

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

Date of Decision: 17.12.2013

+ CRL.A. 27/2010 & CRL.M.A. No.152/2010

AMIT CHAUDHARY & ANR. Appellants

Through: Mr.Rambir Chauhan, Advs.

with appellants in person

versus

STATE

..... Respondent

Through: Ms. Jasbir Kaur, APP.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. This criminal appeal is directed against the judgment dated 10.12.2009 whereby the appellants have been convicted for the offence punishable u/s 308/34 IPC and order of sentence dated 21.12.2009 whereby the appellants have been awarded sentence of RI for one year each with fine of ₹2500/- each and in default to undergo RI for three months. The benefit u/s 428 Cr.P.C has also been given.

2. At the outset, learned counsel for the appellants has submitted that appellants are not challenging their conviction u/s 308/34 IPC. In fact, there is an application on record being Crl.M.A.152/2010 u/s 360 Cr.P.C filed by the appellants wherein it is stated that they are educated persons and are not involved in any other case. Their mother is a heart patient. They have prayed for grant of probation to them instead of sentencing them to

imprisonment as ordered by the learned Addl. Sessions Judge.

3. The alleged occurrence is dated 28th March, 2005. The allegations against the appellants are that on the aforesaid day at about 6.15 pm, appellant no.1 Amit Chaudhary was playing cricket with his associates on the road. While playing cricket, ball had hit Shri Krishan Lal Goel, PW-8, father of the complainant Deepak Kumar Goel, PW-1. Shri Krishan Lal Goel, PW-8, had asked the appellant no.1 Amit Chaudhary and his associates not to play cricket there. Thereupon appellant no.1 Amit Chaudhary went back to his house while hurling abuses. After some time, one Nitin Kataria, PW-3, student of complainant Deepak Kumar Goel, PW-1, came there to inform his 11th class result. While complainant Deepak Kumar Goel, PW-1 and Nitin Kataria, PW-3 were talking to each other, both the appellants came there. They had stopped Nitin Kataria, PW-3 and told them that they would teach them a lesson as they had stopped them from playing cricket. Appellant no.1 Amit Chaudhary was having a lathi. He gave lathi blows to Nitin Kataria, PW-3 and Deepak Kumar Goel, PW-1 and then fled away from the spot. Shri Krishan Lal Goel, PW-8 had informed the PCR. The PCR van brought Deepak Kumar Goel, PW-1 to the hospital. Both the appellants were arrested and on completion of investigation, a charge sheet was filed against them u/s 323/341/308/34 IPC. After supplying of documents to the appellants, the Id.M.M. committed the case to the Sessions Court.

4. Before the Sessions Court, charge u/s 341/34 and 308/34 IPC was framed against both the appellants to which they pleaded not guilty. To prove its case, the prosecution had examined 9 witnesses. Out of which,

material witnesses are complainant Deepak Kumar Goel, PW-1, Nitin Kataria, PW-3 and Kishan Lal Goel, PW-8 who is the father of complainant Deepak Kumar Goel, PW-1. The remaining testimony relates to police officials and doctors. The respective statements of the appellants u/s 313 Cr.P.C. was recorded. They had denied the incriminating evidence against them and pleaded that they were innocent persons and were falsely implicated. In their defence, appellants examined three witnesses.

5. After hearing arguments, learned Addl. Sessions Judge, Delhi convicted the appellants under Section 308/34 IPC and sentenced them as has been stated above. Aggrieved with the same, present appeal is filed.

