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Nisar Vs. State

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Court : Delhi

Decided On : Jan-31-2014

Judge : S. P. Garg

Appellant : Nisar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

31. t January, 2014 + CRL.A. 255/2012 NISAR ..... Appellant Through : Mohd.Shamikh, Advocate. versus STATE + ... Respondent Through : Mr.M.N.Dudeja, APP for the State. CRL.A. 256/2012 FIROZ ..... Appellant Through : Mohd.Shamikh, Advocate. versus STATE + ... Respondent Through : Mr.M.N.Dudeja, APP for the State. CRL.A. 1061/2012 WAHID ..... Appellant Through : Mohd.Shamikh, Advocate. versus STATE ..... Respondent Through : Mr.M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. The appellants Nisar (A-1), Firoz (A-2) and Wahid (A-3) impugn a judgment dated 29.11.2011 of learned Addl. Sessions Judge in Sessions Case No.73/2010 arising out of FIR No.263/08 registered at Police Station Mayur Vihar by which they were convicted for committing offences punishable under Section 452/307/34 IPC. By an order on sentence dated 14.12.2011, they were awarded

rigorous imprisonment for three years with fine `500/- each under Section 452/34 IPC; and rigorous imprisonment for five years with fine `1000/- each under Section 307 IPC. Both the sentences were to run concurrently.

2. Briefly stating the facts of the case are that on 15.08.2008 at about 08.30 P.M. a quarrel took place between the appellants and the complainant-Taj Khan and the appellants inflicted injuries in furtherance of common intention to him (Taj Khan) by a knife on his neck in an attempt to murder him. Abdul Sattar Khan (PW-3) went to the spot on hearing the commotion and was also given beatings. Both were taken to Lal Bahadur Shastri hospital for medical examination. After recording Taj Khans statement (Ex.PW-2/A), the Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. The trial resulted in the conviction of the appellants as aforesaid.

3. Appellants counsel on instructions fairly stated at Bar that the injuries inflicted to the complainant by the appellants were not disputed. He confined his argument to the extent that the offence under Section 307 IPC was not attracted or proved. Learned Additional Public Prosecutor was also of the view that considering the peculiar circumstances, there was no cogent evidence to infer commission of offence under Section 307 IPC. It has come on record that the complainant and the appellants were known to each other and lived in the locality as neighbours. It is an admitted position that no quarrel had taken place earlier with the complainant and there was no history of hostile relations. The occurrence on 15.08.2008 was sudden and unexpected. Initial confrontation took place when A-3 under the influence of liquor abused the complainant without any rhyme or reason. The complainant objected to the abuses and went to his house. Soon after that, A-3 accompanied by his relatives Nisar (A-1), Firoz (A-2) went to his house and A-2 who was armed with a churi inflicted injuries on the complainants neck. No life-threatening repeated blows with the churi were caused to the complainant. None of the appellants caused any harm to the other family members of the complainant who had arrived at the spot. The role attributed to A-1 and A-3 is of catching hold of the complainant. When Taj Khan was taken to Lal Bahadur Shastri hospital, he was conscious and oriented and was not even admitted for treatment. He participated in the proceedings conducted by the police on the said day. The

nature of injuries were opined as simple caused by sharp weapon. The incised wound found on the neck was muscle deep. The appellants had no criminal background and were not involved in any such criminal activities. The complainant did not assign any specific motive to any of the assailants to pick up the quarrel and to inflict injuries. It appears that due to previous altercation between the complainant and A-3, when he was allegedly under the influence of liquor, A-1 and A-2 went to the complainant to settle score. The complainant did not disclose as to what had forced or prompted A-3 at first instance to hurl abuses at him. The crime weapon could not be recovered to ascertain its size or dimensions. PW-2 and PW-3 did not describe the dimension of the weapon used. From these circumstances, it cannot be inferred that the injury was caused with the avowed object or intention to cause death. It was a simple case of quarrel/altercation in which the appellants in furtherance of their common intention voluntarily cause hurt, simple in nature by a sharp object and the offence falls within the ambit of Section 324 IPC. The conviction is accordingly altered from Section 307 to Section 324 IPC.

4. A-3s nominal roll dated 09.04.2013 reveals that he has suffered custody in this case for one year, eleven months and two days besides earning remission for five months and fourteen days as on 13.04.2013. He was enlarged on bail by an order dated 18.04.2013. He has clean antecedents and is not involved in any criminal case. A-2s nominal roll dated 09.04.2013 reveals that he has suffered incarceration one year, five months and twenty six days besides earning remission for five months and fourteen days as on 13.04.2013. He was also enlarged on bail by the same order. He was also not a previous convict and has no criminal case registered against him. A-1s nominal roll dated 09.04.2013 reveals that he has suffered incarceration one year, four months and twenty five days besides earning remission for five months and fourteen days as on 13.04.2013. He was also not having any criminal background and his overall jail conduct was satisfactory. The appellants have offered to pay a reasonable compensation to the complainant for the injuries sustained by him. Considering these mitigating circumstances, the period already undergone by the appellants in custody in this case is taken as their substantive sentence. The appellants shall, however, pay `50,000/as compensation to the complainant and shall deposit it within thirty days in the trial court. The amount shall be released to the complainant after notice.

5. The appeals stand disposed of in the above terms. A copy of the order be sent to Superintendent Jail for information. Trial Court record be sent back immediately. Bail bonds and surety bonds stand discharged. (S.P.GARG) JUDGE JANUARY31 2014 sa

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