(2017) 03 DEL CK 0013

DELHI HIGH COURT

Case No: Criminal A. No. 528 of 2000

Chhattar Singh		APPELLANT
	Vs	
State Govt. of NCT of Delhi		RESPONDENT

Date of Decision: March 6, 2017

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, Section 34

Citation: (2017) 2 JCC 920

Hon'ble Judges: Mr. P.S. Teji, J.

Bench: Single Bench

Advocate: Mr. D.K. Mathur, Advocate, for the Appellants; Mr. Panna Lal Sharma, Additional Public Prosecutor with ASI C.P. Singh, Police Station Krishna Nagar, Delhi, for the State

Final Decision: Disposed Off

Judgement

Mr. P.S. Teji, J.—Present appeal has been filed by the appellants being aggrieved by the judgment of conviction dated 19.08.2000, passed by the learned Additional Sessions Judge, Delhi, thereby convicting the appellants - Chattar Singh, Vijay Singh and Gian Singh for the offence punishable under Section 307/34 of Indian Penal Code (hereinafter referred to as I.P.C.) and the appellant - Balbir Singh for the offence under Section 323 of IPC. Consequent thereto, vide order on sentence dated 21.08.2000, the appellants - Chattar Singh, Vijay Singh and Gian Singh were sentenced to undergo rigorous imprisonment for 10 years each with fine of Rs.4,000 each, in default of payment, they were ordered to undergo further Rigorous imprisonment for one year for the offence punishable under Section 307/34 of IPC. Vide same order, the appellant - Balbir Singh was ordered to pay fine of Rs.1,000/- for the offence under Section 323 of IPC, and in default to undergo Rigorous imprisonment for one month.

2. During the pendency of the present appeal, appellants - Chattar Singh and Gyan Singh expired and accordingly, vide order dated 24.02.2011, the appeal stood abated against

them. As regards the remaining appellants, appellant - Vijay Singh was held guilty for the offence punishable under Section 307 with the aid of Section 34 of IPC and appellant - Balbir Singh was held guilty for offence under Section 323 of IPC.

3. The facts emerging from the record and as enumerated in the impugned judgment are that on 15.12.1993, on receipt of DD No.68B from Constable Ashok Kumar by ASI Pritam Singh, who along with Constable Basti Ram went to JPN Hospital for enquiry. ASI Pritam Singh collected the MLC No. 105469/93 of Nihal Singh, on which the doctor declared the injured unfit for statement and sharp penetrating weapon injury were mentioned. In the hospital, one Sultan Singh met and got recorded his statement by ASI. Sultan Singh stated that on the evening of the date of incident, his relatives had come from the engagement ceremony of his son Satish. At the function at about 9.45 PM, Chattar Singh started abusing his uncle Nihal Singh. His uncle, Nihal Singh, asked him to stop abusing, whereupon Chattar Singh uttered "Maro sale ko function mana raha hai". At the same time, Chattar Singh and Vijay caught hold of Nihal Singh and, Gyan Singh @ Gyanu inflicted injury in the abdomen of Nihal Singh by a sharp object. One Balbir Singh also gave slaps and fist blows to his uncle, Nihal Singh. During that quarrel, Sultan Singh and his relatives rescued his uncle Nihal Singh, from Gyannu and Chattar Singh. In the light of the said statement a case under Section 324/34 IPC was found to be made, and after recording the statements of other witnesses, inspecting the site, preparation of site plan, the accused persons were arrested. During the course of investigation, section 307/34 of IPC was added and the accused persons were again arrested. The result of medical examination was obtained in which, the injury was described to be dangerous and a sharp penetrating weapon injury.

4. After completion of the investigation, charge sheet was filed against the appellants for the offence under Section 307/34 of IPC on 10.02.1995, to which the appellants did not plead guilty and claimed trial.

