

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 16<sup>th</sup> November, 2009*  
*Judgment Delivered on: 23<sup>rd</sup> November, 2009*

+ **CRL.REV.P.544/2001**

DESH RAJ ..... Petitioner  
Through: Mr.Ashok Soni, Advocate

Versus

KEWAL KRISHAN AND ORS. .... Respondents  
Through: Mr.Rajesh Mahajan, Advocate  
for R-1 to R-3.  
Mr.Manoj Ohari, APP for the  
State/R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.**

1. FIR No.6/92 had been registered at police station Hauz Qazi under Sections 452/308/34 of the IPC against Durga Prasad, Kewal Krishan Sharma and Jaspal Singh on the complaint of Desh Raj. Desh Raj is the petitioner before this Court.

2. Briefly stated the facts of the case:-

That on the night intervening 3-4.1.1992 when Desh Raj was sleeping in his room; at about 1.00 AM a noise was heard. Tara Chand father of PW-1 and his brother Jugesh PW-2 were sleeping in

the courtyard outside. PW-1 saw Kewal Krishan accompanied by Jaspal and Durga Prasad standing near his cot. Kewal Krishan was armed with a danda; Jaspal was carrying an iron rod, Durga Prasad had a club/thapi. PW-2 also woke up; altercation took place between the accused persons and the complainant and his brother. Kewal Krishan extorted the complainant by saying that "AAJ HAM TEENO KA KAM TAMAM KAR DENGE". Durga Prasad caught hold of Desh Raj and asked Kewal Krishan to beat him upon which Kewal Krishan and Jaspal Singh started beating Desh Rah. Jaspal hit Desh Raj with iron rod on his head; Kewal Krishan hit him with a danda.

3. The victim suffered a head injury; he was removed to the LNJP hospital by Vinod Kumar PW-4 a neighbour in the vicinity. He was medically examined vide MLC Ex.PW-10/A. One CLW measuring 5 cm x 2 cm long on the scalp was noted; no other apparent external injury was visible. MLC shows that the patient had been admitted in the hospital on 4.1.1992 at about 1.20 AM and had been discharged on 8.1.1992. Nature of the injury had been opined to be blunt.

4. On the complaint Ex. PW-1/A of PW-1 the formal FIR Ex.PW-3/B was registered. Investigation was marked to ASI K.L.Sharma PW-11 who along with Const.Vijender PW-9 reached the spot; photographer H.Ct.Subhash Chand PW-5 took three photographs Ex.PW-5/D to Ex.PW-5/F of the scene of occurrence; site plan was prepared.

5. The aforesaid evidence collected and proved by the prosecution had been examined by the Trial Court. The Trial Court vide judgment dated 30.5.2001 had convicted the accused for the offence under Section 323 read with Section 34 of the IPC; they had been acquitted of the charges levelled against them under Sections 308/452 of the IPC.

6. Trial Court had held that the evidence adduced had not shown that there was any trespass committed by the accused persons; no such evidence was forthcoming that the accused had entered the room which was in the occupation of Desh Raj or his family; version of Desh Raj being categorical that when he came out of the room he had seen the accused persons in the courtyard. Accordingly acquittal under sections 452 of the IPC had followed. The court had further convicted the accused under Section 323 of the IPC and not for the offence under Section 308 of the IPC which postulates the ingredients of an attempt to commit culpable homicide. It has been held that only a single blow had been suffered by the victim. The size and the dimension of the blow had been taken into consideration. The act of the accused persons in inflicting a single blow had revealed the *mense rea* not to commit culpable homicide not amounting to murder; it could not have been said that the accused persons knew that by their act of inflicting a single blow injury to Desh Raj they could have caused his death. Conviction under Section 323 of the IPC had thus followed.

7. Vide order of sentence dated 30.5.2001, accused had been sentenced to undergo probation for a period of one year on their furnishing a personal bond in the sum of Rs.5000/- with one surety of like amount and also to keep peace and good behavior; the accused were also directed to pay a sum of Rs.2000/-each as fine to the complainant Desh Raj.

8. This revision petition has been preferred by the complainant i.e. Desh Raj. State has admittedly not filed any appeal.

9. Scope of the revisional powers of this Court are limited and are distinct from the powers of an appellate Court. In a revision petition, it is only the correctness, legality or the propriety of any finding, sentence or order of an inferior Court which can become the subject matter of a challenge before a higher Court. Revisional jurisdiction when invoked by a private complainant against an order of acquittal ought not to be exercised lightly and should be exercised only in those exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or of a gross miscarriage of justice. Powers of a revisional Court are also distinct from the powers of an Appellate Court. The Court of revision would not ordinarily reassess evidence and interfere merely because the view of the Trial Court as to the evidence does not commend to itself; because that would be exercising the power of appeal in the guise of revision wherein a case where right of appeal has been curtailed by the legislature;

Chaganti Kataiah v. Coginani Venkateshwara Rao AIR 1973 SC 1274.

10. A question of a sentence is also a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, a superior court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; Bed Raj v. State of Uttar Pradesh AIR 1955 SC 778.

11. It is in this backdrop that this revision petition has to be decided.

12. Desh Raj PW-1 is the complainant. He has deposed that on 4.1.1992 at about 1.00 AM while he was sleeping he heard a thumping sound; he came out into the courtyard where his brother Jugesh Kumar was sleeping. Durga Prasad, Kewal Krishan and Jaspal were standing in the courtyard. PW-1 has reiterated on oath the averments which had been made in his complaint Ex.PW-1/A. He has admitted that i.e. PW-1 had an old enmity with Durga Prasad who was their neighbour and they used to quarrel over petty issues. He has further deposed that he remained in the hospital for 11 days. This statement appears to be incorrect. The MLC as discussed supra shows that he has been discharged after four days i.e on 8.1.1992.

