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

Decided on: 26th May, 2023

+ **CRL.A. 305/2022**

VIPIN KUMAR @BILLA

..... Appellant

**Through: Mr. Parminder Singh and
Mr. Karan Vir Singh,
Advocates with appellant in
person.**

V

STATE

..... Respondent

**Through: Mr. Hemant Mehla, APP for
State with SI Bhom Singh,
P.S. Moti Nagar.
Mr. Akshay Verma,
Advocate for Complainant
with complainant in person.**

+ **CRL.A. 315/2022**

GAURAV @ RAHUL

..... Appellant

**Through: Mr. Ashwani Chowdhary,
Mr. Anil Chowdhary and
Mr. Tanmay Mishra,
Advocates with appellant in
person.**

V

THE STATE (GOVT OF NCT OF DELHI)..... Respondent

**Through: Mr. Hemant Mehla, APP for
State with SI Bhom Singh,
P.S. Moti Nagar.
Mr. Akshay Verma,
Advocate for Complainant
with complainant in person.**



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HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (*oral*)

1. This common judgment shall decide two criminal appeals bearing no.305/2022 and 315/2022 filed under section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “**Cr.P.C.**”) to impugn the judgment dated 02.05.2022 and order on sentence dated 07.06.2022 passed by the Court of Shri Pooran Chand, Additional Sessions Judge-02 (West), Delhi (hereinafter referred to as the “**trial court**”) in Sessions Case no. 57404/2016 arising out of FIR bearing no.0218/2009 registered at P.S. Moti Nagar under sections 324/34 of the Indian Penal Code, 1860 (hereinafter referred to as the “**IPC**”).

2. Briefly stated, the relevant facts are that Head Constable Bijender on 20.09.2009, after receipt of DD no. 3A, reached at DDU Hospital, where the complainant Rakesh Chhabra was found to be treated in operation theatre vide MLC no.19158/2009 and no eyewitness was found there. The MLC was kept pending for opinion and subsequently, the concerned doctor opined the injuries as dangerous. However, statement of the complainant/injured could not



be recorded as he was unconscious due to medication. After the complainant/injured regained consciousness, his statement was recorded at the hospital by HC Bijender. Thereafter, HC Bijender prepared *rukka* on the basis of the statement of the complainant/injured and FIR bearing no.0218/2009 dated 20.09.2009 was got registered under section 324/34 IPC at P.S. Moti Nagar. Both the accused (hereinafter referred to as the “**appellants**”) were arrested and released on bail. The weapon of offence could not be recovered. Since the nature of injuries was opined by the concerned doctor as dangerous, the offence punishable under section 326 IPC was also added. The appellants were searched after addition of offence punishable under section 326 IPC by ASI Surat Singh, who was afterwards entrusted with subsequent investigation. ASI Surat Singh recorded the supplementary statement of the complainant/injured and offence punishable under section 326 IPC was converted to section 307 IPC. ASI Surat Singh completed other formalities of the investigation and after completion of the investigation, chargesheet was filed for the offence punishable under sections 307/34 IPC. The case was committed to the Court of



Session. The charges for the offence punishable under sections 307/34 IPC were framed against both the appellants vide order dated 23.05.2013 to which, they pleaded not guilty and claimed the trial. The prosecution examined 11 witnesses including the complainant/injured Rakesh Chhabra as PW-2, Surender Singh@Bittu as PW-3, the Investigating Officer ASI Bijender Singh as PW-4 and the concerned doctors as PW-7 and PW-14. After completion of the prosecution evidence, the statement of the appellants was recorded under section 313 Cr.P.C. wherein, they pleaded innocence and denied all the incriminating evidence against them. The appellants preferred not to lead defence evidence.

