

Shahid and ors. Vs. State

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Court : Delhi

Decided On : Mar-19-2014

Judge : Veena Birbal

Appellant : Shahid and ors.

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on : March 19th , 2014 % + CRL.A. 59/2000 SHAHID & ORS. Appellants Through: Mr. R.D. Rana, Advocate.-.versus- STATE Respondent Through: Ms. Jasbir Kaur, APP. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL

JUDGMENT

VEENA BIRBAL, J.

1. The present appeal is filed against the judgment dated 19.01.2000 and order of sentence dated 21.01.2000 in sessions case no.251/97 arising out of FIR No.177/97 registered under Section 307/34 IPC, P.S. Sadar Bazar, whereby learned Additional Sessions Judge has convicted the appellants under Section 307/34 IPC and sentenced them to undergo R.I. for 10 years and a fine of `20,000/- each and in default of payment of fine to undergo S.I. for 2 years each. Benefit of Section 428 Cr.P.C. has been given to them.

2. The case of the prosecution is based on statement Ex.PW4/A of injured Jamil PW-4 wherein he has alleged that on 22.04.1997 at about 9.15 P.M. he was standing in Chota Maidan of Qasabpure. All CRL.A. 59/2000 Page 1 of 12 the three appellants who are known to him and are resident of his mohalla had come there. Appellant Shakir asked him to provide them cold drinks. On his asking he provided the cold drinks to them. After finishing, the appellant Sahid demanded more cold drinks which he refused by stating he had no money. Thereupon, all the three appellants started abusing him and also slapped him. However, he did not say anything to them and came to his house and sat outside his house in a gali. After 2/3 minutes, three appellants reached there and appellant Shahid had caught hold of him from behind and uttered isko jaan se maar do main apne aap sambhal lunga. The appellant Shakir was armed with a chura and appellant Zahid was armed with a churi. The appellant Shakir stabbed him on the chest as well as on the arms and appellant Zahid had stabbed him above the buttocks near the back bone. On alarm being raised by him all the appellants ran away from the spot. He had alleged that the occurrence was seen by Wasim Ahmad PW-10 and Nadim PW-11. Wasim PW-10 had taken him to RML Hospital.

3. The above statement Ex.PW4/A was made by the injured Mohd. Jamil PW-4 in the hospital to SI Manmohan Kumar PW13 when he had reached the hospital on getting the copy of DD No.19A and 20A. On the statement Ex. PW4/A SI Manmohan Kumar PW13 had made his endorsement Ex.PW13/A and had sent the rukka to the police station and got registered the case against the appellants vide FIR Ex.PW2/A. Thereupon, he went to the spot and prepared site plan Ex.PW13/B at the instance of Wasim Ahmad PW-10 who had met him at the spot. On 15.05.1997 the appellants were apprehended on the pointing out of CRL.A. 59/2000 Page 2 of 12 the injured PW-4. Their personal search was conducted vide memos Ex. PW13/C to Ex.PW13/E respectively. They also made disclosure statements i.e. Ex.PW3/A to 3/C. The appellant Shakir got recovered Churi Ex.P2 under the bed of his room from his house which was seized vide seizure memo Ex.PW3/G after completing necessary formalities. Appellant Zahid also led to his house and got recovered churi Ex.P1 which was also seized vide memo Ex.PW3/E after completing necessary formalities. The statements of other witnesses were also recorded during investigation. After completion of

investigation a challan was filed before the learned M.M. Learned M.M. committed the case to the Sessions as the case was triable by the sessions court.

4. The charge was framed against the appellants by the learned Additional Sessions Judge vide order dated 08.10.1997 for having committed the offence under Section 307/34 IPC. The appellants pleaded not guilty to the same and claimed trial as such were tried before the learned trial court.