5. To bring home the guilt of the appellants, the prosecution examined as many as 14 witnesses. They are, Nihal Singh (PW-1); Head Constable Ved Prakash (PW-2); Ram Singh (PW-3); Sultan Singh (PW-4); Hari Singh (PW-5); Vinay (PW-6); Om Lal (PW-7); Constable Basti Ram (PW-8); Mohan Singh (PW-9); Dr. Ikbal Singh (PW-10); Daanvir Singh (PW-11); Constable Girver Singh (PW-12); Head Constable Satender Singh (PW-13) and Sub-Inspector Pritam Singh (PW-14).

6. Thereafter, entire incriminating material on record was put forth the appellants, and their statements under Section 313 of Cr.P.C. was recorded, in which they specifically stated that they had been falsely implicated in this case and accused Gyan Singh was not present at the time of incident. They also stated that a case causing injury to Chattar Singh and others by Rakesh, Mukesh, Gulab and Nihal Singh was registered vide FIR No. 231/1993, which is pending for trial. The accused persons have also taken a plea that Nihal Singh received injury at the hand of their relatives who were quarrelling among themselves, under the influence of liquor. They also opted to lead evidence in their

defence, but somehow no evidence was led and hence the Defence Evidence was closed.

7. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellants - Chattar Singh, Vijay Singh and Gian Singh guilty for the offence punishable under Section 307/34 of IPC and appellant - Balbir Singh guilty for the offence under Section 323 of IPC. Vide order on sentence passed separately; the appellants were sentenced, as indicated above. During the pendency of the present appeal, the sentence imposed upon the appellants was suspended vide order dated 29.11.2000 and proceedings qua appellant Nos. 1 and 2 stood abated vide order dated 24.02.2011.

8. Argument advanced by the learned counsel for the appellants is that in fact, Nihal Singh and others had assaulted the appellants - Chattar Singh and Balbir Singh. The investigating officer had recorded the statement of appellants Chattar Singh and Balbir Singh in the Hospital on the basis of which FIR No. 431/1993 was registered. The charge sheet in that case was filed under Section 324 of IPC, which was still going on and the trial court erred in not believing the story as stated by the appellants. It is further contended that the trial court had failed to consider the fact that merely saying ''mar sale ko'' cannot be treated as intention to kill and therefore no offence under Section 307 of IPC is made out. It is further contended that the doctor has not given the detailed analysis/depth of the injury before opining the injury as being dangerous. The contradictions and improvements in the prosecution witnesses were also urged.

9. Per contra, learned Additional Public Prosecutor for the State has submitted that the present case was registered on the statement of Sultan Singh (PW-4), who has categorically deposed in his statement before the court that the appellant - Chattar Singh started abusing his uncle Nihal Singh, where after he asked him to stop abusing, Chattar Singh uttered ''maro sale ko function mana raha hai''. He has also attributed the role of the Appellants - Chattar Singh and Vijay of catching hold of Nihal Singh and the appellant - Gyan Singh @ Gyanu of inflicting injury in the abdomen of Nihal Singh by a sharp object; and the appellant Balbir Singh of giving slaps and fist blows to the injured. The other witnesses - Nihal Singh (injured) (PW-1), eye witness - Ram Singh (PW-3), and Vinay (PW-6) have also corroborated the deposition of Complainant Sultan Singh (PW-4). More so, the injuries sustained by Nihal Singh were opined to be dangerous in nature as stated by the doctor. So far as the contradictions cited on behalf of the appellants are concerned, the same have already been dealt with by the learned Additional Sessions Judge. The judgment and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order, therefore, the same is not liable to be interfered with.

10. I have heard the submissions made on behalf of both the sides and also gone through the evidence of relevant witnesses as well as material placed on record. The impugned judgment is also perused by this court and it is revealed that the learned Additional

Sessions Judge has convicted all the accused persons for the offence punishable under Section 307/34 of IPC primarily on the basis of the deposition of the material witnesses i.e. Nihal Singh (injured) (PW-1), eye witnesses - Ram Singh (PW-3), and Vinay (PW-6) who have also corroborated the deposition of Complainant Sultan Singh (PW-4).

