

Mool Chand @ Chilli and ors. Vs. State

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Court : Delhi

Decided On : Jan-10-2014

Judge : S. P. Garg

Appellant : Mool Chand @ Chilli and ors.

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : December 12, 2013 DECIDED ON : January 10, 2014 + Crl.A.No.420/2000 & Crl.M.A.No.5951/2013 MOOL CHAND @ CHILLI & ORS. Appellants Through : Mr.Sunil Tiwari, Advocate. VERSUS STATE Through : Respondent Mr.Lovkesh Sawhney, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Mool Chand @ Chilli (A-1), Badari Nath (A-2), Shankar (A-3), Amar Singh @ Amaroo (A-4) and Shiv Om (A-5) were arrested by the police of PS Rajouri Garden in case FIR No.631/1995 for committing offences under Section 307/34 IPC and sent for trial on the allegations that on 20.08.1995 at about 11.40 A.M. at DDA park, E-Block, near public latrine, Rajouri Garden they, in furtherance of common intention inflicted injury to Rakesh in an attempt to murder him. During the course of investigation, the accused persons were arrested and crime weapons were recovered at their instance. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against all of them and they were duly charged and brought to trial. The

prosecution examined 7 witnesses to prove their guilt. In 313 statements, the accused persons denied their involvement in the crime and pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment held all of them perpetrators of the crime under Section 324/34 IPC. It is relevant to note that the State did not challenge the judgment. It is further relevant to note that during appeal A-1 and A-5 expired and the appeal stood abated qua them.

2. During the course of arguments, appellants counsel, on instructions, stated at Bar that the appellants have opted not to challenge their conviction under Section 324/34 IPC. He prayed to take lenient view as the appellants are not previous convicts and have suffered agony of trial for more than 18 years. Learned Additional Public Prosecutor has no objection to consider the mitigating circumstances.

3. Since the contesting appellants have given up challenge to conviction recorded under Section 324/34 IPC in the presence of overwhelming evidence, their conviction stands affirmed.

4. So far as A-2 and A-4 are concerned, considering their mitigating circumstances, they deserve to be released on probation. As per nominal roll dated 06.02.2013, A-2 was 18 years of age on the day of occurrence. He remained in custody for three days at the initial stage of investigation. He is not involved in any criminal case and has clean antecedents. It is stated that he is to take care of his three children namely Mansa aged 8 years, Varun aged 12 years and Tarun aged 10 years. His elder brother and father have expired. Similarly A-4s nominal roll dated 06.02.2013 reveals that he remained incarcerated for 22 days during trial. He has clean antecedents and is not involved in any other criminal case. His overall jail conduct was satisfactory. It is stated that he has three daughters namely Shivani, Teena, Gungun and one son aged one and a half year to take care of them. Considering their mitigating circumstances, A-2 and A-4 are ordered to be released on probation of good conduct for a period of two years on their furnishing personal bond in the sum of ` 10,000/- each with one surety each in the like amount to the satisfaction of the Trial Court with the direction to appear

and receive sentence whenever called upon during the aforesaid period and in the meantime to keep peace and be of good behaviour. The A-2 and A-4 shall pay compensation @ `25,000/-, each and shall deposit the amount within fifteen days before the Trial Court. The amount of compensation i.e. `50,000/- shall be released to the complainant-Rakesh Kumar. If he is untraceable, the amount will be disbursed to his legal heirs. In case of non-availability of the victim or his legal heirs, the Trial Court will be at liberty to refund/return the compensation amount of `50,000/- to A-2 and A-4.

5. So far A-3 is concerned, he deserves no leniency as he was the main perpetrator of the crime and had inflicted repeated stab blows with knife (Ex.P-1) on the vital organ of the victim. The motive assigned to A-3 to inflict injury was that he was defeated by the victim in a wrestling match a few days prior to the occurrence and nurtured grievance against him for that defeat. The charges against the appellants were for committing offence under Section 307 IPC. However, the prosecution was unable to examine the doctor who opined the nature of injuries as dangerous. For that reason, the nature of injuries were considered as simple and the appellants were convicted under Section 324/34 IPC. The victim remained in hospital for about 16 days. Knife (Ex.P-1) was recovered pursuant to A-3s disclosure statement. At the same time, considering all mitigating circumstances whereby he is to maintain his two children Varsha aged six years and son Tinku Nath aged 14 years; the fact that his elder brother and father have expired and he is suffering from some ailment, the sentence period is reduced to one year. Other terms and conditions of the sentence order are left undisturbed. A-3 shall surrender before the Trial Court on 17th January, 2014 to serve the remaining period of his substantive sentence.

6. The appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. (S.P.GARG) JUDGE January 10, 2014 sa