.10.2011, SI Arvind Kumar alongwith Ct. Shyam Babu reached at H.No. 1889, Sector 3, Pushp Vihar, where they came to know that victim Shashi Kant had suffered injuries at H.No. 1889 and was taken to Modi Hospital. Thereafter, crime team inspected the scene of crime, lifted the blood samples as well as earth control from the spot. Injured Shashi Kant was found not fit for giving statement and thereafter statement of Hemant was recorded in which he alleged that he was a student of second year and accused Daljeet Singh was his relative. He further deposed that his father had lent him Rs.35,000/-, as he had assured his father that he would provide a job to his maternal brother Kushal Kishore @ Vicky, however, neither did he employ him nor did he return the money. He further stated that the previous day, i.e. on 02.10.2011, his father went

to the house of Daljeet to demand the money, where accused Sonu told his father, why they used to come to their house to quarrel. Thereafter, he slapped his father, because of which he had a swollen face. Then, on 03.10.2011, at around 7pm, he alongwith his father, Shashi Kant and maternal brother, Krishan Kumar went to the house of Sonu. They met accused Sonu, his mother and his father and they told them to talk peacefully. However, Sonu came shouting from the balcony and threatened his father Shashi Kant that he would finish them and thereafter stabbed his father in the stomach, but his mother stopped him. Shashi Kant fell down, following which his brother Kushal Kishore took him to their house and thereafter took him to Modi Hospital. He further stated that he had called 100 number. Pursuant to recording his statement, an FIR No.307/120B IPC was registered. During the investigation, the blood stained clothes of the injured were duly sealed and seized, with the sample seal of Modi Hospital and at the instance of the complainant, site plan of place of occurrence of the incident was prepared. The MLC of the accused Sonu was also collected. During his interrogation, he stated that brother-in-law of the injured, Shashi Kant used to reside in their house on rent and they had some money matter, due to which Shashi Kant used to come to their house daily to quarrel. He further stated that Daljeet also used to instigate him to teach him a lesson. On 02.10.2011, Sonu beat Shashi Kant, then stabbed him in a state of anger on 03.01.2011, and thereafter stabbed himself on his hand and back and then threw the knife out of the balcony. Sonu was interrogated, after which he was arrested, however, the knife which

was used to commit the offence could not be recovered. Accused Daljeet was also arrested. The medical opinion on the injuries of accused Sonu was also obtained.

3. On completion of investigation, charge sheet under Sections 301/120-B IPC was filed. On committal, vide order dated 13.04.2012, charges under Sections 307/34 IPC were framed against the accused persons to which they pleaded not guilty and claimed trial. To bring home the guilt of the accused, the prosecution examined 17 witnesses. The statement of the accused was recorded under Section 313 Cr. PC. No evidence was led by the defence.

4. Learned counsel for the State submits that the trial Court has based the judgment on surmises and conjectures. It is also submitted that the Trial Court has erred in acquitting the respondent under Section 307 IPC and holding him guilty only under Section 324 IPC and has also given the benefit of probation to the respondent. Learned counsel for the State has also submitted that the Trial Court has failed to appreciate the fact that the convict Sonu assaulted PW-1, Shashi Kant on his vital part of the body, i.e., stomach and thereafter he became unconscious and remained in the ICU. It is also stated that, the important thing to be borne in mind in determining the question whether the offence under Section 307 IPC is made out or not, is the intention of the convict and not the injury caused (even if simple or minor). The intention and knowledge are the matters of inference from totality of circumstances and, therefore, cannot be measured

merely from the results.

5. Learned counsel for the State has also submitted that undue sympathy to impose inadequate sentence would do more harm to the justice system, it would undermine the public confidence in the efficacy of law, as was held by the Hon'ble Supreme Court in ***Mahesh v. State of M.P., JT 1987(1) SC 793***. Hence, it is prayed that the Court may set aside the impugned judgment dated 17.03.2017 and the order on sentence 24.03.2017 passed by the Court of the Addl. Sessions Judge-02, South District, District Court, Saket, New Delhi.

6. We have heard learned counsel for the State and have carefully examined the judgment of Trial Court.

7. The following questions arise for our consideration:-

(a) Whether the Trial Court was right in acquitting the respondent of the offence under Sections 307/34 IPC and holding him guilty under Sections 324/34 IPC, as also in awarding the sentence, i.e., giving him the benefit of probation?

(b) Whether the Trial Court erred in not appreciating the fact that the accused had given a blow of knife on the vital part, i.e. stomach, even with/without an intention and knowledge to harm?

