



2024:DHC:5001



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

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Date of Decision: 04.07.2024

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CRL.A. 550/2024 & CRL. M.(BAIL) 1055/2024

RINKU SAINI

..... Appellant

Through: Ms Prachi Gupta., Advocate.

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Laksh Khanna, APP for State
with SI Narsi Prasad PS Sunlight
Colony, New Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been instituted against the judgment of conviction as well as order on sentence both dated 30.03.2024 vide which the appellant has been convicted for the offence punishable under Section 307/34 IPC and directed to undergo rigorous imprisonment for two years and payment of fine of Rs.30,000/- in default whereof, he was further directed to undergo simple imprisonment for 60 days. The impugned judgment and order on sentence came to be passed in FIR No.94/2014 registered under Section 307/34 IPC at PS Sunlight Colony, New Delhi.

2. Brief facts, as are relevant for consideration of the present appeal, are that on the intervening night of 13/14.02.2014, the complainant was present in her house alongwith her husband. At about 1.30/1.45 AM, they heard sounds of some boys abusing, shouting slogans and fighting in the street below. Her husband went down and tried to pacify the boys, however as it



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had started raining heavily, the complainant went inside the house. After some time, her husband came back and she saw that there was bleeding from stomach as well as facial injuries. Her husband told her that there were 3/4 boys who had given him kicks and fist blows and that one *Sunil* stabbed him on his stomach with a knife.

3. After investigation, charge-sheet came to be filed under Sections 307/34 against three persons i.e. the present appellant as well *Sunil Kumar* and *Bharat Bhushan*. The accused persons pleaded not guilty and claimed trial.

4. During the pendency of the trial, co-accused *Sunil Kumar* was declared proclaimed offender vide order dated 20.02.2023.

5. Vide the impugned judgment, the present appellant was convicted, whereas considering that the identity of the co-accused *Bharat Bhushan* was doubtful and giving him the benefit of doubt, he was acquitted.

6. In the present appeal, learned counsel for the appellant has assailed the impugned judgment by contending that the learned Trial Court has failed to appreciate that there were material contradictions in the statements of injured *Vijay Kumar Sharma* and his wife *Meeta Sharma*. Further, the appellant, who was concededly a neighbour, was not named by *Meeta Sharma* at the time of the police report/FIR. It is further contended that even as per the prosecution case, there was no common intention shared by the appellant with co-accused *Sunil*, as even as per the prosecution case, it was the injured who had gone to the spot where the accused persons were present. From the testimonies of injured as well as his wife, it is evident that the role of catching hold as attributed to the appellant was only at the time when fist and leg blows were being given. In the alternative, it is contended



that the appellant be released on the period already undergone.

7. Per contra, learned APP for the State has contended that in light of the testimony of the injured, the presence of the appellant at the spot and his role of catching hold has been conclusively proved.

8. The injured *Vijay Kumar Sharma* was examined as PW-1. He deposed that on intervening night of 13/14.02.2014 at about 1:40/1:45 am, he was watching TV with his wife, when he heard sound of quarrelling and abusing from the street below. He came to the balcony and found 4/5 boys, who were shouting and abusing each other. He asked them to go away, but as the shouting continued, he went down and found *Sunil, Bharat Bhushan* and the present appellant present there. On his intervention, they shouted, “*Tere baap ka ilaqa hai, maaro sale ko iski vakalat nikalo*”. He deposed that the appellant caught him and *Bharat Bhushan* gave fist blows on his face. He fell down and tried to flee away, but then *Sunil* stabbed him on the left side of his abdomen. He then went inside his house and told his wife that he was stabbed by *Sunil* and subsequently, his wife took him to the hospital. In his cross-examination, he admitted that previously also there had been disputes between them, on account of them being neighbours.

9. *Meeta Sharma*, the wife of the injured was examined as PW-2. She deposed that immediately after being injured, her husband told her that he had been stabbed by *Sunil*.

10. The prosecution proved the injuries suffered by the injured through his MLC and subsequent opinion being Ex. A1 and Ex.A2 respectively. As per the subsequent opinion, the nature of injuries has been opined to be grievous caused by a sharp weapon. The knife was seized at the instance of the co-accused *Sunil* and was sent to FSL. Though blood was detected on it,



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however it gave no reaction for the grouping.

11. Insofar as the present appellant is concerned, the testimony of injured has remained unchallenged. The prosecution has been able to conclusively prove the presence of the appellant at the spot, at the time of the incident, as well as his role of catching hold the injured. The only role assigned to the appellant is that of catching hold when *Bharat Bhushan* hit the injured on his face with fist blows. Further, when the injured fell down, he was given blows by all. The injuries caused by knife are solely attributable to *Sunil*. However, at time of causing the knife injury, there is no allegation of the appellant caught hold of the injured. It is also worthwhile to note that there is no material or evidence placed on record to show that there was any pre-mediation to inflict the knife injury or that the appellant had any knowledge that the co-accused was carrying a knife. This fact is further substantiated by the fact that there was no exhortation by the appellant to the co-accused *Sunil*, who inflicted the stab wound. Also, there is no allegation that at the time of stab injuries, the injured was continued to be caught by the appellant.

12. It is noted that appellant's sentence was suspended by the learned Trial Court. Learned counsel for the appellant further states that the fine amount has already been deposited by the appellant with the learned Trial Court.

13. The appellant's nominal roll has been received as per which he has undergone a sentence of six months and seven days as on 04.06.2024.

14. In view of the discussion above, this Court finds no justification in conviction of the appellant under Section 307 read with Section 34 IPC. Accordingly, the conviction of the appellant under Section 307/34 IPC is set aside. However, his conviction is modified to one under Section 323 IPC



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and his sentence is modified to the period already undergone. His bail bonds are cancelled and surety is discharged.

15. The appeal alongwith pending application is disposed of in above terms.

16. Let a copy of this judgment be communicated to the concerned Jail Superintendent as well as to the concerned Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

JULY 4 , 2024/rd