

(2018) 01 DEL CK 0115

Delhi High Court

Case No: 564 of 2017

MEHTAB

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision: Jan. 3, 2018

Acts Referred:

- Indian Penal Code, 1860, Section 34, Section 324, Section 323, Section 308 - Acts done by several persons in furtherance of common intention - Voluntar

Hon'ble Judges: Mukta Gupta

Bench: Single Bench

Advocate: Jivesh Tiwari, Meenakshi Chauhan, Prempal Singh, PS Bhajanpura

Final Decision: Disposed

Judgement

1. By the present appeal, the appellant challenges the impugned judgment dated 7th November, 2016 convicting him for the offences punishable under Sections 323/324/34 IPC in FIR No. 1007/2014 registered at PS Bhajanpura and the order on sentence dated 10th November, 2016 directing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/- and in default, to undergo simple imprisonment for a period of 15 days for the offence punishable under Section 323 IPC and rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/- and in default, to undergo simple imprisonment for a period of 15 days for the offence punishable under Section 324 IPC.

2. Learned counsel for the appellant contended that the identification of the appellant by Ahmed Ali PW-2 is highly doubtful. Appellant was not the person who put hand in the pocket.

3. Learned APP for the State on the other hand contends that impugned judgment

and the order on sentence suffer from no illegality. The appellant was identified by Ahmed Ali PW-2 and Abdul Rehman PW-3.

4. Process of law was set into motion on 1st August, 2014 around 8:21 P.M. on receipt of DD No. 38A [Ex. PW-1/A] wherein it was stated "Bhajanpura, MCD ground jaha per mela laga hua hain do teen aadmi ko chaku mar diya hain". The aforesaid DD entry was assigned to SI Gopi Chand PW-9 who along with Ct. Pradhan PW-4 reached the place of incident i.e. MTNL Ground, Yamuna Vihar Delhi. On enquiry, he came to know that the injured persons were taken to Jag Pravesh Chandra Hospital by PCR officials. Thereafter, he reached the hospital and recorded the statement of Ahmed Ali.

5. Ahmed Ali stated that he works as a driver of private loading vehicle.

On 1st August, 2014, around 7:00 P.M. he and his friend Abdul Rehman @ Reham had gone to the Eid fair at MTNL Park, Yamuna Vihar. While they were purchasing tickets for the variety show of dance and music, somebody from behind put his hand in the right side pocket of his kurta. Immediately, he held his hand and slapped him twice. After sometime around 8:00 PM he came with his associates. He told the complainant that he was pretending to be a badmash and started an altercation. The boy of thin built stabbed him with a knife on his abdomen and one boy picked a chair and hit Abdul Rehman on his head. In the meantime somebody called the police. The boy with thin built who had stabbed him when he tried to stop him got injured. Police apprehended one boy whose name was revealed as Mehtab and rest of the boys could not be apprehended at the spot however, he can identify them if he sees them. The aforesaid statement was recorded vide Ex. PWCR. 2/A.

Consequently, FIR No. 1007/2014 was registered at PS Bhajanpura for the offences punishable under Sections 308/324/34 IPC [Ex. PW-1/C].

6. Thereafter, SI Gopi Chand PW-9 reached the crime scene and inspected the spot and prepared the site plan Ex. PW-9/B. Mehtab was arrested vide arrest memo Ex. PW-4/A and his personal search was conducted vide memo Ex. PW-4/B. Disclosure statement of Mehtab was recorded vide Ex. PW-9/C. On 22nd November, 2014 Abdul Rehman PW-3 and Ahmed Ali PW-2 produced their blood stain cloths which they were wearing at the time of occurrence. Abdul Rehman produced one shirt [Ex. P4] and one pant [Ex. P5] which were seized vide memo Ex. PW-3/A. The Kurta [Ex. P1] and Pajama [Ex. P2] of Ahmed Ali were seized vide Ex. PW-2/B. Charge for offences punishable under Sections 308/324/34 IPC was framed against the appellant vide order dated 7th January, 2015.

7. Ahmed Ali deposed in court in sync with the statement made before the police. He further stated that he identified appellant as one of the 5-6 persons who had come there. During his cross examination, he stated that he had apprehended the appellant at the spot. He did not inform the doctors that the appellant had stabbed him.

8. Abdul Rehman corroborated the version of Ahmed Ali. He stated that he had also given one or two slaps to the boy who inserted his hand in the kurta of Ahmed Ali. He further stated that the appellant attempted to stab with the knife again into the abdomen of Ahmed Ali however he caught his hand.

9. Dr. Lokesh, Senior Resident (Surgery), Jag Pravesh Chandra Hospital PW-5 stated that on 1st August, 2014 he examined Ahmed Ali and advised him for FAST (Focused Abdominal Sonography for Trauma) and Chest X- Ray (CXR) and exhibited the MLC vide Ex. PW-6/C.

10. Dr. Pamposh Razdan, Casualty Medical Officer, Max Super Speciality Hospital PW-6 stated that on 1st August, 2014 about 9:05 PM he examined Abdul Rehman. Dr.Pamposh Razdan exhibited the MLC with his endorsement as Ex.PW-6/A, opining the injuries as simple and fresh. On local examination the following injuries were noted:

1. Contused Lacerated Wound (CLW) over Left frontal head measuring 2 cm X 0.5 cm.

2. Contused Lacerated Wound (CLW) over Left hand dorsum measuring 2 cm X 0.5 cm.

11. Dr. Mohd. Niyaz Alam, CMO, Jag Pravesh Chandra Hospital PW-11 on 2nd August, 2014 around 1:44 P.M. examined the appellant and on examination he found that there was (i) small cut wound on upper lip with blood clot; (ii) contusion on left arm and left elbow (stick marks) and (iii) a small contusion on left thigh. He exhibited the MLC of Mehtab as Ex. PW-11/A.

12. Ms. L. Babyto Devi Asst. Director (Biology), FSL Rohini PW-13 stated that on 26th November, 2014, she had received four parcels, two parcels with the seal of "GCN" and two with the seal of "CMO". On examination blood was detected on exhibits "1a", "1b", "2a", "2b", "3" and "4". The report is Ex. PW-13/A. on serological examination blood of human origin and blood group "B" was detected on exhibit

"1a" Jeans pant, Exhibit "1b" Shirt, exhibit "2a" Kurta and exhibit "2b" Pajama. Blood of human origin was detected on exhibit "3" blood sample of Abdul Rahman and exhibit "4" blood sample of Ahmad Ali. However, blood group could not be detected on exhibit "3" and "4" as the exhibit did not give any reaction. She exhibited the report vide Ex. PW-13/B.

13. SI Gopi Chand PW-9 stated that after receiving the DD entry, he reached at the spot where he found that the injured was taken to Jag Pravesh Chandra Hospital. Thereafter, he reached the hospital and recorded the statement of Ahmed Ali. It was thereafter when he again went to the spot and met Ahmed Ali at the place of occurrence, public persons produced the appellant and arrested him. During his cross- examination, he stated that the appellant was arrested at 1:30 A.M. from the spot.

14. Considering the evidence on record the identification of the appellant cannot be held to be doubtful. Appellant was apprehended at the spot. Injuries inflicted by the appellant though simple in nature, but with a sharp weapon. The conviction of appellant for offences punishable under Sections 323/324/34 IPC is upheld. Since the appellant has already undergone nearly 2 years 6 months including remissions, sentence of the appellant is modified and he is directed to be released on the period already undergone.

15. Appeal is disposed of. Superintendent, Central Jail, Tihar is directed to release the appellant forthwith if not required in any other case.

16. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

17. Trial Court Record be returned.