

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

% Decided on: 13th March, 2023

+ **CRL.A. 1159/2019**

AMAN SHARMA Appellant

Represented by: Mr.Rajesh Mahajan,
Advocate/amicus curiae with
Mr.Ranjeeb Kamal Bora and
Ms.Jyoti Babbar, Advocates.

versus

STATE Respondent

Represented by: Ms.Shubhi Gupta, APP for the
State with SI Neelam,
P.S.Khajuri Khas.

+ **CRL.A. 214/2023**

STATE Appellant

Represented by: Ms.Shubhi Gupta, APP for the
State with SI Neelam,
P.S.Khajuri Khas.

versus

AMAN SHARMA & ORS. Respondent

Represented by: Mr.Rajesh Mahajan,
Advocate/amicus curiae with
Mr.Ranjeeb Kamal Bora and
Ms.Jyoti Babbar, Advocates for
R-1.
Mr.Tanmaya Mehta, Advocate
for R-2 to R-4 with R-2 to R-4
in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J. (ORAL)

1. In these two appeals, challenge is laid to the common impugned judgment dated 9th April 2019. By Crl.A. 1159/2019, appellant Aman

Sharma challenges the conviction for offences punishable under Section 307/34 IPC as also order on sentence dated 12th April 2019, whereby, he was directed to undergo rigorous imprisonment for a period of six years and to pay a fine of ₹10,000/-, in default whereof, to undergo simple imprisonment for two months. By CrI.A. 214/2023, after leave to appeal was granted to the State, the State challenges the judgment dated 9th April 2019 whereby the respondent No. 1 Aman Sharma was acquitted for offences punishable under Sections 186 and 353 IPC and the other three respondents i.e. Ashwani Sharma, Brijesh Kumar and Dinesh were acquitted for all the offences i.e. 307/186/353 IPC read with Section 34 IPC.

2. Case of the prosecution is based on the statement of the injured eye-witness i.e. SI Rajender Singh (Retd.), PW-4 who stated that he was posted as Asstt. Sub-Inspector at P.S.Khajuri Khas and on 17th June 2009, while he was on patrolling duty, at about 9.30 pm, when he reached near Yamuna Public School, 3rd Pusta, Sonia Vihar, he found four persons present at the rehri of the juice and one of them was giving beatings to juice vendor. He went to that rehri and scolded four of them to make them understand. Thereafter, the four accused went away and after some time, they came back and on reaching near him, three persons stated “*maar saale es police wale ko*”. One of them was carrying a piece of brick in his hand and he threw the same while aiming on his head. The said piece of brick hit on his head due to which, he started bleedings from head. The victim Rajender Singh raised alarm “*pakdo pakdo*”. At that time, the said persons were under the influence of liquor. They started running, on raising the alarm by the victim but one person who had hit the victim Rajender Singh with piece of brick was over-powered by him and apprehended. The remaining three persons

escaped. Thereafter, someone made a call to 100 number on which ASI Kunwar Pal along with Constable Naresh reached at the spot from P.S. Khajuri Khas. In the meantime, PCR van also reached there and accused Aman Sharma was arrested. Aman Sharma disclosed the names of his associates as Ashwani Sharma, Brijesh Kumar and Dinesh. The PCR van then took the injured to GTB hospital where his MLC was conducted. He also handed over his blood stained shirt to the Investigating Officer which was seized vide memo Ex.PW-3/H.

3. Rajender Singh also stated that he signed the arrest memo of Aman Sharma who was arrested at the spot and his personal search memo exhibited as Ex.PW-3/A and Ex.PW-3/B respectively. After discharge from the hospital, Rajender Singh went to police station Khajuri Khas when co-accused Ashwani Sharma and Brijesh Kumar were present at the police station. He identified them and also signed their arrest memos exhibited as Ex.PW-3/D and Ex.PW-3/E respectively. On 22nd July 2009, the other co-accused namely Dinesh was also arrested and he identified the said accused in the police station. After identification of the accused Dinesh, he had put his signatures on his arrest memo Ex.PW-4/B and personal search memo Ex.PW-4/C. This witness was extensively cross-examined on behalf of accused Brijesh Kumar, Ashwani Sharma and Dinesh, wherein, he stated that he did not remember the time when he left the police station for patrolling and that departure entry in this regard was made but he did not remember its number. He stated that his arrival entry in the police station was not recorded as he was hospitalized. According to him, he was discharged from the hospital in the early morning around 3 am on the intervening night of 17th/18th June 2009.