11. The first informant - Sultan Singh (PW-4) had deposed in his statement recorded before the court that on 15.12.1993 when sagai ceremony of his son Satish was going on at his house and his relatives were present in the function, the appellant - Chattar Singh started abusing his uncle Nihal Singh at about 9.45 PM. His uncle asked him not to abuse, whereupon Chattar Singh shouted "Maro sale ko function mana raha hai". He further deposed that Vinay and Chattar Singh caught hold of Nihal Singh and appellant Gyanu stabbed Nihal Singh in the stomach with some nukili chij (sharp edged object). He further deposed that appellant - Balbir slapped Nihal Singh. He along with other relatives rescued Nihal Singh from the appellants and took him to the hospital. Police officials in the hospital informed the local police of the concerned Police Station who visited the hospital and recorded his statement Ex. PW-4/A.

12. The next relevant witness is injured Nihal Singh (PW-1), who had deposed in his statement before the court that on 15.12.1993 at about 9.45 PM, he was present at his house when sagai of his grandson Satish was being solemnized. He deposed that the appellant - Chattar Singh started abusing him and when he requested him with folded hands not to give abuses, he told the appellant Gyanu that "Maro Sale Budhe Ko". Thereafter, Chattar Singh and Vijay caught hold of him and appellant - Gyanu inflicted injuries on his stomach with some "nukili chij". The other accused/appellant - Balbir Singh gave slap blows to him. He further deposed that appellant - Gyanu had caused injuries on his stomach with "nukili chij" with an intention to kill him.

13. In **Abdul Sayeed v. State of M.P., (2010) 10 SCC 259**, the Hon"ble Apex Court, while dealing with the reliability of testimony of injured witness, has held as under :

"The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

14. The aforesaid statements of the complainant and the injured witnesses is further corroborated by the eye-witness Ram Singh (PW- 3) who also deposed in his statement before the court that on 15.12.1993 at about 9.45 PM, at the sagai ceremony of Satish, son of Sultan Singh, his uncle Nihal Singh asked the appellant - Chattar Singh not to abuse him, whereupon he said "Maro Sale Ko Function Mana Raha Hai". In his deposition he further stated that Chattar Singh and Vijay caught hold of Nihal Singh from

his arms and asked the appellant - Gyanu to kill him. Thereafter, appellant Gyanu stabbed his uncle Nihal Singh in his stomach with a sharp thing. The other accused/appellant - Balbir gave slaps to his uncle. He along with his other relatives, rescued Nihal Singh from the appellants.

15. Vinay (PW-6), the other eye witness to the incident had deposed on the same lines as of PW- 1 and PW-3 thereby corroborating the facts of the incident, and stated that accused Chattar Singh had abused his father and when his father objected to the same, Chattar Singh and Vijay caught hold of his father and Gian Singh caused injuries in the stomach of his father with a sharp object.

16. Apart from the aforesaid witnesses, Dr. Ikbal Singh (PW-10) who after perusing the MLC of the injured gave his opinion Ex. PW-10/A, opining the injuries as being dangerous to life. According to him, the large intestine was fractured through and there was a lot of blood in the peritoneal cavity and the patient was in shock and four units of blood had to be given to him.

17. To prove the guilt of the accused for the offence under Section 307 of IPC, what the court needs to ascertain is the fact whether the act committed by the accused person had common intention to commit the offence or not. From the aforesaid depositions of the complainant Sultan Singh (PW-4), Injured - Nihal Singh (PW-1), Ram Singh (PW- 3) and son of the injured - Vinay (PW-6), the fact of commission of offence on the date of incident is established by the prosecution. For ready reference, section 307 of the IPC which reads as follows is provided hereunder :

"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned."

