

**Faisal Vs. State**

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**Court :** Delhi

**Decided On :** Feb-24-2014

**Judge :** S. P. Garg

**Appellant :** Faisal

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

14. h FEBRUARY, 2014 DECIDED ON :

24. h FEBRUARY, 2014 + CRL.A. 1225/2012 FAISAL ..... Appellant Through : Mr.Sunil Kapoor, Advocate. VERSUS STATE ..... Respondent Through : Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Faisal (the appellant), Mohd. Abid @ Kadir and Atif were arrested by the police of PS Seelampur in case FIR No.474/2008 and sent for trial alleging that on 23.11.2008 at about 09.30 P.M. at shop No.C47/6, gali No.11, Matkewali Gali, Chauhan Bangar, Delhi, they in furtherance of common intention inflicted injuries to Rahisuddin by firing at him in an attempt to murder him. Atif faced trial before Juvenile Justice Board. Mohd.Abid @ Kadir expired during trial and proceedings against him were dropped as abated. The Investigating Officer lodged First Information Report after recording Waheeds statement (Ex.PW-6/A). MLC of the victim was collected and the injuries were opined as grievous. After completion of

investigation, a charge-sheet was filed and the prosecution examined twelve witnesses. The trial resulted in conviction of the appellant for committing offence under Section 307 IPC and by an order on sentence dated 30.08.2012, he was awarded RI for three years with fine ` 5,000/-. Being aggrieved and dissatisfied, he has preferred the appeal.

2. I have heard the learned counsel for the parties and have examined the file. The occurrence took place at around 09.30 P.M. Daily Diary (DD) No.24A (Ex.PW-9/A) was recorded soon thereafter at PS Seelampur on getting information from PCR about an individual to have been fired at. The police machinery came into motion; the Investigating Officer went to the spot with Const. Bitu Singh and came to know that the injured had already been taken to GTB hospital. The Investigating Officer recorded statement of Waheed (Ex. PW-6/A) who claimed to have witnessed the occurrence. He implicated the accused persons for inflicting injuries to his brother Rahisuddin. He also gave vivid description as to how and under what circumstances, the occurrence took place when his brother Rahisuddin demanded payment from the accused persons for the food consumed by them. Since the First Information Report was lodged in promptitude without any delay and specific role was attributed to each of the assailants, there was least possibility of the complainant to fabricate a false story. In his Court statement as PW-6 (Waheed) did not deviate from the earlier version given to the police in the statement (Ex.PW-6/A) and proved it in its entirety. He deposed that on 23.11.2008, he and his brother Rahisuddin were present in the hotel. All the three accused persons came to take dinner. When they demanded payment for the dinner, the accused persons challenged them as to how they had dared to demand money from them. They left without making payment extending threats to his brother. After 5 or 7 minutes, they all came back to the hotel and started abusing while standing outside. When his brother objected, Abid and Faisal (the appellant) exhorted Atif to take out pistol and fire at him. Atif took out a katta and fired at his brother on abdomen and they fled the spot. He took his brother to GTB hospital where his statement (Ex.PW-6/A) was recorded. In the cross-examination, he stated that his statement was recorded only once in the police station on the same night. He explained that one Shehnawaz had also accompanied them to hospital when the victim was taken on the motorcycle. He was not aware as to who had informed the

