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

Date of Decision: 7th April, 2026

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CRL.A. 567/2015

STATE (GOVT OF NCT OF DELHI)

.....Appellant

Through: Mr. Ritesh Kr. Bahri, APP for the State
with Ms. Divya Yadav and Mr. Lalit
Luthra, Advs.

versus

MUKESH & ANR

.....Respondents

Through: Ms. Inderjeet Sidhu (DHCLSC), Ms.
Devyani Singh, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. This is an appeal filed by the State (Govt. of NCT of Delhi) challenging the judgment dated 3rd November, 2014 and the order on sentence dated 22nd November, 2014 passed by the Addl. Sessions Judge, Rohini, Delhi in *Sessions Case No. 28/1* titled '*State v. Mukesh & Anr.*' arising out of *FIR No. 169/09*, registered at PS Mangol Puri, Delhi.
3. *Vide* the impugned judgment dated 3rd November, 2014, the Id. Trial Court had held the two accused persons guilty and had convicted them for the offence u/s 326/34, IPC.
4. Further, vide order on sentence dated 22nd November, 2014, benefit of probation was given to both accused persons and a sum of Rs. 2,500/- each was directed to be paid as compensation to the injured person/victim– Rafiq.



5. It is against the said judgment on conviction dated 3rd November, 2014 and the order on sentence dated 22nd November, 2014, that the State has filed the present Appeal. The State, vide this appeal has sought for setting aside or modification of the impugned judgment and order to the effect that the Respondents be convicted under Section 307/34, IPC and their sentence be accordingly enhanced as well.

6. The background giving rise to this case is that an incident took place on 27th May, 2009, when both the Respondents, i.e. Mukesh s/o Ramji Lal (*hereinafter*, 'Mukesh-I') and Mukesh s/o Mr. Babu Sahab (*hereinafter*, 'Mukesh-II') had caused an injury to one Rafiq (*hereinafter*, 'the injured person').

7. The said incident took place when the injured person– PW/6 and his brother-in-law– Mohd. Rustam, *i.e.* PW/5 were going to Mangol Puri by bus. Upon alighting from the bus and while walking towards the Katran market in Mangol Puri, a verbal spat took place between both the accused persons on one side, and the injured person, as also PW/5 on the other side.

8. In the course of that verbal spat, Mukesh-II caused a knife injury to Rafiq (PW/6) in the abdomen. Due to the said injury, he remained hospitalized for about five days.

9. Upon the PCR van being called, DD No.22A was recorded at PS Mangol Puri and on the statements of PW/5– Rustam, who was present on the spot at the time of the incident, **FIR No. 169/09** was registered and further investigation was then conducted.

10. Chargesheet was filed on 18th August, 2011 and the case was then committed to the Sessions Court on 8th December, 2011. Charges were framed u/s 307/34, IPC against both the Respondents, *i.e.* Mukesh-I & Mukesh-II *vide*



order on charge dated 10th October, 2012 and the matter proceeded to trial.

11. Before the Id. Trial Court, 19 witnesses were examined on behalf of the prosecution. The Id. Trial Court, after analysing the evidence and considering the matter, came to the conclusion that there was no grave and sudden provocation and the weapon used was dangerous, however, no case was made out under Section 307, IPC.

12. Hence, *vide* the impugned judgment dated 3rd November, 2014, both the Respondents/accused persons were convicted for offences under Section 326/34, IPC, in the following terms:

“Both the accused in their statements have claimed that they are innocent and have been falsely implicated in this case. The incident had taken place, when the accused persons struck against Rafiq, on which, he asked them to be careful and suddenly, accused Mukesh, son of Ramji Lal caught hold Rafiq and accused Mukesh, son of Babu Sahab gave a knife blow in the abdomen of Rafiq. Accused persons were apprehended at the spot and they were handed over to the police by the public persons. Except about the recovery of knife, sealing and seizing of the same by the police, all the witnesses have corroborated each other regarding the incident and apprehension of accused persons nearby the spot.

