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

Decided on: 12th June, 2017

+ CRL.A. 1230/2015 and Crl.M.(Bail) 886/2017

SUNIL KUMAR Appellant

Through: Ms. Inderjeet Sidhu, Adv. with
appellant in person.

versus

STATE Respondent

Through: Mr. Tarang Srivastava, APP for
State.

+ CRL.A. 1273/2015

GURDASS @ BIRJU Appellant

Through: Mr. Neeraj Bhardwaj, Adv.

versus

STATE Respondent

Through: Mr. Tarang Srivastava, APP for
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Both these appeals arise out of judgment dated 18.09.2015 of the court of sessions in Sessions Case No. 88/2014 which, in turn, was registered on the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) submitted on conclusion of investigation into first information report (FIR) No. 321/2013 of police station Mundka, followed by order on sentence dated 30.09.2015, whereby the appellants were held guilty and convicted for

offence punishable under Section 307 read with Section 34 of Indian Penal Code, 1860 (IPC) and Sections 506/34 IPC and awarded different terms of imprisonment as punishment. It may be added here that appellant Sunil Kumar (Crl.A. 1230/2015) is son of appellant Gurdass @ Birju (Crl.A. 1273/2015).

2. The gravamen of the charge on which the appellants were tried by the court of sessions primarily was that on 15.12.2013 at about 6.35 p.m. at under-construction highway road numbers 5 and 6, near main Rohtak Road, within the jurisdiction of police station Mundka (police station), they in furtherance of their common intention had voluntarily caused injuries on the person of Kunj Bihari (PW-1) with a sharp-edged weapon (*darati*) with such intention and knowledge, under such circumstances, that if by that act the death of said PW-1 had been brought about they would be guilty of murder, it consequently being an offence of attempt to murder punishable under Section 307 IPC and at the same time having extended threats to cause injuries to Kripal Yadav (PW-2) thereby having committed the offence of criminal intimidation punishable under section 506 IPC.

3. The prosecution led evidence before the trial court by examining, in all thirteen witnesses, they including Kunj Bihari (PW-1); Kripal Yadav (PW-2); W/HC Sudesh (PW-3); Ct. Surender Pratap (PW-4); ASI Shanti Swaroop (PW-5); Dhruv (PW-6); L/Ct. H. Shivamma (PW-7); HC Om Prakash (PW-8); HC Rakesh Kakkar (PW-9); Dr. Sandeep Kumar Mittal (PW-10); HC Joginder Singh (PW-11); Dr. R.S. Narwal (PW-12) and ASI Phool Kumar (PW-13).

4. The appellants were examined under Section 313 Cr.P.C. in which they claimed to be innocent having been falsely implicated due to previous enmity. They, however, did not lead any evidence in defence.

5. The learned trial judge found the evidence led by the prosecution worthy of reliance and held the appellants guilty, as charged, thereby convicting them. The appellant Sunil Kumar who is shown by the evidence to have used the weapon of offence to cause injury was sentenced to rigorous imprisonment for eight years with fine of Rs. 10,000/- and in default to undergo simple imprisonment for three months under Sections 307/34 IPC, with further rigorous imprisonment for six months and fine of Rs. 5,000 and in default simple imprisonment for fifteen days under Sections 506/34 IPC, amounts of Rs. 5,000/- and Rs. 2,500/- from such amounts of fine being paid as compensation to PW-1. The co-convict Gurdass @ Birju was sentenced to rigorous imprisonment for three years with fine of Rs. 10,000/- in default simple imprisonment for three months under Sections 307/34 IPC and same punishment, as in the case of Sunil Kumar, for the offence under Sections 506/34 IPC, with similar amounts from out of fine to be paid as compensation to PW-1. The learned trial judge also made recommendation under Section 357 A Cr.P.C. to the District Legal Service Authority to award appropriate compensation to the victim (PW-1) under Delhi Victim Compensation Scheme, 2011.

6. The learned counsel for the appellants, on instructions, submitted that, in the face of the evidence led, they do not wish to argue on merits of appeal against the findings returned leading to conviction, the prayer being restricted to the issue of sentence only.

