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

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Judgment delivered on: 21.08.2019

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CRL.A. 750/2018 & CrI.M.B.1144/2018 & CrI.M.A.49062/2018

BABLI @ SHAKUNTALA DEVI

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Javed Alvi, Advocate.

For the Respondent: Mr. Hirein Sharma, APP for the State.
Mr.Rajesh Sharma, Adv. for R-2 with Respondent
No.2/Complainant in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns judgment dated 16.05.2018 and order on sentence dated 24.05.2018 whereby appellant has been convicted of an offence under Section 307/34 IPC and sentenced to undergo RI for a period of three years and to pay a fine of Rs.1 lakh and in default of payment of fine to undergo SI for a period of six months.

2. The allegations in the FIR are that the appellant along with her son had a fight with the victim. The role ascribed to the appellant was that she caught hold of the victim while her son started hitting the victim with a

Gainti (Pickaxe). It is further alleged that the appellant instigated her son to hit the victim.

3. Son of the appellant was a juvenile and was separately tried before the Juvenile Justice Board.

4. The Trial Court by the impugned judgment on conviction has held that the accused had clear cut intention as well as knowledge to cause death and accordingly held the appellant guilty of an offence under Section 307/34 of the IPC. The Trial Court was of the view that prosecution had proved the case beyond reasonable doubt.

5. Learned counsel for the appellant points out that the Trial Court has erred in holding that there was an intention to cause death or cause an injury which the accused knew would in all likelihood cause death. Learned counsel submits that the Trial Court has erred in incorrectly appreciating the evidence and ascribing motive or knowledge to the appellant.

6. Learned counsel further submits that the role ascribed to the appellant was of exalting and holding the victim whereas the role ascribed to the son, who was a juvenile, was of actually causing the injury.

7. Learned counsel submits that the juvenile was tried before the Juvenile Justice Board and on appreciation of the evidence the Board, by judgment dated 04.06.2015, held that it did not seem that the juvenile assaulted the victim with the intention to commit murder. The Board further held that the juvenile inflicted injuries upon the victim in a sudden street fight. The Board acquitted the juvenile of the offence under Section 307

IPC and convicted him for the offence punishable under Section 323/34.

8. Learned counsel further submits that the appellant has been convicted solely by application of Section 34 i.e. common intention. He submits that for the purpose of common intention, more than one individual is required.

9. Learned counsel submits that since the main accused, who inflicted injuries, has been convicted only of an offence under Section 323 IPC, appellant could not have been convicted for an offence under Section 307 IPC by applying Section 34 IPC.

10. Learned counsel submits that no appeal was preferred by the State or the victim against the judgment dated 04.06.2015 in the case of the juvenile and said judgment has become final. Learned counsel further submits that in view of the said judgment, the appellant at best could have been convicted for an offence under Section 323 IPC.

11. Perusal of the judgment of the Board dated 04.06.2015 in the case of the juvenile shows that on appreciation of evidence, the Board was of the view that no intention or knowledge to cause death was attributable to the juvenile that his action is likely to cause death or injury of such a nature as is likely to cause death. Since neither the State nor the victim has filed an appeal against the said order, the finding in the case of juvenile, that there was no intention to cause death, has become final.

12. Clearly, as the juvenile/co accused has been convicted for an offence under Section 323 IPC, the appellant could not have been convicted for an

offence under Section 307 IPC by application of Section 34 IPC.

13. Accordingly, the impugned judgment clearly suffers from an infirmity and the conviction of the appellant under Section 307 IPC is liable to be modified to a conviction under Section 323/34 IPC.

14. In view of the above, the impugned judgment dated 16.05.2018 is modified. The conviction of the appellant is converted from conviction for an offence under Section 307/34 IPC to Section 323/34 IPC.

15. Appellant has also filed an application under Section 482 Cr.P.C seeking compounding of the subject offence under Section 323 IPC. It is contended that the victim is a neighbour and the victim and the appellant, with their families, have been living in the same locality for the last 25 years. It is submitted that after the subject incident in the year 2013, parties have been living harmoniously as neighbours and no further incident of quarrel has ever taken place.

16. Parties have settled their disputes with the intervention of elders and other neighbours and with the intention of restoring peace and harmony in the locality they have settled their disputes and complainant has agreed to compound the subject offence.

17. The complainant is present in Court in person, represented by counsel and identified by the IO. Complainant submits that she has settled with the appellant and has no objection to the compounding of the subject offence. As per the settlement, appellant has deposited an amount of Rs.70,000/- with the Trial Court and the said amount along with interest

accrued, if any thereon has to be paid to the victim towards her medical expenditure.

18. Under Section 320 Cr.P.C, Section 323 IPC is a compoundable offence at the instance of the victim. Since the victim is present in Court and has agreed to compounding of the said offence, in my view it would be in the interest of justice to compound the subject offence. The offence is accordingly compounded. Appellant is acquitted of the said offence.

19. The Trial Court is directed to release the compensation amount of Rs.70,000/- deposited by the petitioner, along with interest accrued thereon, if any, in favour of the complainant/victim.

20. Appeal and pending applications are accordingly disposed of in the above terms.

21. Order *Dasti* under signatures of the Court Master.

AUGUST 21, 2019
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SANJEEV SACHDEVA, J