



2024:DHC:7250



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

% Reserved on : 05.09.2024
Pronounced on : 20.09.2024

+ **CRL.A. 112/2024**

MOHD NASIR AND ORS. Appellants

Through: Mr. Gaurav Kochar, Mr. Bharat
Sharma and Mr. Vishal, Advocates.

Versus

THE STATE GOVT. OF NCT OF DELHI Respondents

Through: Mr. Aashneet Singh, APP for State
with SI Suresh Kumar, PS New
Usman Pur, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 06.11.2023 and order on sentence dated 06.01.2024 passed by learned ASJ, Karkardooma Courts New Delhi in Sessions Case No. 44816/2015 arising out of FIR No.422/2015 registered under Sections 308/323/34 IPC at P.S. New Usmanpur, New Delhi.

Vide the impugned judgement, the appellants were convicted for the offence punishable under Sections 308/326/34 IPC with accused *Shakeel* also being convicted u/s 201 IPC and vide the order on sentence, they were directed to undergo rigorous imprisonment for a period of 1 and a half years for the offence punishable under Section 326 IPC with a fine of Rs 15000/- for the offence punishable under Section 308 IPC, the appellants were



directed to undergo rigorous imprisonment for 1 and a half years alongwith fine of Rs.15000/- Convict *Shakeel* was directed to undergo simple imprisonment for a period of 6 months along with fine of Rs 5000/- for the offence u/s 201 IPC. In default of payment of fine, the convicts were directed to undergo further simple imprisonment for 6 months. The sentences were directed to run concurrently and the benefit of Section 428 Cr.P.C was also given to the accused.

2. The facts, as noted by the Trial Court, are as under:-

“....that on 11.12.2011 at about 3.02 pm, an information was received at PS New Usman Pur regarding quarrel at Khaddey Wali Masjid, Arvind Nagar, 3rd Pusta, which was reduced into writing vide DD No. 16A (Mark PW8/A) and marked to HC Jagpal Singh who happens to be first Investigating Officer of the present case(hereinafter referred to as IO). Thereafter, HC Jagpal alongwith Ct. Prabhav reached at the spot where upon enquiry they were informed that injured had already been taken to GTB Hospital. Thereafter, they went to GTB Hospital where they obtained MLC NO. C6992/ 11 of victim Gyanender and MLC No C6993/11 of injured Hemant. Thereafter, the IO proceeded to record the statement of injured Gyanender, who stated that he alongwith his younger brother Hemant Sharma was running an electric shop at U-65 Fateh Singh Marg. At about 2:30 pm, he alongwith his brother Hemant was going to 3^d Pusta, Usmanpur for some work related to their shop in motorcycle bearing No. DL-SSDH-5858. When they reached near Khaddey Wali Masjid Chowk, one TSR was found stationed wherein one Babloo was sitting. He asked Babloo to remove the TSR from the way to which Babloo replied that this is his TSR he will park it there only. Upon this issue, argument took place between Babloo and them whereupon Babloo caught him (Gyanender) and called his three brothers, namely, Mohd. Nasir, Wasim, Aazad and said, “in saalo ko maaro dande”. Thereafter, three brothers of Babloo brought dande and iron sticks and started beating the complainant and his brother. Thereafter, Babloo called two more of his associates namely, Shakeel and Wakil from the meat shop. Thereafter, Wakil caught hold of his



brother Hemant. Thereafter, Babloo and Shakeel left for meat shop and brought one butcher knife. Babloo had attacked with butcher knife on his head and Shakeel had attacked on the head of his brother, due to which both brothers sustained injuries. He prayed that action be taken against Babloo, Nasir, Azad, Nadeem and Shakeel. (n the basis of statement of injured Gyanender, present FIR came to be registered. Statement u/s 161 Cr.P.C. of victim Hemant Kumar was recorded. On 12.12.2011, accused Nasir was arrested at the instance of complainant from Gali No. 2, Gautam Vihar, who confessed about his involvement in the present case. At the instance of accused Nasir, one cricket stump was recovered from his house. The complainant Gyanender handed over his as well as his brother's bloodstained clothes. On 13.12.2011, at the instance of accused Nasir, accused Wasim was arrested near Khaddey Wali Masjid. At the instance of accused Wasim, one iron sariya was recovered from the bushes at 3rd Pusta, Yamuna Khadar. On 22.12.2011, accused Babloo and Shakeel had surrendered themselves at PS, hence, they were arrested. Efforts were made to recover the knife with the help of accused Shakeel and Babloo but the same could not be found. Accused Babloo and Shakeel were got identified through complainant. On 11.01.2012, accused Azad and Wakil had also surrendered themselves at PS, hence, they were arrested.

