

\$~48

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

+ **CRL.A. 727/2018, CRL.M.(BAIL) 1101/2018**

JITENDER KUMAR

..... Appellant

Through: Mr. Rajeev Saini and Mr. Yash Pal
Saini, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. G.M. Farooqui, APP for State
with SI Shailender, PS-Subhash
Place.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

12.07.2018

This appeal impugns the order of conviction dated 28.05.2018 and order on sentence on 30.05.2018 in FIR No. 412/2011 registered at Police Station Subhash Nagar, Delhi, for the offences under section 307/34 IPC on the ground that the impugned order errs both in facts and in law.

The brief facts of the case are that on 4.11.11 at about 10.10 AM in front of House No. A-193, JJ Colony, Shakur Pur, the appellant, in furtherance of common intention had inflicted dangerous injuries on the person of Pradeep Kumar with a knife with an intention to cause his death. As Pradeep Kumar survived, the appellant was charged with for having committed an offence punishable under sections 307/34 IPC. It is the appellant's case that insofar as PW-1 has stated in his testimony that Ram Swaroop and Babu Lal had assaulted him on the head, his testimony has been found unreliable. However, the Court would note that the impugned

order did not find sufficient reason to believe this portion of the testimony for initiating action against Ram Swaroop because according to the medical examination report there was a single injury on his head; this injury, according to the victim, was on account of the assault made by Babu Lal, and it is thereafter that Ram Swaroop had stated to have assaulted him on the head. He had, however, claimed that he had become semi-conscious at that time.

This portion of the testimony has been appropriately dealt with. The other part of unshaken testimony of the victim is, where he had clearly deposed, that the appellant was one of the persons who had assaulted him in collusion with the other. No ground was made out against Ram Swaroop in the case.

The impugned order noted that the cross-examination with respect to the victim pertains primarily to the property dispute and no questions were put to him to shake the deposition that he was attacked by the accused. In this regard, the impugned order records as under:-

“32. This brings us to testimony of PW-1. The witness during course of his examination in chief had given intricate details of the incident as regards the manner of incident and has also deposed about specific role assigned to each of the accused persons. He has stated about his being stabbed by Babu Lal (PO) and also by Jitender, Ashok and Sushila all three of whom are facing trial before this court. Perusal of his testimony further reveals that much of cross examination conducted was in respect of the property in dispute between the parties and hardly any question had been put to the witness to challenge his testimony qua the incident as was mentioned by him during course of his examination in chief. Not even a suggestion was made to the witness to the effect that none of the accused had caused any injury to him nor any suggestion

was made in respect of circumstances under which he might have received injuries which were sustained by him.

37. Bare perusal of the MLC Ex. PW-12/A shows the diabolic manner in which injuries had been caused on person of the victim Pradeep. As per case of prosecution, Pradeep had remained unfit for statement for pretty long time after the incident took place on 4.11.11 and in fact his statement could be recorded only on 17.11.11. As per opinion of doctor, injuries sustained by Pradeep were dangerous in nature. He had received stab injuries on his scalp, parietal and frontal regions besides a stab wound on left side of chest and on left arm.

38. The gruesome manner in which the entire incident had occurred speaks volumes about intention of the accused persons. They all in association with Babu Lal (since PO) had joined hands and in furtherance of their common intention had inflicted multiple stab injuries on person of Pradeep. It appears that it was sheer luck of Pradeep that he survived the attack. Intention of the accused persons is writ large on facts of the case and the same apparently was to do away with Pradeep. The bone of contention between the parties appears to be property dispute and it resulted in the incident.

39. Keeping in view all the aforesaid facts and circumstances of the case, there can be no two opinions regarding intention of the accused persons. Apparently they had intended to commit murder of Pradeep and as Pradeep survived, in considered opinion of this court, all the accused persons had attempted to commit his murder”.

In view of the above, the Court finds no reason to interfere with the impugned order. The appeal is without merits and is accordingly dismissed.

NAJMI WAZIRI, J

JULY 12, 2018

RW