



#S-12

NEUTRAL CITATION NO: 2022/DHC/001542

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 21.04.2022

CRL.L.P. 575/2019

STATE

..... Petitioner

versus

GANESH CHHETRI

.....Respondent

Advocates who appeared in this case:

For the petitioner : Mr. Ashish Dutta, Additional Public Prosecutor for the State with S.I. Gajender Singh, P.S.: K.M. Pur.

For the respondent : Mr. Deepak Kumar and Mr. Mahesh Kumar Yadav, Advocates with Ganesh Chhetri, respondent in-person.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The present criminal leave to appeal petition under Section 378 of the Code of Criminal Procedure, 1973, has been instituted on behalf of the State/petitioner assailing the order of acquittal dated 16.07.2019 passed by learned Additional Sessions Judge-04 and Special Judge (NDPS), South-East District, Saket Courts, New Delhi, in S.C. No.391/2017, emanating from FIR No.53/2017, under Section 307 of the Indian Penal Code, 1860 (in short 'IPC'), registered at Police Station Kotla Mubarakpur.

2. Briefly encapsulated, it was the prosecution's case that on 23.03.2017, upon receiving information *vide* DD No.8A, S.I.



Shamsher Singh along with Constable Deepak reached AIIMS Trauma Centre, New Delhi; and obtained MLC (Ex. PW 8/A) of the injured victim Devika, who was, however, not present at the hospital at that point of time. Upon discovering the residential address of Devika from the subject MLC Ex. PW 8/A, they reached her residential accommodation at 687, Bhola Nagar, K.M. Pur, New Delhi, where they recorded her statement under the provision of Section 161 Cr.P.C., Ex. PW 1/A. Devika stated that she had been residing with Ganesh Chhetri, the sole respondent herein, as husband and wife for the past two years and working as a maid servant.

3. Devika further stated that on 23.03.2017 at around 1:20 a.m., the respondent returned home drunk and started argument with her. The sum and substance was the cross-allegations made by the parties *qua* each other's infidelity. During the course of the heated altercation between them, the respondent, it was alleged, brought one vegetable knife from the kitchen and attacked her resulting in injuries on the left side of her neck, her cheek and her left hand. Subsequent upon investigation, the subject charge-sheet was filed against the sole respondent and charges were framed against him for the commission of offence under Section 307 IPC on 12.09.2017.

4. The respondent pleaded not guilty to the charge and claimed trial.

5. The prosecution examined 14 witnesses including PW-1 Devika and PW-8 Bhunesh Kumar, who proved the subject MLC Ex. PW 8/A on behalf of Dr. Naveen Kumar, who had examined Devika on the fateful night. In sum and substance, Devika in her deposition before the trial court, clearly and unequivocally stated that although the respondent accidentally inflicted injuries upon her with a vegetable



knife, the same were not caused with the intention to kill her. Devika further categorically denied the suggestion that the respondent had exclaimed at the relevant time that “*aaj main tera kaam tamam kar deta hoon*”. It is equally relevant to consider the opinion expressed by Dr. Naveen Kumar in the subject MLC Ex. PW 8/A, where it is recorded as follows :

“Wound 1 INCISED WOUND TWO MEASURING 2 X 1 AND 1 X 1 CMS RESPECTIVELY OVER LT CHEEK;
Wound 2 INCISED WOUND 1 X 1 CM OVER LT SIDE OF NECK;
Wound 3 INCISED WOUND 1 CM OVER MIDDLE PHALANX LT MIDDLE FINGER”.

It is significant to observe that the doctor, who attended to Devika, expressed the opinion that the nature of injuries present upon her person were ‘simple’ although caused by a sharp weapon.

6. It is in this backdrop that the learned trial court after careful examination of the evidence on record found as follows :-

“29 Her testimony further shows that accused has picked a kitchen knife and hit accidentally on her neck. She was declared hostile and cross-examined by the prosecution. During cross examination she admitted that accused had hit on her neck. The accused tried to hit several times. The knife hit her on cheek and hand and when she tried to save herself. She has denied the suggestion that she was attacked with the intention to kill her or accused has uttered the words "aaj main tera kaam tamam kar deta hoon". She was attacked with knife.

30 The blood oozed out from the injuries. The testimony of PW 2 & 7 shows that they are residing in the same building and reached on the spot on hearing the alarm and saw that injured was bleeding from the neck. They have informed the police.