There are contradictions about the recovery of knife as nurse Gargi has not supported the case of the prosecution to the extent that knife was handed over by the PCR officials to her, but even if it is assumed that knife was not recovered from the possession of accused persons, the injury caused is opined as dangerous and the same is incised wound caused with a sharp object. Injured Rafiq has deposed that he was stabbed with knife by accused Mukesh, son of Babu Sahab. According to FSL report Ex. PW9/A, blood could not be deducted on the knife, whereas according to subsequent opinion



Ex. PW17/D, the sharp edged cut mark could be possible by the knife produced before the doctor concerned and the injury mentioned in the MLC was possible by the said knife. So, the contentions of learned defence counsel are not much forceful.

No grave and sudden provocation had caused by Rafiq to the accused for causing injury to him and at the same time, accused persons had caused injuries at the moment, when hot words were exchanged in between Rafiq and both the accused persons, so, there could not be any intention or knowledge on the part of both the accused persons to cause death of Rafiq, for, which, they could be guilty of murder, rather both the accused in furtherance of their common intention at the spur of moment voluntarily caused grievous injuries with a deadly weapon i.e. knife, so, instead of offence u/s. 307/34 of IPC, both the accused are held guilty and convicted for the offence u/s. 326/34 of IPC, which prosecution has been able to prove beyond reasonable doubts.”

13. *Vide* order on sentence passed on 22nd November, 2014 the Id. Trial Court recorded that Mukesh-II was about 22 years of age on the said date, his parents had medical problems. It was also recorded that he had been facing trial since 2009 and was in custody in this case from 26th May, 2011 to 7th June, 2011 and then from 3rd May, 2014, till the date of order on sentence. It was further recorded that he had no other criminal antecedents.

14. With respect to the other accused person, *i.e.* Mukesh-I, it was recorded in the order on sentence that he was also about 23 years of age on the said date and had aged mother and sisters to support. He too had been facing trial since 2009 and was not a previous convict or habitual offender, thus having clean antecedents. It was also recorded that he had been in custody in this case from



3rd November, 2014 till the date of order on sentence.

15. After making the said observations, the Id. Trial Court had passed the impugned order on sentence, giving the benefit of probation to both the accused persons on the basis of the report of the probation officer in the following terms:-

“Report of Probation Officer has been called of both the convicts.

Considering the history of the convicts, their occupation and earnings, economic conditions of the family and the environment in which they are living being their first offence, in which, they have been convicted, benefit of probation is given to both the convicts on furnishing a personal bond of Rs. 10,000/- with one surety in the like amount for a period of three years. In case of default, each convict shall produce himself before the Court for acceptance of sentence. During the period of probation, both the convicts shall maintain peace and be of good behaviour.

Bond furnished and accepted for three years.”

16. The Court also considered the compensation to be payable to the injured person and awarded Rs. 2,500/- each to be paid by both the Respondents to the injured person– Rafiq. Further compensation was also directed to be considered by the DSLSA under the Victim Compensation Scheme.

17. Today, the State is in appeal against the judgement on conviction dated 3rd November, 2014 and the order on sentence dated 22nd November, 2014.

18. It is submitted that Mukesh-I has passed away during the pendency of this appeal.

19. The submission of Mr. Bahri, Id. APP is that the weapon used by the Respondents/accused persons in this case, to cause injury to the injured person



was a deadly weapon and the intention was clear from the fact that they, in fact, carried a deadly weapon and caused injury on a vital part of the body.

20. It is urged vehemently by Mr. Bahri, Id. APP that both the Respondents/accused persons were having a common intention to cause injury that was likely to cause death and thus, the conviction under Section 307 r/w Section 34, IPC, ought to have been handed out by the Id. Trial Court.

21. Further, Mr. Bahri, Id. APP also disputes the benefit of probation given to both the Respondents. He submits that considering the nature of the weapon used and the nature of the injury caused, such benefit of probation should not have been meted out to the Respondents.

22. Mr. Bahri, Id. APP also highlights the fact that Mukesh-II was also involved in four to five other cases and has also remained in custody from 26th May, 2011 to 7th June, 2011 and from 3rd November, 2014 till 22nd November, 2014. Thus, considering the criminal record of Mukesh-II, the sentence awarded to him should have been more stringent.

23. On behalf of the Respondents, Ms Sidhu, Id. Counsel submits that the appeal against Respondent no.1 stands abated since he passed away during the pendency of the appeal.

