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

% **Date of decision: July 13, 2023**

+ **CRL.L.P. 116/2021**

STATE

..... Petitioner

Through: Mr. Tarang Srivastava, Additional
Public Prosecutor with SI Rinku
Singh P.S. Gokulpuri.

Versus

AJAY @ BADA KKA & ORS.

..... Respondents

Through: Mr. B. Badrinath, DHCLSC along
with respondents in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present application under Section 378(3) read with Section 482 of the Cr.P.C., 1973, has been filed on behalf of the appellant seeking leave to appeal against the judgment dated 24.06.2020 passed by the learned Court of Sessions in FIR No. 224/2017, registered at P.S. Gokalpuri, Delhi, for the offences under Sections 307/34 of the IPC.

2. The brief background of this case, as noted in the impugned judgment dated 24.06.2020 is as under:-

“HC Virender posted at GTB Hospital on 09.06.2017 at about 10:00 gave information to Police Station Gokalpuri regarding admission of Rajender (hereinafter referred to as “the injured”) in injured condition as the injured received stab



injuries by a knife in a quarrel and said information was reduced into writing vide DD no. 20A. DD no. 20A was assigned to SI Ompal Singh (hereinafter referred to as **“the investigating officer”**) who along with Ct. Nitin reached at GTB hospital and collected MLC of the injured who was found not fit for statement. Rukka was prepared. FIR bearing no. 224/17 under section 307 of the Indian Penal Code, 1860 (hereinafter referred to as **“IPC”**) was got registered. The Investigating officer reached at the spot and called District Crime Team which inspected the spot. The investigating officer collected exhibits. Eye witness Kallu joined investigation who stated that he is working as a labourer and on the day of incident at about 9:00 PM, he saw Ajay @ Badakka, Govind @ Genda Lal and Hari Kishan @ Kalu (hereinafter referred to as **“the accused”**) were abusing the injured after surrounding him. The accused Ajay @ Badakka asked the accused Hari Kishan @ Kalu and Govind @ Genda Lal to finish the injured. The accused Hari Kishan @ Kallu caught hold of the injured and the accused Govind @ Genda Lal gave knife blows on the neck and stomach of the injured and thereafter all of them fled away from the spot. The father of the injured namely Deewan was informed who removed the injured to GTB hospital and handed over the blood stained clothes of the injured to the investigating officer. The investigating officer also recorded the statement of the injured. The accused Ajay @ Badakka and Govind @ Genda Lal were arrested on 11.06.2017 at the instance of father of injured. The accused Govind @ Genda Lal got recovered weapon of offence i.e. knife. The accused Hari Kishan @ Kalu was arrested on 15.06.2017 at the instance of father of the injured. ASI Karan Singh was assigned further investigation. The accused after



completion of the investigation were charge sheeted for offences punishable under sections 307/34 IPC.”

3. After committal of the case to the Court of Sessions, charge punishable under Section 307/34 IPC was framed against the accused persons and they were put on trial. Statement of accused persons under Section 313 Cr.P.C was recorded wherein, they denied the charges framed against them and pleaded innocence.

4. Prosecution examined 10 witnesses in support of its case. PW1- Kallu is the eye witness, PW2 is the injured, PW-3 is the father of the injured and PW6 is Dr. Ranapratap Singh, who proved the MLC. In addition, five official witnesses were also examined by the prosecution, including the Investigating Officer (PW-4) of this case.

5. Relying upon the testimony of witnesses examined and considering the arguments by both the sides, the learned trial court held that the prosecution failed to prove its case against the accused persons for the offences under Section 307/IPC beyond reasonable doubt. However, for the offence under Section 325 IPC, accused were held guilty and sentenced. The learned Trial court vide Order on Sentence dated 29.06.2020 observed and held as under:-

