

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

RESERVED ON : 25th September, 2013.

DECIDED ON : 9th December, 2013

+ CRL.A. 158/2002

MAM RAJ & ORS. Appellants

Through : Mr.Jitin Sahni, Advocate

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Mam Raj, Chet Ram, Rajinder, Rohtash, Natho and Usha were arrested and sent for trial for committing offences under Sections 147/148/149/307/448/506/34 IPC in case FIR No.380/1987 registered at Police Station Kingsway Camp on the allegations that on 17.10.1987, they all formed an unlawful assembly, the object of which was to inflict injuries to Nathu Singh, Ramesh, Shankar and Gulshan. Pursuant to said common object, on 17.10.1987 at about 08.15 P.M. at house No.B-222, Dakha Village, Kingsway Camp, they inflicted injuries to Nathu Singh by a 'pharsa' in an attempt to murder him and voluntarily poured acid on the person of Shankar Dass, Gulshan Kumar and Ramesh besides criminally

intimidating them. Similar were the allegations against Kumari Rama who faced trial before Juvenile Justice Board. The police machinery was set in motion when Daily Diary (DD) No.25 was assigned to ASI Ramesh Chand for investigation who with Ct.Dharamvir went to the spot and saw number of individuals with acid burns. They were taken and admitted at JPN hospital. The Investigating Officer collected MLCs of the injured and lodged First Information Report after recording victim Nathu Singh's statement (Ex.PW-1/A). During the course of investigation, statements of the witnesses conversant with the facts were recorded and the accused persons were arrested. After completion of investigation, a charge-sheet was submitted against all of them; they were duly charged and brought to trial. The prosecution examined 14 witnesses and produced medical evidence. In their 313 statements, the accused persons pleaded false implication and denied their complicity in the crime. They examined three witnesses i.e. Manohar Lal (DW-1), Sukhpal (DW-2) and Om Parkash (DW-3) in defence. It is significant to note that during trial, Smt. Natho expired and the proceedings against her were dropped as 'abated'. Finally, the trial resulted in the conviction of Mam Raj and Usha only under Section 307/324/506 IPC. Be it noted, the rest of the accused persons i.e. Rohtash, Chet Ram and Rajinder were acquitted of all

the charges. The State did not challenge their acquittal. Being aggrieved Mam Raj and Usha preferred the appeal to challenge the correctness of the impugned judgment dated 19.02.2002 in Sessions Case No.672/1996. It is relevant to note that during the pendency of the appeal Mam Raj died and the appeal stood abated on 27.03.2012. Usha is the sole appellant whose involvement in the crime is to be ascertained.

2. At the outset, it may be mentioned that injuries sustained by Nathu Singh, Ramesh, Gulshan and Shankar are not under challenge. Appellant has denied to be the author of the injuries. It was vehemently stressed that the complainant and his companions were aggressors and had attempted to dispossess them from premises No.B-222, Dhaka Village forcibly after having lost civil suit. They threw/poured acid on Usha, Rohtash and Mam Raj and they suffered unexplained acid burns on their bodies and were medically examined. Counsel urged that in the process of throwing acid on them, the assailants also got burns injuries with acid which accidentally fell upon them. Counsel urged that no specific role was assigned to Usha in the throwing of acid on the complainant and his associates. Learned Additional Public Prosecutor urged that the evidence of all the victims is consistent and Usha has been implicated along with

others for throwing acid upon them. The impugned judgment warrants no interference without sound reasons.

3. Usha has not denied her presence at the spot at the time of occurrence. The injuries suffered and noticed vide MLC (Ex.PW-14/DC) on her body at JPN hospital on 17.10.1987 at 09.05 P.M. confirms her presence at the spot. The MLC (Ex.PW14/DC) records that she was conscious and in a position to make statement. However, she did not lodge any complaint with the police against the complainant and his companions for causing acid burns to her. She herself did not examine any witness to prove as to how and under what circumstances, she got burn injuries and who was the assailant. She rather took inconsistent defence that injuries to the complainant and his associates were caused in exercise of their private defence to protect their property. She, however, did not examine any witness to establish that the complainant and his associates were aggressors and right of private defence was exercised strictly in accordance with the provisions enshrined in the Code. No cross case was instituted against the complainant party.

4. Ramesh, the injured with burns on his right upper limbs, abdomen and lower limb taken to JPN hospital from the spot was medically examined vide MLC (Ex.PW12/D) at 09.10 P.M. PW-12

(Dr.M.S.Chopra) deposed that on 17.10.1987 Nathu Singh, Shankar Dass, Gulshan Kumar and Ramesh were admitted in Burns ward vide MLCs (Ex.PW12/A to Ex.PW12/D). Nathu Singh and Ramesh were discharged on 18.10.1987 and 26.10.1987 respectively vide discharge slips (Ex.PW-12/E and Ex.PW12/F). In the cross-examination, he clarified that he had personal knowledge of the case being Incharge of Burns Ward and the examining doctors were his juniors. PW-11 (Dr.S.P.Bajaj) admitted Ramesh on 11.12.1987 at RML hospital with 25% burns involving back, thighs and elbows and discharged on 19.01.1988. He proved the photocopy of the discharge slip (Ex.PW-7/A) and disability certificate (Ex.PW11/B). PW-10 (Dr.J.L.Gupta) admitted him (Ramesh) in Tirath Ram Hospital on 04.11.1987 with alleged history of 50% burns and was under his treatment from 04.11.1987 to 07.12.1987. In his opinion, the injuries were serious and in the absence of proper treatment, the patient could have died. He further disclosed that Ramesh was critical when admitted in the hospital. Nothing was suggested to the doctors that the injuries were accidental or self-inflicted. No ulterior motive was assigned to them for preparing MLCs at the instance of the complainant/victim as alleged.

