

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

% Decided on: 6th December, 2018

+ CRL.A. 624/2017

ROHIT Appellant

Represented by: Mr. Ajay Verma, Mr. Vineet
Malhotra, Advs.

versus

THE STATE (NCT OF DELHI) Respondent

Represented by: Mr. Ashok Kr. Garg, APP with SI
Vishal Tiwari, PS Ambedkar Nagar.

+ CRL.A. 734/2017

ANIL RAJ Appellant

Represented by: Mr. Sugam Puri, Adv.

versus

STATE Respondent

Represented by: Mr. Ashok Kr. Garg, APP with SI
Vishal Tiwari, PS Ambedkar Nagar.

+ CRL.A. 879/2017

PRASHANT KUMAR Appellant

Represented by: Mr. Sugam Puri, Adv.

versus

STATE Respondent

Represented by: Mr. Ashok Kr. Garg, APP with SI
Vishal Tiwari, PS Ambedkar Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the three appeals, appellants challenge the impugned judgment dated 23rd May, 2017 whereby they have been convicted for offences

punishable under Sections 307/34 IPC and Section 3 of The Prevention of Damage of Public Property Act, 1984 (in short the PDPP Act) read with Section 34 IPC. Besides the conviction on these two counts appellant Anil Raj and Rohit have also been convicted for offences punishable under Section 186/353/332/34 IPC and appellant Anil Raj has also been convicted for offence punishable under Section 279 IPC.

2. Case of the prosecution was initiated on receipt of a PCR call regarding a quarrel at Dakshinpuri towards Pushp Vihar Road near Senior Secondary School on 17th May, 2012 at 5.30 PM which was recorded vide DD No.38A and exhibited vide Ex.PW-2/A. ACP Om Prakash the then SHO PS Ambedkar Nagar on being informed by the duty officer reached the place along with SI P.K. Jha (PW-13), H.C. Sunil Gaur, his driver and operator. One official car No. DL-1CJ-4605 was found at the spot and windscreen and driver side glass of window of the said car were damaged. Some splinters as well as bricks were found lying inside the car as well as on the road. Two motorcycles i.e. one bearing No. DL-3SBC-6891 make TVS and other DL-3SAY-4601 make Bajaj were also found parked near the spot. Two beat Constables also reached the spot and noticed the sticker of Judge affixed on the car and it was revealed that judicial officers who were injured in the incident had been taken to hospital in PCR van.

3. ACP Om Prakash reached the Trauma Centre where he met Chaman Lal (PW-1) the driver of the car and the three Judges, who were travelling in the car namely M.K. Nagpal, Ajay Garg and Inderjeet Singh, PW-6, PW-12 and PW-14 respectively. MLCs of the three injured were collected. Rukka on the statement of Chaman Lal vide Ex.PW-1/A was recorded and sent for registration of FIR.

4. In his statement Chaman Lal stated:

“Chaman Lal/ complainant, s/o Shri Paras Ram, r/o 179/D Basant Village, New Delhi, aged 39 years, 9910726210, working in District and Sessions Judge Saket Court as a driver. On 17.5.12, while driving the white coloured Maruti Esteem bearing license plate DL 1CJ 4605, which is a government car, complainant was taking Ld. ADJ Mr. Indrajeet Singh, Ld. ASJ Mr. Manoj Kumar Nagpal, and Ld. MM Mr. Ajay Garg to their residence. He was on BRT Road, crossing Maharishi Balmiki Marg, towards MB Road. At about 5.15 PM in the evening, near Kali Building School, Maharishi Balmiki Marg, J Block, Dakshin Puri, a motorcycle bearing license No. DL 3SAY 4601 on which two boys were riding recklessly, came and crashed against the back door of my car and fell on the side of the road. Complainant got down to explain to them when they started beating him up. On seeing this, the judicial officers also got down and explained to the boys. After the boys became quiet, the judicial officers and complainant got into the car again. When, rider of the motorcycle later identified as Anil Raj, s/o Salver Raj, R/o C-288, Dakshin Puri, New Delhi came in front of the car and on seeing the judges sticker on the car, got very angry. Anil Raj loudly claimed that these were the judges who had sent them to jail many times, and stated that they would not be left alive. Appellant called out for his friends and then picked up bricks from the roadside and attempted to aim at Mr. Ajay Garg’s head. Due to this, the windshield of the car broke. Until then, accomplices arrived on motorcycle bearing No. DL 3SBC 6891 and all started throwing bricks at the car. One hit Mr. Ajay Garg on the head and on the shoulder, which caused bleeding. Appellants still continued throwing bricks. When both judges in the backseat attempted to save themselves by bowing down, Anil Raj aimed for complainant’s head, breaking the glass of the side window first and then causing injury to complainant’s head next. Meanwhile, another man forcefully opened the door and grabbed Mr. Indrajeet Singh by the collar to drag him out, tearing his clothes and banyan in the process. A crowd had gathered, on seeing which the appellants all ran away. After the PCR car came, the complainant took the judges

to Trauma Centre AIIMS for treatment. Meanwhile, Anil Raj himself having inflicted fake injury on his own head along with his accomplice identified as Rohit S/o Raj Kumar, R/o K-II/194 Gali No.5, Sangam Vihar, New Delhi appeared at the Trauma Centre then. He identified both clearly as their assailants. ”

5. Statements of three Judicial Officers were also recorded under Section 161 Cr.P.C and after necessary investigations charge-sheet was filed. During the course of trial Chaman Lal appeared as PW-1 and deposed in line with his statement on the basis of which FIR was registered as noted above. Three Judicial Officers who had also received injuries also appeared as PW-6, PW-12 and PW-14 and also supported the case of the prosecution.

