

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

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Date of decision: July 19, 2013

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CRL.A. 392/2000

Sri Krishan

. Appellant
Through: Mr. Mukesh Kalia with Mr. Ayub
Khan, Mr. Varun Jamwal and Mr. Hari
Sharan Singh, Advocate

versus

The STATE

..... Respondent
Through: Ms. Jasbir Kaur, APP for State

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

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1. By way of present appeal, a challenge has been made to the judgment dated 24th May, 2000 and order of sentence dated 26th May, 2000 passed by the learned Additional Sessions Judge in S.C.No.154/98 arising out of FIR no.143/98 u/s 308 IPC Police Station Timar Pur whereby the appellant has been convicted for the offence punishable u/s 308 IPC and vide aforesaid order of sentence, has been sentenced to undergo RI for two years with fine of Rs.500/- each and in default of payment of fine, to further undergo RI for three months each.

2. The case of the prosecution is based on statement Ex.PW 1/A alleged to have been made by Akbali Yadav, PW-1 to ASI Mahipal Singh, PW-4 wherein it is alleged that on 13th March, 1998 on the day of Holi, he along with his uncle i.e., injured Jagdish Yadav PW 2 had gone to play Holi in their neighbourhood. In the meanwhile, some neighbours had informed that a crowd had gathered in the Gali. Thereupon he along with Jagdish Yadav, PW-2 had gone there. It was about 1.30 pm. There they saw appellant was uttering abuses. They objected to the same. The appellant asked them to remain quite. His uncle injured Jagdish yadav, PW-2 gave a slap to the appellant. The appellant left the spot and told him that he would teach them a lesson. The appellant went to the house of his brother-in-law Parkash and brought a 'lathi' and gave a lathi blow on the head and forehead of the injured Jagdish Yadav, PW-2. As a result of which, blood started coming out from his head and he became unconscious and fell down. Thereafter, Jagdish Yadav, PW-2 was removed to Tirath Ram Hospital.

3. The above statement was recorded by ASI Mahipal Singh, PW4 in Tirath Ram Hospital. Prior to that ASI Mahipal Singh, PW-4 had gone to the spot on receipt of DD No.9A i.e., Ex.PW3/A. however, nobody was found at the place of occurrence. He remained there for quite some time. At about 10.10. pm, Complainant Akbali Yadav, PW-1 came at the place of occurrence and told him that injured Jagdish Yadav, PW-2 was admitted at Tirath Ram Hospital. Thereupon ASI Mahipal Singh went along with the complainant PW-1 to the hospital and obtained MLC Ex.PW 6/A of the injured who was declared unfit for making statement. Thereupon, he recorded the aforesaid

statement Ex. PW1/A and got registered FIR Ex.PW 3/B against the appellant. From hospital, he went to the place of occurrence and prepared site plan Ex.PW 4/A at the instance of complainant, PW-1. During the investigation, statement of injured Jagdish Yadav, PW-2 was recorded. Appellant was also apprehended during the course of investigation who made disclosure statement Ex.PW 4/B and got recovered 'lathi' Ex.P1 from his house which was seized by PW4 vide memo Ex.PW 8/C. After completion of investigation and necessary formalities, a challan was filed before the learned MM, Delhi. After supplying copies of documents, the case was committed to the Sessions court. Charge u/s 308/34 IPC was framed against the appellant to which he pleaded not guilty and claimed trial.

4. To prove its case, prosecution in all had examined eight witnesses i.e., complainant Akbali Yadav, PW-1, injured Jagdish Yadav, PW-2, Head Constable Ali Mohd., PW-3 who had recorded the formal FIR Ex.PW 3/B, ASI Mahipal Singh, PW-4, IO of the case and Dr.Ved Prakash, PW-5 from Tirath Ram Hospital who had identified signatures of Dr.Ashwani Kumar on CT scan report Ex.PW5/A as the said doctor had left the hospital and Mr.N.D.Loyall, PW- 6, Officer Incharge, Medical Records of Tirath Ram Hospital who had identified the signatures of Dr.Sandeep Madhwan on MLC Ex.PW 6/A. Thereafter evidence of prosecution was closed. The statement of the appellant u/s 313 Cr.P.C. was recorded wherein he had taken a stand that due to death of his brother-in-law i.e., Jija, he had gone there on the day of Holi. There he had intervened in a quarrel. Some unknown person had assaulted the injured and he was falsely implicated in the case.