6. The star witnesses of the prosecution are complainant Deepak Kumar Goel, PW-1, Nitin Kataria, PW-3 i.e. the injured persons and Kishan Lal Goel, PW-8, the eye witness to the occurrence. Sh. Deepak Kumar Goel, PW-1 has proved on record his statement Ex.PW1/A on the basis of which FIR Ex.PW2/A of the present case was registered. He has categorically deposed that on 28.3.2005 at about 6.15/6.30 p.m. he was present outside his house along with his father. Both the appellants were playing cricket on the road in front of his house along with other companions. At that time, a cricket ball had hit on the chest of his father. His father requested both the appellants not to play cricket on the road. Thereupon, appellant Amit Chaudhary got annoyed and left the spot. The other appellant i.e. Naveen Chaudhary also left the spot with his companions. His student Nitin Kataria, PW-3, at that time had also come to inform him about his result. When he was talking to him, both the appellants came there and were armed with cricket bat and danda. The appellant uttered certain words and instigated his

brother i.e. co-accused Naveen Chaudhary and thereupon they had attacked on him and Nitin Kataria, PW-3, with a bat and a danda as a result of which he sustained injuries on his head. Nitin Kataria, PW-3, also sustained injuries on his head and both of them fell down. His father informed the Police and PCR van came there and removed them to the hospital. He has also identified the danda with which he was hit. His material evidence is not demolished in cross-examination. He has categorically deposed about the role played by each of the appellants. Nitin Kataria, PW-3 has deposed in the same manner as has been deposed by Deepak Kumar Goel, PW-1. The evidence of Deepak Kumar Goel, PW-1 and Nitin Kataria, PW-3 is in consonance with each other. Sh. Ram Avtar, PW-5, is the father of Nitin Kataria, PW-3 who has deposed having removed his son to the hospital after the incident. Sh.Kishan Lal Goel, PW-8, is the father of the complainant Deepak Kumar Geol, PW-1 who is also an eye witness to the alleged occurrence. His evidence on material points is same as has been deposed by Deepak Kumar Goel, PW-1. His evidence is also not shaken on material points in the cross-examination. Dr. Rajan Chawla, PW-6 has proved on record MLC Ex.PW6/A of Nitin Kataria, PW-3 which shows injuries on the parital region and the injury has been opined as simple. Dr. Samarjeet Grover, PW-7, has proved on record MLC Ex.PW7/A of Deepak which also shows CLW size approximately 3 X 1 cm at left parital region. The injury has also been opined as simple. The evidence on record clearly establishes that injuries have been caused on the vital part.

7. Considering the evidence on record, learned ASJ has rightly convicted the appellants under Section 308/34 IPC. The impugned judgment

convicting both the appellants under Section 308/34 IPC is based on evidence on record. Accordingly, the conviction of the appellants for having committed the offence under Section 308/34 IPC is upheld.

8. On the point of sentence, learned counsel for the appellants has submitted that appellant-Amit Chaudhary was 22 years of age at the time of incident and the other appellant-Naveen Chaudhary who is his younger brother was 19 years of age. Both were students at that time. Amit Chaudhary was B.Tech. student and Narender Chaudhary was doing Hotel Management from Pusa Institute. The injured Deepak Kumar Goel, PW-1, is their neighbourer. It is submitted that both belong to respectable family and are working on a good position and their relationship with the injured persons have also been normalised. It is also submitted that they are the first offenders as such benefit under Section 360 Cr.P.C. be given to them. Learned APP has not disputed the applicability of Section 360 Cr.P.C. in the present case. The alleged incident is of 2005. They have faced the agony of trial for about 8 years. The incident had occurred on the spur of the moment. No previous conviction has also been proved against the appellants. In these circumstances, the benefit under Section 360 Cr.P.C. can be extended to them.

9. Considering the age, character, antecedents of the appellants and the circumstances in which offence was committed, it would be expedient to release the appellants on probation of good conduct. Accordingly, it is ordered that the sentence imposed upon them be not given effect to and the appellants be released on probation of good conduct for a period of one year on their entering into a bond of ₹10,000/- each with one surety of the like

amount, to appear and receive the sentence as and when called upon during such period and in the meantime, the appellants shall keep peace and be of good behaviour. The requisite bond shall be furnished by the appellants before the concerned trial court within a period of four weeks from today. In case of non-compliance, the sentence imposed by learned ASJ shall remain in force.

10. The appeal as well as aforesaid application stand disposed of. No costs.

VEENA BIRBAL, J

DECEMBER 17, 2013

ssb/kks