

Jagjit Singh and anr Vs. State

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Court : Delhi

Decided On : Aug-29-2013

Judge : Veena Birbal

Appellant : Jagjit Singh and anr

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision: August 29, 2013 CRL.A. 650/1999 JAGJIT SINGH & ANR Appellants Through: Mr.Anand Maheshwari with Mr.Navin Gupta, Adv. with appellants in person. versus STATE Respondent Through: Mr.Yogesh Verma, APP CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

(Oral) 1. By way of present appeal, a challenge has been made to the judgment dated 27.10.1999 and order of sentence dated 11.11.1999, both passed by the learned Additional Sessions Judge in case SC No.44/98 arising out of FIR no.237/97, P.S. Tilak Nagar under section 307/34 IPC whereby the learned Additional Sessions Judge has held the appellants, i.e. accused persons namely, Jagjeet Singh @ Happy and Surjeet Singh guilty for the offence punishable under section 307/34 IPC and sentenced them to undergo RI for one year and to pay a fine of Rs.1000/- each and in default of payment to undergo RI for 3 months. Benefit u/s 482 Cr.P.C has been given to the appellants/accused persons.

2. The prosecution case is based on the statement Ex.PW3/A made by the complainant Rajesh Kumar, PW-7 to the police wherein it is alleged that on 29th March, 1997, he was present along with Jamal, PW-8 i.e. the injured at shop no.72, Sham Nagar, Aashish Tent House, where they both were working as labourers. Near their shop there was shop of G.S. Refrigeration where repair work of ACs of buses was being done. At about 9 PM Surjeet Singh @ Bholu brought a bus and had parked the same in front of their shop. Jamal, PW8, told Surjeet Singh @ Bholu not to park the bus there. Accused refused to do so. Thereupon, Surjeet Singh @ Bholu brought a danda and his servant i.e. appellant Jagjit Singh @ Happy brought some sharp object like patti and Surjeet Singh @ Bholu told that they would teach a lesson to Jamal PW8. Thereupon they started quarreling with him. Surjeet Singh @ Bholu had caught hold of Jamal PW8 and Jagjit Singh @ Happy had hit patti on the head and shoulder of Jamal PW8 as a result of which blood started coming out from his head and thereafter both of them ran away from there.

3. The aforesaid statement Ex.PW3/A was recorded by SI Surinder Singh, PW9 who had reached the hospital after receiving a copy of DD No.48B about admission of one injured in the DDU hospital. He had obtained MLC Ex.PW1/A of injured Jamal PW8 wherein Doctor had declared him unfit for statement. Rajesh Kumar PW-7, met him there who claimed himself to be the eye witness to the alleged occurrence and made the aforesaid statement. SI Surinder Singh PW9 prepared rukka Ex.PW9/A and gave it to Constable Yatinder PW3 who had accompanied him to hospital and sent the same to police station for registration of FIR Ex.PW3/B. Thereupon, SI Surinder Singh PW9 came with complainant Rajesh PW-7 to the place of incident and prepared the site plan Ex.PW9/B. He made search for accused persons but they could not be traced. During the course of investigation he had seized the clothes of injured i.e. pant and underwear vide memo Ex.P-2 and Ex.P-3, respectively after doing necessary formalities in this regard. On 07.4.1997 on the pointing out of Jamal PW8, the accused Surjeet Singh @ Bholu was arrested. On that very day on the pointing out of injured PW-8, Jagjit Singh @ Happy was also arrested who on interrogation he had made a disclosure statement Ex.PW4/B and got recovered patti of fan lying under the table of his shop i.e. G-69, Sham Nagar, Delhi. After completion of formalities and

investigation, a challan was filed before the court of Ld. M.M. After supplying the documents to accused persons, the case was committed to the court of Sessions. A charge under Section 307/34 IPC was framed against them by the learned Addl. Sessions Judge to which the accused persons pleaded not guilty and claimed trial.

4. To prove its case, prosecution in all had examined 9 witnesses, out of which Jamal PW-8 is the injured and Rajesh Kumar PW-7 is complainant/eye witness to the alleged occurrence. The remaining testimony relates to the police officials and medical evidence.

