

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

% Decided on: 26th July, 2018

+ **CRL.A. 934/2017**

SADDAM

..... Appellant

Represented by: Mr. Ashim Shridhar, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Ashok K. Garg, APP for
State with ASI Jagpal Singh,
PS Sonia Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Investigation was set into motion on receipt of information through PCR at 7.55 PM recorded vide DD No.25A (Ex.PW-2/A) informing "*Chauhan patti wali gali, ek ladke ko chaaku maar diya hai, jise le kar GTB jaa rhe hain.*" The DD entry was assigned to HC Ajeet and later to SI Yogesh (PW-17).

2. FIR No.21/2013 under Section 326 IPC was registered on the complaint of Rashid (PW-1), the injured victim who stated that the appellant is his cousin and both of them have welding shops. On 28th January, 2013, he opened his shop and one gate was brought by one customer for repairing. On seeing this, his mausa-mausi (appellant's parents), Kamil (appellant's brother) and the appellant Saddam started quarrelling, saying that the said customer was theirs. He told the customer that his shop was old and Saddam's shop was new and the customer had the choice of getting work done from either of the shops. The customer however, got work done from his shop. Appellant and his family members returned to their shop. In the

meantime, another customer brought two gates and since he was having sufficient work, he sent this customer to Saddam's shop and the customer went to Saddam's shop. Thereafter Rashid went to his residence for lunch and thereafter to Sonia Vihar to collect some payment. His father also left for his residence and his brother came to the shop. After completing his work, he went to urinate at a distance of about 2-3 minutes on foot. While he was urinating, Saddam came to the spot and gave knife blow on his back while the father and brother of Saddam held him. Another knife blow was inflicted on his abdomen. In his defence, Rashid kicked Saddam on his private part, after which Saddam sat down and his father Habib took the knife from Saddam and tried to give blows on Rashid's neck. He tried to save himself and received injuries on his left arm, various parts and succeeded in running away after pushing the assailant. He thereafter reached Dr. Sumitra's clinic and got first aid from there. He was then taken to GTB hospital by Danish (PW-4), his neighbour. In the hospital he fell unconscious and gained consciousness only on the next day at 11.00 A.M.

3. Since weapon of offence was not recovered and the doctor opined the injuries to be grievous Sections 201 and 308 IPC were added to the charge sheet however, later Section 308 IPC was replaced by Section 307 IPC.

4. In Court Rashid deposed in sync with his statement on the basis of which FIR was registered. He also deposed that while he was getting first aid at Dr. Sumitra's clinic, his sister Seema was also present there. Later, his mother also came to see him. He also stated that the above stated persons had also beaten his sister Seema near the clinic. He stated that his statement Ex. PW- 1/A was recorded by police on the same day and also that the site plan *was not* prepared by the police on his pointing-out. In his cross-

examination dated 17th August, 2013, he stated the time of incident to be 7:30-7:45 P.M. Further in his cross-examination dated 7th December, 2013, he stated that it was correct that he had not named Habib (appellant's father) and Kamil (appellant's brother) in his first statement as he was not in his full senses when the statement was recorded at the hospital.

5. Statement of Danish Saifi (PW-4) the public witness who had taken Rashid to GTB hospital was also recorded who stated that on 28th January, 2013 he had gone to the barber's shop which was two three shops away from Dr. Sumitra's clinic, when he came out of the shop on hearing the noise, he saw Rashid in an injured condition and the doctor was bandaging him. He thereafter took Rashid to GTB hospital whereafter his family members also reached and he returned back. Similar statements of Nafees (PW-5) and Chanderpal (PW-6), Mohd. Saddiq (PW-10), Inderjeet (PW-12) and Arif (PW-13) public witnesses were recorded however, as noted none of them were the eye witnesses and came to the spot only after the incident.