“1.The counsel for the convict Ajay @ Badakka stated that he remained in JC with effect from 11.06.2017 to 04.02.2019. The convict is only earning member in the family and is married. The convict has to maintain his old aged parents. The counsel for the convict Hari Kishan @ Kallu stated that he remained in JC with



effect from 16.07.2017 to 08.01.2019. The convict Hari Kishan @ Kallu is unmarried and he has to maintain his parents aged about 70 years. The counsel for the convict Govind @ Genda Lal stated that he is in JC with effect from 11.06.2017. The convict is married and is having two children. The convict is the only earning member in his family. The counsels for the convicts stated that the convicts are first time offenders and convicted for offence punishable under section 325/34 IPC. The convicts be given an opportunity to reform themselves so that they can be again part of the mainstream of the society. If the convicts are sentenced to further imprisonment, it will ruin their respective families and their families shall be at the verge of starvation and vagrancy. The pandemic Covid-19 is also spreading in Jail premises as reported. The counsels for the convicts prayed that the convicts be sentenced to the period already undergone. The Additional Public Prosecutor argued that the convicts inflicted injury to the complainant PW2 Rajender by using knife Ex.P4. The manner in which the offence was committed the maximum punishment be awarded to the convicts.

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3.After considering all facts as mentioned herein above, the convicts are ordered to be sentenced for the period already undergone for offence under section 325/34 IPC. The case property be confiscated to the State after the expiry of period of appeal.”

6. Against the aforesaid judgment and order on sentence, the present leave to appeal has been filed by the appellant/State.
7. At the hearing, learned Additional Public Prosecutor for State (APP) submitted that while passing the impugned order, learned trial court has



failed to consider that the accused persons had surrounded the injured and beat him and threatened him to murder and also delivered three blows on his vital parts. Thereafter, they left the crime scene leaving the injured in the blood of pool.

8. It was further submitted that accused persons, with a *mala fide* intention to kill injured, had carried the weapon of offence late in the night and these facts are established from the evidence of PW1 and PW2 as well as by the MLC report. Learned APP submitted that the trial court has erred in holding that the weapon of offence was a vegetable cutter and not a deadly weapon and therefore, it cannot be said that the respondents/accused had any intention to murder the injured person. Learned APP submitted that trial court has ignored the MLC report proved by doctors -PW5 and PW-6, GTB Hospital, wherein it is recorded that the injuries inflicted were sharp and grievous. Lastly, learned APP submitted that the impugned judgment is against the evidence on record and deserves to be set aside.

9. On the other hand, learned counsel on the panel of Delhi High Court Legal Service Committee and appearing on behalf of respondents/accused submitted that the judgment passed by the learned trial court is well merited and calls for no interference by this Court. Attention of this Court was drawn to Para-6 of the impugned judgment, wherein it is recorded that PW-3, father of the injured, was in the habit of lodging FIRs against the persons residing in the locality with a purpose to extort money. The aforesaid Para-6 of Judgment dated 24.06.2020 reads as under:-

“6. The respective statement of the accused Govind @ Genda Lal, Ajay @ Badakka and the accused Hari Kishan @ Kallu were recorded under



section 313 Cr.P.C. vide proceedings dated 13.08.2019. The accused denied the incriminating evidence and pleaded false implication and innocence. The accused stated that the father and the paternal uncle namely Kallu of alleged injured are habitual in lodging false FIRs against the peoples residing in the locality to extort money from them. Deewan father of the injured is complainant in FIRs no. 591/13, 738/15, 798/15, 804/15 registered at police station Gokalpuri. Deewan and family members of Deewan are the witnesses in said FIRs. The accused preferred to lead defence evidence and examined Ct. Sonu Tomar as DW1 who proved the copies of FIR no 591/13 as Ex.DW1/A, FIR no 738/15 as Ex.DW1/B, FIR no 798/15 as EX.DW1/C, FIR no 804/15 as Ex.DW1/D.”

10. Upon hearing learned counsel for the parties and on the perusal of impugned judgment and trial court record, we find that challenge to the impugned judgment dated 24.06.2020 as well as Order and Sentence dated 29.06.2020 is primarily on the ground that the learned trial court has not considered the testimony of eye witnesses in its right perspective.