5. After prosecution closed its evidence, the incriminating evidence was put to the accused persons and their statement under section 313 Cr.P.C. was recorded wherein they had denied the same and stated that they were innocent persons and were falsely implicated. In defence, the accused persons had produced two witnesses i.e. Charanjeet Singh DW1 and V Bachitter Singh DW2.

6. After hearing arguments of both the sides, the learned Additional Sessions Judge held that there was sufficient evidence on record to prove the role assigned to the accused persons and held them guilty of having committed the offence under Section 307/34 IPC and imposed the sentence as is stated above vide order of sentence dated 11.11.1999.

7. Aggrieved with the aforesaid judgment of conviction and order of sentence, present appeal is filed.

8. Learned counsel for the appellant has contended that the appellants are not denying the alleged occurrence. It is submitted that the trial court has convicted them under Section 307 IPC but the evidence on record does not establish the ingredients of offence punishable under Section 307 IPC and at the most the appellants can be convicted under Section 324/34 IPC. It is submitted that the alleged occurrence is of 1997 and one of the accused that is appellant Jagjit Singh was of 21 years of age at the time of occurrence and he had remained in jail for 2 months. It is submitted that they have also faced the trial including the present proceedings for the last 14 years and they be given benefit of probation under Section 360 Cr.P.C. It is submitted that appellants are not involved in any other

case.

9. On the other hand, learned APP has argued that the evidence on record clearly establishes the case under Section 307 IPC is made out against the appellant. It is contended that even the testimony of injured Jamal PW-8 and eye witness Rajesh PW-7 find support from the MLC Ex.PW1/A of Jamal PW8. It is contended that reading the entire evidence on record, the appellants have been rightly convicted by the learned Additional Sessions Judge under Section 307/34 IPC. It is further contended that considering the role played by the accused persons, they do not deserve benefit of probation.

10. I have heard learned counsel for the parties and perused the material on record.

11. In the present case there are two witnesses to the occurrence i.e. injured Jamal PW8 and the other eye-witness is Rajesh Kumar PW7. The injured PW-8 has deposed that on the day of occurrence i.e. on 29.3.1997 he was working at Aashish Tent House, Shyam Nagar, Shop No.72 along with his friend Rajesh PW7. At about 9 PM a bus was stopped in front of their shop there. The said bus was brought by the accused Surjit. When he objected to the same, Surjit took out a danda having some patti. Again said that one of the accused was having danda and accused Jagjit @ Happy was having patti of fan. Accused Surjit had caught hold of him and accused Jagjit Singh @ Happy assaulted him with a fan blade on his head and shoulder. Thereafter, both the accused ran away from the spot. He has further deposed that Rajesh PW7 took him to the hospital where he was medically examined. The accused Jagjit Singh was arrested on 07.4.97 who also made a disclosure statement Ex.PW4/B. Jamal PW8 has proved his signatures on the aforesaid disclosure statement of Jagjit Singh. He has further deposed that in his presence accused Jagjit Singh had produced Patti which was seized vide recovery memo Ex.PW2/A. He identified the Patti as Ex.P1 which was produced during the course of evidence in the court by taking out from a sealed pulanda. Jamal PW8 has also identified his clothes i.e. Ex.P2 and P3 which he was wearing at the time of murder. The above witness was cross-examined at length by the Id. counsel for the accused persons but his evidence on material points was not

shaken in crossexamination. He has denied the suggestion that on the day of occurrence he had quarreled after taking liquor with Rajesh PW7 and accused Jagjit had separated them. He has denied that he had fallen on a sharp object and sustained injuries of his own.

12. The other eye-witness is Rajesh Kumar PW-7 who has also deposed that on the day of occurrence he was working as labourer in Sham Nagar along with Jamal PW8. At about 9 PM one bus was parked in front of their shop. Jamal PW8 had asked the accused Surjit Singh @ Bholu to remove the bus from there. Thereupon, quarrel had taken place. Thereafter, Surjit Singh @ Bholu brought danda and Jagjit Singh @ Happy brought sharp patti and assaulted Jamal PW8 with sharp patti on his shoulder and one blow was given with that patti on the head of Jamal PW8. On seeing blood coming from person of Jamal PW8, they ran away from the spot. He has deposed having given statement Ex.PW3/A to the police on the basis of which FIR Ex.PW3/B was recorded. He was treated hostile on the point that he did not support the case of the prosecution as regards preparation of site plan Ex.PW9/B at his instance. On being cross-examined by State, he stated that the site plan was not prepared in his presence. As regards material deposition about the occurrence, his evidence is in consonance with the evidence of Jamal PW8. There are also no material contradictions in his statement made to the police Ex.PW3/A as compared to his evidence recorded before the court. He has also fully supported the case of prosecution as regards role played by accused persons. His testimony on material points is not demolished in cross-examination. He has denied that any quarrel had taken place between him and Jamal. Even if the aforesaid has not supported the case of prosecution as regards the preparation of site plan Ex.PW3/B at his instance, the same does not demolish the entire testimony of Rajesh PW7.