4. Though Rajender Singh stated that out of the four boys, one was giving beating to juice wala, however, in his examination-in-chief, he did not identify any of the said accused persons as the person who gave beatings to the juice wala which is the genesis of the occurrence. Further, the said vendor selling juice was neither cited as a witness nor examined during the course of the trial to prove the genesis of the occurrence.

5. Learned Trial Court vide the impugned judgment acquitted all the accused for offences punishable under Sections 186/353 IPC, for the reason, that the prosecution failed to prove that the victim ASI Rajender Singh was on official duty at the relevant time. The prosecution neither proved the departure entry of ASI Rajender Singh nor his arrival entry. Further, though the blood stained shirt was seized, however, the same was not sent to the FSL to find out whether the blood on the shirt belonged to the injured or someone else. The learned Trial Court also noted that even the ACP who gave the requisite sanction under Section 195 CrPC for prosecution for the offence punishable under Section 186 IPC did not make it part of his deposition when he appeared in the witness box as PW-11 to show that the victim was on official duty at the relevant time. It was further noted by the learned Trial Court that the sanction which was brought on record as Ex. PW7/A did not bear any date, month or even the year thereon.

6. To prove the offences punishable under Sections 186/353 IPC, one of the primary requirements to be proved by the prosecution is that there was obstruction or assault while the public servant/official was discharging his public functions. In view of the facts noted above, since the prosecution failed to discharge its onus of proving that the victim ASI Rajender Singh was on official duty at the relevant time when he was assaulted, the view

expressed by the learned Trial Court in acquitting all the accused for offences punishable under Sections 186/353 IPC is a reasonable view on the evidence led by the prosecution on the facts of the case and cannot be said to be termed as a perverse view warranting interference.

7. Further, it is the case of the prosecution that Aman Sharma was apprehended at the spot and three other accused were apprehended at the instance of Aman Sharma. There are serious discrepancies with regard to their time of arrest and the signing of the arrest memos. According to the victim i.e. ASI Rajender Singh, after his discharge at 3 am on 18th June 2009, he went to the police station straight, where accused Ashwani Sharma and Brijesh Kumar were already present and on his identification, they were arrested and he signed their arrest memos and personal search memos. However, as per IO SI Kunwal Pal Singh (PW-8), he along with Constable Naresh and ASI Rajender Singh went to the house of the accused Ashwani Sharma and there, both Ashwani Sharma and Brijesh Kumar were arrested. They were led to the house of Ashwani Sharma by accused Aman Sharma. According to this witness, arrest of Ashwani Sharma and Brijesh Kumar took place at 3 pm and not at 3 am as claimed by injured victim that they were present at the police station. Further, accused Dinesh was allegedly arrested at 7.30 pm on 22nd July 2009 on the basis of a secret information. No independent witness to this arrest was associated and HC Rabinder Kumar (PW-5) in his cross-examination admitted this fact of not associating any public witness. He stated that ASI Rajender Singh identified accused Dinesh when he entered in the police station. Case of the prosecution is that Dinesh was arrested underneath the flyover at Loni Golchakker and

admittedly, ASI Rajender Singh was not present at the time of arrest, however, the arrest memo of Dinesh has been signed by ASI Rajender Singh.

8. In view of the facts noted above, we do not find any merit in the appeal filed by the State seeking conviction of the other three respondents in CrI.A. 214/2023 namely Ashwani Sharma, Brijesh Kumar and Dinesh for offence punishable under Section 307 IPC.

9. This leaves us with the conviction of the appellant Aman Sharma for offence punishable under Section 307/34 IPC. Though invocation of Section 34 IPC in the absence of conviction of the co-accused by the learned Trial Court may be erroneous, however, the role assigned to appellant Aman Sharma is that he caused the injury on the head of ASI Rajender Singh and thus, committed the offence punishable under Section 307 IPC.

10. As noted above, even though the prosecution has not examined the juice vendor to prove the genesis of the occurrence, however, from the cogent and convincing testimony of ASI Rajender Singh to the extent that he was inflicted injury by piece of brick by Aman Sharma who was apprehended by him at the spot and immediately thereafter, he was taken to the hospital where his MLC was prepared, cannot be doubted.

