

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

**RESERVED ON : 26th September, 2013
DECIDED ON : 1st October, 2013**

+ CRL.A. 741/2001

HARISH ARORA @ SUNNY Appellant
Through : Mr.Javed Hashmi, Advocate.

versus

STATE Respondent
Through : Mr.Lovkesh Sawhney, APP.

AND

+ CRL.A. 746/2001

SURESH KUMAR @ DABOO & ANR. Appellants
Through : Mr.Javed Hashmi, Advocate.

versus

STATE Respondent
Through : Mr.Lovkesh Sawhney, APP.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Harish Arora @ Sunny (A-1), Suresh Kumar @ Daboo (A-2)
and Vijay Kumar @ Kale (A-3) impugn a judgment dated 26.09.2001 of
learned Additional Sessions Judge in Sessions Case No.84/2001 arising

out of FIR No.610/1993 registered at Police Station Janak Puri by which they were held guilty for committing offence under Section 325/34 IPC. By an order dated 28.09.2001, A-1 was sentenced to undergo RI for one year with fine ₹2,000/- and A-2 and A-3 were awarded RI for two years with fine ₹3,000/- each.

2. Allegations against the appellants were that on 28.10.1993 at 02.00 P.M. opposite Jagdamba Lottery Centre, Najafgarh Road, Uttam Nagar they in furtherance of common intention inflicted injuries to Ramesh Chand and caused his death. PW-5 (HC Jai Singh) of PCR went to the spot on receiving information of quarrel and found Ramesh Chand lying unconscious in front of Jagdamba Lottery Centre. Ramesh Chand was taken to DDU hospital and was pronounced dead on arrival. The police machinery was set in motion when DD No.16 (Ex.PW11/A) was recorded at 03.06 P.M. at Police Post Uttam Nagar. The Investigation was assigned to SI Satya Prakash (PW-13). Post-mortem examination of the body was conducted. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellants under Section 304 IPC. They were duly charged and brought to trial. The prosecution examined 13 witnesses. In 313 statements, the appellants pleaded false implication. They did not,

however, produce any evidence in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment convicted A-1 to A-3 under Section 325/34 IPC. It is significant to note that State did not challenge appellants acquittal under Section 304 IPC.

3. Appellants' counsel emphasized that the appellants were not author of the injuries to the victim. The Trial Court ignored vital discrepancies and contradictions emerging in the testimonies of the prosecution witnesses without valid reasons. In the post-mortem examination report, visible injuries on body of the deceased were not noticed. He adopted alternative argument that at the most, the appellants could have been held guilty under Section 323/34 IPC only. Learned Additional Public Prosecutor urged that the injuries inflicted to the deceased proved fatal and conviction under Section 325 IPC needs no interference. A quarrel between the parties ensued at 02.00 P.M. and PCR rushed to the spot at about 02.15 P.M. Soon thereafter, the victim was taken to DDU hospital and was declared 'brought dead'. MLC (Ex.PW-3/A) records arrival time at the hospital as 02.55 P.M. DD No.16 (Ex.PW11/A) was recorded at 03.06 P.M. at Police Post East Uttam Nagar. The Investigating Officer after recording Suresh Chand's

Crl.A.Nos.741/2001 & 746/2001 *Page 3 of 8*

statement (Ex.PW-2/A) lodged First Information Report by sending rukka (Ex.PW-13/A) at 04.15 P.M. Apparently, there was no delay in lodging the FIR. FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. In the statement (Ex.PW-2/A) Suresh Kumar gave graphic account as to how and under what circumstances, Ramesh Chand was assaulted with fists and kicks. He narrated specific role played by each accused in the occurrence and also assigned motive for that. Since the FIR was lodged promptly, there was least possibility of false story being fabricated in such a short interval.