5. After hearing learned counsel for the parties, the learned Additional Sessions Judge held that prosecution was able to prove its case against the appellant and has held the appellant guilty of the offence punishable u/s 308 IPC and imposed the sentence vide order dated 26th May, 2000 which has already been stated above.

6. Aggrieved with the same, present appeal has been filed.

7. Learned counsel for the appellant has contended that appellant is not denying the alleged occurrence. It is submitted that reading the evidence of injured Jagdish Yadav, PW-2, and complainant Akbali Yadav, PW-1 and medical evidence on record and the weapon of offence used was 'lathi' and that there was only single injury on the head of the injured, the only offence established against the appellant is u/s 323 IPC. It is submitted that the learned trial court has wrongly convicted the appellant u/s 308 IPC. It is submitted that appellant has already undergone sentence of two months. The same is stated to be sufficient to meet the ends of justice. It is further contended that the offence u/s 308 IPC is not made out inasmuch as the doctor who had prepared the MLC Ex.PW 6/A has not been produced and only Mr.N.D.Loyall, PW-6, Officer Incharge Medical Records of Tirath Ram Hospital Record Clerk has proved the MLC Ex.PW 6/A, as such injury opined on the MLC Ex.PW 6/A cannot be taken to be proved. It is further contended that assuming that this court has come to the conclusion that appellant has committed offence u/s 308 IPC, in that event appellant was below 21 years of age at the time of occurrence and he has suffered the agony of trial including pendency of appeal for 15 years. The appellant has 10 months old child and old parents, as such, he be

given the benefit u/s 360 Cr.P.C. In support of his contention, learned counsel has relied upon State of Maharashtra Vs. Muddappa: (1999) 5 SCC 732 wherein the judgment of this court releasing the appellant therein on probation after considering the relevant material for an offence u/s 304 Part II has been upheld.

8. On the other hand, learned APP for the State has submitted that evidence on record shows that appellant had hit 'lathi' Ex.P1 on the vital part of the body of the injured. The CT scan Ex.PW 5/A shows 'Fracture of parietal bones'. The signature on CT scan Ex.PW 5/A of Dr.Ashwani Kumar was proved by Dr.Ved Parkash, PW-5 Consultant Neuro Surgeon having seen him signing and writing during discharge of his routine duties, as such case of the prosecution is proved. It is submitted that appellant is rightly convicted under Section 308 IPC. Learned APP has submitted that appellant does not deserve any leniency.

9. I have heard learned counsel for the parties and perused the material on record.

10. The material witness of the prosecution case is injured Jagdish Yadav, PW-2. He has categorically deposed that on the day of occurrence he along with his nephew Akbali Yadav, PW-1 went to the house of their neighbours to play Holi where they were informed that several persons had collected by the side of their room in a 'Gali'. On hearing that, they went there. Appellant was present there who was abusing in a very loud voice. He asked the appellant as to why he was abusing. The appellant started abusing him also and threatened to set him right. Thereupon, he had slapped the appellant. Appellant told him that he would teach a lesson. Then appellant brought a 'lathi' Ex.P1 and

assaulted him on his head. After 'lathi' blow, he fell down and was removed to the hospital. The above witness was cross-examined at length by the learned counsel appearing for the appellant.

11. He had identified 'lathi' Ex.P1. Despite lengthy cross-examination, his evidence on material points was not shaken as regards role of the appellant, place of occurrence etc.

In cross-examination he has deposed that appellant was known to him one year prior to the incident. Even his brother-in-law Parkash was known to him 3-4 years prior to the incident. In cross-examination, a suggestion was given to injured Jagdish Yadav, PW-2 that he had sustained injuries of his own as he fell down on account of excessive liquor. In statement under section 313 Cr.P.C, appellant has taken a stand that he had intervened in a quarrel and some unknown person had assaulted the injured. Thus, two contradictory stands are taken by the appellant.

12. The evidence of injured Jagdish Yadav PW-2 finds support from the evidence of complainant Akbali Yadav, PW-1, an eye witness to the occurrence. He has deposed the manner in which he and injured had reached the place of occurrence and when they reached there, appellant was abusing every body in a loud voice. He has further deposed that when Jagdish Yadav, PW-2 asked the appellant to remain silent, he started misbehaving with the injured, PW-2. Thereupon injured PW-2 slapped him. While threatening Jagdish Yadav, PW-2, appellant went to his house and brought 'lathi' ex.P1 and assaulted the injured on his head due to which he fell down. He has proved his signature on the statement Ex.PW 1/A. His evidence is in consonance with

his statement Ex.PW 1/A made to the police. No contradiction of material nature has been pointed out in his evidence before the court as compared to his statement Ex.PW 1/A made to the police. The aforesaid witness clears supports the case of the prosecution.