7. Though the appellants do not seek to question the correctness of the findings returned whereupon they have been held guilty and convicted it being the stage of first appeal and, therefore, the final forum on facts, this court has gone through the evidence led on record to satisfy itself as to the correctness of the conclusions drawn by the trial court.

8. Having perused the record, this court finds that the learned trial judge has considered the evidence appropriately and has reached correct findings on facts applying the appropriate law on the subject to hold both the convicts/appellants guilty for offences punishable under Sections 307/506 IPC read with Section 34 IPC. It may be mentioned here that the incident which is the subject matter of the present case wherein PW-1 was injured was witnessed by Kripa Yadav (PW-2) and Dhruv (PW-6), the former (PW-2) being JCB operator and the latter (PW-6) being the Site Engineer, both present at the scene, in the normal course of their engagement in the construction work wherein the victim (PW-1) was employed as a Project Engineer. The evidence of these witnesses brings out that both the appellants, father and son, under the influence of alcohol, were found fighting and grappling with each other. The cause of their personal dispute is not known nor brought out in any manner even by the appellants. Be that as it may,

PW-1 is shown by the evidence to have tried to intervene to disengage the appellants from each other. But, this provoked the duo wherein the appellant Gurdass exhorted his son Sunil Kumar to hit him (PW1). Pursuant to such provocation, and exhortation, the appellant Sunil Kumar went to a nearby meat shop and picked up the chopper (*darati*) lying there and came back to hit PW-1, aiming at his neck. It is clear from the evidence of PW-1, as is supported by the evidence of the other two eye witnesses, that though he (PW-1) tried to evade the said attack with chopper, the weapon landed on his face, causing bone deep lacerated wound measuring 15-18 cm extending from cheek on left side involving zygomatic area and temporal area of skull, the zygomatic bone in the process being cut while temporal bone being fractured. The injuries were duly noted, upon the victim (PW-1) being taken to nearby Cygnus Sonia Hospital at Nangloi, where he was examined by Dr.R.S. Narwal (PW-12), the Chief Medical Officer (Casualty), who recorded MLC (Ex.PW-10/A), it having been duly proved without contest at the trial.

9. From the above evidence, it is clear that upon being exhorted by appellant Gurdass @ Birju, the other appellant Sunil Kumar had picked up the chopper and hit PW-1 aiming at his neck. Though the weapon did not land at the part of the body where it was directed, the blow affected thereby caused extensive damage, the nature of injury, described as above, being clearly life threatening.

10. In these facts and circumstances, the conviction of the two appellants for the offence under Section 307/34 IPC has been rightly returned and ought not be disturbed.

11. The evidence of PW-1 and PW-2 in particular further brings out the threats extended by the appellants which amounts to criminal intimidation and, therefore, the learned trial judge was justified in returning a finding holding the appellants guilty for offence under Section 506/34 IPC as well.

12. The appellant Gurdass @ Birju has already served the sentence and has since been released. The learned counsel for the other appellant Sunil Kumar, however, prays for some leniency in the sentence. She submitted that the offences were committed in the course of sudden fight, in the heat and passion, and that given the young age at which the appellant happened to indulge in such crimes, he, otherwise having no past criminal record, deserves some leniency so that he can come out of jail earlier to return to normal life, he being the sole bread earner for his family which includes aged father. The nominal roll indicates his conduct in jail has been satisfactory.

13. Having accorded consideration to the submissions made, this Court finds punishment of rigorous imprisonment for seven years with fine of Rs. 10,000/- for the offence under Section 307/34 IPC should serve the ends of justice, the punishment for the other offence under Section 506/34 IPC being appropriate, the order on sentence in the case of Sunil Kumar is accordingly modified. Both substantive sentences shall run concurrently. The sentences awarded against the

other convict Gurdass@ Birju, however, do not call for any interference.

14. The appeals are disposed of in above terms.

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

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

JUNE12, 2017
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R.K.GAUBA, J.