11. Learned counsel for the appellant Aman Sharma in CrI.A.1159/2019 has seriously challenged the invocation of Section 307 IPC against Aman Sharma on the ground that though the MLC exhibited as Ex.PW-6/A of ASI Rajender Singh notes that as per neurological clinical record, the injury was grievous as also as per the dental record, the nature of injury was grievous, however, neither the doctors who carried out the said examination were produced in the witness box nor documents were placed on record to prove that grievous injuries were caused.

12. Prosecution examined Dr.P.K.Phukan (PW-9) who was deputed by M.S. of GTB Hospital to appear in the Court on behalf of Dr.Amit, the then Junior Resident who had prepared the MLC of injured ASI Rajender Singh under his supervision being CMO which noted lacerated wound in the size of 4 x 7 cm present on the right side of the ear and swelling on the right side of mandible. This witness stated that the patient was referred to neurosurgery, ENT, dental and medicine emergency.

13. Prosecution also examined Dr.Rishi Tyagi (PW-6) who stated that he had been deputed by the M.S. of GTB Hospital to appear on behalf of Dr.Neha Aggarwal, the then Senior Resident who had prepared the MLC No. A2621/09 and had left the services of the hospital and her whereabouts were not known. He exhibited the MLC on record as Ex.PW-6/A and the opinion of Dr.Neha Aggarwal vide which the nature of injury was grievous and proved the endorsement of Dr.Neha Aggarwal on the MLC which was in her handwriting. He proved the handwriting and signatures of Dr.Neha Aggarwal as he had seen her while signing and writing during the course of his duties. It may be noted that the MLC was prepared by Dr.Seema and only an opinion on the MLC with regard to the injury being grievous on examination of dental record was noted by Dr.Neha Aggarwal.

14. Prosecution also examined Dr.Amit Kumar Gamit, Senior Resident as PW-10 who appeared in Court on behalf of Dr.Rajan Kumar to prove that the injury from neurosurgery angle was grievous. He identified the signatures of Dr.Rajan Kumar on the MLC Ex.PW-6/A.

15. Though the witnesses have appeared in the witness box to prove the MLC and the endorsements of Dr.Neha Aggarwal and Dr.Rajan Kumar with regard to the nature of injury as grievous, however, the necessary

prescriptions and certificates/documents showing how the said injuries were grievous, have not been brought on record. To prove an offence punishable under Section 307 IPC to have been committed, the prosecution is required to prove the intention with which injury was inflicted which can also be deciphered from the nature of injury. In the present case, the piece of brick has been hit near the ear of victim. Even though prosecution has not been able to prove that he was on official duty at the same time, however, the injury as caused to the said victim has been proved. Hence, we do not find it to be a fit case to modify the conviction of the appellant from offence punishable under Section 307 IPC to a lesser offence.

16. Appellant Aman Sharma has been awarded sentence of rigorous imprisonment for a period of six years and to pay a fine of ₹10,000/-, in default whereof, to undergo simple imprisonment for two months for offences punishable under Sections 307/34 IPC. The mitigating circumstances pointed out by the learned counsel for the appellant Aman Sharma before this Court as also before the learned Trial Court are that the appellant is not involved in any other previous offence; he was of young age around 22 years at the time of alleged incident and he had a widowed mother to look after.

17. Learned counsel for the appellant Aman Sharma further states that the appellant has faced the ordeal of trial and appeal since the year 2009 till date i.e. since last 14 years and has undergone custody of 5 years 3 months and 14 days as on date and thus, in the alternative, he be released on the period

undergone. We find merit in the argument. Since the appellant Aman Sharma has already undergone sentence of more than 5 years including remissions, while maintaining the conviction of the appellant for offence punishable under Section 307 IPC, his sentence is modified to the period already undergone.

18. Accordingly, Crl.A. 1159/2019 is disposed of.

19. Crl.A. 214/2023 filed by the State is dismissed.

20. Superintendent, Tihar Jail is directed to release the appellant Aman Sharma in Crl.A.1159/2019 forthwith if not required in any other case.

21. Copy of this judgment be uploaded on the website of this Court and be also conveyed to the Superintendent Tihar Jail for intimation of the appellant and updation of record.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

MARCH 13, 2023

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