6. In his cross-examination conducted by Ld. Counsel for Rohit, Chaman Lal stated that "Government Vehicle" was not written on his car in red ink and sticker of "Judge" was affixed on the windscreen as well as on the rear glass. He stated that as the appellants were hitting them with bricks, he thought that they intended to kill him. He further stated that after seeing sticker on the car either of the appellants Anil Raj or Rohit said "*Ye Judge sahab ki gaadi hai apne dosto ko bulao*"

7. In his cross-examination conducted by the Ld. Counsel for Prashant, Chaman Lal stated that at the time of the incident Mr. Ajay Garg, was sitting on the front seat alongwith him, Mr. Inderjeet Singh and Mr. Manoj Nagpal were sitting on the back seat. They had left the court premises at 5:00 P.M. that day and the incident took place at about 5:15 P.M., at a distance of about 3-4 kilometres from the District Court. He stated that he was driving the car at a speed of 20 km/hr as there was heavy traffic. Anil Raj had hit his car from the right side. He stated that no fight took place between the appellants and him until he sat in the car when they started hitting the car

with brickbats. He further stated that the windscreen of his car was not broken till Anil Raj and Prashant came there.

8. In his cross-examination conducted by the Ld. Counsel for Anil Raj, Chaman Lal stated that site plan was prepared before him. The name of appellant Anil Raj was disclosed to him by the police.

9. ACP Om Prakash (PW-24) the investigating officer deposed about the investigation carried out and the manner in which torn clothes were found and collected. Finger prints which were collected from the two motorcycles were sent for examination and reports thereon by the forensic experts also tallied with that of the accused opining that finger-prints recovered belonged to the appellant Rohit. To prove the MLCs of the four injured Dr. Harikesh Yadav Sr. Resident PW-13 appeared in the witness box.

10. As noted above, appellants Rohit and Anil Raj were apprehended from the Trauma Centre where they had gone to get themselves treated. On the disclosure statement of Anil Raj, Prashant was apprehended.

11. Considering the evidence led by the prosecution, learned counsel for the appellant made a feeble attempt to attack the judgment of conviction, however as noted above from the evidence of the complainant and the three injured victims the prosecution has proved its case beyond reasonable doubt for the offences the appellants have been convicted for.

12. The main grievance of learned counsel for the appellants is that even accepting the case of the prosecution as it is, the sentence of rigorous imprisonment for a period of 10 years to all the accused is highly disproportionate and be modified.

13. The sentences awarded to the appellants on the various counts by the learned Trial Court are as under:

“i) Convicts Anil Raj, Rohit and Prashant are hereby sentenced to undergo rigorous imprisonment for a period of 10 years and also to pay a fine of ₹5,000/- for offence punishable under Section 307/34 IPC and in default to make payment of fine, they are to undergo simple imprisonment for a period of six months.

ii) They are further sentenced to undergo rigorous imprisonment for a period of three years and also to pay a fine of ₹1000/- for offence punishable under Section 3 of The Prevention of Damage to Public Property Act, 1984 read with Section 34 IPC and in default to make payment of fine, they are to undergo simple imprisonment for a period of two months.

iii) Convicts Anil Raj and Rohit are sentenced to undergo rigorous imprisonment for a period of three months for offence punishable under Section 186/34 IPC.

iv) Convicts Anil Raj and Rohit are further sentenced to undergo rigorous imprisonment for a period of two years each for offence punishable under Section 353 and Section 332 read with Section 34 IPC.

v) Convicts Anil Raj is further sentenced to undergo rigorous imprisonment for a period of six months for offence punishable under Section 279 IPC.

vi) All the sentences shall run concurrently.

vii) Benefit of Section 428 Cr.P.C. be given to convicts for the period of detention already undergone by them in custody in this case.”

14. Nature of injuries on the four victims have been opined to be simple. Weapon of offence used were portions of bricks for pelting and that in the process Anil Raj also suffered an injury. Further two of the appellants have no previous conviction, though Anil Raj had two previous cases under Section 323 IPC which FIRs have since been compounded, thus this Court deems it fit to modify the order on sentence. Appellants Rohit and Anil Raj

have undergone more than 3 years, thus the sentence awarded for offences punishable under Section 3 PDPP Act read with Section 34 IPC, 186/34/353/332 read with Section 34 IPC and 279 IPC has already been undergone. However, sentence of the appellants Anil Raj and Rohit for offence punishable under Sections 307/34 IPC is modified to rigorous imprisonment for a period of five years and to pay a fine of ₹5000/- in default whereof to undergo simple imprisonment for a period of three months.

15. As regards appellant Prashant is concerned, he was not present at the time when the incident took place and joined the appellants subsequently. Prashant has undergone slightly more than three years imprisonment. Considering the role attributed to Prashant, sentence of Prashant is modified to the period already undergone. Appellant Prashant be released forthwith if not required in any other case.

16. Appeals are disposed of.

17. Copies of the judgment be sent to the Superintendent, Concerned Jail for updation of record and intimation to the appellants.

18. Trial Court record be sent back.

CrI.M.B. 1388/2017 in CRL.A. 624/2017

CrI.M.B. 1365/2017 in CRL.A. 734/2017

CrI.M.B. 1648/2017 in CRL.A. 879/2017

Applications are disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

DECEMBER 06, 2018
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