

Firoz Khan Vs. State

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Court : Delhi

Decided On : Feb-07-2013

Judge : R.V. Easwar

Appellant : Firoz Khan

Respondent : State

Advocate for Pet/Ap. : Mr. Sumeet Verma, Mr. Pawan Sharma, Mr. Sahil Mongia

Judgement :

\$~4 & 5 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

7. h February, 2013 + CRL. A. 579/2000 FIROZ KHAN Through: Appellant Mr. Sumeet Verma, Advocate. versus STATE Through: + Respondent Mr. Pawan Sharma, Standing Counsel with Mr. Sahil Mongia, Advocate. CRL. A. 634/2000 MOHD. SHAKEEL Through: Appellant Mr. Sumeet Verma, Advocate. versus STATE Through: Respondent Mr. Pawan Sharma, Standing Counsel with Mr. Sahil Mongia, Advocate. CORAM: HONBLE MR. JUSTICE R. V. EASWAR JUDGMENT R. V. EASWAR, J.: (ORAL) These are two appeals filed against the conviction under section 326/34 of the Indian Penal Code by the judgment dated 12.09.2000 passed by the Addl. Sessions Judge, Delhi. It is not necessary to examine the facts or the impugned judgment in detail. It is sufficient to notice the basic facts leading to the conviction. On 19.01.1999 which was the day of Eid, both the accused Firoz Khan, Mohd. Shakeel along with Javed and the injured Asgar Hussain were taking a stroll and all of a sudden Javed took out a knife and

stabbed Asgar Hussain who was being held by the accused Mohd. Shakeel. Accused Firoz Khan also appears to have inflicted a knife injury on Asgar Hussain. The learned Addl. Sessions Judge on these facts has held that an offence under section 326 read with section 34 of the Indian Penal Code has been made out; he has, however, acquitted the accused Firoz Khan and Mohd. Shakeel of the offence under section 307 of the Indian Penal Code. He awarded sentence of rigorous imprisonment of 5 years and to a fine of `1,000/- each, and 4 months R.I. in default thereof to each of the accused under section 326 read with section 34 of the Indian Penal Code.

2. It is stated by the learned counsel appearing for the appellants that Firoz Khan has undergone more than three years of the sentence and Mohd. Shakeel has undergone less than one year of the sentence. It is also stated that both of them have now been reformed and assimilated into the society, and about 14 years have passed after the date of the incident. Accused Firoz Khan, it is stated, is married and has two minor daughters aged 3 years and 2 years. He is living with his parents and is working as a conductor in a private vehicle. Accused Mohd. Shakeel, it is stated, is working in a meat shop. He has a wife and a minor son aged about 5 years. It is also stated that in these 14 years time they have led a normal crime-free life and have been assimilated into the society and there has been no complaint against or offence committed by them.

3. I have considered the arguments of both the sides and I have also examined the impugned judgment. From a consideration of all these, it appears to me that it was only after Javed inflicted the first injury, and apparently emboldened by that, that the accused Firoz Khan also inflicted a knife injury on Asgar Hussain. Mohd. Shakeel did not inflict any knife injury on Asgar Hussain but had only caught hold of him. It further appears that there was no previous history of any enmity between any of the accused persons and the victim. Any motive is, therefore, ruled out. There was no intention to kill as has been brought out by the learned Addl. Sessions Judge. The accused persons were charged for an offence punishable under section 307 read with section 34 of the IPC but the Addl. Sessions Judge held them accountable under section 326 read with section 34 IPC which is a lesser offence, on the ground that Mohd. Shakeel had caught hold of Asgar

Hussain and Javed, who is stated to be absconding, inflicted the first injury, followed by the injury inflicted by Firoz Khan. After considering the entire evidence, the learned Addl. Sessions Judge has come to the conclusion that the prosecution has been able to establish an offence punishable under section 326 read with Section 34 of the IPC against both the accused (appellants). He has predominantly relied upon the testimony of the victim.

4. Taking the entire facts and circumstances and the evidence into account and having regard to the rival contentions before me, it appears to me that the learned Addl. Sessions Judge was right in convicting the appellants under section 326 read with section 34 of the IPC. The testimony of the victim Asgar Hussain has been found to be cogent, consistent and reliable by the Addl. Sessions Judge. The learned counsel for the appellants has not been able to make any dent into the same or the quality of the evidence or the overall conclusion reached by the learned Addl. Sessions Judge. I accordingly uphold the conviction.

5. However, coming to the sentence, I have taken note of the submissions of the learned counsel for the appellants. Both the appellants appear to be leading a normal and crime-free life. They have married and raised families. They are also taking care of their parents. They are employed and are supporting their families. Fourteen years have passed since the date of the incident; there appears to be no complaint against the accused persons by any one nor is there any evidence of their complicity in any criminal activities during this period. It would appear that they have reformed and have been able to assimilate themselves into the society and have also gained acceptability which is the object of the conviction and the sentence. Both the accused were awarded 5 years. While Firoz Khan has served a sentence of more than three years, Mohd. Shakeel has served a sentence of less than one year. However, there is a difference between the two in the sense that Firoz Khan did inflict knife injuries on the victim whereas Mohd. Shakeel did not inflict any injuries on the victim but was found to hold the victim while the injuries were being inflicted. His role is not so grave as that of Firoz Khan. Taking all these into account, I am of the view that the conviction should be confined to the sentence already undergone by Firoz Khan and Mohd. Shakeel. I reduce their sentence accordingly while maintaining the conviction. The appeals are disposed

of as above. R.V.EASWAR, J FEBRUARY 7 2013 hs

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