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

% *Date of decision: November 27, 2013*

+ **CRL.A. 161/2005**

LAL BAHADUR Appellant
Through: Ms.Priyanka Kapoor, Amicus Curiae

versus

STATE Respondent
Through: Mr.Feroz Khan Ghazi, APP.

G.S.SISTANI, J. (Oral)

1. The present appeal is directed against the judgment dated 22.1.2005 and order on sentence dated 24.01.2005. Case of the prosecution as noticed by the Trial Court is as under:-

(1) Brief facts of the case of prosecution are that on 5.3.2001 a complaint was filed by one Hukum Singh S/o Dunger Singh R/o 503, Chatta Lal Mian, Chandni Mahal, Delhi that he is residing at the above address and is a business man and that houses No.503 and 444 Chhatta Lal Mian, Chandni Mahal, Delhi is his ancestral property.

Complainant stated that he is residing in House No.503, Chhatta Lal Mian, Delhi along with his brother Prabhu Singh, whereas house No.444 Chatta Lal Mian, Delhi is occupied by the sons of Gopal Singh i.e. grandsons of his tau/uncle.

He further stated that in the year 1970 a partition suit was filed for partition of his ancestral property. One shop in house of No.444 (supra) which was in possession of the complainant, was forcibly possessed in the year 1987 by Gopal Singh and his sons.

In the year 1997 a final decree was obtained in the partition suit and the said shop of house No.444, Chatta Lal Mian, Delhi with other property came in the share of the complainant. On 17.1.01 a warrant of possession was obtained from the court of Smt.Neerja Bhatia, Civil Judge, Delhi and on 2.3.01 bailiff Mool Chand was appointed and who on 3.3.01 in the afternoon got recovered to the complainant the possession of the said shop along with some back portion.

However, at about 8:30 pm on 3.3.01 when the complainant and his son Dharmender were returning to their house from Tiraha Bairam Khan after shopping, they were

attacked on the way by Hari Singh (since deceased). Madan, Lal Bahadur, Bharat Singh and Neeru with dandas and that the complainant received injuries on his feet whereas his son Dharmender received injuries on his head. Lal Bahadur exhorted that if they would come again to the shop they would be killed. The complainant and his son returned from the spot to their house and rang up No.100. Later on the complainant came to know that the accused persons had also broke open the lock of their shop and had repossessed it unlawfully. The present complaint was filed to take action against accused persons and for redelivery of possession of the aforesaid shop.

2. On the basis of this complaint, FIR bearing No.58/01 was registered at PS Chandni Mahal, Delhi and investigation started. On completion of investigation challan was filed and on completion of formalities the case was committed to the court of Sessions.

3. On 5.1.02 a charge u/S 308/323/506/448/34 IPC was framed against the accused persons to which they pleaded not guilty and claimed trial.

4. Prosecution examined as many as 11 witnesses in its support and thereafter the statement of accused persons was recorded u/S 313 Cr.P.C. and they examined one witness in their defence. Before proceeding further, let me state in brief the statements made by the prosecution witnesses.”

2. Counsel for the appellant submits that the learned Trial Court has failed to consider the testimony of the doctor that Hukam Singh and Dharmender had sustained simple injuries and these injuries could well have been caused due to a fall. Counsel submits that the complainant was never hospitalized and he went to the police station on 5.3.2001. Counsel also submits that the recovery of the danda has not been proved and further there are material contradictions and inconsistencies in the evidence of the witnesses of the prosecution. Mr.Dubey next contends that the said witnesses of the prosecution are interested witnesses and are inimical towards the appellant. It is also the case of the appellant that the judgment of the Trial Court is based on surmises and assumptions and is not based on the evidence on record. Counsel also submits that the Trial Court should have granted the benefit of Section 360 Cr.P.C. and Probation of Offenders Act as the appellant has no previous history and has not been convicted in the past. Counsel submits that the appellant

has suffered through long trial and has undergone more than 15 days during the period of trial and the sentence of rigorous imprisonment of 4 months is not commensurate with the alleged offence. Per contra learned counsel for the State submits that the prosecution has been able to establish its case beyond any shadow of doubt. The evidence of PW-1 Hukum Singh and PW-4 Dharmender are consistent, truthful and reliable. PW-8 SI Om Singh, PW-10 Ct.Duli Chand and Ct.Jitender were first to reach on the place of the incident and receipt of DD No.24A and 25A dated 3.3.01 when they found 4 persons being the accused grappling with each other and injured were taken to the hospital.