3. PW-2 the complainant/injured supported the case of the prosecution and deposed that on 19.09.2009 at about 09.00 PM, he along with Surender Singh@Bittu i.e. PW-3, had gone to Priyanka Tower, Basai, Dara Pur and at about 10.20 PM, he left Surender Sing@Bittu in front of Priyanka Tower. PW-2 the complainant/injured was turning his car back, in the meantime, the appellants accompanied by 2-3 persons came there and started to abuse PW-2 the complainant/injured. The appellant Vipin



Kumar@Billa stabbed in abdomen of the PW-2 the complainant/injured while the appellant Gaurav@Rahul stabbed in head of the PW-2 the complainant/injured with a sharp object. PW-2 the complainant/injured was also given kicks and fist blows by the associates of the appellants. PW-3 Surender Singh@Bittu reached at the spot after alarm being raised by PW-2 the complainant/injured. The appellants ran away from the spot. PW-2 the complainant/injured was removed to the hospital, where his statement Ex.PW-2/A was recorded. PW-3 Surender Singh@Bittu did not support the case of the prosecution and the Additional Public Prosecutor for the respondent/State was allowed to cross-examine the PW-3 Surender Singh@Bittu as he resiled from his previous statement recorded under section 161 Cr.P.C. PW-4 ASI Bijender Singh deposed regarding the investigation, which was being conducted by him.

4. The trial court vide judgment dated 02.05.2022, convicted the appellants for the offence punishable under sections 307/34 IPC. The trial court relied upon the testimony of PW-2 the complainant/injured and on the part testimony of PW-3 Surender Singh@Bittu to



corroborate the testimony of PW-2 the complainant/injured. The trial court was not in agreement with the arguments advanced on behalf of the appellants. The trial court also believed that as per the testimony of PW-7 Dr. P.S. Sarangi, the nature of injuries stated to be received by PW-2 the complainant/injured was dangerous and was inflicted on the vital parts of the body i.e. the abdomen and the head. Accordingly, on the basis of the evidence and other material brought on record by the prosecution, the appellants were convicted for the offence punishable under sections 307/34 IPC vide impugned judgment dated 02.05.2022.

5. The trial court vide order on the sentence dated 07.06.2022, sentenced the appellants to undergo rigorous imprisonment of four(04) years for the offence punishable under sections 307/34 IPC and each of the appellants was also directed to pay a fine of Rs.20,000/- in default of RI for three (03) months. The trial court also directed that out of the said fine of Rs.20,000/-, Rs.18,000/- shall be paid as compensation to PW-2 the complainant/injured.

6. The appellants being aggrieved by the impugned judgment dated 02.05.2022 and order and sentence dated 07.06.2022, filed the



present appeal under section 374(2) Cr.P.C on the grounds that the trial court has erred in holding that the appellants were having the common intention to commit the offence punishable under section 307 IPC. The trial court did not appreciate the contradiction in the respective testimony of PW-2 the complainant/injured and PW-3 Surender Singh@Bittu. The weapon of offence was not recovered during the investigation, as such, the appellants cannot be linked and/or connected to the alleged offence. The trial court has erred by relying on the testimony of PW-2 the complainant/injured and PW-3 Surender Singh@Bittu. It was prayed that the appeals be allowed and the appellants be acquitted from the offence punishable under sections 307/34 IPC.

7. The respective counsel for the appellants argued on the issues as mentioned in the appeals and further argued that the appellants be acquitted as the prosecution has failed to prove its case beyond reasonable doubt.

8. The Additional Public Prosecutor for the respondent/State assisted by the counsel for the complainant argued that the trial court has rightly relied upon the testimony of PW-2 the



complainant/injured, which was partly corroborated by the testimony of PW-3 Surender Singh@Bittu. Even if the weapon of the offence is not recovered during the investigation, it is not fatal to the case of the prosecution and the contradiction as pointed out by the respective counsel for the appellants during the course of arguments are minor and irrelevant in nature, which hardly affects the case of the prosecution. The Additional Public Prosecutor for the respondent/State argued that the appeals deserve to be dismissed.

9. The perusal of impugned judgment reflects that the trial court has rightly relied upon the testimony of PW-2 the complainant/injured, which proved that the appellants on 19.09.2009 had inflicted injuries on him, which were subsequently opined to be dangerous by PW-7 Dr. P.S. Sarangi and the injuries were inflicted on the vital parts of the body. There is no reason to disbelieve the testimony of PW-2 the complainant/injured, which is consistent and free from any material contradiction. The testimony of PW-2 the complainant/injured, which is partly supported by the testimony of PW-3 Surender Singh@Bittu, can be safely relied upon. The impugned judgment is well reasoned and was passed after due



appreciation of the facts and laws as brought on record. There is no reason to interfere with the conviction as awarded by the impugned judgment.

