



2024:DHC:10023



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

% Reserved on : 23.10.2024
Pronounced on : 24.12.2024

+ **CRL.A. 542/2011**

SHYAM SUNDERAppellant
Through: Mr. Vinod Yadav, Advocate

Versus

STATE NCT OF DELHI Respondent
Through: Mr. Shoaib Haider, APP for State
with ASI Raghuraj Singh

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 19.04.2011 and order on sentence dated 25.04.2011 passed by learned ASJ, Patiala House Courts, New Delhi arising out of FIR No. 44/2008 registered under Sections 279/186/353/307 IPC at P.S. Sangam Vihar, New Delhi.

Vide the impugned judgement, the appellant was convicted for the offence punishable under Sections 186/353/307 IPC and vide the order on sentence, he was directed to undergo rigorous imprisonment for a period of 5 years for the offence punishable under Section 307 IPC with a fine of Rs 2000/- in default whereof, he was directed to undergo further simple imprisonment for 6 months. For the offence punishable under Section 186 IPC, the appellant was directed to



undergo simple imprisonment for 3 months alongwith fine of Rs.500/- in default whereof, he was directed to further undergo simple imprisonment for 15 days. Lastly for the offence punishable under Section 353 IPC, the appellant was directed to undergo rigorous imprisonment for a period of 1 year with a fine of Rs 500/- in default whereof, he was directed to undergo further simple imprisonment for 1 month. 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 20.01.08 at about 3.30 p.m on receipt of DD no. 19A HC Nathi Lai alongwith Ct. Arun reached at Tuglakabad Shooting Range where Interceptor Operator Ct. Salimuddin met him who disclosed that the driver alongwith car which caused the accident has been stopped by SI Umed at Ratia Marg. They went to Ratia Marg where SI Umed Singh and Ct. Dhanraj alongwith accused Shyam Sunder met them and disclosed that accused has caused injury to Ct. Praveen while on duty with an intention to cause his death and injured has been taken to Trauma Centre, AIIMS Hospital. Ct. Arun was left at the spot to guard accused Shyam Sunder and his vehicle and HC Nathi Lai went to AIIMS Hospital. He collected the MLC of Ct. Praveen Kumar who was declared fit for statement. His statement Ex.PW4/A was recorded in which he has alleged that he is resident of H.No.32E, Police Colony, Model town R, New Delhi and working in Delhi Police in traffic circle Greater Kailash. On 20.01.2008 he alongwith other staff were checking the vehicles with speed interceptor at MB Road near Air Force Station. One red flag was in his hand. At about 3.30 p.m, one TATA Safari of red colour bearing no. HP 06 2420 being driven by its driver in rash and negligent manner came from Badarpur side. He gave him signal to stop by showing red flag. But the driver of Tata Safari hit him with an intention to kill him. He fell on the



2024:DHC:10023



railing of road divider due to which he sustained injury on his both the feet and hands. He can identify the driver if produced before him. The driver of Tata Safari has killed him while on duty with an intention to kill him. The accused was arrested and investigation was done and after completion of investigation, challan has been filed against the accused in the court.”

3. Subsequent to filing of the chargesheet on completion of investigation and based on the material collected during investigation, the accused was charged under Sections 186/353/307/34 IPC, to which, the accused pleaded not guilty and claimed trial.

4. In trial, a total of 15 witnesses were cited by the prosecution to prove its case. The injured/complainant was examined as PW1, PW4. PW6, PW8 and PW9 were fellow interceptors present at the spot with the injured who witnessed the incident. Besides the above, the other witnesses were formal in nature relating to various aspects of investigation.

On the other hand, the accused person, in his statement recorded under Section 313 Cr.P.C. claimed that he was innocent and that he had been falsely implicated in the case.

5. On behalf of the appellant, the impugned judgment has been assailed on the ground that the testimonies of the witnesses do not inspire confidence being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures. It is contended that there is absence of motive, intention, knowledge and preparation which are essential components for an offence to be made out under Section 307. It is further added that the



eye-witnesses cited are fellow police officials and colleagues of the injured, thus being interested witnesses. Learned Counsel further submits that the injured PW4 in his testimony has mentioned that interceptor operator had pointed out the number of the vehicle to be UP-2440, contrary to the actual number of the vehicle i.e. HP 06 2420. In addition, it is stated that the red flag stated to be in the hands of the injured was not made a case property. Lastly, it is submitted that aforesaid case is a simple road accident case and must not come within the ambit of Section 307 IPC in the absence of any intention .

6. Learned APP for the State while opposing the present appeal defended the impugned judgment and emphasized that the appellant was rightly convicted in light of the material that came on record and keeping in mind the testimonies of the persons who were present at the spot along with the injured.

