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

+ **CRL.A. 527/2003**

SANJAY KUMAR Appellant

Through: Mr. Sunil Ahuja, Advocate.

versus

STATE OF DELHI Respondent

Through: Mr. Amit Ahlawat, APP for the State.

Insp. Vinit Malik, PS Anand Parbat.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **11.03.2024**

1. The present appeal under Section 374 of the CrPC challenged the judgment of conviction and order on sentence dated 14.07.2003 and 15.07.2003 respectively passed by Mr. TD Kashav, learned Additional Sessions Judge, Delhi in Sessions Case No. 144/01 arising out of FIR No. 52/2007 under Sections 308/34 of the IPC registered at PS Anand Parbat.
2. The appellant has been convicted of offence under Section 308 of the IPC and sentenced to undergo rigorous imprisonment for 03 years.
3. The case of the prosecution is that on 09.03.2001 the appellant and 04 other co-accused persons, in furtherance of their common intention, caused injuries to Smt. Kamlesh (PW-2) and Sh. Rajesh (PW-3) on the occasion of Holi, with such intention and knowledge and under such circumstances that if by that act, they would have caused death of the aforesaid injured persons, they would have been guilty of culpable homicide. Smt. Kamlesh (PW-2)



testified that her nephew Rajesh (PW-3) was playing music on the roof of their house, whereas the accused persons including the appellant were playing cards at the rooftop of a house away from theirs. A dispute took place due to the playing of music. The appellant and co-accused persons came downstairs. The appellant was armed with a sword, co-accused Navin, Ram Khilari and Bobby were armed with knives and co-accused Bunty was empty handed. They started beating up Rajesh (PW-3) and the appellant gave a blow on his head with the sword. When Smt. Kamlesh (PW-2) interfered, the appellant hit her with the sword and the other accused persons gave her fist and kick blows. Rajesh (PW-3) fell unconscious and was taken to the hospital.

4. Learned counsel appearing on behalf of the appellant submits that the learned Trial Court has based the conviction of the present appellant on the basis of corroboration from the MLC of the injured persons which are never exhibited/proved. There was no evidence to prove the said documents. It is further pointed out that the said MLCs were not put to the appellant while recording his statement under Section 313 of the CrPC. It is further submitted that the FIR in the present case was registered after delay of 3 days which remained unexplained despite the fact that both the injured person, i.e., PW-2 and 3 were fit to give statement in the hospital. It was admitted case of the prosecution that no sword has been recovered which is alleged to have been used by the present appellant. It is further submitted that learned Trial Court while disbelieving the statement of the injured witnesses with regard to the role of other co-accused persons holding them convicted the present appellant relying upon the aforesaid unproved MLCs.

5. Learned counsel appearing on behalf of the appellant further places



reliance on following judgements:-

(i) Rajvir and Anr. v. State, 2005 I AD (Cr.) DHC 397

(ii) Ashok Kumar v. State, 1994 JCC 522

6. *Per contra*, learned APP for the State submits that both the injured have supported the case of the prosecution and have categorically alleged that the present appellant was armed with a sword at the time of the incident which caused the injuries to PW-2 and 3. Apart from the PW-2 and 3.

7. Heard learned counsel for the parties and perused the record.

8. PW-2 in her testimony before the Court had categorically stated that her nephew Rajesh (PW-3) was caught hold by all the accused persons and started beating him and the present appellant gave a sword blow on the head of her nephew and when she intervened, a sword blow was given by him on her. It is further stated that Rajesh (PW-3) became unconscious and was moved to hospital. Similarly, PW-3 in his testimony before the Court stated that the present appellant had inflicted the injury by sword and other co-accused persons were armed with knives. It has also come on record in the examination of PW-6 SI N.C.Thakur who was the Investigating Officer that the injured persons, i.e., PW-2 and 3 were taken to RML Hospital. It is stated by him that the doctors had declared both the persons to be fit for statement, however, they declined to make any statement. The statement of PW-3 on the basis of which the present FIR was registered Ex-PW3/A made on 12.03.2001, i.e., after three years. The prosecution also examined PW-4 (Raj Kumar) and 5 (Chandrakanta), who are stated to be neighbours. However, the said witnesses did not support the case of the prosecution.

