

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

+ **CRL.A. 998/2010 & CrI.M.B. 1187/2010 (suspension of sentence)**

%

Reserved on: 2nd May 2012

Decided on: 12th July, 2012

HUKUM SINGH & ORS

..... Appellants

Through: Mr. Y.S. Chauhan and Mr. Aburam,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present appeal is directed against the judgment dated 16th July, 2010 passed by the learned Additional Sessions Judge convicting the Appellants for offences punishable under Sections 308/34 IPC and order on sentence dated 29th July, 2010 whereby the Appellants were sentenced to undergo rigorous imprisonment for 1½ years and a fine of Rs. 1,000/- each and in default of payment of fine to further undergo simple imprisonment for two months.

2. Appellant No. 1 Hukum Singh had died during the pendency of the appeal. Thus, the appeal qua him stands abated vide order dated 9th January, 2012. Learned counsel for the Appellant Nos. 2 to 4 contends that by the impugned judgment the learned Trial Court has overlooked the cardinal principles of criminal law that the burden of proof of a case is upon the prosecution and not on the accused. Learned Trial Court has ignored the factual matrix of the case and passed the impugned judgment on conjectures and surmises. It is stated that the exculpatory version qua appellants has not

been considered by the learned Trial Court. The MLC of the Appellants is disbelieved by the learned Trial Court as it was proved by the record clerk whereas the MLC of the complainant is believed though it is also proved by the record clerk and not the doctor concerned. There are major contradictions in the statements of the witnesses. There are material improvements in the testimony of PW1, complainant from his statement recorded under Section 161 Cr.P.C. It is further contended that PW2 has deposed that his statement was recorded only once in the police station and before coming to the Court his statement was shown to him. It is stated that there is no clear and cogent testimony/evidence placed on record by the prosecution to prove its case beyond reasonable doubt against the appellants. The impugned judgment is thus bad in law as well as on facts and is liable to be set aside.

3. Per contra learned APP for the State contends that the impugned judgment suffers from no illegality as contended by the learned counsel for the Appellants. PW1, the complainant Prakash Pawar has given the entire version of the incident which is corroborated by PW2, Dharamender. Minor contradictions as pointed out by the learned counsel for the appellants do not dent the otherwise cogent testimony of the prosecution witnesses. The provisions of Section 308 IPC are clearly attracted in the present case. Learned Trial Court has correctly convicted the Appellants and thus the present appeal has no merit and is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the records.

5. Briefly the prosecution case is that on the statement of one Prakash Pawar FIR No. 89/2006 was registered under Sections 323/325/308/506/34 IPC against the accused persons. Complainant Prakash Pawar in his

statement stated that he was running a factory and accused Sahib Singh used to work for him. He was having money transaction with Sahib Singh. On the day of the incident, that is, 2nd March, 2006, Sahib Singh came to his house and started abusing his wife and children. He further stated that when he returned to his house at 7.00 p.m. his wife told him about these facts. He stated that he called Sahib Singh and Sahib Singh said that he had not abused anyone and asked the complainant to come to his factory and they would sit and talk. He further stated that thereafter he along with his brother Satvir Singh and brother-in-law Dharmender, went to factory of Sahib Singh near Alok Kunj School at about 8.45 p.m. There Sahib Singh started abusing them. He further stated that his accomplices Hukum Singh, Ram Avtar and Rakesh started beating them. They were armed with danda and lathies and they started beating them and told them to run away from there otherwise they would be killed. After registering the FIR investigation was carried out. After recording the statement of prosecution witnesses and statement of accused persons under Section 313 Cr.P.C., learned Trial Court convicted the accused persons for offences punishable under Section 308/34 IPC and sentenced them as mentioned above. This judgment and order on sentence are impugned in the present appeal.

