

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

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Reserved on: 7th September, 2018

Decided on: 24th May, 2019

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CRL.A. 1220/2016

VIKASH BHARDWAJ @ KALA

..... Appellant

Represented by: Mr. R.N. Sharma, Mr. Dheeraj
Sharma, Mr. Deepak Kumar
and Mr. Shivam Sharma,
Advocates.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Represented by: Ms. Rajni Gupta, APP for State
with SI Karamvir, PS Narela.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Vikash Bhardwaj @ Kala challenges the impugned judgment dated 25th October, 2016 convicting him for the offence punishable under Section 326 IPC in FIR No. 55/2007 registered at PS Narela and the order on sentence of the even date directing him to undergo rigorous imprisonment for a period of nine years and to pay a fine of ₹30,000/- and in default whereof to undergo simple imprisonment for a period of one year.

2. Learned counsel for the appellant contends that the offence under Section 326 IPC is not made out as injury was not likely to cause death. The injury was also not inflicted on any vital part of the body. He further points out that the testimonies of Arun Mann (PW-2) and Raj Kumar (PW-3) reveal different time of meeting. Arun Mann deposed that they met at

8:30P.M., whereas Raj Kumar deposed that they met at 9:00 P.M. Raj Kumar was in possession of a mobile phone yet he did not call the police at the time of occurrence of the incident. The measurements of the ustra have been wrongly mentioned. Neither was the site plan prepared at the instance of the complainant or any other witness nor did the police conduct any spot proceedings. He further submits that the injured/complainant was under the influence of alcohol when he arrived at the hospital. Name of the alleged assailant has not been mentioned in the MLC. No subsequent opinion has been taken on the weapon of offence. Appellant is a first time offender, therefore he be released on the period already undergone.

3. Learned APP for the State on the other hand relies on the MLC of Raj Kumar wherein the doctor opined the nature of injury as grievous resulting in permanent disfiguration of face. She further submits that the weapon of offence that is ustra was recovered at the instance of the appellant and is a sharp and deadly weapon.

4. Process of law was set into motion on 26th January, 2007 at about 10:50 P.M. when telephonic information was received from BSA Hospital from Ct. Ravinder who was working as Duty Constable at the Hospital informing that one Raj Kumar S/o Ramesh Chandra R/o House No.417, Khera Khurd was admitted in the hospital in injured condition by his father whereupon DD No.22 was recorded. On receipt of DD No.22 (Ex.PW-5/A), SI Satbir Singh along with Ct. Rajesh went to BSA Hospital where he collected the MLC (Ex.PW-4/A) of the injured Raj Kumar. He collected a green colour blood stained track suit jacket, a red colour shirt, underwear and brown colour pants from the doctor of the hospital which were seized vide seizure memo Ex.PW-16/A. He recorded the statement of the injured

Raj Kumar wherein he stated that on 26th January 2017 at around 9:00 P.M. he along with Arun Mann @ Manu and Sonu was standing at old bank, Village Khera Khurd and they were talking to each other. At that time, the appellant and Raju who are both residents of Khera Khurd came towards them and the appellant made him drink beer. After making him drink beer, the appellant asked him to light a cigarette. When he refused to light a cigarette, the appellant and Raju started kicking him and gave him fist blows. The appellant gave ustra blows on the left side of his face number of times. When he started running from the spot out of fear, the appellant fired twice or thrice from behind. He then went running towards his house and his father took him to Ambedkar Hospital, Rohini. Aforesaid statement was recorded vide Ex.PW-3/A.

5. SI Satbir Singh handed over the rukka (Ex.PW-3/A) to Ct Rajesh for registration of FIR. Consequently, FIR No.55/2007 (Ex.PW-1/A) was registered at PS Narela for the offence punishable under Section 307/34 IPC.

6. SI Satbir Singh along with Arun Mann reached at the spot where he prepared the site plan vide Ex.PW-17/B and recorded the statement of Arun Mann under Section 161 Cr.P.C.

