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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 1st October, 2018

+ CRL. APPEAL NO. 140/2002

SHAILENDER SINGH & ANR. Petitioners

Through: Mr. Abhay Kumar &
Mr. Ashok Kumar Verma,
Advs.

versus

STATE DELHI ADMN. Respondent

Through: Mr. Ravi Nayak, APP for the
State with SI Shrikrishna, PS
Hari Nagar.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) no. 459/1997 was registered on 24.06.1997 on the complaint of Paramjeet Singh (PW-1), resident of C-26, Tihar Camp, New Ashok Nagar, New Delhi regarding an incident that had occurred at his said residence at about 11.15 p.m. on 23.06.1997. Two persons including said Paramjeet Singh (PW-1) had been injured in the incident, the other Amarjeet Singh (PW-7) being his brother, Babli (PW-3) the wife of their brother being an eye witness, the crime reported having statedly been committed by the appellants, they being sons of maternal uncle of the victims and consequently well known.

2. On the basis of report of investigation under Section 173 of the Code of Criminal Procedure, 1973 (the charge-sheet) which was submitted upon conclusion of investigation, both the appellants were

summoned and were eventually put on trial in sessions case 10/1998 on the charge for offences under Section 307/452/34 IPC. On the conclusion of the trial, by judgment dated 09.11.2001, both the appellants were held guilty, as charged, and by order on sentence passed on the same date, punishment was meted out in the form of rigorous imprisonment for three years with fine of Rs. 5000/- for offence under Section 307/34 IPC; and rigorous imprisonment for two years with fine of Rs. 5,000/- for offence under Section 452 IPC.

3. The present appeal was filed jointly by both the convicted persons to assail the said judgment and order on sentence.

4. The appeal was admitted. But, when it came up for consideration both the appellants absconded and would not appear. It was with great difficulty that the presence of the second appellant Vijender Singh @ Dabbu could be secured. The other appellant Shailender Singh continues to be elusive. Since both were represented by the same counsel, and had joined in filing the appeal, the matter has been heard finally with the counsel appearing also for the first appellant as *amicus curiae*.

5. As per the allegations in the FIR (Ex.PW-4/B), the first appellant Shailender Singh (A-1) had come to the house of the complainant at about 11.00 p.m. and when he was questioned as to the purpose of his visit, he (A-1) got infuriated and started questioning as to why he could not come. There is enough material to substantiate the allegations in the FIR, that the parties, though related closely, had been on inimical terms, and would not even talk to each other. The

appellants clearly were living separately in a house in a distinct locality and did not have any purpose or justification to call on the victims at such late hour of the day.

6. Be that as it may, the presence of A-1 in the house led to a quarrel wherein A-1 and the first informant (PW-1) came to be involved in grappling. It is stated that A-1 ran away from the scene at that point of time and returned after fifteen minutes at which stage he was accompanied by second appellant Vijender Singh @ Dabbu (A-2), both of them having forcibly entered into the house, started roughing up PW-1 and his brother (PW-7). It was alleged in the FIR that both the appellants threatened the victims that they would not be left alive. A-1 allegedly caught hold of PW-7 while A-2 attacked with the knife. It was also alleged that PW-7 too was also caught hold of by A-1 and attacked by A-2 with the knife, it resulting in injuries being suffered by him on his nose.

7. The record of investigation clearly shows that report to the police by residents of the locality, resulted in the local police arriving at the scene and, besides other steps, taking away the two victims to the hospital. It is stated that A-1 had also suffered injuries in the process and was caught from the spot, A-2 being arrested later. As per the prosecution case, the knife used in the crime was recovered at the instance of A-2 from a public place.

8. No separate charge for possession of knife under Section 25 Arms Act was laid. The evidence about the recovery of knife is rather hazy. There is no clarity by any forensic examination confirming the

use of the knife which was allegedly recovered at the instance of A-2 in the crime. No conviction has been recorded *vis-à-vis* the said knife and, therefore, the evidence in that regard may be kept aside.

9. The medico legal certificates (MLCs) in respect of both the victims have been proved during the trial by Dr. H.C. Gandhi (PW-9), the Chief Medical Officer of the hospital where such examination took place. The MLC with regard to first informant Paramjeet Singh (PW-10) is Ex. PW-9/B and the one in respect of the other victim Amarjeet Singh is Ex. PW-9/A. It does appear that the medical officers who had examined the said witnesses and had prepared the said MLCs were not called in to prove the said documents. But, PW-9 who testified with regard to the said MLC, is categorical that he was acquainted with the writing and signatures of the authors thereof, they being Dr. Monica and Dr. Sanjeev respectively. It has been explained that both the medical officers had left the services of the hospital and their presence could not be procured without unnecessary delay. In the facts and circumstances when their superior medical officer was in a position to prove the MLCs, the nature of injuries suffered being simple in nature and, therefore, there being no need for any further facts to be elicited the mode of proof cannot be questioned [*Vijay and Anr. vs. State 2015 SCC Online Del 11984*].