18. From a careful scrutiny of the case in hand, the identity of the appellants has been established by the deposition of Nihal Singh (PW- 1), Ram Singh (PW-3), Sultan Singh (PW-4) and Vinay (PW-6). All the witnesses have corroborated with each other''s statements. More so, all the four witnesses have specifically attributed the role of each of the appellants herein. According to the witnesses to the incident, the appellants-Chattar Singh and Vijay Singh had caught hold of the injured - Nihal Singh (PW-1); appellant - Gyan Singh @ Gyanu had inflicted injury through "nukili chij" on the stomach of the injured; and appellant - Balbir Singh had given slap blows to the injured. The impugned judgment passed by the learned Additional Sessions Judge also specifically mentions the same facts, however the appellants-Chattar Singh, Vijay Singh and Gyan Singh @ Gyanu had been convicted for the offence under Section 307/34 of IPC and the appellant - Balbir Singh was convicted for the offence under Section 323 of IPC.

19. It is apparent from the record that initially the FIR was registered under Section 324/34 of IPC which later on was converted to Section 307/34 of IPC and ultimately the appellants were charged for the offence under Section 307/34 of IPC. This court observes that on the same set of evidence, when all the appellants were charged with offence under Section 307/34 of IPC, the appellant - Balbir Singh was convicted for the offence under Section 323 of IPC on the basis of the role attributed to him in the commission of the offence. However, the other appellants - Chattar Singh, Vijay Singh and Gyan Singh were held guilty for the offence under Section 307/34 of IPC, despite the specific role assigned by the witnesses to the appellants in commission of the offence. From the aforesaid deposition of Nihal Singh (PW-1), Ram Singh (PW-3), Sultan Singh (PW-4) and Vinay (PW-6), in which all the witness have deposed that the appellants-Chattar Singh and Vijay Singh had caught hold of the injured - Nihal Singh and it was the appellant - Gyan Singh @ Gyanu who inflicted the stab injury in the stomach of the injured.

20. The appellant - Chattar Singh who had uttered the words "maro sale ko..." and the appellant - Gyan Singh, who in fact, had inflicted stabbed injuries in the stomach of the injured, have already expired and the appeal against them has been abated. Therefore, in the present facts and circumstances of the case, this court is of the opinion that the impugned judgment passed by learned Additional Sessions Judge needs to be modified to the extent that the appellant-Vijay Singh is held guilty for the offence under Section 323 of IPC as from the deposition of aforesaid witnesses, he has been assigned the role of catching hold of the injured - Nihal Singh. As per the testimony of above mentioned public witnesses, he was not the person who caused any injury to the injured what to say about dangerous it being. The role attributed to him is only to the extent that he caught hold of the injured at the time of the incident, which could cover the case against him under Section 323 of IPC.

21. Resultantly, the order on sentence thereby sentencing the appellant-Vijay Singh under Section 307/34 of IPC is set aside and he is made liable to be sentenced for the offence under Section 323 of IPC. It is ordered accordingly.

22. On the quantum of sentence to be awarded to the appellant - Vijay Singh, in the facts of the present case, this court observes that his conviction has now been modified from Section 307/34 of IPC to Section 323 of IPC. Further, the sentence of the appellant-Vijay Singh was suspended on 29.11.2000. Keeping in view the peculiar facts of the case and the fact that the present case relates back to the year 1993 and that the appellant has faced the agony of trial for the last 24 years, this court is of the considered opinion that in the interest of justice the sentence awarded to the appellant-Vinay Singh for the offence under Section 323 of IPC be reduced to the extent of period already undergone by him. On the same set of facts, the sentence of the appellant - Balbir Singh is reduced to the period already undergone by him. It is ordered accordingly.

23. Resultantly, the impugned judgment dated 19.08.2000 is hereby modified to the extent that the appellants-Vijay Singh and Balbir Singh are held guilty for the offence

under Section 323 of IPC. Consequently, the order on sentence dated 21.08.2000 is modified to the extent that the sentence of the appellants-Vijay Singh and Balbir Singh is reduced to the period already undergone by them.

24. Appellants-Vijay Singh and Balbir Singh are on bail. Their bail bonds and surety bonds are discharged. They are ordered to be set free from this case.

25. A copy of this order be sent to the Trial Court for information and necessary steps.

26. With aforesaid directions, the present appeal is disposed of.