3. Subsequent to filing of the chargesheet and based on the material collected during investigation, the accused were charged under Sections 308/326/34 IPC and co-accused *Shakeel* was also charged under Section 201 IPC, to which, the accused pleaded not guilty and claimed trial.

4. In trial, a total of 13 witnesses were cited by the prosecution to prove its case.

On the other hand, the accused persons, in their statement recorded under Section 313 Cr.P.C. claimed that they were innocent and that they had been falsely implicated in the case.

5. On behalf of the appellants, the impugned judgment has been assailed



on the ground that the testimonies of the witnesses do not inspire confidence, the same being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures. It is contended that the Trial Court has failed to consider that the names of the appellants have not been mentioned in the DD No. 16-A. The Trial Court has further failed to consider that the injured persons namely *Hemant* and *Gyanender* have given a different time of the incident before the concerned doctor at the time of recording of their respective MLCs. Moreover, as per the X-ray report of injured *Hemant* and *Gyanender*, no bone injury was noticed on their person and the sharp weapon allegedly used in the offence was never recovered. It is further argued that the place of the incident i.e. the meat shop has not been identified and the Trial Court has failed to appreciate that no independent public person came forward to support the case of the prosecution, despite public being present at the time of the alleged incident.

6. The learned APP while opposing the present appeal states that the impugned judgement does not suffer from any infirmity and the appellants have been rightly convicted.

7. I have heard learned counsel for the appellants and the learned APP for the State.

8. *Gyanender*, the injured/complainant in the present case, who was examined as PW6, categorically identified all the accused at the time of recording of his testimony in Court. He deposed as to the manner in which the incident occurred and the injuries were inflicted. He stated that on 11.12.2011, the incident occurred near *Khaddey Wali Masjid Chowk* when he alongwith his brother *Hemant* was going towards his shop on a



motorcycle. The appellant *Babloo* was sitting in his *TSR* and when the witness asked *Babloo* to remove his *TSR* from the way, an altercation ensued. *Babloo* called his brothers namely *Nasir*, *Azad* and *Wasim* and exhorted them to beat the complainant and his brother. *Nasir*, *Azad* and *Wasim* gave beatings to the injured with *dandas*, rods and iron strips. *Babloo* also called other co-accused *Shakeel* and *Wakil*. While *Wakil* caught hold of the witness, *Babloo* and *Shakeel* brought a *Churri* (knife) from *Shakeel's* meat shop. *Babloo* attacked the witness with the knife and *Shakeel* used the knife to attack the brother of the complainant namely *Hemant*. The complainant's brother, *Hemant* was examined as PW10. His testimony is cumulative to the testimony of the complainant. Further, the testimonies of both the injured witnesses are consistent with their previous statements recorded under Section 161 Cr.P.C. The deposition of the injured was duly corroborated by the noting recorded in their MLCs (Ex.PW3/A and PW2/A).

9. As per the MLC Ex.PW2/A, *Hemant* had received following injuries:

- i) Laceration wound at head 6 x 1 cm.
- ii) Laceration wound at "forehead 6 x 1 cm.
- iii) Laceration wound at left forearm 2 cm.
- iv) Incised wound at left hand ring finger 1 cm.

As per Gyanander's MLC, he had received following injuries:

- i) Incised wound of 4 cm length, width 0.5 cm over right front parietal region.
- ii) Bruise over left shoulder 10 x 4 cm.
- iii) Bruise over right side back at the level of scapula 18 x 2 cm.
- iv) Bruise over left arm 10 x 1.5 cm posteriorly, bruise with abrasion 15 x 2 cm over left lower thigh laterally.



10. Both the injured witnesses have categorically stated as to the involvement of each of the accused as well as the role played by each one of them in giving the injuries to the victims in their testimonies. The injuries listed in the MLCs indicate the use of a sharp object. Insofar as non-recovery of *Churri* is concerned, this Court in the case of Aas Mohd. @Ashu v. State, reported as **2021:DHC:4339** observed that the non-recovery of the weapon of offence would not be fatal to the prosecution case. The relevant extract reads as under:-

“22. On the issue of non-recovery of the weapons of offence from the accused/appellants, it is noted that the Supreme Court in Rakesh and Another v. State of Uttar Pradesh and Another reported as (2021) 7 SCC 188 has observed that recovery of the weapon of offence is not a sine qua non for convicting an accused. Albeit under Sections 302/34 IPC, the Court in this case also opined that it was not possible to reject the ocular evidence of eye-witnesses to the incident, who were reliable and trustworthy.

