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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 27th October, 2021Decided on: 12th January, 2022

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CRL.A. 38/2021

GAIN CHAND @ RAHUL

..... Petitioner

Represented by: Mr. Samyak Gangwal, Adv. (Proxy)
for Mr. Gaurav Gupta, Adv.

versus

THE STATE GOVT. OF NCT, DELHI

..... Respondent

Represented by: Mr. Ravi Nayak, APP for State with
SI Ravi Kumar, PS Jahangir Puri.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present appeal, the appellant challenges the impugned judgment dated 7th March, 2020 whereby the appellant has been convicted for offence punishable under Section 307 IPC and the order on sentence dated 13th August, 2020 whereby he has been directed to undergo rigorous imprisonment for a period of 5 years and a fine of ₹10,000/- in default whereof to undergo simple imprisonment for 5 months.
2. Learned counsel for the appellant contends that as per the case of prosecution, the appellant was living with his wife and the mother-in-law at their house when an altercation took place. It is alleged that the appellant came back intoxicated, went to the kitchen, took the axe and hit the mother-in-law and the wife resulting in grievous injury to the mother-in-law and



simple injury to the wife. The Doctor who wrote the MLC was not examined and hence in view of the decision of this Court reported as (2019) SCOnline Del 9129 Ramveer Vs. State grievous injury cannot be said to be proved. It is contended that despite the case of the prosecution being that several eye-witnesses were present, no eye-witness was examined. The circumstances in which the appellant was arrested are also shrouded in mystery for the reason, case of the two injured victims is that the appellant ran away from the place of incident immediately after inflicting the injuries, however, as per the arrest memo, the appellant was arrested from his house. MLC of the appellant has not been placed on record which would prove whether the appellant was under the influence of alcohol or not. Further, there are material contradictions in the testimony of the two injured victims. One of the two eye-witnesses examined is the brother of the appellant's wife who stated that he received a call at his office, hence he is not an eye-witness to the incident. In view of the material contradictions in the testimony of the witnesses, the appellant be acquitted of the charge for offence punishable under Section 307 IPC or in the alternative be released on the period already undergone which is more than half the sentence awarded, i.e. 2 years 10 months including remissions.

3. Learned APP for the State submits that PW-2 and PW-3 are the injured witnesses and hence their evidence stands on a higher pedestal and cannot be brushed aside. PW-4 and PW-6 took the two injured victims to the hospital and hence their presence at the spot cannot be doubted. The plea of alibi taken by the appellant was not proved by him. The quarrel took place as the temple was to be vacated. Even if no grouping could be ascertained blood was found on the axe which also corroborates the version



of the injured victims. In view of the serious offence committed by the appellant no case for acquittal or for reduction of sentence is made out.

4. FIR No. 527/2014 under Section 307 IPC was registered at PS Jahangir Puri on the complaint of Madhu @ Jyoti the wife of the appellant who was examined before the Court as PW-2. In the FIR and in her deposition before the Court, Madhu stated that she was married to the appellant on 28th November, 2011 and out of the said wedlock a girl child was born. After 3 days of the marriage the appellant and the complainant started living in her parental house. Appellant was addicted to alcohol and used to quarrel with her often due to which she had filed cases under the Protection of Women from Domestic Violence Act, Maintenance and Divorce against him, which were pending. On 4th July, 2014 she and her mother Smt. Anita who has been examined as PW-3 came back from Allahabad, U.P. to Delhi after visiting her ailing maternal grand-mother who was admitted in ICU at Allahabad. When they reached, the appellant was not at home and came at about 1.30 – 2.00 PM. When PW-2 asked the appellant as to why he was not doing any work or earning the livelihood, the appellant started abusing her and left the house after 10 minutes. At about 3.30 PM the appellant came back under the influence of liquor when her mother Smt. Anita requested the appellant to do some work for earning the livelihood and to bear the family expenses, the appellant got angry and started abusing her mother and threatened “*Is jhagre ko jadh se khatam kar deta hoon*”, as both of them insisted the appellant to work and created trouble for him. The appellant went to the kitchen, brought one axe (kulhadi) and stated “*aaj tum dono ko jaan se khatam kar deta hoon*”. Thereafter, the appellant hit the complainant on neck with the axe but the



