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

+ **CRL.A. 399/2003**

BALJIT SINGH

..... Appellant

Through: Mr. Sacchin Puri, Sr. Advocate
along with Mr. Varun Tyagi,
Mr. Bharat Gupta and Mr.
Kamil Khan, Advs.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT
26.07.2018

Dr. S. Muralidhar, J.:

1. This appeal by Baljit Singh is directed against the judgment dated 17th April, 2003 passed by the learned Additional Sessions Judge, Delhi convicting him for the offence under Section 325/34 IPC for having caused grievous injuries to Dinesh Kumar (PW-7) and under Section 323/34 IPC for having caused simple injuries to Pradeep Kumar (PW-3) and Sheela (PW-4). The appeal is also directed against the order on sentence dated 21st April, 2003 whereby for the offence

under Section 325/34 IPC, the Appellant was sentenced to Rigorous Imprisonment (RI) for 3 years along with a fine of Rs.5000/-, and in default to undergo Simple Imprisonment (SI) for three months. For the offence under Section 323/34, he was sentenced to RI for one year. The sentences were directed to run concurrently.

2. At the outset it requires to be noticed that the present Appellant has already served out his entire sentence. Nevertheless, the present appeal is being pursued as the conviction is detrimental to the interests of the Appellant.

3. It should further be noticed at the very outset that the Appellant was sent for trial along with three other co-accused namely Raj Singh son of Ram Swaroop, Raghubir Singh son of Raj Singh and Gulab Singh son of Ram Swaroop. Furthermore, other co-accused viz., Omprakash, Sunil Kumar, Sat Narayan and Surender Kumar were declared Proclaimed Offenders (POs).

4. The present Appellant was charged with three offences the first of which was that along with his co-accused he committed the murder of Ramesh Kumar (deceased) thereby committing an offence under Section 302/34 IPC; secondly, that he voluntarily caused grievous hurt to Mahavir (PW-6) and Dinesh (PW-7) thereby committing an offence under Section 325/34 IPC and thirdly, that he voluntarily caused

simple hurt to Pradeep Kumar (PW-3) and Sheela (PW-4) thereby committing an offence under Section 323/34 IPC.

5. As far as the present Appellant is concerned, he was acquitted for the offence under Section 302/34 IPC for the murder of Ramesh Kumar. He was also acquitted of the offence under Section 325/34 IPC for causing grievous injuries to Mahavir Singh (PW-6).

6. The prosecution relied on the eye witness testimonies of PWs 3, 4, 6 and 7 to prove the charges against the present Appellant. With the help of Mr. Sachhin Puri, learned senior counsel appearing for the Appellant and Mr. Kewal Singh Ahuja, learned APP for the State, the Court has perused the testimonies of the aforesaid injured eye witnesses.

7. As far as Pradeep Kumar (PW-3) is concerned, whilst he stated in his cross examination that Ramesh (the deceased) had been assaulted by Omprakash and Raghbir, according to him, Dinesh (PW-7) was assaulted by the present Appellant and Surender. As regards the assault on his own person, PW-3 stated that “I was assaulted by Raj Singh and Satya Narain”. He further added “Gulab had hit my *Bhabhi* Sheela.” Consequently, as far as PW-3 is concerned, he was not assaulted by the present Appellant.

8. However, the statement of PW-3 that the present Appellant had assaulted Dinesh along with Surender (PO) is not corroborated by Dinesh himself who was examined as PW-7. According to PW-7, while he saw the Appellant along with certain co-accused assaulting Ramesh, he was prevented from saving Ramesh by the other co-accused. Although he said that he himself was assaulted, he did not name the present Appellant as one of those who assaulted him. He only mentioned that the present Appellant “had a *danda*”. Therefore, the evidence of PW-3 in regard to the assault on PW-7 is not corroborated by PW-7 himself.

9. Coming next to the evidence of Sheela (PW-4), she categorically stated in her cross examination that she was hit by “Gulab and Sat Narayan.” She does not mention that she was assaulted by the present Appellant.

10. Mahavir Singh (PW-6), in his cross examination he states that he saw the present Appellant along with certain other co-accused assault Ramesh but as far as the assault on Ramesh or PW-6 is concerned, the trial Court itself has acquitted the present Appellant. Further the Appellant has been acquitted of the offence of assaulting PW-6.

11. Learned APP for the State pointed out the observations of the trial Court as regards invoking Section 34 IPC is concerned. The Court is

of the view that the trial Court has mentioned Section 34 IPC in the context of the attack on the deceased and PW-6 by the other co-accused. In fact, the trial Court has acquitted the present Appellant with regard to the aforementioned assaults.

12. As a result, there is no evidence to prove the guilt of the Appellant for his role in causing injuries to Dinesh (PW-7), Pradeep (PW-3) or Sheela (PW-4). Consequently, the Court sets aside the judgment of conviction dated 17th April, 2003 and acquits the present Appellant for the offences under Section 325/34 and 323/34 IPC. The consequent order on sentence dated 21st April, 2003 for the aforementioned offences qua the present Appellant is also set aside.

13. The appeal is accordingly allowed. The bail bonds and surety bonds furnished by the Appellant stand discharged. He will fulfill the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record (TCR) be returned together with a certified copy of the judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 26, 2018

shailendra/sandeep