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Guddu Giri vs.state

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Court : Delhi

Decided On : Oct-11-2017

Appellant : Guddu Giri

Respondent : State

Judgement :

$~4, 5 & 6 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + AND + AND + Date of Decision: October 11, 2017 CRL.A. 141/2017 SURAJ GIRI ..... Appellant Through: Mr.Biswajit Kumar Patra, Advocate (DHCLSC) with appellant in person. versus STATE ..... Respondent Through: Ms.Kusum Dhalla, APP for the State with SI Satish Kumar, PS Aman Vihar. CRL.A. 565/2017 GUDDU GIRI ..... Appellant Through: Ms.Inderjeet Sidhu, Advocate (DHCLSC) with appellant from J/C. versus STATE ..... Respondent Through: Ms.Kusum Dhalla, APP for the State with SI Satish Kumar, PS Aman Vihar. CRL.A. 638/2017 DEVENDER PRASAD @ LAMBU ..... Appellant Through: Mr.Jatin Rajput, Advocate (DHCLSC) with Mr.Surya Nath Pandey, Advocate and appellant from J/C. versus CRL.A.Nos.141, 565 & 638 of 2017 Page 1 of 9 STATE ..... Respondent Through: Mr.Kewal Singh Ahuja, APP for the State with SI Satish Kumar, PS Aman Vihar. PRATIBHA RANI, J.

(Oral) 1. These three appeals have been preferred by appellants Suraj Giri, Guddu Giri and Devender Prasad assailing the judgment dated 24th October, 2016 passed in Session Case No.577
whereby they have been convicted for committing the offence punishable under

Section 4
IPC and sentenced as under:-

"Appellant Suraj Giri Appellant Guddu Giri Appellant Devender Prasad : to undergo RI for 5 years with fine of `1000/- and in default of payment of fine to undergo SI for one month : to undergo RI for 7 years with fine of `1000/- and in default of payment of fine to undergo SI for one month : to undergo RI for 5 years with fine of `1000/- and in default of payment of fine to undergo SI for one month 2. In brief the prosecution case as narrated in the complaint Ex.PW-1/A made by PW-1, Bahadur Baghel is that he was residing at House No.E-141, Laxmi Vihar, near Shivam Model School, Prem Nagar-III, Delhi and was running a tea shop. Pawan, Devender, Suraj and Guddu were residing in his neighbourhood. Pawan took a loan of CRL.A.Nos.141, 565 & 638 of 2017 Page 2 of 9 15,000/- from him about 3 years prior to 1.4.2012 and Guddu took a loan of 25,000/- about 6-7 months prior to 1.4.2012. Suraj and Devender also took some money from him. When he asked all of them to return the money, they deferred the repayment on one pretext or the other. About 4-5 days prior to 1.4.2012 all the four accused came to his shop and when he asked them to return his money they refused to return the money. They not only abused him but also threatened to teach him a lesson. On the night intervening 31.3.2012 and 1.4.2012 at about 4.30 a.m. when he along with his wife and daughter was sleeping in his house all the four accused persons entered his house from the roof of the adjoining house. On hearing some sound, when he woke up, accused Suraj and Pawan caught hold of him from his neck and Devender caught his hands whereas Guddu started stabbing him with the knife saying that TUJHE HUM ABHI PAISE DETE HAI. He raised alarm and his wife and daughter came there. All the four accused ran away saying that AAJ KE BAAD PAISE MAANGE TO TUJHE ZINDA NAHI CHHODENGE. The matter was reported to the police and he was taken to the hospital.

3. On the basis of above statement case FIR No.80/2012 under Sections 450/3 IPC PS Aman Vihar was registered. During investigation the accused Suraj Giri, Guddu Giri and Devender Prasad were arrested and weapon of offence i.e. knife was recovered. After completion of investigation charge-sheet was filed. Accused Pawan was not traceable hence declared P.O.

4. On the basis of the material placed by the prosecution all the three accused persons, namely, Suraj Giri, Guddu Giri and Devender CRL.A.Nos.141, 565 & 638 of 2017 Page 3 of 9 Prasad were charged for the offence punishable under Section for 4
IPC to which they pleaded not guilty. The prosecution examined 9 witnesses in all to prove its case. Statement under Section, 313 Cr.P.C. of the accused persons/appellants herein have also been recorded to explain the incriminating evidence appearing against them.

5. After trial the accused persons were convicted for committing the offence punishable under Section 4
IPC and sentenced in the manner stated above.

6. Appellant Suraj Giri is present on bail. Pursuant to the production warrants being issued, appellants Guddu Giri and Devender Prasad have been produced from J/C.

7. Mr.Biswajit Kumar Patra, Advocate for appellant Suraj Giri, Ms.Inderjeet Sidhu, Advocate for appellant Guddu Giri and Mr.Jatin Rajput, Advocate for appellant Devender Prasad, on instructions, submit that the appellants are not disputing the incident and they are challenging their conviction only to the extent that they could not have been convicted for committing the offence punishable under Section 4
IPC as no grievous injury was caused while committing lurking house trespass at night. It has been submitted that the injuries have been caused to injured Bahadur Baghel (PW-1) only after the appellants had entered his house. Thus, they could only be convicted under Section 4
IPC. Hence, their conviction may be altered from under Section 4
IPC to Section 4
IPC. The appellants have also prayed for a lenient view on the quantum of sentence submitting that they are the sole bread earner in their family which CRL.A.Nos.141, 565 & 638 of 2017 Page 4 of 9 consist of their wife, children and aged parents. They are the first offenders and not involved in any other case prior to this case or thereafter.

