

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

RESERVED ON : 6th JUNE, 2017
DECIDED ON : 12th JULY, 2017

+ **CRL.A. 1162/2016 & CrI.M.B.No.682/2017**

SHAHID Appellant
Through: Mr. Sunil Tiwari and Ms. Preeti
Mittal, Advocates.

VERSUS

THE STATE (NCT OF DELHI) Respondent
Through: Ms. Meenakshi Chauhan, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 09.11.2016 of learned Addl. Sessions Judge in Sessions Case No.15/2015 arising out of FIR No.117/2011 PS Shahdara by which the appellant – Shahid was held guilty for committing offence punishable under Section 307/34 IPC. By an order dated 11.11.2016, he was sentenced to undergo RI for ten years with fine ₹ 10,000/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on the night intervening 08/09.04.2011 at about 12.15 a.m. at House No.180, double storey, second floor, Kabool Nagar, Shahdara, Delhi, the appellant sharing common intention with co-accused Imran (since PO) inflicted injuries to the complainant –

Nazmin by throwing thinner upon her with an intention to commit murder. The incident was conveyed to the police promptly and DD No.4A (Ex.PW-12/A) came into existence at 01.18 night at PS Shahdara. The investigation was assigned to ASI Bhupinder who along with Const. Mukesh went to the spot. The victim was first taken to East Delhi Hospital, thereafter, she was shifted to GTB Hospital. After recording victim's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report. Victim's statement (Ex.PW-1/B) was also recorded on 10.04.2011 by the concerned SDM Mr.Rajeeva Shukla. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Statements of the witnesses conversant with the facts were recorded. The appellant was arrested. Efforts were made to find out co-accused Imran but in vain. Finally, he was declared Proclaimed Offender. Upon completion of investigation, the prosecution filed charge-sheet against the appellant for commission of the offence under Section 307/34 IPC. To establish its case, the prosecution examined sixteen witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication due to property dispute with victim's parents. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the complainant and the appellant were acquainted with each other, prior to the incident. They were closely related to each other. It has further come on record that the appellant and his family members were residing in the property

owned by the complainant's parents as tenants and civil proceedings were pending against them for eviction. It has further come on record that subsequently the proceedings were decided in favour of the complainant's parents and the premises were vacated by the appellant and his family members. There used to be frequent quarrels between the parties before the incident. The complainant's mother had lodged a complaint with the police about threats extended by the appellant and his acquaintance.

4. The occurrence took place on the night intervening 08/09.04.2011 at around 12.15 midnight. The incident was conveyed to the police promptly at 01.18 (night) and DD No.4A (Ex.PW-12/A) came to be recorded at PS Shahdara. In her complaint (Ex.PW-1/A) recorded soon after the incident, the complainant gave graphic detail of the incident and disclosed as to how and in what manner, chemical was thrown upon her by the co-accused Imran and the appellant threw a burning match stick on her body as a result of which she sustained burn injuries. The appellant was specifically named in the FIR and definite role was assigned to him in the incident. Since the FIR was lodged without any delay and the appellant's involvement emerged in the statement (Ex.PW-1/A), there is least possibility of the complainant, a victim, to fabricate a false story in such a short interval.

5. In her court statement as PW-1, the complainant - Nazmin proved the version given to the police without any variation. She deposed that on 09.04.2011, when she was studying at her house at second floor, at around 12.15 a.m., someone knocked at the door.

When she opened it, she saw that her maternal uncle Shahid (the appellant) and his son Imran (since PO) were present at the door. Imran was having a bottle containing some liquid substance. He poured the liquid on her and Shahid lit the match-stick and threw it on her as a result of which her clothes got burned. She raised alarm and called her mother. The appellant and his associate Imran fled the spot. She was taken to bathroom and water was poured on her to extinguish the fire. Police was informed and she was taken to East Delhi Hospital from where she was shifted to GTB Hospital. She further disclosed that her statement (Ex.PW-1/A) was recorded at GTB Hospital. SDM also recorded her statement (Ex.PW-1/B) on 10.04.2011. In the cross-examination, she admitted that a dispute existed between the appellant and his mother regarding ownership of the house No.180, Kabool Nagar and quarrels had taken place often in that regard. She denied the suggestion that the injuries were self-inflicted as she was rebuked by her family members for 'outing' with Shoeb.