5. To prove its case, the prosecution in all had examined 12 witnesses. Out of which the injured is Jamil PW-4. The alleged eye witnesses are Wasim Ahmad PW-10 and Nadim PW-11. The other witnesses examined are PW-1 SI Dhani Ram, PW-2 HC Chander Bhan, PW-3 ASI Kanta Prashad, PW-5 Constable Ashwani Kumar, PW-6 Constable Jaswant Singh, PW-7 Dr. D. Behl, CMO RML Hospital, PW-8 Dr. D.P. Barua, PW-9 HC Rai Singh, PW-12 Dr. Suraj Pal, PW-13 SI Man Mohan Singh.

6. The statement of appellants under Section 313 Cr.P.C. was recorded CRL.A. 59/2000 Page 3 of 12 wherein incriminating evidence was put to them. They had denied the same and stated that they were innocent person and were falsely implicated. No evidence in defence was led by them.

7. After hearing the counsel for parties, the learned Additional Sessions Judge has convicted all the three appellants under Section 307/34 IPC and sentenced them as is stated above vide order of sentence dated 21.01.2000.

8. Aggrieved with the same, the present appeal is filed.

9. Learned counsel for appellants has contended that the alleged eyewitnesses, namely, Wasim Ahmad PW-10 and Nadim PW-11 have not supported the case of the prosecution as regards the material occurrence is concerned. It is contended that even the evidence of injured PW-4 is not believable. There are material variations in his evidence as compared to the statement before police i.e. Ex.PW4/A on the basis of which FIR Ex.PW2/A was registered. It is contended that considering the entire evidence on record, the prosecution has failed to prove its case beyond the shadow of doubt. Ld. Counsel for appellant has further

contended that even assuming the accused persons are responsible for the alleged occurrence, in that event the offence under Section 307/34 IPC is not made out against them. It is contended that as per evidence of Dr. Suraj Pal, PW-12 there is no bone injury. The injuries vide MLC Ex.PW7/A of injured PW-4 have been opined as grievous by Dr.Suraj Pal PW-12. It is submitted that as per his evidence he has given the opinion about the nature of injury after consulting Dr. N.S. Hadke who was Head of the Unit. It is contended that Dr. N.S. Hadke has not been produced in the evidence CRL.A. 59/2000 Page 4 of 12 nor it has come on record as to what was his opinion. It is contended that injuries are grievous but not dangerous to life and at best it is a case under Section 324/34 IPC. It is further submitted that occurrence is of the year 1997 and more than 16 years have passed and all the appellants have married and each of the appellants has three minor children. They be given benefit under Section 360 Cr.P.C. as they are first time offenders.

10. On the other hand, learned APP has argued that even if the eye witnesses have not supported the case of prosecution, the evidence of injured i.e. Jamil PW-4 is sufficient to prove that the appellants are responsible for the occurrence. It is contended that considering the nature of injuries, the weapon used, the medical evidence on record, the statement of witnesses, the accused persons have rightly been convicted under Section 307/34 IPC. It is contended that considering the nature of offence, benefit of Section 360 Cr.P.C. cannot be given to the appellants.

11. I have considered the submissions made and gone through the material on record.

12. The star witness to the alleged occurrence is Jamil PW4 who is injured as well as complainant. On his statement Ex.PW4/A to IO PW13 FIR Ex.PW2/A was registered. The injured Jamil PW4 has categorically deposed that on 22.4.1997 at about 9.15 p.m. when he was standing in Chota Maidan of Qasabpura, all the 3 appellants who reside in his mohalla had come there and appellant Shakir asked him to provide them cold drinks. He has also deposed that accused Shakir is a Taribaaj of the area and in order to avoid him he provided CRL.A. 59/2000 Page 5 of 12 them cold drinks. After finishing the cold drinks, the appellant Shakir

