



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 10.09.2025
Pronounced on : 24.09.2025

+ **CRL.A. 376/2017**

PRINCEAppellant
Through: Mr. K.K. Gautam, Advocate.
versus

STATE NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State

AND

+ **CRL.A. 1120/2017**

NARENDER SINGH @ KAKEAppellant
Through: Ms. Astha, Advocate.

versus

STATERespondent
Through: Ms. Shubhi Gupta, APP for State

AND

+ **CRL.A. 431/2017**

AKASH @ TAMLUAppellant
Through: Mr. Ajay Kumar Jha, Advocate

Versus

STATE NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State



CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the above-noted appeals, the appellants seek to assail the common judgment of conviction dated 28.02.2017 whereby they have been convicted of the offences punishable under Sections 326/323/34 IPC and the common order on sentence dated 06.03.2017 whereby they have been directed to undergo the following sentences:-

- "1. All the convicts are hereby sentenced to undergo rigorous imprisonment for a period of five years and also to pay a fine of Rs.5,000/- each for offences punishable u/s 326/34 IPC and in default of payment of fine, they are to undergo simple imprisonment for a period of six months.*
- 2. They are further sentenced to undergo rigorous imprisonment for a period of three months and also to pay a fine of Rs. 1,500/- each for offence punishable u/s 323/34 IPC and in default of payment of fine, they are to undergo simple imprisonment for a period of one month.*
- 3. Both the sentences shall run concurrently.*
- 4. Benefit of section 428 Cr.P.C. be given to convicts for the period of detention already undergone by them in custody in this case."*

2. Since common submissions have been addressed against the impugned judgment, the present appeals are taken up together and are being disposed of vide common judgment.

3. Criminal investigation commenced in the context of an incident occurring on 14.04.2014, when a police call was received at P.S. Sunlight Colony regarding throwing of boiling oil by 3-4 persons upon a boy near the gate of *Tikona* Park at Sunlight Colony. The said information was received at 9:40 p.m. and recorded vide DD No. 19A. The said DD was assigned to



SI *Avinash*, who along with HC *Virender Pal* and Ct. *Ashok* reached the spot. At that time, the PCR Van had also arrived.

On enquiry, the police staff came to know that one person had got burnt due to hot oil from a *kadhai* (pan) thrown on him. In all, six persons suffered injuries in the said incident. While four injured persons, namely, *Manish*, *Kamal*, *Dharmesh*, and *Tanuj*, were initially taken to AIIMS Trauma Centre, injured *Altaf Raja* was admitted to Safdarjung Hospital with 10% burns. Another injured, namely *Gaurav*, came to P.S. Sunlight Colony and, on his statement, the FIR in question came to be registered.

4. Charges were framed under Sections 326A/323/34 IPC, to which the accused pleaded not guilty and claimed trial. In total, 15 witnesses were examined by the prosecution. The injured persons, namely the complainant/*Gaurav*, *Tanuj Dixit*, *Altaf Raja*, *Manish Malik*, and *Dharmesh Malik*, were examined as PW-3, PW-4, PW-7, PW-8, and PW-10 respectively. The MLC of injured *Kamal* was proved through Dr. *Manjunath Bale*, who was examined as PW-5. Dr. *Akshay Upadhyay*, who was examined as PW-14, proved the MLCs of *Manish Malik*, *Dharmesh Malik*, and *Tanuj Dixit*. Dr. *Govind*, who proved the MLC of *Altaf Raja*, was examined as PW-15. His injuries were opined to be dangerous. The Investigating Officer of the case, namely SI *Avinash*, was examined as PW9.

5. Learned counsels for the appellants contended that the appellants have been falsely implicated in the present FIR as none of the injured persons has supported the prosecution case. The prosecution has further failed to establish that there was any common intention amongst the accused persons to commit the offence. It is next contended that though the FIR contains the names, father's names and addresses of the accused, the complainant in his



cross-examination admitted that he did not know the father's names of the accused. In this backdrop, it is stated that the FIR was antedated.

6. Learned APP for the State, on the other hand, has defended the impugned judgment by contending that on account of the altercation that had taken place at the *momos* stall, the common intention was developed at the spot. One of the injured, i.e. the complainant, had identified the appellants.

7. The complainant/*Gaurav* in his deposition stated that on 14.04.2014 at about 9:45 p.m., he was present at a *momos* stall near *Darshana* Park when he saw that a scuffle had broken out between *Prince*, *Aakash*, *Narender* and some other persons. He stated that *Prince* threw boiling oil upon him from a boiling pot, and the oil fell on him as well as on the person selling *momos*. Both of them were taken to Safdarjung Hospital. His statement was recorded in the hospital wherein he disclosed the entire incident. Though he was discharged after receiving first aid, the person selling *momos* had suffered burn injuries on his face, chest, and neck and remained hospitalized. As the witness was not deposing in accordance with his earlier statement, he was cross-examined by the learned APP, in which he admitted that the name of the person selling the *momos* was *Altaf Raja*. He stated that he could not say if the accused persons had started quarreling with *Altaf* when the latter demanded money for the *momos*.

In cross-examination by the counsel for the accused persons namely *Prince* and *Aakash*, the witness admitted that he did not know the names of the fathers or the addresses of any of the accused persons, even on the date of his deposition. He also did not know the father's name or address of injured *Altaf*. He further stated that he had known *Aakash* for the last 4/5 years and *Prince* for about 1 year. He admitted that none of the accused had



a quarrel with him on that day. He stated that it was wrong to suggest that a quarrel had arisen between him and his friends while eating *momos*, or that he suffered injuries having poured boiling oil upon him, or that the pot containing boiling oil fell on him in the said quarrel, or that *Prince* did not pour any boiling oil upon him or *Altaf*. He denied the suggestion that neither *Aakash* nor *Prince* was involved in the said incident. In further cross-examination by the counsel for accused *Narender*, the witness deposed that the accused *Narender* was also present at the scene at the time of the incident.