8. In respect of the above questions, the Trial Court held that, though the injury was on the vital part, i.e., stomach, however, the injury was simple in nature, and the knife used for the offence was a vegetable cutting knife, thereby the intention of the convict was

lacking. In *Navjeet @ Prince and others vs. State*, **MANU/DE/2507/2010**, it is held as under:-

“As regards the charge under section 307 of the IPC, we find that the informant Sagar Sharma had sustained two injuries one of which was an abrasion over left upper arm 5 cm long and skin deep, whereas the other was a clean incised wound measuring 8mm x 2 mm on the right side of lower part of his chest. A perusal of his MLC Exhibit PW14/B would show that the injury sustained by him was found to be simple. Considering the nature of the injuries caused to him, we find it difficult to hold that the appellants intended to commit his murder. Had that been the intention, as in the case of the deceased, the knife blow would have been given with substantial force and the appellant Tavinder may not have stopped at giving one knife blow to him. In our view, the appellants intended only to cause injuries to him using a knife, which is a sharp edged weapon and also an instrument of cutting and stabbing. Hence, the charges under Section 307 of IPC does not stand established and the appellant Tavinder is liable to be convicted only under Section 324 of IPC for causing injuries to the informant Monu alias Sagar Sharma.”

9. At the same time, in *Om Parkash v. The State of Punjab*, **AIR 1961 SC 1782**, it is held as under:

“...On a parity of reasoning, a person commits an offence under [Section 307](#) when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in [Section 100](#). The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence.

The expression 'whoever attempts to commit an offence' in Section 511, can only mean 'whoever intends to do a certain act with the intent or knowledge necessary for the commission of that offence'. The same is meant by the expression 'whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder' in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression 'by that act' does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time."

10. The Trial Court, after evaluating the entire evidence of PWs 1, 2 and 3 as well as the medical opinion (Ex.PW-15/A) and the statement under Section 313 Cr. PC held that the prosecution has been able to prove that Sonu caused stab injuries to PW-1.

11. We do not find any flaw or infirmity in the judgment of the Trial Court regarding the offence made out against the accused persons. It is on record as well as in the judgment of the Trial Court that PW-9, Dr. Harish Kapila had conducted the operation of injured Shashi Kant and opined the nature of injury, as simple with sharp object. He also does not suggest that any grievous or dangerous injury was inflicted on the injured PW-1, Shashi Kant. Though PW-1 had stated in his testimony that the accused Sonu came running down from the balcony and exhorted that he would finish them and thereafter stabbed him with a knife in his stomach, however this factum that accused Sonu inflicted knife injuries to PW-1 with an intention to kill him, had not come in the cross-examination of PW-2,

Kaushal Kishore. Furthermore, the set of facts also does not suggest that accused Sonu had any intention or premeditated plan to cause fatal stab injuries. The incident appears to have taken place at the spur of the moment. Therefore, the nature of injuries and the facts and circumstances under which the quarrel took place do not at all suggest that accused Sonu inflicted knife injuries with an intention to kill. Furthermore, the knife, which he used, was stated to be a vegetable knife and also does not fall in the category of a deadly weapon, even otherwise it cannot be inferred that the knife was a deadly weapon, as it was not recovered during investigation. Hence, we do not find any support in the contention of the learned counsel for the State, that the injuries inflicted on the vital part of the body, i.e., stomach was coupled with an intention to kill, therefore, nothing can be inferred. We do concur with the findings of the Trial Court that the injuries were simple in nature caused by using a vegetable knife.

12. In *State of M.P. v. Kashiram & Ors.*, MANU/SC/0107/2009, it is held as under:

“To justify a conviction under Section 307 IPC, intention and knowledge of the crime committed is paramount and succeeds over the actual injury caused or whether that injury was sufficient to cause death of the victim.”

13. The injury caused by Sonu in the present case was a simple injury, and had there been a clear intention to cause death, the force with which the victim was stabbed would have been substantial and might even have been repetitive.

14. The case in hand is a case of stabbing with a vegetable knife in a sudden fight that happened in heat of moment, without any intention. Therefore, taking into account the factual matrix of this case, we find it difficult to infer that the convict had an intention to cause death or to cause him such injury which was likely to result in his death. There is no substance in the contention of learned counsel for the State that the accused ought to have been held guilty under Sections 307/34 IPC, rather than holding him guilty under Section 324 IPC. Accordingly, we find no ground or substance in the contention of learned counsel for the State that the Trial Court had imposed inadequate sentence or that the Trial Court has failed to award proper sentence, in view of the detailed reasons given by the Trial Court.

15. Even otherwise, it is settled law that the appellate court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so [See *Sheo Swarup v. King-Emperor*, AIR 1934 PC 227 (2); *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 (paragraph 16 and 17); *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529 (paragraph 6); *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 (paragraph 7); *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 (paragraph 42); *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 (paragraph 73); and *Muralidhar @ Gidda v. State of Karnataka*, (2014) 5 SCC 730 (paragraph 12)].

16. Accordingly, we find no ground to interfere in the impugned judgment dated 17.03.2017 and the order on sentence dated 24.03.2017 of the Trial Court. The personal bonds and the sureties under Section 437-A Cr.P.C. are discharged.

17. The leave to appeal is dismissed.

G.S.SISTANI, J

CHANDER SHEKHAR, J

JULY 17, 2017

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