10. The victims PW-1 and PW-7 have testified along the lines of the prosecution case confirming their respective statements as given before the police during the course of investigation. The MLCs provide due corroboration to their respective testimonies, the injuries

suffered having been inflicted by sharp edged weapon, it being, in the case of PW-7 in the neck region and, in the case of PW-1, on the nose.

11. The counsel arguing for the appellants submitted that there are serious contradictions in the prosecution case and the evidence. The court has carefully scrutinized the testimony of the relevant witnesses but finds no such contradiction as can be taken to be going to the root of the matter. The broad case of the prosecution has been established that the appellants had entered into the house of the victims late in the night of 23.06.1997 so as to pick up quarrel against the backdrop of residents of the house indicating to them that they were not welcome, they having not only grappled with PW-1 and PW-7 but also having caused physical injuries to each of them. The fact that the evidence clearly shows that A-2 was in possession of a knife, a cutting instrument, with no justification whatsoever for carrying it at the time of such visit, shows that he had accompanied his brother (A-1) and had entered into the house of the victim side duly prepared and with intent to commit the assault leading to injuries being inflicted.

12. In these facts and circumstances, common intention will have to be attributed to both the appellants and their guilt for the offence under Section 452 IPC has been rightly held to be proved the same, therefore, calling for no interference.

13. There are, however, valid questions raised as to the correctness of the finding *vis-à-vis* the charge under Section 307 IPC. The said charge was framed primarily for the reason that the injury suffered by PW-7 was in the neck region that too by use of a knife. In this context,

it has to be borne in mind that in the FIR based on the *rukka* (Ex. PW-13/A), the first informant (PW-1) had attributed to the appellants that during the second visit to the house, in the company of each other and immediately upon arrival, A-1 having caught hold of PW-7, was followed up by A-2 inflicting the knife injury on his neck after declaring that they would not leave the victim party alive. In the court testimony, however, the sequence is brought out differently. According to the deposition of PW-1, when A-1 had returned to the house he was again alone. A-2 came in a little later and immediately after he had come in, he gave the knife blow which landed on the neck of PW-7. This sequence of events, noticeably, is not strictly in accord with the one narrated in the FIR where the said persons had first grappled with each other in the course of which the knife blow was inflicted. Since in the court deposition, there is no reference of any threat to the life of the victims being extended, it cannot be assumed that the knife blow was actually aimed at the neck region. There was grappling between A-2 and PW-7. The fact that it landed at the neck region does not by itself mean that it must be assumed that it was intended or aimed at the neck region. It appears the injury was inflicted during the course of grappling it being simple in nature. In this fact-situation, the intention was to cause hurt, but it cannot be inferred that the intention was to cause such hurt as was likely to cause death.

14. In the facts and circumstances, the conviction for the offence under Section 307/34 IPC must be set aside and, in its lieu, a finding returned that the appellants are guilty of offence of voluntarily causing

hurt by sharp edged weapon which constitutes offence under Section 324/34 IPC. Ordered accordingly. This necessitates modification of the order of conviction from the one under Section 307/34 IPC to one under Section 324/34 IPC and for revisit of the order on sentence as well.

15. The incident had occurred in 1997. Twenty one years have passed by. The appellants and the victim's side are closely related to each other. In the facts and circumstances, the rigor of the sentence is reduced and thus substituting the order of sentence awarded by the trial court, the appellants are directed to undergo rigorous imprisonment for one year with fine of Rs. 5,000/- each, on the two counts i.e. under Section 452/34 IPC and under Section 324/34 IPC. The said sentences shall run concurrently. In case of default in the payment of fine, they shall undergo rigorous imprisonment for two months each. The period of detention already undergone shall be set off in terms of Section 428 Cr.P.C.

16. A copy of this judgment with appropriate warrant shall be sent by the concerned registrar to the Superintendent jail for enforcing the sentence, as modified, vis-à-vis the second appellant Vijender Singh @ Dabbu who is lodged in jail in terms of the directions in the order dated 26.09.2018.

17. A copy of this judgment will also be sent to the trial court for requisite process to be issued against the first appellant Shailender Singh son of Sh. Bhupender Singh so that his presence is secured and such that he is made to undergo the sentence. The station house

officer of police station Hari Nagar will render all assistance to the trial court in that regard.

18. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 01, 2018

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