24. Insofar as Respondent no.2– Mukesh-II is concerned, it is submitted that he was very young at the time when the incident took place. She further submits that the present appeal itself has a technical defect, as the appeal challenging the order on sentence ought to have been filed separately.

25. Ms Sidhu, Id. Counsel also submits that the nature of the incident would show that the stabbing happened in the spur of the moment and there was no previous intentions or premeditation on part of the Respondents/accused persons.



26. The court has heard the Id. Counsel for the parties. Since Respondent no.1 has already passed away, the appeal against Respondent no.1 stands abated.

27. Further, the Court has perused the impugned judgment on conviction & and the order on sentence, as also the evidence of the witnesses examined before the Id. Trial Court. The evidence of the injured person– PW/6 has also been perused. Relevant portion of the said evidence reads as under:

“On 27/05/09, I was living with my brother in law Mohd Rustam (sala) in a tenanted house no. H-296, Sagarpur Delhi. I used to work as sticker cutter. On that day, I alongwith my sala Rustam was going at P block Mangolpuri by bus to meet one Girish bhai and after coming down from bus at mangolpuri bus stand of B block, we both were going to P block, while going through Katran market, at about 3.00 pm, when we reached at Q block school, near Kudadan. My brother in law Rustam was behind me at a distance of 8-10 steps and I was going ahead of him.

At that time, both the accused persons, who are present in the court today (correctly identified) came from the front side and one of them stuck against me, I objected the same and asked him to walk carefully. In the meanwhile, one of the boy caught hold me while abusing and the other boy hit me with knife on my right side abdomen.

We raised alarm and on this, both the accused persons started running towards Q block. On hearing our noise, public persons, apprehended both the accused persons at some distance and both were beaten by the public persons. The knife was also snatched from accused, who had me with the knife.”

28. A perusal of the above testimony of PW/6 Rafiq, who was the injured person himself shows that when they were walking in the market, the accused



persons and the injured person had collided against each other, at which point a verbal spat appears to have occurred.

29. In the opinion of this Court, the knife was used by the accused persons in the spur of the moment, as the parties did not even know each other from before. Thus, there could not have been any pre-meditation or common intention to injure Rafiq.

30. Thus, the submission on behalf of the Appellant by Mr. Bahri, Id. APP, that since the weapon was deadly in nature, the Respondents should have been convicted under Section 307, IPC, would not be correct.

31. In as much as Section 307, IPC is concerned, there is a pre-condition that there has to be intention or knowledge that death could have been caused and the same would then constitute an attempt to murder.

32. In the present case, there was no such intention or knowledge on part of the Respondents, as none of the parties even knew each other prior to the incident and while walking in the market, one person collided against the other which led to the incident.

33. Further, a perusal of Section 326, read with Section 320, IPC, would also show that Section 326, IPC would be attracted whenever grievous hurt is caused by a dangerous weapon. Section 320 defines what grievous hurt means and the same reads as under:

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.



*Sixthly.—Permanent disfiguration of the head or face.
Seventhly.—Fracture or dislocation of a bone or tooth.
Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”*

34. Further, Section 326, IPC provides for punishment for voluntarily causing grievous hurt, and the same reads as under:

“326. Voluntarily causing grievous hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

35. The present case, in the opinion of this Court, could be covered by the 8th illustration under Section 320, IPC and therefore, the sentence awarded by the Id. Trial Court u/s 326/34, IPC is reasonable.

36. The Id. Trial Court has taken into consideration the various relevant facts, including the lack of knowledge, lack of any intention, the incident occurring in the spur of the moment, the age of the accused persons and has then passed the impugned judgment on conviction and order on sentence.

37. Further, the present appeal has been filed by the State challenging the judgment dated 3rd November, 2014, u/s 378, Cr.P.C. and challenge to the order on sentence dated 22nd November, 2014 has not been separately made by the State under Section 377, Cr.P.C. Hence, the Court is not interfering



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with the quantum of the sentence or the benefit of probation awarded to the Respondents by the 1d. Trial Court *vide* the order on sentence dated 22nd November, 2014.

38. Thus, in the opinion of this Court, the said judgment dated 3rd November, 2014 and the order on sentence dated 22nd November, 2014 deserves to be confirmed and does not warrant any interference by this Court.

39. The present appeal is accordingly dismissed.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

APRIL 7, 2026/prg/ss