3. I have heard the learned Amicus Curiae and also Mr.Feroz Khan Ghazi, learned APP for the State. Learned Trial Court has examined the statements of both PW-1 Hukum Singh and PW-4 Dharmender. Both the witnesses have deposed that the accused are related to them and further that property No.503 and 444 Chatta Lal Mian, Delhi is an ancestral property and further property bearing No.444 was forcibly possessed by Gopal Singh, father of the appellants in the year 1987. Through the orders of the Court possession of this property was handed over to the complainants on 3.3.01 through the Court Bailiff on the spot when PW-1 Hukum Singh affixed his own lock in the premises as per photographs Mark A-1 and A-2 and the photographs have been proved by PW-7 Prakash. On the same day Hari Singh (deceased) called the police from Police Station Chandni Mahal in the house of PW-1 Hukum Singh. However, on examination of the report of the bailiff the police was satisfied that possession was legally delivered to PW-1 Hukum Singh. The depositions of PW-1 and PW-4 would also show that on 3.3.2001 at about 8:30 pm when they were returning from Tiraha Bairam Khan after making some purchases and when they reached in front of House No.444 all the five accused persons met them. They had dandas in their hands and they started beating them. PW-4 Dharmender received 18 stitches on his head. PW-1 Hukum Singh suffered fracture on his right leg. The witnesses have proved the decree sheet as Ex.P-1, judgment dated 19.7.78 as Ex.P-2,

memo of parties as Ex.P-3, photocopy of warrants as Ex.P-4, judgment dated 2.12.2000 as Ex.P-5. It was also testified that the appellant had broke open the locks after injuring them and the possession was again restored to them on 5.3.2001 with the help of senior police officials. The statements of PW-1 and PW-4 are consistent as truthful and trustworthy and find corroboration from the evidence of PW-8 SI Om Singh, PW-10 Ct.Duli Chand and Ct.Jitender. The factum of injury is also borne out from the MLC and the testimony of the doctor PW-6. The motive in this case stands duly proved with regard to the Court cases which were pending amongst the parties who are related to each other. Their presence at the spot also stands duly proved. Counsel for the appellant has not been able to substitute her arguments that there are natural contradictions in the evidence of material witnesses. It is settled law that reliance can be placed on the evidence of interested witnesses. The law with regard to placing reliance on evidence of close relations and partisan witness has been a subject matter of various decisions of the Apex Court. It would be worthwhile to reproduce herein the observations of this Court in Crl.A.No.470/2003, **Harish Vs. The State**, reported at 2008 (147) DLT 608; 2008 (2) AD (Delhi) 405 particularly paragraphs 41 and 42, where the law laid down by the Apex Court has been relied upon:

*“41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of **Masalte Vs. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, relevant portion of which is reproduced below:-*

“14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to

be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

42. Similar view has also been expressed in the case of **State of Punjab Vs. Karnail Singh**, reported at **AIR 2003 Supreme Court 3613:-**

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and others v. The State of Punjab* (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:-

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and

one which another Bench of this Court endeavoured to dispel in – Rajasthan', (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

9. Again in Masalti and others v. The State of U.P. (AIR 1965 SC 202) this Court observed : (pp. 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

10. To the same effect is the decision in State of Punjab v. Jagbir Singh, (AIR 1973 SC 2407) and Lehna v. State of Haryana, (2002 (3) SCC 76). As observed by this Court in State of Rajasthan V. Smt. Kalki and another, (AIR 1981 SC 1390), normal discrepancies in evidence are those who are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those who are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in Krishna Mochi and others v. State of Bihar etc. (JT 2002 (4) SC 186)."

4. On careful examination of the evidence of the PW-1 and PW-4, I find their evidence to be trustworthy and truthful and there are no material contradictions. Thus, there is no infirmity in the judgment of the Trial Court. At this stage, counsel for the appellant submits that the sole surviving appellant Lal Bahadur has no previous conviction. The doctor has opined the injuries to be simple. The appellant has been through the rigors of the trial and the incident relates back to the year 2001 and it is pleaded that the order of sentence should be modified to the period already undergone. Mr.Ghazi submits that in case order on sentence is to be modified the appellant should be directed to pay fine and also compensation to the victims.

5. Heard. Having regard to the submission made taking into consideration the facts of this case, more particularly, that the incident occurred on account of protracted litigation arising out of ancestral property and further that the appellant has no previous history of conviction and also taking into consideration that the offence relates to the year 2001 the order on sentence is modified to the extent of period already undergone subject to the appellant paying fine of Rs.5,000/- and compensation to the injured in sum of Rs.10,000/-.

6. The appeal stands disposed of in above terms.

7. Delhi High Court Legal Services Committee shall pay fee to the Amicus Curiae as per the rules.

(G.S.SISTANI)
JUDGE

NOVEMBER 27, 2013//dk//