blow fell on her head. When her mother tried to intervene to save the complainant, appellant stated “*tumhare ko bhi jaan se maar deta hoon*” and hit on the neck of her mother with the axe which blow hit the cheek of the mother. Her mother fell down and the complainant started crying and screaming when her cousin brother Rakesh PW-4 and brother Raj Kumar PW-6 came and on seeing them the appellant ran away from the spot leaving the axe behind. Both PW-4 and PW-6 took both the injured to BJRM hospital for medical examination where rukka on the statement of the complainant was recorded vide Ex.PW-2/A.

5. PW-2 also deposed about the proceedings carried out during the investigation after she was discharged from the hospital on the same day when in her presence blood was lifted from the floor of the house and the axe lying on the ground floor near the sofa was also recovered. The complainant also handed-over her blood stained clothes to the Police which were converted into a pulandda vide memo Ex. PW-2/D. The site plan was also prepared at the instance of complainant and the appellant was arrested near Shiv Mandir outside the house of the complainant vide memo Ex.PW-2/F.

6. Statement of Anita, mother of the complainant was also recorded under Section 161Cr.P.C. and before Court who supported the version of the complainant in its entirety.

7. Rakesh, the cousin brother of the complainant was examined as PW-4 who stated that on 4th July, 2014 at about 3.45 PM while he was in his home, on hearing the noise he came out and found that people of the locality were talking that his sister was hit with kulhadi/ axe. He along with Raj Kumar, the real brother of the complainant went to the house of the complainant and



saw that the complainant was bleeding from her head and saw injury on the left cheek of Smt. Anita, mausi of the witness. He stated that the appellant was present and was standing in house, holding an axe and on seeing them he ran away. Rakesh along with Raj Kumar, the real brother of the complainant took both of them to BJRM hospital in a battery rickshaw and on the way, injured told them that accused had caused injury with the axe with the intention to kill them.

8. Raj Kumar PW-6, the brother of the complainant also deposed on the same lines. Raj Kumar who is stated to be not an eye-witness as per the appellant, deposed before the Court that on 4th July, 2014 at around 3.30 PM he returned to his house and saw that a crowd had gathered outside his house. Rakesh, son of his Mausi PW-4 had also reached their residence. When they entered the house they saw their sister Madhu bleeding from the head and the mother had a cut mark on her left cheek and was bleeding and lying on the floor. The appellant was also standing in the room with a Kulhadi and his demeanour at the time was that he could hit anybody with the axe. Appellant threatened by saying that “if anybody comes he will kill them”. Thereafter, the appellant fled away from the spot and Raj Kumar and Rakesh shifted Anita and Madhu to the hospital going in a battery rickshaw.

9. In his cross-examination, Raj Kumar admitted that on the day of incident he was in his office. His duty was from 2.00 PM to 11.30 PM and he joined the duty at 2.00 PM. He further stated that he received a telephonic call on his mobile phone from the neighbour about the incident and thus he left the office at about 3.05 PM for his house and reached there at 3.30 PM. He stated that from the inception of the marriage appellant was unemployed and his sister along with the appellant was residing with them.



He stated that the place where his mother, sister, appellant and his niece resided with him was a property belonging to the temple. However, there were no CCTV cameras installed in the temple or in the neighbourhood. The daily expenses were met from the offering of the temple and his sister used to do the work of stitching. From the statement of this witness it is evident that he is not an eye-witness to the incident but reached home after the incident took place.

