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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd April, 2019

+ CRL.A.783/2002 and CrI.M.A.5474-5475/2019; 5517/2019

SOBARAN SINGH & ORS.

..... Appellants

Through: Mr. Pawan K. Bahl, Advocate
with Appellants in person.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State with ASI Gabbar Singh,
PS Kalyan Puri.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellants were sent up for trial to the court of sessions (in Sessions Case No.60/2001) on the basis of evidence gathered during investigation of first information report (FIR) No.185/2000 of Police Station Kalyan Puri and were proceeded against on the charge for offences punishable under Sections 452 and 308 read with Section 34 of the Indian Penal Code, 1860 (IPC).

2. By judgment dated 16.09.2002, the Additional Sessions Judge (ASJ) presiding over the said trial held that the charge under Section 452 IPC had not been brought home. The appellants were, thus,

acquitted of the said charge. There being no appeal brought against such acquittal, the said result, thus, has attained finality. By the said judgment, the appellants, however, were held guilty and convicted for offence under Section 308 read with Section 34 IPC.

3. After the said conviction had been recorded, the trial court by order dated 17.09.2002 ruled on the question of punishment. The fourth appellant Prabhu Dayal (A4) was found to be 65 years old person with clean antecedents. The trial court declined to pass any substantive sentence order against him and instead directed that he be released on probation for a period of three years, subject to he furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount. Again, the said order on sentence qua A4 was not challenged by any petition before any superior forum and, thus, the said decision attained finality. By order dated 17.09.2002, the Additional Sessions Judge awarded rigorous imprisonment for three years with fine of Rs.500/- each and in default to further undergo rigorous imprisonment for two months each, as against Sobaran Singh (A1), Om Pal (A2), and Arjun Singh @ Pappu (A3).

4. The three above mentioned appellants, though having challenged the judgment of conviction and order on sentence by the present appeal, have moved applications (Crl.M.A.5474-5475/2019 and Crl.M.A.5517/2019), praying for the benefit of the Probation of Offenders Act, 1958 being extended to them, their submission being that the case against them was similarly placed as against Prabhu Dayal (A4). In this context, they submit through their counsel that

they do not press the appeal in so far as it challenges the findings on facts concerning physical assault against Sher Singh (PW-4) is concerned, though they pray for reconsideration of the offence for which their guilt was brought home, in their submission, there being no sufficient evidence to accept the charge under Section 308 read with Section 34 IPC. These appellants also pray for the benefit to be accorded of benevolent provisions of the Probation of Offenders Act, 1958 in the matter of punishment on the grounds that they have had past clean record, nor have they been involved in any other criminal activity after the incident which was the subject matter of the present case.

5. With the assistance of the learned counsel for the appellants and the Additional Public Prosecutor for the respondent/State, this court has gone through the evidence which was adduced at the trial. The prime depositions on the basis of which the role of the appellants in the incident, wherein Sher Singh suffered injuries, was brought out are those of Sher Singh (PW-4) and his son Krishan Pal (PW-5), their word being corroborated by the medical opinion adduced on record through Dr. Monika Bhora Pandit (PW-1) and Dr. S.S. Bhandari (PW-8), the former (PW-1) being the author of the MLC (Ex.PW-1/A), the latter (PW-8) the radiologist who had given opinion that Sher Singh had suffered fracture of the left ulna bone.

6. The evidence of PW-4 and PW-5, read together, has brought out vividly that they were in possession of a property described as house No.8/164, Khichdi Pur, Delhi, their claim to it being on account of gift

by its owner Smt. Bhu Devi, the appellants, on the other hand, being inimically placed, they also laying claim to the said property. Be that as it may, the incident relates to 8:45 p.m. of 08.07.2000. The evidence would show that A1, A2 and A3, assisted by A4, had come together and accosted PW-4 outside his house and had committed assault on him, the efforts of PW-5 to come to his rescue not being of much help, he eventually having been thrown into a drain, after being injured. The MLC, as proved by PW-1, shows that PW-4 had suffered eight injuries, five of which were incised wounds, one of the blunt injuries having resulted in a fractured forearm.

7. Given the nature of the above assault, and the injuries which were inflicted, the conclusion reached by the trial court that it was a case of voluntarily causing hurt must be upheld. But then, there is nothing in the evidence from which it could be deduced that the intention was to cause such bodily injuries as were likely to result in death. The injuries inflicted include simple hurt caused with a sharp edged weapon and, therefore, the offence under Section 324 read with Section 34 IPC stood committed. The injuries also included a fractured bone which renders it a case of grievous hurt, clearly caused by a blunt weapon which constitutes offence under Section 325 read with Section 34 IPC. This court is conscious that no charge for offences under Sections 324 or 325 IPC was framed. But then, the said offences being minor in relation to the offence under Section 308 read with Section 34 IPC, conviction can be returned without such formal charges being framed.

8. On foregoing facts and in the circumstances, the judgment of the trial court is modified. Instead of being held guilty and convicted for the offence under Section 308 read with Section 34 IPC, the appellants shall stand convicted for offences under Sections 324 and 325 read with Section 34 IPC.

9. Having regard to the view this Court is taking on the question of sentence against others and the fact that the order on sentence against A-4 was not challenged by the State, or the victim, it having attained finality, the appeal of A-4 does not call for any further directions.

10. The prime assailants i.e. A1, A2 and A3 undoubtedly committed a conjoint assault on the person of Sher Singh belabouring him and causing him injuries in the process. They are ready to make amends. The incident had occurred almost nineteen years ago. It is not disputed that the appellants otherwise have had clean antecedents. They were not involved in any crime prior to the incident which has become the subject matter of this case, nor has there been any involvement in any criminal activity on their part in the period thereafter till date.

11. Given the background facts and having regard to the principle of parity with A4 (Prabhu Dayal), who was released on probation by the trial court itself, this court is inclined to extend similar benefit to the other appellants, such order, however, not being unconditional. It will be in the fitness of things that while giving the benefit of provisions of the Probation of Offenders Act, 1958, the appellants Sobaran Singh (A1), Ompal (A2) and Arjun Singh @ Pappu (A3) are

directed to suitably compensate the victim Sher Singh (PW-4). It is, thus, directed that each of the said appellants shall pay Rs. One lakh (Rs.1,00,000/-) each as compensation to Sher Singh (PW-4), as a pre-condition to their release on probation of good conduct.

12. In the result, the impugned order on sentence is modified. It is directed that instead of being sentenced at once to any imprisonment, the three appellants (A1 to A3) shall stand released on probation of good conduct for a period of three years, subject to each of them depositing Rs.1,00,000/- (Rs. One Lac Only), as mentioned above, with the trial court, the amount to be availed for compensating the victim, along with personal bonds in the sum of Rs.20,000/- with one surety in like amount each, and if so ordered, to appear and receive the sentence when called upon to do so during the said period of probation and, in the meantime, to keep the peace and be of good behaviour.

13. The appellants are granted time to make the deposits of the amount payable as compensation and furnish bail bonds, as above, with the trial court on or before 27th May, 2019. The default in making of the deposit, or furnishing of the bail bonds, or breach of conditions of release on probation, will entail consequences envisaged in law including the liability to be called before the court and to be sentenced to substantive punishment.

14. Upon deposit(s) of the amount, as above, being made by the appellants, the same shall be released to the victim Sher Singh (PW-4). The trial court will take necessary steps for disbursal of the compensation as hereby directed.

15. The appeal stands disposed of in above terms.

16. *Dasti.*

R.K.GAUBA, J.

APRIL 23, 2019

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