

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

+ **Crl. Appeal No. 242/2001**

% Reserved on: 11th November, 2010

Decided on: 1st February, 2011

Babu Lal and Ors. Appellants

Through: Mr. Vishal Kumar Advocate

versus

State Respondent

Through: Mr. Manoj Ohri, APP with SI Gurjeet Singh,
PS Dr. Ambedkar Nagar, Delhi

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. The Appellant No. 1 Babu Lal and Appellant No. 2 Arjun are the father and son, Appellant No.3 Rakesh is the son of the brother-in-law of Appellant No.1 Babu Lal. The prosecution case in a nutshell is that the Appellants and the Complainant PW1 Nanno Devi reside in the same locality. There was a raid

conducted at the shop of Appellant No.1. On 22nd March, 1992 at about 10:30 pm, the Appellant Babu Lal in a drunken condition came in front of the house of Nanno Devi and started abusing that Nanno Devi makes complaints against him that he sells liquor. On Nanno Devi objecting, Babu Lal came after some time with one Shyam Lal, and Appellant Nos. 2 and 3. One Manoharlal also accompanied them and they all were armed with dandas. They forcibly entered the house of Nanno Devi and dragged out PW4 Raj Kumar, son of Nanno Devi and gave him beatings. On this, Nanno Devi, her husband Chhajju Ram PW3 and daughter Sushila Devi PW5 intervened to save Raj Kumar, when they too were assaulted by these persons. Thereafter, all were taken to the hospital. As per their MLCs Ex. PW2/1, PW2/2 & PW8/1 respectively, it was opined that PW5 Sushila Devi had laceration on her forehead, PW1 Nanno Devi had a laceration on the left side of her forehead, and PW3 Chhajju Ram had a contused lacerated wound on the left infra orbital and mastoid region. The injuries on the person of PW1 Nanno Devi were opined to be simple caused by a blunt object, by PW2 Dr. Sunil Chumber. After the registration of FIR, dandas were recovered at the instance of the Appellants and on completion of investigation a charge sheet was filed under Sections 308/452/34 IPC.

2. After examination of prosecution evidence and recording of the statement of the accused persons under Section 313 Cr.P.C, the court acquitted accused Shyam

Lal for paucity of evidence, however, convicted the Appellants Babu Lal, Arjun and Rakesh for offences under Section 323/452/34 IPC and awarded sentence of Rigorous Imprisonment for six months on each count and fine of ₹1,000/- and ₹4,000/- for offences under Section 323/34 IPC and 452/34 IPC respectively and in default of payment of fine to further undergo Simple Imprisonment for fifteen days.

3. Learned counsel for the Appellants contends that though accused Shyam Lal was also involved in the offence, however, the witnesses have turned hostile qua him and have recognized only the Appellants herein and thus no reliance can be placed on the testimony of such hostile witnesses. It is contended that this is a case of business rivalry and the Complainants have deliberately and malafidely implicated the Appellants. It is contended by the learned counsel for the Appellants that in fact Chhajju Ram has a shop where he sells “sura” and a raid was conducted by the police and Chhajju Ram suspected that police has raided his shop on the information furnished by Babu Lal and thus they have a motive against the Appellant and hence Appellants have been falsely implicated in the present case. The Appellants are not named in the MLC and also the FIR has been registered belatedly at 3:30 p.m. on the 23rd March though the incident is of 22nd March, 1992 at about 10:30 pm. There is no allegation levelled against the Appellant No.3, Rakesh for inflicting any injury on the Complainant party or for