6. On scanning the entire testimony of the complainant, it stands established that it was the appellant who had accompanied his son Imran at odd hours to inflict injuries on the complainant by throwing a chemical (thinner) on her body. Material facts disclosed by the complainant remained unchallenged and un-rebutted in the cross-examination. No ulterior motive was assigned to the child witness, a student of 10th class aged around 15 years, to falsely implicate the appellant for the grievous injuries suffered by her. Nothing has come on record to show that the victim had any affairs

with Sohaib or that she was scolded by her parents for an excursion with him that day. Complainant was quick to disclose that Sohaib was her brother and she had no affairs / friendship with him. Apparently, feeble attempt was made by the appellant to shift the blame upon victim's parents. Nothing has come on record to show that injuries suffered by the victim were self-inflicted. No such suggestion was put to PW-10 (Dr.R.Mukunth) and PW-13 (Dr.Nihar Ranjan Mohaptra) in the cross-examination.

7. PW-2 (Smt.Reshma) and PW-3 (Chand Khan) – victim's parents and PW-4 (Sher Afzal) – victim's brother have fully corroborated her version without any variation. Presence of the complainant and her family members at the house was quite natural and probable.

8. Complainant's ocular testimony has been corroborated by medical evidence. She was medically examined by Dr.K.Kalaivanan vide MLC (Ex.PW-10/A). In the alleged history recorded therein it is mentioned that a substance was poured on the complainant by an individual known to her. The victim who had sustained grievous injuries is not expected to let the real culprit to go scot free and to implicate the appellant and his son at her parents' behest as alleged. Unsuspectingly, she had opened the door of the house when it was knocked at by the appellant and his associate at around 12.15 a.m. Even PW-2 (Reshma) was able to recognise and identify the assailants while fleeing the spot.

9. It has further come on record that the appellant had filed a petition (Crl.M.C. 3491/2014) for quashing of the FIR in question on

the basis of settlement. The appellant had agreed to pay ₹1 lac to the complainant as compensation. The complainant had excused the appellant for the crime due to his detention for a period of two years and on his undertaking not to ever quarrel with her or harass the complainant or her parents in future.

10. No valid reason exists to discard the statement of the complainant and her family members. The appellant tried to put blame without any foundation upon victim's parents when she was allegedly beaten for her outing with Sohaib.

11. The impugned judgment has discussed all the relevant aspects and warrants no intervention. Conviction under Section 307/34 IPC is affirmed.

12. Regarding sentence, the appellant was ordered to undergo RI for ten years with fine ₹10,000/-. Nominal roll dated 25.02.2017 records that the appellant has undergone three years, nine months and ten days incarceration besides remission for one month and twenty-three days as on 22.02.2017. It further reveals that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory; he is aged around 61 years and is suffering from various ailments including psychiatric problem. Certain medical documents have been placed on record showing the appellant getting treatment at GB Pant Institute and IBHAS. Other mitigating circumstance to modify the sentence order is that the matter has been settled by the complainant with the appellant and a compensation of ₹1 lac has been accepted by her. The parties are closely related to each other and the bone of contention i.e. occupation of the tenanted

premises since has come to an end. Sentence order records that ₹3 lacs have already been given by District Legal Services Authority, Shahdara, as compensation to the complainant.

13. Considering the facts and circumstances of the case, the Sentence Order is modified and the appellant is sentenced to undergo RI for seven years with fine ₹10,000/-; default sentence being SI for fifteen days. The period already undergone by the appellant in this case shall be counted and set off under Section 428 Cr.P.C.

14. The appeal stands disposed of in the above terms.

15. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

16. Pending application also stands disposed of.

JULY 12, 2017 / tr

**(S.P.GARG)
JUDGE**