demanded more cold drinks from him. On his refusal, all the appellants started abusing and beating him. He managed to escape from there and went to his house which was nearby. His shirt was torn off in the incident. After changing his shirt, he again came in the gali and sat about 20 paces away from his house in the street. After about 2-3 minutes, the appellants came there and appellant Shahid had caught hold of him from behind and gave lalkara uske maar do pet mein dekh lunga. At that time, appellant Shakir was armed with a big chhura and appellant Jahid was armed with a chhuri. Appellant Shahid had caught hold of him and appellant Shakir gave a chhura blow on the left side of his chest. Thereafter, he gave another blow on the right arm near the shoulder. Thereafter, he gave another blow on the left arm. When he started running from there, accused Zahid who was armed with a chhuri had stabbed him just above the buttocks due to which he fell down. As he fell down, appellant Zahid stabbed him on the left upper portion of his leg. After causing these injuries, they all ran away. Mohd. Wasim PW10 and Mohd. Nadeem PW11 were also present at that time and had seen the occurrence. Mohd. Wasim PW10 took him to Willington Hospital where police had come and recorded his statement Ex.PW4/A. Jamil, PW4 has identified his signatures on the statement Ex.PW4/A. He has also deposed that at the time of incident, he was wearing jeans which were stained with blood. He has identified the jeans as Ex.P4 which was seized during the investigation. He has further deposed that the belt which was tied around his waist was also cut into two portions. He had identified the CRL.A. 59/2000 Page 6 of 12 two portions of the belt as Ex.P5 and P3. He has also identified the chhuri Ex.P2 with which injuries were inflicted upon him.

13. His testimony on material points about the role played by each of the appellant at the time of incident is not challenged in the cross-examination. He has also stated in cross-examination that he was not having any enmity with the appellants. The evidence of injured PW4 stands corroborated with MLC Ex.PW7/A which gives the details of injuries as are deposed by him in the evidence which has been proved on record by Dr. D. Behl PW-7, CMO, RML Hospital. The said doctor has deposed having examined Jamil PW4 on 22.4.1997 at about 10.05 p.m. and gave the details of injuries recorded in the MLC Ex.PW7/A. There is no cross-examination of the aforesaid witness by the appellants. The blood stained jeans

Ex.P4, two cut portions of belt Ex.P5 and P3 which have been identified by injured PW4 also corroborate his version. As per evidence of injured PW4 he was wearing aforesaid jeans and the belt of which cut pieces Ex.P5 and Ex.P3 was tied on his waist. In view of above evidence, even if alleged eye witnesses i.e. Mohd. Wasim PW10 and Mohd. Nadeem PW11 have turned hostile, the case of prosecution is not demolished in any manner. Further the statement of injured PW4 in cross-examination wherein he has tried to save appellants by stating that number of persons had collected at the place of occurrence and he sustained injury in a rush can be ignored because the cross-examination was recorded after a gap of 7 months of recording statement in examination-in-chief. The appellants are his neighbours. The chances of injured being won over cant be ruled out. It may also CRL.A. 59/2000 Page 7 of 12 be noticed that there is no cross-examination of injured PW4 on material aspects of the matter. There is no suggestion that appellants were not present at the spot or did not cause injury to him. Their identity is also not disputed in evidence.

14. In statement under Section 313 Cr.P.C., the appellants have stated that they are innocent persons and have been falsely implicated. Moreover, no evidence in defence is led to support the same.

15. The evidence of injured PW4 is worthy of credence. The recovery of chhuri Ex.P1 at the instance of appellant Shakir from his house vide memo Ex.PW3/G also stands proved from the evidence of ASI Kanta Prashad PW3 and IO SI Manmohan PW13. ASI Kanta Prashad PW3 has not been cross-examined at all. Nothing has come out which makes the recovery of chhuri Ex.P1 at the instance of Shakir unbelievable. Similarly, the recovery of chhuri Ex.P2 also stands established from the evidence of aforesaid witnesses at the instance of appellant Zahid. The same is also identified by injured PW4. The evidence of injured PW4 supported with medical evidence MLC Ex.PW7/A clearly establishes that the appellants had caused injuries to Jamil PW4 on the date and time mentioned in the FIR Ex.PW2/A. Even the blood stained jeans Ex.P4 and cut belt Ex.P3 and Ex.P5 produced in the evidence also supports the case of prosecution.