7. On 28th January 2007, SI Satbir Singh received information from Hari Nagar Police Station that the appellant had been arrested vide Ex. PW-12/C. The appellant was arrested on 29th January 2007 from the court of the Ld. Metropolitan Magistrate in the present FIR vide Ex.PW-5/B. Disclosure statement of the appellant was recorded vide Ex.PW-5/C.

8. On 30th January, 2007, the appellant led the police officials to his house adjacent to which there was a vacant plot. The appellant produced one ustra having blood stains from the bushes in the said vacant plot. A sketch of

the ustra was prepared vide Ex.PW-5/D and it was seized vide seizure memo Ex.PW-5/E. The appellant pointed out the place of occurrence on the basis of which pointing out memo was prepared vide Ex.PW-5/F.

9. On 25th February, 2007, the injured Raj Kumar accompanied SI Satbir Singh to SRHC where his blood sample was taken. The blood sample was handed over by the doctor which was seized vide Ex.PW-17/C. On 6th March 2007, exhibits were sent to FSL through head constable Satish vide RC No.68/21/07. After completion of investigation charge sheet was filed. Vide order dated 12th July 2007, charge was framed for offence punishable under Section 307/34 IPC against the appellant.

10. Raj Kumar deposed in sync with his statement made to the police. Further, he voluntarily stated that since the accused persons fired from back side, he was unable to tell who out of the two fired the shots.

11. Arun Mann corroborated the testimony of Raj Kumar. He also stated that he along with Amit Kumar @ Sonu took the injured Raj Kumar to Ambedkar Hospital. Raj Kumar's father also accompanied them.

12. Dr. Kuldeep Singh, CMO, BSA Hospital, Rohini (PW-11) deposed that on 26th January 2007, at about 9:55 P.M. one patient Raj Kumar was brought to the hospital with his father with alleged history of stab injury about 45 minutes before. On examination, the history of alcohol intake was positive. The following injuries were found on the injured:

- i. Incised wound over forehead left side over temporal side 5cm X 1cm approximately with active bleed positive. No crepitus. No gross deformity.*
- ii. Incised wound over left cheek 6cm X 0.5cm with active bleed positive. No crepitus. No gross deformity.*

iii. Incised wound over left cheek inferior to wound no.2 measuring 9cm X 0.5cm. No crepitus. No gross deformity.

13. Dr. Sanchit Gupta (PW-4), Sr. Resident, Surgery, BSA Hospital proved the handwriting and signatures of Dr. Ashish Krishna who was Sr. Resident Surgery at the time of the incident. As per the MLC, the nature of injury was grievous due to permanent disfiguration of face.

14. Contention of learned counsel for the appellant that offence under Section 326 IPC is not made out as the injury was not likely to cause death nor was it inflicted on any vital part of the body deserves to be rejected for the reason as per the case of the prosecution appellant inflicted incised wounds on the left temporal side of the forehead and left cheek of the victim by ustra blows resulting in permanent disfiguration of the face, which falls under Clause *Sixthly* of Section 320 IPC which defines grievous hurt. Merely because there was a slight variation in the time given in the testimony of the witnesses and the witnesses fairly stated that since it was their back and they could not see who out of the two fired the shots, their testimony cannot be disbelieved. Further the presence of the alcohol also corroborates the version of the victim that he was assaulted after quarrel took place when they were drinking.

15. As regards the version of firing is concerned, neither the victim saw the person who fired nor were empty cartridges or bullets recovered from the spot nor was the pistol recovered at their instance. Hence the appellant has been rightly convicted for offence punishable under Section 326 IPC. Thus, his conviction for offence punishable under Section 326 IPC is upheld. The appellant has been awarded sentence of rigorous imprisonment for a period of 9 years which is on the higher side. Considering the fact that

there is no previous conviction of the appellant, the substantive sentence of the appellant is modified to rigorous imprisonment for a period of 7 years and to pay a fine of ₹30,000/- which fine amount will be paid as compensation to the complainant if recovered and in default whereof to undergo simple imprisonment for a period of three months.

16. Appeal is disposed of.

17. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

18. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 24, 2019

‘vj’



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