

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

% *Date of decision: August 06, 2014*

+ **CRL.A. 45/2014**

CHAND RAM Appellant

Represented by: Mr. M.K. Singh, Advocate

versus

STATE & ORS. Respondents

Represented by: Mr. Lovekesh Sawhney, APP with
Insp. Rajesh Kumar Mishra, SI
Premveer PS Sultanpuri.
Mr. R.K. Uppal, Adv. for R-2 to 4.
Mr. K.K. Pradhan, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (Oral)

1. The appellant an injured victim and maker of FIR No. 419/2009 challenges the judgment passed by the learned Sessions Judge dated November 11, 2013 whereby respondents No.2 to 5 have been acquitted of the charges framed under Sections 307/34, 452/34 & 506/34 IPC. Respondent No.2 has been convicted for offence under Section 325 IPC and released on probation with a compensation of ₹40,000/- to be paid to the appellant.

2. The grievance of the appellant is that for the incident which occurred on December 07, 2008 the Police did not register any FIR and only when he filed an application under Section 156 Cr.P.C. before the learned Metropolitan Magistrate, FIR No. 419/2009 was registered under Sections

323/452/34 IPC. On a charge-sheet being filed, the learned Trial Court did not rely upon his testimony and that of his wife PW-2 Raj Bala and brother-in-law PW-6 Naveen and acquitted the respondents No. 2 to 5. According to him the intention of the respondents No.2 to 5 was to cause an injury which was likely to cause death and thus the conviction ought to have been under Section 307 IPC and adequate sentence ought to have been awarded.

3. At the outset it may be noted that as regards adequacy of sentence, no appeal by a complainant lies on the said count and proviso to Section 372 Cr.P.C. provides the remedy of filing an appeal to a victim against an order acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. Thus, this Court is only looking into the scope of acquittal and whether Satbir has been convicted for a lesser offence.

4. The investigation in the matter was set into motion on receipt of DD No.45A dated December 02, 2008 by HC Brahm Swarup. Chand Ram, R/o M-84 Krishan Nagar (the appellant) did not get his statement recorded on that date since he was drunken, however his MLC was got conducted. The MLC Ex.PW-7/A shows that the appellant gave alleged history of physical assault though no one was named therein. He was conscious and oriented and smelling of alcohol. He had received one contused lacerated wound of the size 4x1x1 cm over right parietal region. No other fresh external injury was seen. On X-ray fracture of fronto parietal bone was detected.

5. The appellant deposed before the Court that he was working as a DTC driver and Satbir respondent No.2 and Suman wife of Satbir respondent No.3 were residing as tenants in the house of his brother Raj Singh, which was situated opposite their house. Some unwanted person used to visit their house so he asked his brother to get the house vacated from the accused

persons. Thereafter, accused persons got constructed their own house at M-86, Kishan Vihar and shifted to that house. They started quarrelling with the complainant on throwing garbage and water flowing in the drains. Bijender and Laturia i.e. respondent No.4&5 used to visit their house. On December 02, 2008 in the morning at about 9.30 AM he asked Suman not to throw garbage in the drain, on which she hurled abuses. Satbir who was also present there stated that they will throw the garbage there only. Satbir also abused him. The neighbourers intervened and pacified the matter. He went for duty. As he tried to enter into his house by opening the door on returning from duty, Satbir and Suman forcibly entered his house. Satbir who was carrying an iron rod gave a blow on his head. Suman was carrying a knife in her hand. Suman stated to Satbir to finish him of saying that he used to abuse her and quarrel with them. Bijender and Laturia who were standing at the gate of Satbir stated “*Maaro-Maaro Inko Jaan Se Khatam Kar Do, Koi Beech Me Ayega to Dekh Lenge*”. Blood oozed out from his head and he raised alarm bachao-bachao, on which his wife and brother-in-law came out and the accused persons ran away.