committing any overt act. As per the testimony of the eye witnesses, the incident took place in the gali outside the house and thus no case for trespass is made out. Reliance is placed on *Shafiquddin and Ors v State* 132 (2006) DLT 122, to contend that if there is a doubt about place of occurrence then the accused cannot be held guilty for an offence of house trespass punishable under Section 452 IPC. Raj Kumar has not received any injury, thus falsifying the entire prosecution case that the witnesses PW1 Nanno Devi, PW3 Chhajju Ram and PW5 Sushila Devi intervened to save Raj Kumar. The injury to Babu Lal has not been explained by the prosecution and thus they are entitled to acquittal. It is stated that Appellant Nos.1, 2 and 3 at the time of alleged offence were aged 60 years, 18 years and 19 years respectively and are now of 78 years, 36 years and 37 years respectively. The Appellant Nos. 2 and 3 are entitled to be released on probation as held by the Hon'ble Supreme Court in *Tulsiram and Ors v State of M. P.* JT 2008 (6) SC 537. They have been convicted for imprisonment for six months and fine. The fine has already been paid and they have undergone 5 days' to 8 days' sentence and thus, if no probation is granted to the Appellants, they be released on period already undergone as they have faced the ordeal of trial and appeal for nearly 19 years.

4. Learned APP on the other hand states that there is no delay in registration of the FIR. The incident is of 22nd March, 1992 at about 10:30 pm. After the receipt of information, they were taken to the hospital and the FIR was registered at 3:30

a.m. on the 23rd March and not 3:30 pm as stated by the learned counsel for the Appellants and thus, there is no delay. The injuries on the person of PW1, PW3 and PW5 have been duly proved by Dr. Sunil Chumber PW2 and PW8 Dr. Sedebi Angani vide MLCs Ex.PW2/2, PW8/1 and PW2/1 respectively. It is stated that as per the testimony of the witnesses, it is clear that the Appellants broke open the door and pulled out the son of the Complainant and thereafter a fight ensued in the gali. Thus, a case of offence of house trespass punishable under Section 452 IPC is made out. Learned trial court has already dealt with the Appellants leniently in so far as they have been awarded sentence of imprisonment for a period of six months only.

5. I have heard learned counsel for the parties and perused the records. From the testimony of PW1 Smt. Nanno Devi, PW3 Chhajju Ram and PW5 Sushila Devi, who are all injured witnesses, it is proved beyond reasonable doubt that the Appellants were the aggressors and went to the house of the Complainant/injured. PW3, PW4 and PW5 have stated that all the accused came inside the house. They first pushed the main gate and after breaking open the kundi of the gate, came inside the house. This broken kundi was taken into possession and identified by PW4 Raj Kumar during his testimony as Ex. P-3. They were armed with dandas and they started beating Raj Kumar PW4. In view of this consistent testimony of the three witnesses and that nothing material has been elicited from them in their

cross examination, it cannot be said that no case for offence punishable under Section 452 IPC is made out. The witnesses have further stated that it was Appellant No.1 Babu Lal who hit PW3 Chhajju Ram with danda on his head. PW5 Sushila Devi was given beating by Appellant No.2 Arjun and Nanno Devi was given beating by the fourth man whom they could not identify. However, it is apparent that the three Appellants along with one more person, who could not be identified, with common intention armed with dandas, went to the house of the Complainants/injured and caused injuries to them. Having gone through the statement of the witnesses, I find no infirmity in the judgment of the learned trial court convicting the Appellants for offences punishable under Sections 323/34 IPC and 452/34 IPC.

6. On the quantum of sentence, it may be noted that incident took place about 19 years ago. The Appellant Nos. 2 Arjun and Appellant No. 3 Rakesh were of 18 and 19 years respectively at the time of commission of offence and Appellant No.1 was of 60 years and is now 78 years. As per learned counsel for the parties, Appellants have not been convicted for any other offence. Thus, keeping in view the age of the Appellants and other mitigating circumstances in this case, as they have undergone the agony of this litigation for about 19 years, sentence awarded by the trial court is modified. The Appellants are granted benefit of the Probation of Offenders Act, 1958 and are directed to furnish a bond in the sum of ₹10,000/-

with one surety each for their good behavior for a period of one year before the learned trial court within four weeks from today. In addition, each Appellant shall pay ₹5,000/- as cost of the proceedings under Section 5(b) of the Act which shall also be deposited with the trial court, within four weeks. In case of non-compliance, the sentence awarded by the trial court shall remain in force.

7. The present appeal thus stands disposed of. Copy of this order be sent to the trial court. Dasti under the signatures of the Court Master. List for compliance on 6th April, 2011.

(MUKTA GUPTA)
JUDGE

FEBRUARY 01, 2011
‘raj’