6. PW1 Prakash Pawar the complainant in his testimony has deposed that he is the fabricator by profession and his factory is located in Rama Garden, Karawal Nagar, Delhi. He further stated that Sahib Singh was known to him as he was his employee. On 1st March, 2006 at about 7.00 P.M. he was present in Gandhi Nagar Market and his wife gave him a telephone call and informed him that Hukum Singh had reached their home and abused her and her children in filthiest language. This witness has stated that he could not

bear that, returned home and found his wife weeping. He gave telephone call to Sahib Singh and asked him as to why Hukum Singh behaved in a disorderly manner. He asked him that since he and Sahib Singh were on business terms then why Hukum Singh was sent to his house. It is further stated that on this Sahib Singh told him that he should come to his factory and then they would sort out the matter. He along with his brother Satbir Singh and brother-in-law Dharmender went to the factory of Sahib Singh which was located near Alok Kunj School, Karawal Nagar. As soon as they reached the gate of the said factory he found Hukum Singh coming downstairs. He (PW1) questioned him as to why had he abused him, his wife and his children? In the meantime, Sahib Singh, Rakesh and Ram Awtar also reached there from inside the factory. They started abusing him. Accused Rakesh and Ram Avtar were armed with clubs. They assaulted him. One club blow was wielded over his head. They had assaulted him on his hands as well as his legs. He sustained fracture injuries in both of his hands and one of the legs. Other associates of Rakesh and Ram Avtar pulled and pushed him and made him fall on the ground. When his brother and brother in law tried to rescue him they also were assaulted. His brother-in-law and brother also sustained injuries in the incident on their heads. Accused persons shouted that they should run away otherwise they would kill them. His brother-in-law Dharmender gave a telephone call to police control room and removed him to his house where police also reached and from there they were taken to GTB Hospital. He has stated that his statement was recorded by the police and on next morning he was discharged from the hospital.

7. PW2 Dharmender, the brother-in-law of complainant has deposed that the accused were known to him as they were employees of his brother-in-law namely Prakash Pawar. On 1st March, 2006 at about 7.00 p.m. accused Sahib Singh came to the house of his brother-in-law and abused his brother-in-law since there was some money transaction between the accused person and his brother-in-law. He stated that at that time Prakash Pawar was not present at his house and he was present there. At about 8-8.15 p.m. his brother-in-law returned and he narrated the facts to his brother-in-law. His brother-in-law gave a telephone call to Sahib Singh and inquired as to what the matter was, who told him that he had not abused him and asked him to approach his factory to settle the grievance. PW2 has further stated that he along with his brother-in-law (the complainant) and Satbir went to the factory of Sahib Singh where all the accused persons met them. He further stated that Sahib Singh started abusing them and asked them to leave the place otherwise they would be killed. All the four accused persons wielded club blows on them due to which they sustained injuries. His brother-in-law Prakash Pawar received fracture injuries on one of his hands, one of his legs and also sustained injuries over his head. He gave a telephone call to police control room, hired a TSR and removed his brother-in-law and Satbir Singh to GTB Hospital. This witness has stated that police met them in the hospital. In his cross-examination this witness has stated that both Sahib Singh and Hukum Singh came and hurled abuses at the house of Prakash Pawar. This witness has denied the suggestion put to him that Hukum Singh, Rakesh, Ram Avtar and Sahib Singh had sustained injuries inflicted by them.

8. PW3 Satbir has deposed that the accused persons were known to him since they were at visiting terms with his brother namely Prakash Pawar. This witness has corroborated the testimony of PW1 and PW2 in regard to the incident and deposed that on 1st March, 2006 at about 7.00 p.m. accused persons Hukum Singh and Sahib Singh came to their house. He was present at their home at that time. They were abusing his brother since there was a dispute between one of them over money transaction. At about 8.00 p.m. his brother returned home and called Sahib Singh who told Prakash Pawar that he had not abused him and asked his brother to come to his factory and settle his accounts. This witness has further deposed that on reaching the premises of Sahib Singh's factory, Sahib Singh met them there and started abusing them. In the meantime the other three associates of Sahib Singh came there duly armed with clubs. They directed them to either leave the factory or otherwise they will kill him. He has stated that thereafter all the accused persons started assaulting them with clubs due to which they received injuries.

9. PW4 ASI Bandhan Uran, the Investigating Officer of the case has deposed that on receipt of DD No. 27A he along with constable Gajender Singh went to the spot where he was informed that the injured had been removed to GTB hospital. Thereafter he went to GTB hospital and obtained the MLC of Prakash, Satbir and Dharmender.

