

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
RESERVED ON : 25th SEPTEMBER, 2013
DECIDED ON : 01st OCTOBER, 2013

+ CRL.A. 472/2001

ASHOK KUMAR @ PINTU & ORS. Appellants

**Through : Mr.M.L.Yadav, Advocate with
Mr.Lokesh Chandra, Advocate.**

VERSUS

STATE OF DELHI Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Ashok Kumar @ Pintu (A-1), Anil Kumar @ Mota (A-2) and Narender Kumar (A-3) were arrested in case FIR No.341/92 PS Mehrauli and sent for trial on the allegations that on 06.10.1992 at about 06.45 P.M. outside shop of Kanwar Pal Halwai, Ward No.1, Mehrauli, they in furtherance of common intention inflicted injuries with iron rod and lathi to Rajesh Kumar and Satish Kumar in an attempt to commit culpable homicide. The prosecution examined ten witnesses. The Trial Court, on appreciating the evidence, convicted all of them under Section 308/34 IPC by a judgment dated 30.06.2001 in Sessions Case No. 17/94. By an order dated 05.07.2001, they were sentenced to undergo RI for four years each. Being aggrieved, the appellants have preferred the appeal. It is relevant to

note that A-2 (Anil Kumar) expired during the pendency of the appeal and proceedings against him were dropped as abated by an order dated 18.11.2010.

2. I have heard the learned counsel for the parties and have examined the record. The police machinery was set in motion when Daily Diary (DD) No. 12A (Ex.PW-3/B) recorded at 07.10 P.M. at PS Mehrauli on getting information about a quarrel at Harijan Basti, Mehrauli. The investigation was assigned to SI Lal Chand who with Const. Naresh went to the spot. Daily Diary (DD) No. 14/A (Ex.PW-3/C) was recorded at 08.15 P.M. when Const.Sunil Kumar informed about admission of Rajesh Kumar in injured condition at Safdarjang Hospital. The Investigating Officer lodged First Information Report after recording Rakesh Kumar's statement (Ex.PW-6/A). He gave detailed account of the incident as to how and under what circumstances the assailants had inflicted injuries to Rajesh Kumar and Satish Kumar. The assailants were named in the FIR and specific role was attributed to them. The occurrence happened at about 06.45 P.M. The FIR was lodged at 09.40 P.M. after sending rukka (Ex.PW-9/B). There was no delay in lodging the report and it ruled out fabrication of a false story.

3. PW-5 (Rajesh Kumar) in his Court statement implicated all the assailants / accused persons and assigned motive for inflicting injuries as they had not contributed donation at the time of Balmiki Jyanti. He deposed that A-3 caught hold him from back and A-1 and A-2 caused injuries with iron rod and lathi. He sustained iron rod blows on his head and became unconscious. When he regained consciousness, he found an injury on his left ear also. Despite lengthy cross-examination, no material discrepancies could be elicited to disbelieve the version given by the victim. PW-6 (Rakesh Kumar) also corroborated him on material facts and deposed on similar lines regarding the role played by each assailant in inflicting injuries to Rajesh Kumar and Satish Kumar. PW-8 (Dr.N.D.Deshpandey) proved Rajesh Kumar's MLC (Ex.PW-8/A) where the injuries were opined as 'grievous' caused by blunt weapon. There is no inconsistency between the ocular and medical evidence. The injuries sustained by Rajesh Kumar are not under challenge. The appellants have pleaded that he had sustained injuries at some other place and falsely implicated them due to previous enmity. No such evidence has come on record to substantiate this fact. The injuries are not self-inflicted or accidental. The injured were not expected to let the real culprit go scot free and falsely implicate the accused persons in the absence of any prior

animosity. It is true that PW-2 (Satish Kumar), the other injured, has opted not to support the prosecution and has exonerated the accused persons. However, that does not dilute the credibility of the version given by PW-5 (Rajesh Kumar). The findings of the Trial Court holding the appellants' guilty for inflicting injuries are based upon fair appraisal of evidence and require no interference. Apparently, the appellants were author of the injuries inflicted to Rajesh Kumar.

4. I am not convinced that the prosecution was able to establish commission of offence under Section 308/34 IPC. It has come on record that the appellants and the victims had no previous enmity. On the day of occurrence, the victims were returning to their respective houses after witnessing Dussehra festival. The accused persons were not aware about their arrival at the spot and did not anticipate it and it ruled out pre-plan or meditation. No weapon of offence was recovered from their possession. The assailants did not inflict repeated fatal blows on the vital organs of the victims. PW-2 (Satish Kumar) sustained only injuries 'simple' in nature caused by blunt object. Injuries on the body of Rajesh Kumar were (a) Clean lacerated wound (CLW) on left ear lobe, tragus & angle of mandible, (b) Contusion haematoma on left occipital region. PW-1 (Dr.M.K.Mittal), who examined the patient Rajesh Kumar did not notice

any bone injury in his report (Ex.PW-1/A). The victim was discharged after examination and did not remain admitted in the hospital for long duration. It appears that a quarrel / altercation took place between both the parties and in the incident injuries were inflicted to Rajesh Kumar and Satish Kumar with blunt objects voluntarily. In order to succeed in a prosecution under Section 308 IPC, the prosecution was to prove that the injuries to Rajesh Kumar were caused by the appellants with such intention or knowledge and under such circumstances that if these had caused death, the act of the appellants would have amounted to culpable homicide not amounting to murder. The intention and knowledge are lacking in the present case. The prosecution has established that the appellants in furtherance of their common intention voluntarily caused 'grievous' injuries with sharp object to Rajesh Kumar and they are perpetrators of the crime under Section 325/34 IPC.

5. The incident took place on 06.10.1992, A-2 (Anil Kumar) has since expired. The appellants have suffered agony of trial / appeal for more than twenty years. They have remained in custody for some duration before grant of bail. They have clean antecedents and are not involved in any other criminal activity. The offence has been altered to 325/34 IPC. There was no previous history of enmity between the parties. The

occurrence was an outcome of a sudden flare without prior planning or meditation. They deserve extension of benefit of the beneficial legislation applicable to first offenders. Of course, they can be directed to pay reasonable compensation to the victims. Taking into consideration all these mitigating circumstances, it is a fit case where the appellants can be released on probation of good behaviour. The order on sentence is modified and instead of sentencing the appellants at once to any punishment, they are ordered to be released on probation on their furnishing personal bond in the sum of ₹ 50,000/-, each with one surety, each in the like amount to the satisfaction of the Trial Court for a period of two years and to appear and receive sentence when called upon, and in the meantime, they shall keep peace and be of good behavior. Ashok Kumar @ Pintu (A-1) and Narender Kumar (A-3) shall deposit ₹ 40,000/- each as compensation before the Trial Court within 15 days. The Trial Court shall issue notice to the injured / victims – Rajesh Kumar to receive the compensation. The appeal stands disposed of in the above terms. The Trial Court record be sent back forthwith with the copy of the order for compliance.

OCTOBER 01, 2013/*tr*

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**(S.P.GARG)
JUDGE**

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