6. Dr. Shiv Kumar (PW-8) who was running Sumitra Clinic at Gupta Wali Gali, Chauhan Patti, Shukar Bazar was examined as PW-8 who stated that at about 7.30 -7.45 PM on 28th January, 2013 Rashid came to his clinic in an injured condition. He administered first aid and informed that patient be taken to the government hospital. Thereafter the attendants took him to the government hospital.

7. Dr. Badri Narayan Sharma, CMO, GTB Hospital, (PW-15) exhibited the MLC of Rashid vide Ex.PW-15/A. He deposed that on 28th January, 2013 Rashid was brought by Dinesh and medically examined by Dr. Ranjeet Kumar, the then junior doctor under his supervision and following injuries were found on his body:

1. *Incised wound in the size of 5 X 1 cm over left side of chest in mid clavicular line on 9th and 10th rib level extending to left hypochondrium.*
2. *Incised wound in size 1.5 X 0.5 cm, 10 cm below the right scapula on back.*
3. *Incised wound in size 8 X 0.5 cm over left forearm.*
4. *Incised wound in the size of 5 X 3 cm over left forearm.*

8. Dr. Rahul Poddar, Sr. Surgery, GTB Hospital (PW-16) who appeared on behalf of Dr. Manish Jain, proved the opinion on the MLC opining the nature of injuries as grievous.

9. SI Yogesh Kumar (PW-17), Investigating Officer, deposed about the receipt of DD No.25A and registration of FIR, seizing and sealing of the blood lying at the spot and the blood stained earth. He also deposed that on 5th February 2013 he along with Constable Manish first went to the house of Rashid where his father Miskar joined them and thereafter they searched for Saddam. It is stated that at the instance of Miskar, the appellant was arrested vide arrest memo PW-9/A. Though the appellant led to the spot and pointed out the place of occurrence however, recovery of the weapon of offence could not be made.

10. In his defence Saddam produced his mother Smt. Muneerja (DW-1) who stated that on 28th January, 2013, the appellant had left for his work at 9:00 A.M. and had returned at around 5:45 P.M. Her husband Habib was also present in the house. She further stated that a policeman came to her house calling Saddam to the Police Station. They went to the PS Sonia Vihar at 2:00 P.M. on 05th February, 2013 where inquiries were made from Saddam. She and her husband were sent back and she was told that Saddam

would return later. However, she came to know that Saddam had been taken into custody.

11. Evidence of Rashid is duly corroborated by his MLC Ex.PW-15/A and soon after the incident on the statement of Rashid FIR in question was registered. The injuries to Rashid have been opined to be grievous in nature.

12. Considering the nature of injuries, particularly, the first injury which is a stab wound of 5 x 1 cm over left side of the chest in middle clavicular line on 9th and 10th rib level extending to left hypochondrium, the learned Trial Court committed no error in convicting the appellant for offence punishable under Section 307 IPC and for offence punishable under Section 201 IPC as the weapon of offence was not recovered.

13. Saddam has been awarded sentence of rigorous imprisonment for a period of one year and a fine of ₹1,000/-, in default whereof to undergo simple imprisonment for a period of 15 days under Section 201 IPC. For offence punishable under Section 307 IPC Saddam has been awarded rigorous imprisonment for a period of seven years and a fine of ₹5,000/- in default whereof to undergo simple imprisonment for a period of three months. Though the sentence for offence punishable under Section 201 IPC is maintained however, the sentence of rigorous imprisonment for a period of seven years awarded to the appellant for offence punishable under Section 307 IPC is on the higher side and is thus modified. The sentence for offence punishable under Section 307 IPC is thus modified to rigorous imprisonment for a period of four years and to pay fine of ₹5,000/- in default whereof to undergo simple imprisonment for a period of three months.

14. Appeal is accordingly disposed of.

15. Copy of this order be sent to the Superintendent, Tihar Jail for updation of record and communication to the appellant.

16. Trial Court record be sent back.

Crl. M.B. No.224/2018 (suspension of sentence)

Application is dismissed is infructuous.

(MUKTA GUPTA)
JUDGE

JULY 26, 2018
‘vn’