Such is the situation in the present case. All the eye-witnesses have consistently stated that the accused persons were carrying guns in their hands, on pointing of which they robbed articles, i.e., gold chain and kadas belonging to Manish and Utkarsh. Both Manish and Ankit have correctly identified the appellants as the accused who committed the offence. In view of the positive identification by eye-witnesses Manish and Ankit, whose testimonies are found trustworthy and reliable, the contention raised does not weigh with this Court and is rejected.”

11. *Dr Raj Kumar Raj* (PW4) who was posted at the GTB hospital had examined both the injured, had advised their NCCT Head examination. In the case of *Gyanender*, the NCTT Head report indicated a minor linear fracture in the right side of the frontal bone and the nature of the injury was



opined to be grievous.

12. A further perusal of the testimonies of both the witnesses would show that though they were cross-examined but no material contradictions appeared. Suggestions were given that it was the injured who alongwith their friends Yogesh, Saurabh and others had come to the house of the accused person to quarrel with them, which was denied. Another suggestion was given that there was no meat shop, which was also denied. Infact, the meat shop was shown in the site plan. The appellants had produced a witness namely *Sattar Ahmad* (DW1) who stated that on the day of the incident i.e., on 11.12.2011 at about 9.45/10am, *Babloo* had accompanied him to *Meerut* where he had gone to meet his sister. They remained there and came back at about 10.30/10.45 pm. His cross-examination was deferred but he did not appear thereafter and was not offered for cross-examination. (ref: Ekene Godwin v. State of Tamil Nadu reported as **2024 SCC OnLine SC 337**)

13. Pertinently, while the alleged knife was not recovered, the injured witnesses have deposed consistently to the extent of *Babloo* and *Shakeel* getting the knife from *Shakeel's* meat shop and thereafter using it to inflict injuries on them. Similarly, the role of other appellant have also been categorically stated. Further, the cricket wicket (exhibited as Ex.P1) that were recovered during investigation, was identified by both the witnesses and stated to be used by the appellant *Nasir*. The *iron sariya* (exhibited as Ex.P2) was also identified by the injured witnesses as the weapon used by the accused *Waseem* in the commission of the offence. Both the injured witnesses also identified their blood stained clothes i.e. a pant and a vest (exhibited as Ex.P3 and EX.P4). Besides, the appellants were known to the



injured and further, no dispute on this aspect was raised during cross examination.

14. Coming to the parameters which need to be looked at when assessing whether an offence has been committed under Section 308, this Court deems it apposite to refer to the case of Pawan Chaddha v. State reported as **2016 SCC OnLine Del 502** wherein it was observed as under:-

“22..... In order to constitute an offence under Section 308 IPC it is to be proved that the said act was committed by the accused with the intention or knowledge to commit culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death, he would have been guilty of culpable homicide. The intention or knowledge on the part of the accused, is to be deduced from the circumstances in which the injuries had been caused as also the nature of injuries and the portion of the body where such injuries were suffered.....”

15. A perusal of the MLCs, show injuries inflicted on the head, including a minor linear fracture in the right side of the frontal bone of *Gyanender*, an injury which was opined to be grievous. Looking at the circumstances surrounding the incident, it is seen that subsequent to the act of *Babloo* calling *Nasir*, *Azad* and *Wasim* to beat the victims, and thereafter, *Babloo* called *Shakeel* and *Wakil* from the meat shop with a knife to inflict further injury on the witnesses. The above-stated facts show that the said offence cannot be said to have happened without any element of deliberation and establishes a degree of aggravation at the end of the appellants. Merely because some cases were also pending against the injured would not by itself be a reason to discard their testimonies which find corroboration from the other material in the form of their MLCs.

16. Upon a careful analysis of the testimonies as well as the material



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placed on record and keeping in mind the nature of injury, the objects used and the fact that the injuries were inflicted on vital parts of the body, one of which is opined to be grievous, this Court is of the considered opinion that the allegations against the appellants under the above-noted offences have been conclusively proved. Consequently, the appeal fails and the appellant's conviction under the aforesaid Sections and the sentence imposed, is upheld.

17. The appeal is disposed of in above terms.

18. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 20, 2024/js