8. Learned counsel for the appellants have placed reliance on Said Ahmed & Anr. vs. King Emperor AIR1927 Allahabad 536 in support of his contentions.

9. I have considered the submissions made by learned counsel for the appellants and carefully gone through the record.

10. Section 459 IPC provides as under:-

"459. Grievous hurt caused whilst committing lurking house trespass or house-breaking.-Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. 11. Section 457 IPC reads as under:-

"lurking commits 457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.-Whoever house- trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprison- ment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years. 12. A bare reading of Section 459 IPC would reveal that it contemplates a situation wherein the grievous hurt or attempt to cause CRL.A.Nos.141, 565 & 638 of 2017 Page 5 of 9 grievous hurt is while committing lurking house trespass or house breaking.

13. In Said Ahmeds case (Supra) relied upon by learned counsel for the appellants the offence of house breaking was held to be complete when entry into the house is effected. It was also held that any grievous hurt caused after breaking into the house would not amount to causing grievous hurt while committing the lurking house trespass within the meaning of Section 459 IPC. This Court has taken a similar view in the decision reported as Rohtas Vs. State, 1987 (1) Crimes 576 Delhi. In the above noted case, the occurrence had taken place at about 1.30 a.m. on the night intervening 8th/9th February, 1979 at the house of the complainant where he along with his wife was sleeping at his house. The injuries were caused

to the complainant and his wife with a mussal picked from the room. The appellant Rohtas was convicted for committing the offence punishable under Section 459 IPC. In appeal the conviction under Section 459 IPC was challenged on the ground that to attract the provision of Section 459 IPC the attempt to cause grievous hurt or an attempt to cause death or grievous hurt to any person must be done in the course of commission of offence of lurking house trespass or house breaking. While accepting the submission made on behalf of the appellant in para No.7 of the report it was held as under:-

"7. There is much substance in the contention of learned counsel for the appellant. In order to attract the provisions of Section 459, the causing of grievous hurt or the attempt to cause death or grievous hurt must be done in the course of the commission of the offence of lurking CRL.A.Nos.141, 565 & 638 of 2017 Page 6 of 9 trespass or house breaking. It is not sufficient that the grievous hurt was caused or the attempt made after the completion of lurking trespass or house trespass. The offence of house breaking is complete when the entry into the house is effected, and grievous hurt caused subsequently cannot be said to be caused whilst committing the trespass. However, the fact remains that the accused committed house trespass by entering into the building which was being used by Tara Chand as a dwelling place. The mere fact that the accused entered the house and committed assault on Tara Chand and his wife does not necessarily pre-suppose preparation. In fact, there is no clear proof of preparation for causing hurt etc. All these facts taken together will bring the case within the four corner of Section 452 IPC. I, therefore, alter the conviction of the accused from one under Section 459 to the one under Section 452 IPC. 14. Reverting to the facts of the instant case, from the statement of the complainant/injured (PW-1) it is proved that the hurt was caused by the appellant not in the process of committing lurking house trespass. The offence of lurking house trespass was complete once they entered into the dwelling unit of the complainant. The injuries subsequently caused by the appellant after breaking into his house do not satisfy the requirement of section 459 IPC as held in Said Ahmeds case (Supra) and by this court in Rohtass case. Since the grievous hurt has been caused after committing the lurking house trespass, the offence proved against the appellants would be under Section 4
IPC and not under Section 4

IPC.

15. I find force in the submissions made on behalf of the appellants that the offence proved to have been committed by them does not fall under Section 4
IPC. Learned APP for the State also concedes CRL.A.Nos.141, 565 & 638 of 2017 Page 7 of 9 that while committing lurking house trespass at night no grievous injury was caused to PW-1 Bahadur Baghel - complainant/injured.

16. In view of the above discussion, the conviction of the appellants is altered from Section 4
IPC to Section 4
IPC.

17. Now coming to the quantum of sentence, in view of the submissions made on behalf of the appellants, the substantive sentence awarded to them is reduced to three years. The sentence of fine is maintained. However, in default of payment of fine, the SI of one month is reduced to one week.

18. As per the nominal rolls of the appellants available on record, the period of sentence undergone by them in this case is as under:-

"Sl.No.Name of the As on date appellant Period undergone of sentence Suraj Giri 20.01.2017 3 months and 20 days 1.

2. Guddu Giri 04.05.2017 2 years, 9 months and 23 days (meaning thereby that as on date, the appellant Guddu Giri has undergone 3 years and 2 months. 7 months and 21 days 3. Devender 25.05.2017 Prasad 19. Appellant Suraj Giri, whose substantive sentence was suspended till the pendency of the appeal vide order dated 24th March, 2017, is directed to surrender before the concerned Jail Superintendent on 23th October, 2017 and intimation thereof shall be send to the Registry by the concerned Jail Superintendent. CRL.A.Nos.141, 565 & 638 of 2017 Page 8 of 9 20. Since appellant Guddu Giri has already undergone the sentence of three years in this case, he be set at liberty if not wanted in any other case.

21. The appeals are allowed in above terms.

22. TCR be sent back alongwith copy of this order.

23. A copy of this order be sent to the concerned Jail Superintendent for information and compliance. PRATIBHA RANI (JUDGE) OCTOBER11 2017 st CRL.A.Nos.141, 565 & 638 of 2017 Page 9 of 9

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