13. The evidence of injured Jagdish Yadav, PW-1 and eye witness Akbali Yadav, PW-1 finds support from MLC Ex.PW 6/A which shows “Lacerations on forehead”. Learned counsel for the appellant has submitted that Dr.Sandeep Madhwan who had prepared MLC Ex.PW 6/A was not produced by the prosecution in the evidence. It is submitted that Dr.Bhavesb who had opined the injury as ‘Dangerous’ was not produced as a witness. Only Mr.N.D.Loyall, PW-6, Officer Incharge Medical Records of Tirath Ram Hospital, was produced who had proved the signatures and hand writing of the aforesaid doctors on the MLC Ex.PW 6/A having seen them signing and writing during discharge of his official duties. It is contended that in these circumstances injury on MLC Ex.PW 6/A has to be taken as ‘simple’.

14. In the present case, prosecution has also proved on record CT scan report Ex.PW5/A of injured which shows ‘Fracture of parietal bones’. The aforesaid report was proved on record by Dr.Ved Parkash, PW-5, Consultant Neuro Surgeon by deposing that Dr.Ashwani Kumar Sharma who had given the aforesaid report has left the hospital and he being familiar with Dr.Ashwani Kumar Sharma, identified his signature on the CT scan report Ex.PW 5/A. There is no cross-examination of the aforesaid doctor. In view of this, the injuries sustained by the injured cannot be taken as simple as is contended. The contention of the appellant in this regard is rejected.

15. Reading the evidence of material witnesses of the prosecution injured Jagdish yadav, PW-2, eye witness Akbali Yadav, PW-2 coupled with the medical evidence MLC Ex.PW 6/A, CT scan report Ex.PW 5/A, weapon of offence i.e., 'lathi' Ex.P1 and also taking into consideration that injury was on the vital part of the body i.e. forehead, it cannot be said that appellant has been falsely implicated as is contended by learned counsel for the appellant. The evidence on record establishes that injuries were inflicted by the appellant with the knowledge that the same were likely to cause death. Thus, the offence under section 308 IPC is made out against the appellant. The learned Additional Sessions Judge has rightly analysed the evidence and convicted the appellant under section 308 IPC. Accordingly, the judgment of the learned Additional Sessions Judge holding the appellant guilty under section 308 IPC is upheld.

16. On the point of sentence, it may be noticed that at the time of occurrence, appellant was less than 21 years of age. The Trial court record shows that at the time of recording the statement of appellant under section 313 Cr.P.C., his age was recorded as 19 years. The said statement was recorded on 17.12.1999. The occurrence is dated 13th March, 1998 which means that appellant was 17 years and three months on the day of occurrence.

17. The appellant had remained in judicial custody for about two months. Now he is stated to be married having 10 months child, besides wife and old parents. The appellant has also faced agony of litigation for about 15 years. No previous conviction has been proved against the appellant. The learned

APP has not disputed about the applicability of section 360 Cr.P.C. in the present case. As such, benefit u/s 360 Cr.P.C. can be given to him.

18. Considering the age, character, antecedents of the appellants and the circumstances in which offence was committed, it would be expedient to release him on probation of good conduct. Accordingly, it is directed that sentenced imposed upon him be not given effect to immediately and he be released on entering into a bond of Rs.10000/- with one surety of the like amount for a period of two years. He shall appear and receive the sentence if called upon within two years from the execution of the said bond. The bond in question shall be furnished before the concerned trial court within four weeks. In case of non-compliance, sentence imposed by learned ASJ shall remain in force. In addition, the appellant shall pay a compensation of Rs.10,000/- to the injured Jagdish Yadav i.e., PW-2. The same be also deposited with the concerned trial court within four weeks. The Ld. trial court shall inform the injured, PW-2 and shall release the same in his favour. The fine deposited by the appellant shall also be treated as compensation and shall be released in favour of injured, PW-2 in case not already released.

Appeal stands disposed of accordingly.

No costs.

VEENA BIRBAL, J

JULY 19, 2003

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