10. PW5 Dr. Maigender Dass CMO, GTB Hospital has proved the MLC of Prakash, Satbir and Dharmender. PW6 Dr. Mohit Joshi has deposed that on 18th March, 2006 surgery record of patient Dharmender was produced before him and he advised the patient for getting an x-ray done of his skull. He further stated that the nature of injuries on the person of Dharmender

were opined to be simple by Dr. Abhishek Goyal and he can identify the signature and handwriting of Dr. Abhishek Goyal. MLC and other relevant record of patient Prakash were put before him for opinion and he opined the nature of injuries to be simple caused by blunt object. PW8 Dr. Vijay Kumar has deposed that on 14th August, 2006 MLC, clinical record and CT scan of Satbir were produced before him for opinion to which he opined the nature of injuries to be simple caused by blunt object.

11. PW9 Dr. Arun Pal Singh, Senior Research Associate, GTB Hospital has deposed that on 18th March, he was working in GTB hospital and on that day x-ray and MLC of patient Prakash were placed before him for opinion. On the basis of record he opined the injuries sustained by Prakash to be grievous which stand recorded on his MLC Ex. PW5/A. Similarly x-ray and MLC of Satbir were placed before him for opinion and on the basis of the record he opined the nature of injuries sustained by Satbir to be grievous.

12. It may be noted that PW2 and PW3 have consistently deposed that they were present in the house of PW1 the Complainant at the time when accused person Hukum Singh and Sahib Singh came and hurled abuses against Prakash Pawar. It is the consistent version of all the three witnesses, that is, PW1, PW2 and PW3 that when they reached the factory of Sahib Singh, the accused persons inflicted club blows on them and they sustained injuries at the hands of the accused persons. The injuries sustained by the injured witnesses stand corroborated by their MLCs Ex. PW5/A, PW5/B, and PW5/C. The minor contradictions pointed out by the learned counsel for the Appellant is of no consequence as they do not dent the otherwise clear and cogent testimonies of the witnesses. The fact that the incident took place and the accused persons had assaulted the witnesses is clearly proven by the

testimony of these witnesses. It is relevant to note that the defence of accused persons is that the injured witnesses received injuries at the hands of public who had gathered at the factory of Sahib Singh and they had not inflicted any injuries on them does not inspire confidence and has not been proved by any evidence placed on record. Furthermore the only suggestion put to the prosecution witness is in regard to the fact that the prosecution witnesses had come to the factory of Sahib Singh accompanied with 10-12 persons and inflicted injuries on him. This suggestion has been denied by all the prosecution witnesses. Furthermore in order to prove the defence of the Appellants that they had received injuries in the incident, the MLC of Sahab Singh is placed on record. DW3 Dr. Ganesh Adhikari has stated that the documents i.e. the Medical record of Sahab Singh recording that he had received stitches on head was not prepared in his presence nor was he conversant with the handwriting of signatures of the person who prepared it. The contention of learned counsel for the Appellants that the MLCs of the Appellant Sahab Singh stand proved by the record clerk holds no ground as the record clerk DW1 has neither proved nor exhibited the MLC.

13. Bare perusal of Section 308 IPC clearly indicate that in order to constitute an offence under the said provision it has to be proved that the act was committed by the accused with the intention or knowledge to commit a culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death he would have been guilty of culpable homicide. Intention or knowledge, on the part of the accused, is to be deduced from the circumstances in which injuries have been caused as above and the nature of injuries and the portion of the body where such injuries were sustained by

the victims. In the present case, the intention or knowledge is clear from the facts of the case. The accused Sahib Singh had himself invited the injured/complainant to settle the matter with him and when he along with PW2 & PW3 reached at the factory of Sahib Singh, accused Sahib Singh along with his associates hurled abuses and threatened him to go back or they would be killed. They inflicted club blows on the head, legs and hands of the complainant. This conduct of the accused persons clearly depict that it was a pre-planned attack. The prosecution in the present case has proved its case against the Appellants beyond reasonable doubt.

14. Learned Additional Sessions Judge has correctly invoked the provisions of Section 308/34 IPC. Thus, keeping in view the facts and circumstances of the present case, I find no merit in the present appeal and the same is accordingly dismissed. I also find no reason to reduce the sentence of the Appellants. The Appellants are on bail. The bail bonds and surety bonds are cancelled. They will be taken into custody to serve the remaining sentence.

15. Appeal and application are dismissed. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 12, 2012
‘vn’