

(2014) 02 DEL CK 0209

In the Delhi High Court

Case No : Criminal A. 1477 of 2011 and Criminal M.B. No. 2088 of 2011

Muslim @ Salim

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Arms Act, 1959 — Section 25

Penal Code, 1860 (IPC) — Section 308 324 34 398

Citation : (2014) 2 JCC 1082

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Nandita Rao in Criminal A. 1477/2011 and Criminal M.B. No. 2088/2011, Mr. Ravi Chaturvedi in Criminal A. 34/2013 and Criminal M.B. No. 52/2013 and Mr. Anwesh Madhukar in Criminal A. 641/2013 and Criminal M.B. No. 1005/2013, for the Appellant; Lovkesh Sawhney, APP, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.—Challenge in these appeals is to a judgment dated 03.08.2011 of learned Addl. Sessions Judge in Sessions Case No. 99/10 arising out of FIR No. 1012/07 PS Sangam Vihar by which Muslim @ Salim (A-1), Kafil Ahmad (A-2) and Amit (A-3) were held perpetrators of the crime under Sections 398/308/34 IPC and awarded RI for seven years with fine Rs. 3,000/-, each u/s 398 IPC; RI for three years with fine Rs. 2,000/-, each u/s 308 IPC by an order dated 17.08.2011. The substantive sentences were to operate concurrently. Allegations against the appellants as detailed in the charge-sheet were that on 23.10.2007 at about 02.45 A.M. in front of house No. 1007, C-Block, Sangam Vihar, they in furtherance of common intention while armed with deadly weapons robbed Laxmi Narain and inflicted injuries to him. The police machinery swung into action on receipt of Daily Diary (DD) No. 59A (Ex. PW-11/A) at PS Sangam Vihar. The investigation was marked to HC Ali Mohammad who with Const. Kamal went to the spot and came to know that the victim had already been taken to AIIMS. The Investigating Officer, after recording statement of Laxmi Narain (Ex. PW-5/A),

lodged First Information Report. PW-2 (HC Suresh Tomar) recorded the First Information Report (Ex. PW-2/A). During investigation, statements of the witnesses conversant with the facts were recorded. The accused persons were apprehended and arrested in case FIR Nos. 1059/07, 1060/07 and 1061/07 u/s 25 Arms Act, PS Nihal Vihar. Pursuant to disclosure statements, their involvement in the instant case surfaced. They participated in the Test Identification Proceedings and correctly identified by the complainant. After completion of investigation, a charge-sheet was filed against all of them; they were duly charged and brought to trial. The trial resulted in their conviction. The occurrence took place in the night intervening 22/23.10.2007 at around 02.45 A.M. The information to the police was conveyed regarding the incidence at 04.07 A.M. and Daily Diary (DD) No. 59A (Ex. PW-11/A) was recorded. The Investigating Officer recorded statement of the complainant - Laxmi Narain (Ex. PW-5/A); made endorsement (Ex. PW-11/A) over it and sent rukka for registration of the FIR at 05.30 A.M. PW-3 (Parmeshwar Yadav), PW-4 (Subhash Tyagi) and PW-6 (Umesh Kant), who lived in the neighbourhood of the victim, arrived at the spot on hearing the noise and found Laxmi Narain in an injured condition. They took him to AIIMS. MLC (Ex. PW-15/A) records the arrival time of the patient at AIIMS at 04.09 A.M. with the alleged history of assault; stab injury. Apparently, there was no delay in lodging the police report. In the statement (Ex. PW-5/A), the complainant gave detailed account of the occurrence as to how and under what circumstances injuries were inflicted to him by four assailants armed with various weapons. In his Court statement, the complainant proved the version given to the police at the earliest available opportunity and identified the appellants as the assailants who had caused injuries to him with various weapons in their possession. In the cross-examination, no ulterior motive was assigned for implicating the appellants with whom he had no prior acquaintance or animosity. The accused persons were unable to extract any material discrepancy to disbelieve his version. Injuries sustained by the victim remained unchallenged in the cross-examination. The witness not only identified these appellants in the Court but also identified them in Test Identification Proceedings conducted at Tihar jail by PW-13 (Mr. Sanjay Bansal), Addl. Chief Metropolitan Magistrate. The Test Identification Proceedings (Ex. PW-13/B, Ex. PW-13/C and Ex. PW-13/D) reveal that the complainant was able to identify correctly all the assailants. There is no substance in the plea of the appellants' counsel that the complainant was shown the photographs prior to holding of the Test Identification Proceedings. No such plea was taken by the appellants when they readily agreed to join the Test Identification Proceedings. Nothing has come on record as to when and where the complainant had seen the appellants in the police station. The complainant categorically asserted that the photos of the accused persons were shown to him after the Test Identification Proceedings. There is no valid or sound reasons to disbelieve the testimony of the witness who had sustained injuries at odd hours near his residence. The accused persons did not explain the specific reason/purpose for their presence at odd hours near the residence of the complainant. They did not offer plausible