5. PW-3 (Ramesh Chand) in his Court statement ascribed a specific role of throwing acid on him and her father to Usha. When Gulshan arrived at the scene on hearing hue and cry, Usha also threw acid on him. In the cross-examination he disclosed that at Erwin hospital he remained admitted for treatment for 5/7 days. When his condition deteriorated, he got treatment at Tirath Ram hospital till 27.10.1987. He visited the hospital thereafter on 09.11.1987 also. No suggestion was put in the cross-examination that the acid was thrown in exercise of private defence or that they were aggressors and had brought acid and threw on appellant (Usha), Rohtash and Mam Raj. Material facts deposed by the witness remained unchallenged in the cross-examination. PW-1 (complainant-Nathu Singh) also implicated Usha (Mam Raj's daughter-in-law) deposing that after he was assaulted with 'Pharsa, on hearing his hue and cry, his son, Ramesh came running to save him. Usha threw acid on him. When Shankar and Gulshan intervened, they were also not spared and Usha threw acid on Gulshan. In the cross-examination, questions were put mainly regarding ownership and possession of the premises in question. He further deposed that container and bottles containing acid were seized by the police. He was not aware if Usha and Rohtash had sustained acid burns. He elaborated that accused persons ordinarily kept

acid with them for testing milk. He denied the suggestion that they were aggressors and picked up the acid lying in the containers to throw on the accused and in the process acid fell on them and the accused. In the absence of any material discrepancies in the cross-examination there are no good reasons to disbelieve his version.

6. PW-2 (Shanti Devi), PW-7 (Gulshan Kumar), PW-13 (Shankar Dass) have corroborated PWs-1 and 3's version and have given statements on similar lines without major variations. PW-6 (Manjit Singh) who was running a shop 'Chadha Sales Pvt.Ltd.', 137, Indira Park, Tis Hazari used to sell acid required for milk testing to their customers Mam Raj etc. Apparently, from the ocular testimony of the injured coupled with medical evidence, it stands established that Usha was one of the assailants and actively participated in the incident and threw acid upon the victims. It is true that there was dispute regarding ownership and possession of premises in question i.e.B-222.Dakha Village, Kingsway Camp for which civil suit was also instituted and Local Commissioner was appointed. In the present criminal proceedings, the court is to see as to who was the aggressor and who caused injuries. Apparently, Usha was one of the assailants and had inflicted injuries with acid. However, there is conflicting version as to who were the victims at the hands of the

appellant. PW-1 (Nathu Singh) implicated Usha for throwing acid only on Ramesh and Gulshan. PW-2 (Shanti Devi) deposed that she throw acid on Ramesh, Shankar and Nathu Singh. PW-3 (Ramesh) attributed specific role to Usha in throwing acid on him, Gulshan and Nathu Singh. PW-7 (Gulshan Kumar) implicated her for throwing acid on him, Shankar and Ramesh. PW-13 (Shankar Dass) stated that Ramesh and Gulshan sustained injuries when acid was thrown on them by Usha. All the witnesses are consistent that Ramesh and Gulshan were caused injuries with acid by Usha. Benefit of doubt is to be given regarding the injuries sustained by other victims and Usha cannot be held responsible for that. Usha was charged under Section 324 IPC for voluntarily causing simple injuries with acid to Shankar Dass, Gulshan Kumar and Ramesh. She was charged under Section 307 IPC read with Section 149 IPC as there were allegations that in furtherance of their common object they inflicted pharsa and acid injuries on the person of Nathu Singh. The Trial Court, however, did not find any cogent material to ascertain if all the assailants formed an unlawful assembly and caused injuries in furtherance of their common object. Mam Raj and Usha were not convicted with the aid of Section 149 IPC. The prosecution was unable to prove if any injuries on the neck were inflicted with a sharp weapon. No definite role was

assigned to Usha by the prosecution witnesses in inflicting injuries to Nathu Singh. There are no allegations even of exhortation. She herself did not cause any injury to PW-1 (Nathu Singh) who had direct confrontation initially with accused Mam Raj. Apparently, Usha cannot be held responsible for injuries caused to PW-1 (Nathu Singh) by Mam Raj (since expired) and other accused persons (since acquitted). She can be held liable for her individual act of causing injuries to Ramesh and Gulshan for which she was convicted under Section 324 IPC. Her conviction under Section 307 IPC cannot be sustained and is set-aside.

7. The incident pertains to the year 1987. She has suffered ordeal of trial/appeal for about 25 years. On her conviction she was taken into custody and substantive sentence was suspended vide order dated 24.07.2002. She thus remained in custody in this case for more than five months. She has no criminal antecedents and was not involved in any other criminal case. She has lost her father-in-law during the pendency of the appeal and is to look after her children. Considering these mitigating circumstances, the period already undergone by the appellant in this case shall be considered as her substantive sentence for the offence under Section 324 IPC. Other terms and conditions of the sentence order are left undisturbed. The appellant shall deposit unpaid fine (if any) with

compensation of ₹50,000/- in the Trial Court within 15 days. The compensation will be released to injured Ramesh only after due notice.

8. The appeal stands disposed of in the above terms. Trial Court record along with a copy of this order be sent back forthwith. Bail bond and surety bond of the appellant stand discharged.

(S.P.GARG)
JUDGE

December 09, 2013
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