13. PW-1 has deposed that Kewal Krishan had given him a danda blow and Jaspal Singh had given a blow with an iron rod on his

head. This version also appears to be incorrect as MLC Ex. PW-10/A as discussed supra has noted only one injury on the head i.e. a CLW of 5 cm x 2 cm long; no other apparent external injury was found visible.

14. PW-2 was the brother of PW-1; he has corroborated his version.

15. In the statement of the accused recorded under Section 313 of the Cr. P.C., they have all stated that they are innocent. Kewal Krishan was a tenant in the house of the complainant Desh Raj and on the fateful day when he was coming back with his servant Jaspal he struck against his cot and fell down; Tara Chand father of PW-1 had extorted his son and they had given beatings to the accused persons; accused have been falsely implicated. Relevant would it be to state that this defence found mention in the cross-examination of PW-1, PW-2 and also other related witnesses of the prosecution. That is a far back as 5.7.95 when PW-1 was first cross-examined.

16. One witness has been produced in defence. He was record clerk of LNJP Hospital and he had produced MLC Ex. PW-10/DA and Ex.PW-10/DB of accused Jaspal and accused Kewal Krishan showing their admission in the hospital on 4.1.1992 at 2.00 AM and 3.00 AM respectively. These documents had established that the accused Jaspal and Kewal Krishan had also received injuries on the same

day. It was thus an altercation which had ended in a scuffle between the parties.

17. The Trial Court had relied upon unimpeached testimony of PW-1 and PW-2 and had placed reliance upon it. At the same time the intention of the accused persons had been gathered from the medical record which had been produced i.e. the medical record of the victim Desh Raj and also medical record of Jaspal and Kewal Krishan i.e. two of the three accused persons. Ex. PW-10/DA which is the MLC of Jaspal has shown minor abrasions on his hands and the left side of his face; Ex. PW-10/DB MLC of Kewal Krishan revealed abrasions and contusion on his right leg and on a portion of the face.

18. On the other hand the victim Desh Raj had suffered one injury i.e. a CAW 5 cm x 2cm long on his scalp; no other injury was noted; had been declared fit for the statement on the same day when his statement Ex.PW-1/A was recorded by the Investigating Officer which has become the subject matter of the complaint. Incident was reported at about 1.10 AM on 4.1.1992 and FIR was registered at 2.25 AM within a span of one hour.

19. Court had gathered the intention and knowledge on the part of the accused person from this oral and ocular versions of PW-1 and Pw-2 as also the manner in which the assault had taken place; the part of the body on which the injury had been caused. The fact that the only one injury had been suffered by the victim; the fact

that all the three accused persons were armed with three separate weapons i.e. a danda, an iron rod and a thapi yet the injury was a single blunt blow on the scalp of Desh Raj; had the accused persons the criminal intention to cause death they could have caused the death and injuries would have been in the plural and would have been on other vital parts of the body as well. The single simple blow injury suffered by Desh Raj had led the Court to conclude that the offence made out against the accused persons is one under Section 323 of the IPC.

20. Counsel for the petitioner has placed reliance upon Sunil Kumar v. NCT of Delhi & Ors. 1999 [1] JCC [SC] 92 to support his submission that to make out offence under Section 308 of the IPC the nature of the injury i.e. whether it was grievous or simple deserves to be given a back seat. This judgment was on an appeal against the order of the High Court whereby the entire charge sheet under Section 308/323/34 of the IPC had been quashed on the ground that the offence under Section 323/34 of the IPC had been investigated by the police without the prior permission of the magistrate and the said permission not having been obtained the entire charge sheet stood quashed. It was at the stage of framing of the charge itself that the charge sheet has been quashed; it was in this context that the aforementioned observation highlighted by the learned counsel for the petitioner had been made by the Supreme

Court. The facts of that case would not have any application to the instant case.

21. This court is also of the view that the accused persons are guilty of the offence punishable under Section 323 of the IPC only and the ingredients of Section 308 of the IPC are clearly not made out. Nature of the injury suffered by a victim may not always be true test to determine the offence committed by him, yet the ocular versions of PW-1 and PW-2 as also the medical record clearly establish that the accused persons had been rightly convicted for the offence under Section 323 of the IPC. Conviction of the accused persons for a graver offence is not called for.

22. While awarding the sentence of probation the Court had taken into account that the accused persons are not previous convicts; there was a bone of contention between them; both Durga Prasad and Desh Raj residing in the same building; there used to be frequent quarrels between them on petty matters; accused persons already having suffered incarceration for about 10 to 11 days; they had been granted a sympathetic consideration and had been released on probation.

23. It is apparent that the Court had acted on the lines of the reformatory and retributive purpose on sentencing and had given due regard to the age, character and the antecedents of the offender. The power to grant probation is in the discretion of the Court which is to be exercised according to the circumstances of

each case. This discretion has been exercised fairly and justly in the background of the facts of each case; same has not been exercised arbitrarily or capriciously and calls for no interference.

24. In Lekh Raj vs. State AIR 1960 Cr.LJ 1234, it had been held that the power to grant probation is to be exercised in those cases where the offenders even the youthful ones without being persons of depraved character, may succumb to sudden temptation or uncontrollable an impulse, or have done a thoughtless rather than a criminal act, or were at the time of the offence acting under the influence of others. These considerations had weighed in the mind of the Court to award the sentence of probation and rightly so.

25. Revision petition is without any merit; dismissed.

(INDERMEET KAUR)  
JUDGE

23<sup>rd</sup> November, 2009  
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