8. *Tanuj Dixit* (PW-4), another injured, deposed that on the night of the incident he, along with *Dharmesh* and *Manish Malik*, who were his colleagues, was eating *momos* when a crowd of 20/30 people came there and started fighting with each other, wherein someone hit him, and he suffered injuries on his back. He was taken to AIIMS and, after receiving treatment, he returned home. He further deposed that he did not see any of the assailants and that none of the accused persons was either present at the spot or caused any injuries to him. He was cross-examined by the learned APP and admitted that he was aware of the names of the accused persons. He admitted that it was correct that a quarrel had taken place at the *momos* stall. He also admitted that the person selling *momos* had sustained burn injuries from oil. He, however, denied the suggestion that he had told the police that *Prince* had thrown oil on the person selling *momos* after quarrelling with him and refusing to pay him money for the *momos*.

9. *Altaf Raja* (PW-7), the *momos* seller, deposed that on the day of the incident he was selling *momos* when there was some quarrel going on in the area, and when he tried to pick up the tin box of oil, somebody pushed the



kadhai and the oil fell upon him, after which he became unconscious. He deposed that he did not know on whose push the oil had fallen on him. He further deposed that he did not know any of the accused persons present in Court. He also deposed that the accused persons were not present at the spot on the day of the incident.

In cross-examination by the learned APP, the witness denied making any statement to the police that accused persons had beaten him. He denied the suggestion that he had seen the accused persons at the spot when they had come to eat *momos* at his stall. He also denied the suggestion that the accused persons present in Court had not given him money for the *momos* or that they had abused him. He further denied that it was accused *Prince* who had thrown the *kadhai* upon him, due to which he had sustained injuries. He stated that he did not know *Manish Malik*, *Kamal Singh*, *Dharmesh Malik*, or *Tanuj Dixit*. The accused were shown to him, at which point the witness stated that none of them had fought with him or caused any injuries to him. He stated that he remained hospitalized for more than a month and denied the suggestion that he had been won over by the accused persons. In cross-examination by counsel for the accused, he again admitted that it was correct that he had not seen any of the accused persons on the day of the incident.

10. *Manish Malik*, another injured, examined as PW-8, also stated that on the day of the incident he, along with his brother *Dharmesh* and friend *Tanuj*, was eating *momos* when suddenly a commotion took place and he fell down. He further stated that the *momos* seller also sustained injuries, due to the boiling oil which had fallen on him. He stated that he did not know any of the accused persons present in Court. He was also declared hostile, and in cross-examination by the learned APP, he denied giving any statement to the



police that the accused persons had beaten him, his friend, his brother, or the *momos* seller. He further denied the suggestion that the accused persons had refused to give money for the *momos* they had eaten or that they had abused the *momos* seller when he demanded money. He also denied the suggestion that accused *Prince* had thrown the *kadhai* of oil on the *momos* seller, due to which he had sustained injuries. On the accused persons being shown to the witness, he stated that they were not the one who had fought with him or caused any injuries to him or the *momos* seller.

11. To a similar extent is the deposition of *Dharmesh Malik*. He also did not identify any of the accused persons or attribute any role to them.

12. The Trial Court relied on the testimony of the complainant/*Gaurav* to arrive at a conclusion that all the appellants were present at the spot. The Trial Court further observed that the testimony of PW-3 revealed that the accused were fighting with some other persons by fists and slaps and that *Prince* threw boiling oil on *Gaurav* and the person who was selling *momos*. However, a perusal of the testimony of the injured *Altaf Raja* reveals that he himself has deposed that it was on account of a push by someone that the oil, kept in a pot, fell on him. He further stated that he was trying to pick up a tin box of oil and the *kadhai* of oil fell on him upon being pushed. He, at no point in time, has stated that the oil was thrown on him by someone. None of the other injured persons have supported the case of the prosecution. The charge under Section 326A IPC was framed for injuries caused to *Altaf Raja* when he demanded money as payment for *momos*. The charge under Section 323 IPC was framed for causing injuries to *Kamal*, *Tanuj*, *Manish*, and *Dharmesh*. There was no charge framed for any injuries caused to *Gaurav* since there was no MLC prepared for him. None of the



injured persons have identified the appellants as the same persons who were present at the spot on the day of the incident.

13. The narration of events in the testimony of *Gaurav* is in contrast to what the injured *Altaf* has stated. While *Gaurav* claimed that *Prince* had thrown oil on him, some of which also fell on *Altaf*, the testimony of *Altaf* revealed that when he was picking up a tin of oil, on account of a push, the oil fell upon him. He further stated that he did not know who pushed and that the accused persons were not even present at the spot. Further, the testimony of *Gaurav* is also shrouded in doubt, as though in his initial complaint he had mentioned details of parentage and address of all the accused, at the time of his Court deposition he claimed no knowledge of any such details till that date.

There is no quarrel with the proposition that common intention can be developed at the spot, but for that to apply, the accused need to be identified. None of the injured witnesses have deposed regarding the identity or presence of the accused persons at the spot.

14. In view of the above discussion, all the above-noted appeals are allowed and the impugned judgment as well as impugned order on sentence are set aside. The appellants are acquitted, and they be released forthwith by the concerned Jail Superintendents, if not wanted in any other case.

15. A copy of this judgment be sent to the concerned Jail Superintendents and the Trial Court, for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 24, 2025/ga