6. Thus, from the testimony of Chand Ram it is evident that the alleged incident was not witnessed by his wife and brother-in-law and they came out only after he raised the alarm bachao-bachao and blood had oozed out of his head. Though Raj Bala has deposed that she had witnessed the incident, however from the testimony of Chand Ram it is clear that she came out only after Chand Ram shouted bachao-bachao. Even Naveen in the testimony has deposed that on December 03, 2008 at about 10.45/11.00 PM he along with his sister was sleeping in the room when they heard the noise of bachao-bachao, he came out from the room. So, even Naveen had not

witnessed the incident. This Court is thus left with the testimony of Chand Ram only.

7. From the testimony of Chand Ram it is evident that when Satbir gave an iron rod blow there was no exhortation from Bijender and Laturia as the words used by them "*Maaro-Maaro Inko Jaan Se Khatam Kar Do, Koi Beech Me Ayega to Dekh Lenge*" were made only after the injury was inflicted by Satbir. Hence no role to respondent No.4 and 5 can be attributed in the commission of the offence. Moreover, Chand Ram himself has stated that when Bijender and Laturia gave exhortation they were standing at the gate of Satbir. Thus offence of criminal trespass was also not committed by them.

8. Coming to the role attributed to Suman, as per Chand Ram Suman forcibly entered into their house and was carrying a knife in her hand. No injury by knife has been inflicted on the Chand Ram. Further, no specific words have been mentioned as to how Suman was exhorting Satbir. In the absence of any participation in the offence of either causing injury or exhortation it cannot be held that Suman carried away common intention to commit the offence. Thus, the Trial Court was fully justified in acquitting Suman, Bijender Singh and Dinesh @ Laturia.

9. Learned Trial Court held that version of Chand Ram that as he entered the house after opening the door, Satbir and Suman entered simultaneously is not probable, as if they wanted to kill him they would have been in a much better condition to do the same outside rather than going inside his house. Further, no corroborating evidence like the blood stains from the house etc., have been lifted. We are entirely in agreement with the reasoning of the learned Trial Judge that there was no occasion for Satbir,

Suman to have entered the house of Chand Ram. It is apparent that Chand Ram has given an exaggerated version of the incident and has used an opportunity to rope in the entire family of Satbir.

10. This brings us to the role attributed to Satbir. As noted above, Chand Ram has received one injury on his head resulting in fracture of the fronto parietal bone. The version of Chand Ram is that this injury was given to him in his house. However, Satbir has led defence evidence. DW-1 Smt. Bhagwani Devi who appeared in the witness box has deposed that she was the neighbour of Satbir and Chand Ram. Satbir is a Government Servant. Chand Ram used to knock the door of Suman in drunken condition. In the last month of the year 2008 Chand Ram again knocked the door of Suman in drunken condition and when Suman and her husband objected to it, then he started shouting and abused Suman, Satbir and others. There was altercation between both the parties. Finally both the parties were pacified and Chand Ram went away. On one day she saw Chand Ram again at the house of Suman. She went to Chand Ram and asked him as to how he was knocking the door of Suman in such a condition and she saw him in the pool of blood from the back side of his neck at around 11 PM. According to her at that time Chand Ram, she and Satbir and Suman were only present. No one was abusing any person.

11. Thus, from the evidence of Smt. Bhagwani Devi it is evident that the incident took place when Chand Ram in an intoxicated condition went to the house of Suman and knocked the door on which Satbir gave him a blow from an iron rod on the head. In view of this defence evidence and the MLC of Chand Ram and no blood being found in the house of Chand Ram the acquittal of Satbir for offence under Section 452 IPC is justified. As noted

above, the exhortations given to Satbir were only after he had given an iron rod blow. The blow was not very serious in nature and had caused an injury of 4x1x1 cms on the forehead. In view of this aspect of the matter it cannot be said that the prosecution has been able to prove beyond reasonable doubt that the injury inflicted by Satbir to Chand Ram was with the intention of causing death.

12. Hence in our opinion the impugned judgment convicting Satbir for offence under Section 325 IPC and acquitting him for the rest of the offences and Suman, Bijender and Dinesh @ Lutaria for all the offences is legal and justified.

13. Appeal is accordingly dismissed.

14. T.C.R. be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 06, 2014
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