

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

% *Judgment Reserved on: 3rd November, 2009*
Judgment Delivered on: 5th November, 2009

CRL. R.P. NO.650/2003 & CRL.M.A. NO.1146/2003

SMT SITA DEVI & ANR. PETITIONERS

Through: Mr.Rajesh Mahajan, Amicus Curiae.

versus

STATE OF DELHI & ANR RESPONDENTS

Through: Mr.Manoj Ohri, APP.

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.

On 5.3.2003, the learned Metropolitan Magistrate had convicted Sita Devi and Uma Rani for the offence under Section 323 of the IPC; vide order of sentence dated 10.3.2003, they had been sentenced to be released on probation of good conduct for a period of 6 months on their furnishing a personal bond in the sum of Rs.5,000/- with one

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surety of the like amount as also to keep peace and good behavior.

2. This judgment had become a subject matter of an appeal filed before the Additional Session Judge. The Additional Session Judge vide impugned judgment dated 5.8.2003, had confirmed the conviction of both the petitioners under Section 323 of the IPC; no modification had also been made in the sentence of probation which had been granted to them.

3. The present revision petition has assailed this conviction. It has been argued that no medical evidence have been produced by the prosecution to show that the complainant had suffered any injury; the doctor had not been examined; the necessary corollary is that the complainant had in fact not sustained any injury; as per the version of the complainant the accused i.e. Sita Devi and Uma Rani had been accompanied by their respective husbands when they entered the house of the complainant; why the husbands have not been examined has not been answered by the prosecution; Avtar Singh son of the complainant was present at the time of the incident; he has also not been examined. The conviction qua the petitioners suffers from these inherent defects which had resulted in a miscarriage of justice; conviction is liable to be set aside.

4. There are two concurrent findings of fact by two Courts below; this Court in its revisional power would interfere only when there is a palpable error of law or a wrong view taken or where the lower Court mis-appreciated the evidence which has resulted in a failure of justice and not otherwise.

5. Adjudged on these parameters the statement of eye-witness PW-1 has been examined; she is the complainant Bachan Kaur; on oath she has deposed on 24.5.1999 at about 11.30AM Vidya Sagar along with his wife Sita Devi and Uma Rani wife of Madan Mohan and daughter-in-law of Vidya Sagar had come to her house for the purpose of getting possession of this house; PW-1 had objected to their presence; they started beating her; Sita Devi caught hold of her while Uma Rani gave a blow with a sharp edged object on her right hand; PW-1 sustained injuries; she was removed to S.D.N. hospital; her statement PW-1/A was recorded.

6. In her cross-examination PW-1 has admitted that both Uma Rani and Sita Devi were accompanied by their husbands when they entered the house; the entire house is in her possession. Accused persons had entered her house with their personal articles; her son Avtar Singh had called the police; she denied the fact that no such incident had taken place.

7. From this version of PW-1 it is clear that Avtar Singh had called the police, his presence in the house has not been testified.

8. Version of PW-1 is clear, consistent and cogent; discrepancies which are of an inconsequential nature were rightly ignored by both the Courts below. It is further borne out that there were disputes and a litigation pending between the complainant and accused persons; this has also been fortified by the version of the Investigating Officer SI Kumar Jeveshwar PW-2. DW-1 had also come into the witness box to establish that a suit for specific performance, possession, damages and mense profits had been filed by Rohtash Kumar against the complainant. DW-2 had produced the certified copy of the complaint case filed by Rohtash Kumar against the complainant. The said documents have been proved as DW-2/A to DW-2/C. Rohtash Kumar is the son of Vidya Sagar and Sita Devi.

9. Petitioners before this Court i.e. Sita Devi and Uma Rani are mother-in-law and daughter-in-law of one and another. The enmity between the complainant and the petitioners stands proved which has rightly been attributed by the Trial Court as the motive for the act of the petitioners.

10. The MLC of the victim have been collected by PW-2 which had evidenced injuries as simple and sharp. The doctor had not come into the witness box and the MLC of the victim

has not been exhibited. Yet the injuries opined are simple and in these circumstances it was not incumbent for the doctor to testify to the nature of the injuries as it was a case of simple hurt.

11. In a case of simple hurt it is not sine qua non that a medical certificate must be forthcoming. The medical evidence is a corroborative and not a substantive evidence. For an allegation under Section 323, medical report may not be required if the fact of 'marpeet' could be established by cogent and reliable evidence; Sarita Devi and Ors. Vs. State of Bihar and Ors. (1997) 2 BLJR 1483 (Pat).

12. The conviction of the petitioners calls for no interference. Revision petition is without any merit. Dismissed.

**(INDERMEET KAUR)
JUDGE**

5th November, 2009
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