10. The respective counsel for the appellants stated that vide order on sentence dated 07.06.2022, the appellants were sentenced to RI for a period of four (04) years for the offence punishable under sections 307/34 IPC besides payment of fine of Rs.20,000/- in default to further undergo RI for a period of three (03) months. It was also ordered that out of the fine of Rs.20,000/-, Rs.18,000/- to be paid as compensation to PW-2 the complainant/injured. The counsel for the appellant Gaurav@Rahul stated that the appellant Gaurav@Rahul has already paid the fine of Rs.20,000/- vide receipt bearing no. 0773994 dated 04.07.2022, a copy of which is also placed on record. The appellant Vipin Kumar@Billa has not paid the said fine. Accordingly, he is directed to deposit the fine of Rs.20,000/- before the concerned trial court within a period of 15 days from today.

11. The respective counsels for the appellants argued that the appellants have never been convicted of any offence and their antecedents are clear. They further stated that the appellants be given



another chance to reform themselves so that they can be a part of the mainstream society. The counsel for the appellant Gaurav@Rahul stated that he was aged about 22 years at the time of the incident and was unmarried but now he is married and has a minor child, who is less than 10 years of age. The appellant Gaurav@Rahul is the only bread earner in the family and his father had already expired in the year 2011. The appellant Gaurav@Rahul has to look after his grandmother, who is more than 85 years of age and is suffering from various ailments. The appellant Gaurav@Rahul has also suffered the agony of trial for 13 years. The counsel for the appellant Vipin Kumar@Billa stated that he belongs to the lower strata of the society and his mother has already died due to Cancer. The appellant Vipin Kumar@Billa has two minor children and his father is diabetic and is suffering from various ailments. The appellant Vipin Kumar@Billa also suffered the agony of trial for 13 years. In these circumstances, the respective counsel for the appellants prayed for a lenient view and cited **Murali V State, Represented by Inspector of Police, (2021) 1 SCC 726** and in light of the said judgment, they prayed that the appellants be sentenced to the period of imprisonment already



undergone. The appellants also stated that they are ready to pay Rs.4,50,000/- to the complainant/injured, who is present in the court, as compensation for the losses suffered by him.

12. The Additional Public Prosecutor for the respondent/State also stated that although the appellants do not deserve any leniency from this court but they are ready to pay Rs.4,50,000/- as compensation to the complainant, which is acceptable to the complainant as such, the court may pass any direction in its discretion.

13. The complainant/injured stated that he received the injuries on vital parts of his body and remained under treatment for considerable time but now, he has fully recovered from the injuries inflicted by the appellants. He further stated that he is ready to accept the compensation of Rs.4,50,000/- as proposed by the appellants towards the losses suffered by him and he does not have any objection if the appellants are given another chance to reform themselves. The appellants are not previous convicts and their antecedents are clear. The appellants belong to the lower strata of the society and have to maintain their respective families along with elders in the family. The appellants suffered agony of trial for 13 years. The appellants have



already suffered imprisonment for about 230 days. The appellants have paid Rs.4,50,000/- jointly to the complainant/injured by way of demand draft bearing no.879196 dated 25.05.2023 drawn on Karur Vysya Bank which is accepted by the complainant/injured.

14. After considering the socio-economic position of the appellants and that they have suitably compensated PW-2 the complainant/injured for the losses suffered by him, the order on sentence dated 07.06.2022 is modified to the extent that the appellants are sentenced to imprisonment for the period they have already undergone besides fine imposed by the trial court vide order dated 07.06.2022.

15. In addition to the compensation of Rs.4,50,000/- paid by the appellants, the PW-2 complainant/injured shall also be entitled to the compensation as awarded by the trial court vide order on sentence dated 07.06.2022. The trial court is directed to release the compensation in terms of the order on sentence dated 07.06.2022 without any delay.



16. The present appeals, along with pending applications, if any, stand disposed of.

SUDHIR KUMAR JAIN, J.

MAY 26, 2023

N/SW