10. In his cross-examination, Rakesh PW-4 cousin of the complainant also stated that at the time of incident he was doing the work of labour at his house and reached the scene of occurrence of crime after hearing the noise. He stated that when he reached the spot many public persons had gathered outside the mandir, however none of them entered in the house. He along with his cousin brother i.e. Raj Kumar went inside the house and saw the injured and took them to the hospital in e-rickshaw. The fact that the witness entered the place where the incident took place along with Raj Kumar shows that even he did not witness the incident. However, the fact that these two witnesses took the injured to the hospital is corroborated by the two MLCs Ex.PW-7/A and PW-7/B which notes that the injured were brought by Raj Kumar. Even if PW-4 and PW-6 are not the eye-witnesses, the conviction of the appellant can be safely based on the testimony of the two injured witnesses i.e. the complainant and her mother who were examined as PW-2 and PW-3. As noted above, there is no contradiction in the testimony of the two injured victims.

11. In his statement under Section 313 Cr.P.C. the appellant took the plea that no such incident had taken place. He stated that he came back to the house at about 6.00 PM and that he was trying his level best to bear the



expenses of his family. When he came home, his wife and mother-in-law had already been taken to the hospital and he came to know about the incident from public persons who gathered near the house. He pleaded false implication as he was requesting his wife to shift to a separate accommodation, as her mother was creating nuisance in the day-to-day life of the appellant with his wife in connivance with the brother-in-law. He further stated that he was apprehended from the hospital where he had gone to see the well-being of his wife and mother-in-law. The appellant led no defence evidence.

12. As per the arrest memo, the appellant was not arrested from H.No. G-266, Jahangir Puri but from near the Shiv Mandir place i.e. the residence at 9.15 PM on 4th July, 2014 and the arrest memo was duly witnessed by his wife PW-2 whose statement was recorded at the hospital itself based whereon FIR was registered, thus leaving no scope of manipulation for false implication.

13. To prove the MLC of Anita and Madhu vide Ex.PW-7/A and PW-7/B respectively, Dr. Deepak appeared in the witness box who identified the hand-writing of Dr. Santosh who had prepared the two MLCs and had left the services at the time of examination of the witnesses. As per the MLC Ex.PW-7/A, the injured Anita received grievous injury, whereas Jyoti @ Madhu received simple injury as per MLC Ex.PW-7/B. In the MLC of Anita, X-ray had been recommended, however the report of the X-ray has not been placed on record. Further, the patient was also referred to Sr. Resident (Surgery) in view of the incised injury of 10 x 3 x 3 cm over the face from the left cheek extending upto the left ear with exposed muscles and bleeding. From this injury itself, it is evident that there was a permanent



disfiguration of the face of the victim leaving a scar thereon and thus the same would fall within the definition of grievous hurt under Section 320 IPC even if the prosecution has not proved fracture on the basis of bony X-ray report.

14. Learned counsel for the appellant has relied upon the decision of this Court in Ramveer vs. State (supra) wherein this Court held that in the absence of the doctor who prepared the MLC, there was no material on record to show that the injury was grievous in nature. It is trite law that for conviction for offence punishable under Section 307 IPC, it is not necessary that the victim should suffer an injury and in a case where the offence is committed with an intention to commit the murder of the victim, Section 307 IPC would be attracted as in the case of firing when no resultant injury is suffered by the victim. In the present case, the appellant has used the axe with which he inflicted injury on the victim Anita on the vital part of the body i.e. the face. Considering the weapon of offence and the vital part of the body where injury is inflicted, the intention of the appellant to commit murder is evident.

15. Considering the nature of weapon used, that the injuries were inflicted on vital part of the body and the evidence of the two injured victims this Court finds that the prosecution has proved beyond reasonable doubt that the appellant has committed the offence punishable under Section 307 IPC. Hence no case is made out for interference with the impugned judgment of conviction. As regards the sentence, the appellant has been awarded 5 years rigorous imprisonment and in view of the nature of injuries caused including grievous injury to Anita on cheek with axe, this Court also does not find it to be a fit case to release the appellant on the period already undergone.



16. Appeal is accordingly dismissed.
17. Order be uploaded on the website of this Court.

