

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

Date of Order: DECEMBER 22, 2009

+ **CRL.A. 727-728/2006**

Pokhar Singh & Anr. Appellants
! Through: Ms. Charu Verma, Advocate
Amicus Curiae
versus

\$ STATE Respondent
^ Through: Mr. Amit Sharma, APP.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be
reported in the Digest? Yes

: V.K. JAIN, J. (ORAL)

1. This is an appeal against the judgment dated 22nd July, 2006 and Order on Sentence dated 24th July, 2006 whereby the appellants were convicted under section 308 and 325 of the IPC read with section 34 thereof and were sentenced to undergo RI for four years each under section 308 of IPC and were further sentenced to undergo RI for one year each and to pay a fine of Rs.200/- each and in default to undergo RI for one month each under section 325 of IPC.

2. The case of the prosecution is that the complainant Rekha owed some money to her sister Seeta and that on 2nd November, 2003 at about 10.30 P.M. when her sister Seeta demanded that money back, Shri Khem Singh, husband of the complainant, promised to return the money by 10th November, 2003. However, her brother-in-law Laxman and Pokhar Singh, nephew of her brother-in-law started abusing and beating her husband Khem Singh, insisting upon immediate repayment of the money that had been taken by Rekha from her sister. When the complainant tried to intervene Pokhar Singh held her husband whereas Laxman picked up a 'saria' which was lying nearby and gave a blow on the head of her husband Khem Singh. This is also the case of the prosecution that Pokhar Singh also picked up another 'saria' lying on the spot and gave a blow using that 'saria' on the right hand of the complainant.

3. The complainant Rekha came in the witness box as PW 1 and stated that husband of her sister Seeta demanded back the amount of Rs.1500/- which she had borrowed from her, she promised to return that amount by the 10th of the month. Laxman and Pokhar Singh who were present, who are the brother

and nephew respectively of her brother-in-law, thereupon gave beating to her husband with a 'saria'. According to the complainant, she was hit on her hand, whereas her husband was hit on his head.

4. PW 6 Khem Singh is the husband of the complainant. He has corroborated the deposition of his wife and has stated that on the day of the incident, Pokhar Singh caught hold of his hand and dragged him outside the jhuggi. Both the accused attacked him and gave beatings to him with saria. He was hit on his head. When he raised alarm his wife Rekha also came out. He thereafter became unconscious.

5. In their statements under section 313 of Cr.PC the appellants denied the allegations against them. The appellant Laxman stated that there was a dispute between his brother and his brother-in-law and that is why he had been falsely implicated in this case on account of that dispute. The appellant Pokhar Singh claimed that he had no quarrel and he had been falsely implicated.

6. As regards the injury caused to Khem Singh, the case of the prosecution as set out in the FIR is that the appellant Pokhar

Singh had held him and while the appellant Laxman took up a 'saria' which was lying nearby and gave blow on his head, however, when the complainant came in the witness box she did not say that the appellant Pokhar Singh had held her husband and a 'saria' blow was given to him by Laxman. As per her deposition in the court, both the appellants gave beating to her husband with a 'saria'. This is contrary to the version given in the FIR. A perusal of the MLC of Khem Singh would show that he had sustained only one wound over his left partial region. Since only injury was given to Khem Singh, it could have been caused either by Pokhar Singh or by Laxman and not by both of them. But, one doesn't tell the Court, as to who had given saria blow to her and who had given it to her husband.

7. Shri Khem Singh, husband of the complainant, when he came in the witness box as PW 6, claimed that both the accused attacked him and gave beating to him with a 'saria' and that he was hit on his head. He also does not say that Pokhar Singh had held him while 'saria' blow on his head was given by Laxman. He does not tell the court as to who had caused injury on his head. Thus, the prosecution has failed to prove as to which out of the

two appellants had given 'saria' blow on the head of injured Khem Singh.

8. There is no evidence from which it may be inferred that both the appellants shared a common intention to give 'saria' blow on the head of Khem Singh. There is no allegation of exhortation or some other overt act by one accused resulting in giving of 'saria' blow by the other accused. Therefore, it cannot be said that both the appellants shared a common intention to give 'saria' blow on the head of Khem Singh. It would be pertinent to mention here that admittedly 'saria' was picked up from the place of incident and was not brought by either of the appellants with them. In fact from the mere use of 'saria' by one of the appellants cannot impute a common intention to the other one to give 'saria' blow to Khem Singh, since there is no evidence of one of them having aided or abetted in giving 'saria' blow or having resulted in giving 'saria' blow to Khem Singh.

9. Therefore, the only inference which can be drawn from the facts and circumstances proved by the prosecution is that both the appellants shared a common intention to cause injuries to PW

6 Khem Singh and thereby committed offence under section 323 read with section 34 thereof.

10. Though the case of the prosecution is that it was the appellant Pokhar Singh who had given 'saria' blow on the head of the complainant Rekha. When the complainant came in the witness box she did not tell the court as to who had hit her on the hand. She simply stated that she was also hit on her hand and received injuries. However, PW 6 Khem Singh during the examination by learned Public Prosecutor admitted that the appellant Khem Singh took a 'saria' from the spot and gave blow on the hand of his wife Rekha.

11. As regards injury caused to PW 1 Rekha, the case of the prosecution is that she sustained a fracture and, therefore, grievous hurt was caused to her. A perusal of the MLC of PW 1 Rekha does bear an endorsement to the effect that as per the opinion of the Radiologist there was fracture and, therefore, the injury was grievous. But, the author of this endorsement has not been produced in the witness box nor has any witness proved the handwriting and/or signature of the person who made this

endorsement. No opinion of any Radiologist has been produced by the prosecution to prove that Rekha had sustained fracture. No Xray film of Rekha has been produced by the prosecution. When Rekha came in the witness box, she did not claim that she had sustained fracture.

12. Mere use of a saria would not convert an otherwise simple hurt into grievous hurt, which has been defined under section 320 of the IPC as under:-

“Section 320. Grievous hurt.

The following kinds of hurt only are designated as "grievous"

First. - Emasculation.

Secondly. - Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly. -Destruction or permanent impairing of the powers of any member or joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly. - Fracture or dislocation of a bone or tooth.

Eighthly. - Any hurt which endangers life or which

causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

13. The injury on the right hand of the complainant Rekha cannot be said to be such an injury which endangers the life. There is no evidence or even allegation that Rekha had to spent 20 days severe bodily pain or that she was unable to follow her ordinary pursuits. Therefore, causing of grievous hurt is otherwise not made out from giving saria blow on the hand of the complainant Rekha.

14. In the facts and circumstances of the case, it cannot be said that the prosecution has been able to prove any grievous hurt to Rekha. From the facts and circumstances proved by the prosecution, the only common intention which can be inferred to the appellants is that they intended to cause hurt to Rekha.

15. For the reasons given in the preceding paragraphs, the impugned order is modified to the extent that the appellants are convicted only under section 323 read with section 34 of the IPC. Both the appellants have spent more than three years in jail, which is more than the maximum punishment that can be

imposed under section 323 of IPC. Keeping in view the facts and circumstances of the case, the appellants are sentenced to RI for one year each. The appellants be released forthwith, if not required in any other case.

16. The Criminal Appeal No. 727-728 of 2006 stands disposed of accordingly. One copy each of this order be sent to both the appellants through the concerned Jail Superintendent.

V.K. JAIN, J

DECEMBER 22, 2009
RS