police about the incident. He admitted that there were many employees and customers present in the hotel at the time of occurrence. He further admitted that there was no previous dispute between the victim and the accused persons or their family members. He denied the suggestion that somebody else had inflicted injury to Rahisuddin and the accused persons were falsely implicated due to a previous altercation with the victim over sharing of commission. Apparently, no ulterior motive was assigned to the victim to falsely implicate the accused persons with whom there was no prior animosity. Material facts deposed by the witness remained unchallenged in cross-examination. PW-3 (Rahisuddin), the victim, has fully corroborated the version given by his brother and has implicated all the accused persons for inflicting injuries to him. He also assigned specific motive to the accused persons to cause injuries as he had demanded payment for the dinner taken by them in the hotel. He specifically deposed that after about five minutes at about 09.30 P.M. the accused persons came back to the hotel. Faisal (the appellant) and Abid exhorted Atif, Maar sale ke goli paise kaise maang rarra tha. Atif took out a katta and fired at him on abdomen below chest. He further disclosed that he remained hospitalized for 10 - 12 days. The bullet was taken out from his body after operation. The witness was cross-examined at length but no material discrepancies could be extracted or elicited to disbelieve his version. The accused persons were known to him prior to the occurrence as they lived at a distance of 40 - 50 paces from his hotel. He disclosed that there was no previous enmity or dispute with any of the accused persons regarding money transaction or property. He further disclosed that no altercation ever took place between him and the accused persons prior to the occurrence. He further stated that earlier also when the accused persons had visited his hotel once or twice, the payment was made by individuals accompanying them. He denied the suggestion that there was any altercation regarding commission with Abid. The victim who had sustained grievous injuries on the body was not expected to falsely implicate an innocent and to spare the real offender. Nonexamination of any witness from the hotel does not discredit the cogent and reliable testimonies of PW-3 (Rahisuddin) and PW-6 (Waheed). Their statements are in consonance with medical evidence. PW-11 (Dr.P.Ram) proved the MLC (Ex.PW-11/A) prepared by Dr.Sanjeev who medically examined the victim Rahisuddin. On local examination, one entry wound was seen

at epigastric region of about 1 x 1 cm with charring. There was no exit wound. PW-12 (Dr.D.Mohanty) proved endorsement (Ex.PW12/A) of Dr.Dharmender who after examining the record and MLC gave final opinion regarding the nature of injuries as grievous. PW-8 (Irshad Ali) put the police machinery into motion when he made telephone call on mobile No.9811542292 at 100 to PCR. In the cross-examination, he stated that Atif had caused gunshot injuries on the person of Rahisuddin. He, however, stated that at that time, he had seen only Atif. The counsel for the appellant tried to argue that Faisal (the appellant) and Atif were not present at the spot. This fact was not stated so by PW-8 (Irshad Ali) in his examination-in-chief. The prosecution did not treat him as an eye witness. Counsel further pointed that Atif has since been acquitted by Juvenile Justice Board. In my view, acquittal of co-accused Atif has no bearing in the present case. The judgment of the said case has not been placed on record to ascertain on what grounds Atif was acquitted. In the instant case, the evidence of the victim coupled with statement of PW-6 (Waheed) supported by medical evidence has established the guilt of the accused beyond reasonable doubt. PW-3 (Rahisuddin) and PW-6 (Waheed) did not claim if the appellant was armed with any weapon. The only role assigned to him is that he (the appellant) and Abid exhorted Atif to fire. All the accused persons had come together to take dinner. None of them had offered payment for the dinner and they all left threatening the complainant / victim for demanding payment from them. After 5 or 7 minutes, they all returned and confronted the victim for demanding money from them. On the exhortation of the appellant and Abid, Atif fired at him. They all fled the spot together. These circumstances show that all of them shared common intention which can develop at the spur of the moment. Injuries were caused by a deadly weapon on the vital organ of the victim. He had to be operated upon and remained hospitalized for 10 - 12 days. At the time of his appearance before the Court, he had a belt fixed on his abdomen. He disclosed that he was unable to perform his duties for about three and a half months due to the injuries. Apparently, the injuries were inflicted to the victim with the avowed object or intention to murder him. The findings of the Trial Court are based upon fair appraisal of the evidence and warrant no interference.

3. Appellants counsel in the alternative prayed to modify the sentence order as the appellant is not involved in any other criminal case and has suffered detention for

about two years. Nominal roll dated 07.12.2013 reveals that the period in custody was one year, five months and twenty three days besides remission for two months and five days as on 07.12.2013. Nominal roll further reveals that the appellant is involved in FIR No.117/12 under Sections 302/506/120B/34 IPC and 25/27 Arms Act PS Jafrabad. His overall jail conduct is unsatisfactory. He got punishment by ticket No.171 dated 06.04.2013 due to a quarrel with other inmate which shows his violent nature. The injuries were caused to the victim without any fault of his when he demanded his legal dues for serving dinner. The appellant deserves no leniency.

4. The appeal preferred by the appellant is unmerited and is dismissed. Trial Court record be sent back immediately with the copy of the order. Copy of the order be sent to the Superintendent Jail for information. (S.P.GARG) JUDGE  
FEBRUARY24 2014/tr

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