9. Learned Trial Court while convicting the present appellant has observed as under:



“32. Since, accused Sanjay Kumar has used the sword in inflicting injuries on the person of Rajesh so that case of the prosecution that accused Sanjay had caused injuries on the person of Kamlesh and Rajesh with such intention and under such circumstances that if by that injuries received by Rajesh and Kamlesh caused by Sanjay, they would have died. he would have been guilty of culpable homicide not amounting to murder. So, offence u/s 308 IPC committed by accused Sanjay by using a sword in inflicting injuries on the person of Rajesh and Kamlesh is proved and he is accordingly convicted u/s 306 IPC.

33. Regarding accused Ashok Kumar, Devender, Narender and Ram Khiladi, the part assigned to them is that they caught hold of Rajesh while Sanjay was inflicting injuries to him and these persons are stated to have caused injuries with fist and leg blows on the person of Smt. Kamlesh. From the perusal of MLC of Kamlesh it can be seen that she had received one incised wound approx. 1 cm x thin x skindeep approx. 2 cms. above the lateral aspect of right eyebrow and there is no blunt injury on her person, so the use of fist and legs by the accused persons does not corroborate by the medical evidence. However, on the person of Rajesh there is injury with a sharp object i.e., wound of 4 cm. on left parietal region. He was found having abrasions above right elbow and on left forearm and bruises on left shoulder, which prove that blunt object was also used in inflicting injuries on the person of Rajesh and the medical opinion is also that he received injuries with sharp edged weapon and also with blunt object.

36. From the statements made by the two witnesses of the incident, namely Kamlesh and Rajesh, it can be seen that accused Sanjay who was allegedly armed with talwar has caused injuries to these two persons. whereas, the other accused persons were stated to be silent speculators in this incident. Fist and leg blows are attributed to these accused persons but no corresponding injuries were found on the persons of Kamlesh and Rajesh which could have been caused by fist and leg blows. Each accused was armed with talwar or knife as per the statement made by the witnesses but no arms has been recovered from the possession of the accused persons. Except accused Sanjay, no other accused used their respective weapons for causing injuries to Rajesh and Kamlesh. These accused kept their weapons/knives



concealed and they allegedly resorted to cause injuries to Rajesh and Kamlesh with fist and legs. There is no corresponding injuries caused by legs and fists on the person of Rajesh and Kamlesh as per MLC. Since those arms which were in possession of these accused persons had not been used in causing injuries to the complainant and the witness it can be safely concluded that these accused persons Ashok Kumar, Devender, Narender and Ram Khiladi neither intended to cause any injury to Rajesh and Kamlesh nor they participated in the said incident nor they caught hold of either Rajesh or Kamlesh nor they have any common intention with accused Sanjay Kuar to cause injuries to Rajesh and Kamlesh. I, therefore, come to the conclusion that prosecution case against accused Sanjay Kumar that he was armed with a sword and caused injuries to Rajesh and Malesh with the sword stands proved against accused Sanjay kumar both from the oral evidence of Rajesh and Kamlesh and also from the medical evidence produced on record. So, I hold accused Sanjay Kumar guilty of the offence punishable u/s 308 IPC and convict him therein.”

10. A perusal of the aforesaid observation reflects that the learned Trial Court convicted the present appellant for causing injuries with a sword which otherwise have not been proved on record by way of a MLC. A perusal of the record reflects that MLC of both the injured persons PW-2 and 3 though on judicial record have remained unproved and unexhibited and therefore cannot be looked into. Apart from that learned Trial Court has clearly disbelieved the testimony of PW-2 and PW-3 with regard to the involvement of the other co-accused persons and has proceeded to convict the present appellant on the basis of the aforesaid unproved MLCs to say that injuries therein corresponds with regard to the allegation of causing the same by the sword by the present appellant. It is also a matter of record that the statement of PW-3 that he had become unconscious is also incorrect as the Investigating Officer clearly stated that he was conscious and fit to give a statement. No explanation was bought forth with regard to delay of 3 days



in registering the FIR. As pointed out hereinabove, the two independent witnesses cited by the prosecution, belonging to the neighbourhood, did not support the case of the prosecution.

11. In view of the above, the present appeal is allowed, impugned judgment of conviction dated 14.07.2003 and order on sentence dated 15.07.2002 passed by Sh. T.D.Kashav, Additional Sessions Judge, Delhi in FIR No. 52/2001 under Sections 308/34 of the IPC, registered at P.S. Anand Parbat is set aside.

12. Accordingly, the appellant stands acquitted.

13. Copy of the order be sent to the concerned Jail Superintendent, for necessary information and compliance.

14. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

MARCH 11, 2024/sn