explanation to the incriminating circumstances proved against them in 313 statements.

2. There is no conflict between the ocular and medical evidence. The prosecution examined PW-15 (Dr. Ram Karan Chaudhary) who proved the MLC (Ex. PW-15/A) prepared by Dr. Avinash Prakash. He identified his handwriting and signatures on the basis of medical record. The nature of injuries given "simple" caused by sharp object was not questioned in the cross-examination. PW-18 (Dr. B.L. Chaudhary) gave detailed opinion (Ex. PW-18/A) and was of the view that the injuries mentioned in the MLC were possible with the knives shown to him. He also stated that the cut marks on the clothes produced before him were possible with the said weapons. The prosecution was able to prove that the appellants in furtherance of common intention inflicted injuries to the complainant.

3. Regarding conviction of the appellants under Sections 398/308 IPC, there was no sufficient evidence to infer that injuries to the victim were inflicted in an attempt to commit robbery. The complainant in his statement (Ex. PW-5/A) did not disclose if any of the assailants had robbed any valuable article from his possession or that they had directed or commended him to hand-over any article in his possession. When he was being beaten, the complainant, on his own, offered to hand-over whatsoever he had, to the assailants. Even after infliction of injuries, no attempt was made by any of the assailants to take out any article in possession of the complainant. In his Court statement also the complainant did not testify if at the time of initial confrontation, any of the assailants had directed him to hand-over the article in his possession. He himself requested the assailants not to give him beatings and he was ready to give everything in his possession. Despite his offer, no article was delivered to the assailants. Apparently, there was no delivery of any property. Needless to say, the appellants had no motive to deprive the complainant of any valuable article in his possession. It appears that a scuffle took place when the complainant found the assailants present near his house and challenged them. In the said scuffle, the assailants in furtherance of common intention voluntarily caused injuries "simple" in nature by sharp weapon. Again, conviction u/s 308 IPC is not sustainable as the prosecution was unable to prove beyond doubt that the assailants had inflicted injuries with the avowed object or intention to kill him. The complainant had no previous animosity with the assailants and they were not known to each other. The presence of the complainant at the spot was sudden and was not anticipated by the appellants. No repeated blows with sharp weapons were inflicted on the vital organs of the complainant. When taken to the hospital, he was quite conscious and oriented and was not even hospitalized for any treatment. He was discharged from the hospital after half an hour. The nature of injuries was "simple". The victim was unable to attribute specific role to each of the assailants in the incident. He was also unable to give detailed account as to which of the assailants was in possession of which specific weapon. He did not attribute specific role to the each assailant in inflicting/causing injuries to him. The prosecution miserably failed to prove ingredients of Sections

398/308 IPC. The appellants were responsible for voluntarily causing "simple" hurt by sharp object to the victim and the offence proved against them was under Sections 324/34 IPC.

4. A-1's nominal roll dated 13.11.2013 reveals that he has suffered detention in this case for more than four years, three months and eight days besides remission for one month and fifteen days as on 10.11.2013. A-2's nominal roll dated 11.12.2012 shows that he has suffered custody for more than three years, nine months and nine days as on 05.12.2012. A-3's nominal roll dated 25.09.2013 would show that he has remained in custody for more than four years, three months and seventeen days besides remission for one month and seventeen days as on 25.09.2013. The appellants have thus undergone substantial period of substantive sentence awarded to them under Sections 398/308 IPC, the offence for which they were not liable to be charged and prosecuted. The period already suffered in custody by them is taken as substantive sentence. No further sentence is required to be awarded to them in this case. A-1 to A-3 are ordered to be released forthwith if not required to be detained in any other case. Appeals stand disposed of in the above terms. Pending applications also stand disposed of as infructuous. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to Superintendent Jail for information.