4. Suresh Chand in his Court statement fully proved the version given to the police at the first instance without any major variation. The victim who was present at his house, left at 01.30 P.M. informing him to go to Jagdamba Lottery Centre to collect ₹10,000/- as prize lottery money. Soon thereafter, he received information about beatings given to him and rushed to the spot. He saw that A-1 had caught hold Ramesh Kumar from

behind and A-2 and A-3 were giving fists and leg blows on his stomach and private part. When he intervened to separate the victim, he was also pushed. The appellants continued to give beatings as a result of which Ramesh Kumar became unconscious. In the cross-examination, he fairly admitted that he did not sustain any injury during the scuffle. Despite lengthy cross-examination, no material discrepancies emerged to disbelieve his version. Since the quarrel had taken place near his residence, his presence at the spot after hearing the information about the beatings to his brother was quite natural and probable. Specific suggestion was put to him in the cross-examination that A-1 had not caught hold of the victim but was attempting to separate him from the others two giving beatings to him. The accused persons did not deny their presence at the spot. PW-2 (Suresh Chand) was not an interested witness to falsely implicate the innocents and to let the real culprits go scot free. His testimony inspires implicit confidence. PW-8 (Subhash Gulia) though did not support the prosecution in its entirety, nevertheless, deposed that at 01.45 P.M. Ramesh Chand had come to Suresh Kumar's counter. He was having a lottery ticket in his hand and was demanding money from him (A-2) and Vijay Kumar (A-3). An altercation took place and there was scuffle between them. He intervened and asked them not to quarrel at

his shop. Thereupon they all left. This independent public witness who was dealing with sale of lottery tickets by the name of Jagdamba Lottery Centre at Uttam Nagar and had allowed others to have lottery counters at his shop, had no ulterior motive to make false deposition. The Trial Court has given cogent reasons to conclude that the appellants were authors of the injuries and these findings require no interference.

5. I am, however, not convinced that the appellants could be held guilty for committing offence under Section 325 IPC. No visible injuries were noticed on the body of the victim. PW-3 (Dr.Suresh Khurana), who medically examined the patient vide MLC (Ex.PW.3/A) did not record any injury on the victim's body. In the post-mortem examination report (Ex.PW4/A), Dr.L.K.Barua, autopsy Surgeon, did not notice any injury/violence marks on the body on 29.10.1993. The cause of death was heart failure consequent to assault. Apparently, the injuries inflicted to the victim were not the cause of his death. Altercation was the outcome of sudden flare at the spot on the refusal of A-2 and A-3 to part with ₹10,000/- claimed as lottery amount by the deceased. The appellants did not anticipate his arrival at the spot and were not armed with any deadly weapons. Since A-1 to A-3 had given beatings in furtherance of their common intention with fists and kick blows on the victim's body,

they were responsible for causing simple hurt under Section 323/34 IPC. The conviction is altered from Section 325/34 to Section 323/34.

6. The appellants on their own offered to pay reasonable compensation to the victim's family to escape substantive sentence under Section 323/34 IPC. The victim was aged about 40 years and despite heart ailment, was leading a normal life on the day of incident. He had driven scoter to his brother's residence and was hale and hearty. He had gone to Jagdamba Lottery Centre to collect ₹10,000/- as prize money. It appears that A-2 to A-3 did not pay the amount and in an altercation on that issue gave severe beatings with fists and kicks resulting in his death. Though the appellants were not liable for causing culpable homicide/murder, but they were instrumental in accelerating his death. But for this unfortunate incident, God knows, for how many days/months the victim could have survived. Each day was precious for him and his family. After the episode, ₹10,000/- for which the victim lost his life were not offered/paid to his legal heirs. The said amount payable in 1993 had substantial value. The appellants were expected to return the amount voluntarily. The occurrence took place about 20 years back. The appellants were in custody for some duration before grant of bail under Section 304 IPC. They have voluntarily offered to pay reasonable

compensation. Taking into consideration all these mitigating circumstances, no useful purpose will be served to send the appellants to Jail under Section 323 IPC. The sentence order is modified and A-1 to A-3 are sentenced to undergo the period already spent by them in this case under Section 323 IPC. Other terms and conditions of the sentence order are left undisturbed. A-1 shall deposit ₹50,000/- and A-2 and A-3, who are primarily responsible for causing beatings, shall deposit ₹75,000/- each within 15 days in the Trial Court to be paid as compensation. The Trial Court shall issue notice to the widow to receive the compensation amount and if she is not available, the amount will be disbursed to deceased's children in equal proportion.

7. The appeal stands disposed of in the above terms. Record along with copy of this order be sent back to the Trial Court.

(S.P.GARG)
JUDGE

October 01, 2013

sa