

Phool Mohd. Vs. State

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Court : Delhi

Decided On : Jul-17-1997

Reported in : 1997IVAD(Delhi)644; 68(1997)DLT454; 1997(42)DRJ551; 1997RLR41

Judge : Jaspal Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307 and 324

Appeal No. : Criminal Appeal No. 121 of 1992

Appellant : Phool Mohd.

Respondent : State

Advocate for Pet/Ap. : R.P. Luthra and; H.J.S. Ahluwalia, Advs

Judgement :

Jaspal Singh, J.

(1) Phool Mohd. stands convicted under Section 307 of the Indian Penal Code. The sentence awarded to him is five years rigorous imprisonment. He feels he has wrongly been convicted and sentenced.

(2) The learned counsel for the appellant has urged only two grounds in support of the appeal. His first contention is that Section 307 of the Penal Code is not

attracted. The second point relates to the quantum of sentence.

(3) That on August 7, 1990 at about 8.45 Am the appellant inflicted a churi blow on the left side of the neck of Mohd. Shafiz stands proved not only from the statement of the victim who has entered into the witness box as PW-7 but also from the evidence of the eye witness namely Abdul Quam (Public Witness -8). It is probably because of this convincing eye witness account that the learned counsel for the appellant did not ask for acquittal.

(4) Has the prosecution made out a case under Section 307 of the Penal Code? This then, is the question which needs to be answered and I feel that, for the reasons which I propose to record presently the answer must go against the prosecution.

(5) It is the admitted case of the prosecution itself that there was no previous history of enmity between the appellant and the injured. In fact they were strangers, to each other. There was a sudden quarrel which led to the occurrence. There was only one knife blow and the knife became handy in the heat of the moment, as it was lying nearby. The injury inflicted was not on a vital part of the body and as the doctor who examined the victim and so also the doctor who opined about the nature of the injury have not been examined, the nature of the injury has to be taken to be simple in nature, and I say so on the authority of Mohinder Singh v. The State 1976 Plr (Delhi Section) 69; Narinder Kumar v. The State : 17(1980)DLT302 and Rajesh alias Vimal. Kumar & Anr. v. State 1995 (2) C.C.C 57 . And, I do feel that keeping in view the totality of the circumstances noticed above, the conviction and sentence of the appellant under Section 307 cannot be held to be proper. Ofcourse, it is not disputed and rightly so that Section 324 of the Penal Code is squarely attracted. The result is that the conviction of the appellant is converted to one under Section 324 of the Penal Code and the appellant is sentenced to undergo one year rigorous imprisonment.