16. Now, the question to be considered is whether on the basis of evidence on record can the appellants be held guilty for the offence punishable under Section 307/34 IPC or under Section 324/34 IPC.

17. The MLC Ex.PW7/A of injured Jamil PW4 shows 5 incised wounds. The size of incised wound on the chest is of large size. Further, the CRL.A. 59/2000 Page 8 of 12 chest is the vital part of the body. The other four incised wounds are on the different parts of the body i.e. arms, left thigh and right gluteal region. The nature of injuries on MLC Ex.PW7/A has been proved on record by Dr. Suraj Pal PW12 as grievous. The evidence of aforesaid witness has not been challenged by the appellants in the cross-examination. The stand of the appellants is that Dr.N.S. Hadke who was consulted for giving opinion on nature of injury has not been produced, as such injuries can be taken as simple. However, the contention raised has no force especially when no question has been put to the aforesaid witness in cross-examination. Further for establishing offence under Section 307/34 IPC, the nature of injuries is immaterial. The repeated blows with sharp edged weapons and one of the injuries on the vital part of the body, clearly establishes requisite intention of the appellants to commit the murder of Jamil PW4.

18. The Supreme Court in Hari Kishan v. Sukhbir Singh and Ors.: AIR 1988 SC2127 has observed as to what the court has to see for establishing offence under Section 307 IPC. The relevant portion of the judgment is reproduced 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 CRL.A. 59/2000 Page 9 of 12 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.
.....

19. Further, the Supreme Court in Vasant Vithu Jadhav v. State of Maharashtra:

2004. (2) ACR1047(SC) has observed that the court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 307 IPC. The relevant portion of the judgment is as under:

10. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt.

20. In view of the evidence discussed above, the appellants had committed an act with requisite intention to commit murder of Jamil PW4. The evidence on record clearly establishes that the requisite intention to CRL.A. 59/2000 Page 10 of 12 commit murder of Jamil PW4 has been proved by the prosecution from the evidence of injured Jamil PW4 as well as medical evidence and weapons of offence i.e. Ex.P1 and Ex.P2. In the facts and circumstances of the case, the present is not an offence punishable under Section 324/34 IPC as is contended. The learned ASJ has rightly convicted the appellants under Section 307/34 IPC. Accordingly, the conviction of the appellants under Section 307/34 IPC is upheld.

21. On the point of sentence, learned counsel for the appellants has argued that the occurrence is of the year 1997. The appellant persons have faced the agony of trial including present proceedings for the past 17 years. It is stated that now they are married persons and each of the appellant is having 3 minor children who are

all school going and they have a large family to support. It is submitted that they were granted bail by this Court on 17.5.2002 and are still on bail. It is prayed that they be released on the sentence already undergone by them.

22. The incident had occurred about 17 years ago. Nothing has been brought on record by prosecution to show that the appellants have been involved in any other occurrence except the present case. The appellants have also offered compensation of Rs.20,000/- each to the injured. Considering the peculiar facts and circumstances of the case, the ends of justice would be met if their sentence is reduced to three years. Accordingly, substantive sentence of imprisonment is reduced to three years. The sentence of fine is upheld. The appellants are present in court. It is stated that fine amount has been deposited by CRL.A. 59/2000 Page 11 of 12 them. The compensation of Rs.60,000/- i.e. Rs.20,000/- shall be deposited by each of the appellant before the learned trial court within four weeks from today. The learned trial court shall release the same in favour of injured i.e. Mohd. Jamil PW4. It is stated that Shakir and Zahid have already undergone the sentence of three years. The appellant Shahid shall surrender within one week from today for undergoing the remaining sentence. He be given benefit under Section 428 Cr.P.C.

23. The appeal stands disposed of in above terms. VEENA BIRBAL, J th MARCH19, 2014 srb/kks CRL.A. 59/2000 Page 12 of 12

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