13. The evidence of aforesaid witnesses also finds support from the MLC Ex.PW1/9 of Jamal PW8 which shows that he was brought to DDU hospital on 29.3.97 and as per MLC Ex.PW1/9 there are 2 CLWs of 1.5 cm each, one on the left side of the occipital region and the other is on the shoulder. The MLC Ex.PW1/9 is proved on record by Dr.J.P. Singh (PW1), Incharge CMO, DDU Hospital. The FIR Ex.PW3/B stands proved on record by Constable Jatinder PW3

who has deposed that he took rukka to police station on 29.3.97 and got registered formal FIR Ex.PW3/B.

14. The evidence of injured Jamal PW8 and that of eye witness Rajesh Kumar PW7 coupled with medical evidence on record clearly proves that the accused persons have caused injuries on Jamal PW8 on the date and time mentioned in the FIR Ex.PW3/B.

15. The question for consideration is whether the accused persons have been rightly convicted under Section 307/34 IPC. It may be noticed that as per evidence of Jamal PW8, accused Jagjit Singh @ Happy had assaulted him with fan blade on head and shoulder i.e. one blow at the head and other at shoulder. As per MLC Ex.PW1/A injuries have been opined as simple. The x-ray of skull of Jamal PW8 was also conducted vide Ex.PW2/A by Dr. A. Bhasin, Radiologist, DDU Hospital. As per said report, there is no bony injury on Jamal PW8.

16. The Supreme Court in Hari Singh v. Sukhbir Singh and Others; (1988) 4 SCC 55.has discussed as what the court has to see in order to bring a case under Section 307 IPC. The relevant portion of the judgment is as under:-

7. Under Section 307 IPC 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 that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of attempt to murder. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

17. In the present case, injured Jamal PW8 was discharged from the hospital on the same day. The evidence on record shows that the incident had occurred all of a sudden on the issue of parking of bus. There were no repeated assaults given

by accused Jagjit Singh @ Happy by patti to Jamal PW8. The nature of injury has been opined as simple with sharp object. There was no obstruction for the accused persons in giving repeated assaults with patti to Jamal PW8. The depth of injury is also not stated in the MLC Ex.PW1/A. The evidence on record establishes there was no intention to commit murder. The accused persons had no motive either. The injury sustained, the manner of assault and the weapon used does not make out a case under Section 307 IPC. In these circumstances, the conviction the appellants cannot be convicted under Section 307/34 IPC as has been held by Id.ASJ.

Considering the evidence on record their conviction is converted to 324/34 IPC.

18. On the point of sentence, it may be noted that presently accused Jagjit Singh @ Happy is 35 years of age and Surjit Singh is 50 years of age. At the time of occurrence Jagjit Singh @ Happy was 21 years of age. Both are married and have children. They have faced agony of litigation for about 16 years. No previous conviction has been proved against the accused persons, as such benefit u/s 360 Cr.P.C. can be given to them.

19. Considering the age, character & antecedents of the appellants and the circumstances in which offence was committed, it would be expedient to release them on probation of good conduct. Accordingly, it is directed that sentenced imposed upon them be not given effect to and the appellants be released on probation of good conduct for a period of one year on their entering into a bond of Rs.10000/- each with one surety of the like amount to appear and receive the sentence as and when called upon during such period and in the meantime, the appellants shall keep peace and be of good behaviour. The requisite bonds shall be furnished by the appellants before the concerned trial court within a period of six weeks. In case of noncompliance, sentence imposed by learned ASJ shall remain in force.

20. The appeal stands disposed of in the above terms. No costs. VEENA BIRBAL,
J AUGUST 29 2013 srb