7. I have heard the counsels for the parties and have perused the material which has come on record.

8. A perusal of the record would show that there are five eye-witnesses in the present case being PW1, PW4, PW6, PW8 and PW9. The injured complainant (PW4) in his testimony categorically narrated the sequence of events which occurred on the night of the offence. In the testimony, he stated that while the complainant along with other staff was posted at MB Road on speed checking duty on 20.01.2008, at about 3:40 pm a red coloured Tata Safari (hereafter, the vehicle) was coming at 65 kmph which was above the speed limit. When the complainant gave the red flag signal to the vehicle to stop, the accused did not obey the directions of the complainant and instead the vehicle



2024:DHC:10023



hit him resulting in injuries on his arms and legs. He identified the appellant as the driver of the said vehicle. A suggestion was given to the witness in his cross-examination that the distance was too less for the appellant to stop the vehicle, the same was denied.

9. Ct. *Salimuddin* (PW9) deposed that on the day of the incident, he was on duty as the interceptor operator. The interceptor detected the speed of the vehicle at 65 kmph, which was above the permissible speed limit of 50 kmph. He took a photograph of the vehicle that was exhibited as Ex. PW9/A.

On similar lines are the testimonies of PW1, PW6 and PW8 who consistently deposed to the extent of the appellant driving the vehicle and hitting the complainant even after being shown the red flag. SI *Umed Singh* (PW8) deposed that he along with one Ct. *Dhanraj* chased the vehicle in their official police gypsy, whereafter they apprehended the appellant at *Ratiya Marg*. PW9 too had categorically identified the appellant to be the person driving the vehicle who hit the complainant.

10. Dr Arvind Guru (PW 14) proved the MLC of the injured as Ex. PW14/A. The MLC records following injuries:

1. *Right arm fracture with wound 0.5 x 0.5 cm*
2. *CLW 3cm x 0.5 x 0.5 cm on right leg*
3. *CLW on right thigh (18 cm x 0.2 cm x 0.2 cm)*
4. *CLW on left thigh 2 cm x 3 cm x 3 cm*

The above-noted injuries were opined to be *grievous* in nature.



11. This Court observes that the eye-witnesses in the present case have consistently deposed that the appellant committed the offence and was duly identified. Although a doubt was sought to be raised about the identity of vehicle, however, the same is found to have no merit as the registration number of vehicle had come on record on the day of the incident itself. The vehicle was seized and produced in court. The question which falls for consideration before this court is whether the offence committed comes within the ambit of section 307 IPC.

12. When assessing whether an offence committed falls under the provisions of Section 307 IPC, the intention to commit the offence can be gathered from the nature of injury as well as other attending circumstances like the seat of the injury, the nature of the weapons used and the severity with which the blows were inflicted. The act may not even result in an injury. As such, it is the intention or knowledge with which the act was committed. The ingredients of the section are satisfied if the prosecution is able to prove the intent and for its execution, commission of some overt acts (Ref: State of Maharashtra v Balram Bama Patil reported as (1983) 2 SCC 28). The relevant extract from the said decision reads as under:

“9...To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any



reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.” (Emphasis supplied)”

13. A perusal of the evidence placed on record would show that the incident took place when the appellant did not stop the vehicle despite being signaled to do so. The incident which had taken place was instantaneous and sudden when the injured had moved towards the central verge of the road and tried to stop the incoming vehicle. The appellant's attempt to escape resulted in injuries to the injured. In the facts of the present case, there was no premeditation or planning or intent on part of the appellant to cause such injuries which could have led to death of the injured. As noted above, the nature of injury alone would not be the conclusive proof to deduce the intent or knowledge required in commission of offence and satisfying the ingredients of the charged offence but would also depend on the facts and other material that has come on record.



2024:DHC:10023



14. On analyzing the material and evidence, this Court is of the considered opinion that in the absence of any prior design or preparation, the act of the appellant cannot be stretched to conclude that he had the intention and knowledge to commit the murder of the complainant. At best, the appellant could be attributed the knowledge that his act of hitting the complainant with his vehicle would bring the offence under the ambit of Section 308 IPC.

15. In light of the aforesaid, it is directed that the conviction of the appellant under Sections 186/353/307 IPC be altered and modified to Sections 186/353/308 IPC.

16. At this juncture, this Court also takes note of the fact that the incident in present case pertains to the year 2008. As per the latest Nominal Roll, the appellant has already undergone sentence of about 8 months and his jail conduct during the said period was noted as satisfactory. It is also noted that at the time of conviction, the appellant was 42 years, was married and had four children aged 11 years, 9 years, 7 years and 5 years to look after. He is stated to be the sole bread earner of the family and besides the present case, he has no other criminal involvements.

17. Consequently, in view of the aforementioned mitigating facts and circumstances, this Court finds it appropriate to modify and reduce the sentence of the appellant to the period already undergone. The appeal is disposed of in above terms. The bail bonds are cancelled and sureties stand discharged.

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



2024:DHC:10023



Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 24, 2024

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