11. Pertinently, in the impugned judgment, the learned trial court with regard to testimony of PW-2/ injured has noted that this witness has fully supported the case of prosecution with regard to role played by each accused in the alleged incident. With regard to role of PW-1, the learned trial court has noted that though he is an eye witness of the alleged incident, yet he could not describe the weapon of offence. Also noted that PW-3, who is father of injured, has admitted in his cross-examination that his son PW-2/injured was a drug addict. The trial court has also noted that the



crime spot is in a residential area, facing a book shop and surrounded by other shops, especially an egg vendor, who was present on the spot, yet no public witness has been examined by the prosecution. The Investigating Officer of the case has also stated in his cross-examination that no eye witness was available either at the spot or at the time when injured was admitted to the hospital.

12. On perusal of testimony of the witnesses recorded before the trial court, we find that PW-5 and PW-6 (doctors) in their evidence have stated that the injuries suffered by PW-2/injured were grievous and have refrained to state these were self inflicted injuries. Also, PW-5 & PW-6 are silent as to whether the injuries caused, could prove fatal. The Injured/PW-2 in his evidence has stated that after the alleged incident, he had himself rushed to his home, from where his father took him to the hospital.

13. Also, from the examination and cross-examination of PW-2 and PW-3 it is clear that Pw-2/injured, PW-1/eye witness and accused persons were living in the same area and were known to each other. PW-1, who is the only eye witness of the alleged incident has not been able to give colour of the weapon of offence but stated that it was like a vegetable cutter. He has stated that after the incident he had rushed to the house of the injured to inform his family but he neither accompanied the injured to the hospital nor lodged any complaint with the Police against the alleged incident. The information of the alleged incident was given to the Police by the GTB Hospital where the injured was taken after the incident. Moreover, filing of multiple FIRs being FIR Nos. 591/2013, 738/2015, 798/2015, 804/2015 registered at police station Gokalpuri, New Delhi at the instance of PW-3-



Deewan, father of injured, against different persons of the locality, cannot be ignored.

14. So far as plea of appellant/State that there were sufficient reasons to believe that respondents/accused had intention to cause culpable homicide is concerned, we find that PW-2/ injured in his cross-examination has admitted that he had no enmity with the accused persons. So, the motive behind causing the injury has not been spelt out by any of the witnesses and it cannot be said that the accused persons had carried the vegetable cutter with an intent to cause injury or harm to the injured. The presumption of ill intention and knowledge sufficient to cause injury to death, are necessary ingredients of the provisions of Section 307 IPC, which are lacking in the present case.

15. In the considered opinion of this Court, prosecution failed to prove its case to bring it within the ambit of Section 307 IPC and, therefore, the learned trial court has rightly acquitted the respondents/accused under Section 307 IPC giving them benefit of doubt. However, the trial court has also observed and held that from the testimonies of the witnesses examined it stands proved that PW-2/Injured had sustained grievous injuries and has therefore, rightly held the respondents/accused guilty for the lesser offence under Section 325 IPC.

16. The provisions of Section 325 IPC provide sentence for a maximum period of seven years with fine. The learned trial court while awarding the sentence observed that respondent No.1/accused- Ajay @ Badakka has already remained behind bars from 11.06.2017 till 04.02.2019; respondent



No.2/accused- Govind @ Gendalal has also been behind bars since 11.06.2017 and respondent No.3-accused Harikishan @ Kalu from 16.07.2017 till 08.01.2019; and has convicted and sentenced them for the period already undergone by them.

17. Relevantly, for the offences in question, the accused persons have remained in jail for a period of approximately one year and nine months. In the impugned judgment, learned trial court has rightly held that the accused/ convicts have to be given an opportunity to reform and so, has sentenced the respondents/ accused for the period already undergone. In the considered opinion of this Court the aforesaid view of the learned trial court in the facts and circumstances of the case and material on record is justified and does not call for any interference by this Court. However, provisions of Section 325 IPC also prescribe for awarding of fine, which learned trial court has erred in not imposing upon the respondents/accused.

18. Accordingly, the impugned Order on Sentence dated 29.06.2020 is modified to the extent that the respondents/ accused are directed to deposit fine of Rs.500/- each within eight weeks, in default of payment of fine, they shall be liable to undergo simple imprisonment of one week.

19. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

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