31 PW 1 was sent to hospital by PW 3. Her blood sample was taken. The blood sample, clothes of the injured i.e. scarf, gown, top, knife with sample seal were sent to RFSL and report Ex. PA-1 was obtained. The report is admitted by the accused u/s 294 CrPC. The report shows that DNA profile on the top, gown, scarf, cotton piece, knife and gauze cloth piece is sufficient to conclude that male DNA profile generated from the source of exhibits i.e. top, gown, scarf, cotton piece and knife is similar to female DNA profile generated from gauze cloth piece described as blood sample of injured.

32 It is clear from the testimony of PW 1 that she was hit with knife by the accused. She has sustained injuries on her neck, cheek and hand. She was got medically examined. MLC Ex PW8/A shows that she has sustained injuries measuring 2x1cm and 1x1 cm over left cheek, incised wound 1 x 1 cm over left neck and incised wound of 1cm over middle phalanx left middle finger. She has sustained injuries with sharp edged weapon. The suturing was done which is clear from the MLC Ex PW13/B.

33 There is contradiction regarding the manner of recovery of knife Ex. P2. The testimony of PW 4 & 14 shows that knife was got recovered by the accused from the kitchen. The testimony of PW14 shows that no eye witness met him. No eye witness was present at the time of preparing seizure memo.

34 The testimony of PW 7 shows that he has seen the accused with knife in his hand. He has snatched the knife from him and handed over to the police.

35 There is contradiction in the testimony of PWs to this effect. The prosecution has failed to give any explanation about this contradiction. This contradiction is material in nature which makes the recovery of knife doubtful.



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37 *The testimony of PW 1 shows that she was hit accidentally. There was no intention on the part of the accused to kill her. She has denied the suggestion that accused has shouted that "aaj main tera kaam tamam kar deta hoon". She has not supported her version to this effect given to the police in her statement Ex. PW 1/A.*

38 *Section 307 IPC is applicable only if there is intention or knowledge on the part of the accused that such action might cause death and thereby hurt is caused then section 307 comes in to play. Support is drawn from State of MP v. Harjeet Singh, 2019, Crl. LJ 2093.*

39 *The testimony of injured nowhere shows that accused had the intention to kill her or accused has caused injuries with intention to kill her. The injured has sustained simple injuries with sharp edged weapon.*

40 *Hence, I have no hesitation to hold that prosecution has proved its case u/s 324 IPC against the accused beyond shadow of reasonable doubt. The accused is held guilty u/s 324 IPC and convicted."*

7. From a plain reading of the above extracted findings, it is axiomatic that the testimony of Devika clearly establishes that the injuries inflicted on her by the respondent were accidental. Consequently, the rigor of Section 307 IPC is not attracted to the facts of the case since intention constitutes a *sine qua non* for punishment for commission of offence under the said Section. Furthermore, for the purposive consideration of the subject MLC Ex. PW 8/A, it is evident that the injuries suffered by Devika were 'simple' and that, in fact, she had already been discharged from the AIIMS Trauma Centre



by the time the police reached that location consequent upon recording of DD No.8A.

8. In view of the foregoing, we find ourselves in complete agreement with the finding returned by the trial court to the effect that the prosecution was able to establish its case against the respondent beyond the shadow of reasonable doubt only insofar as the charge under Section 324 IPC is concerned. The respondent was accordingly convicted for the commission of an offence under Section 324 IPC and sentenced to the period of custody already undergone by him, i.e. 5½ months, as an under-trial.

9. In view of the foregoing discussion, we find ourselves unable to agree with the submission made on behalf of the State that the trial court fell into error by not proceeding to convict the respondent for the commission of offence under Section 307 IPC. We, therefore, see no warrant to interfere with the findings arrived at by the trial court to the effect that the respondent was guilty for the commission of an offence under Section 324 IPC instead; and sentencing him to the period of incarceration already undergone by him, as an under-trial, for the commission of the said offence.

10. The leave to appeal petition, being devoid of merit, is accordingly dismissed.

**SIDDHARTH MRIDUL
(JUDGE)**

**SUDHIR KUMAR JAIN
(JUDGE)**

APRIL 21, 2022/'AA'

[Click here to check corrigendum, if any](#)