

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

% *Judgment reserved on: 11.02.2014.*
Judgment delivered on: 18.02.2014.

+ CRL.A. 96/2006
RAMAN KANT VAID

..... Appellant
Through Mr. R.N. Mittal, Sr. Adv. with
Mr. Ankit Goel, Adv.

versus

STATE NCT OF DELHI

..... Respondent
Through Mr. Varun Goswami, APP for the
State.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The appellant is aggrieved by the impugned judgment and order of sentence dated 06.02.2006 and 13.02.2006 whereby he has been convicted under Section 308 of the IPC and has been sentenced to undergo RI for a period of 4 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo RI for 1 year.

2 At the outset, learned senior counsel for the appellant points out that out of total period of 4 years of sentence which had been awarded to the appellant, he had suffered a sentence of about nearly 4 months. This

submission of the appellant is borne out from the record as also from the nominal roll which has been summoned.

3 Record shows that on 19.12.2000 at about 02:00 pm when Ashok Kumar (PW-2) and Vijay Kumar (PW-3) had gone to the MCD office at Karkardooma Courts and were waiting in the parking lot, accused Raman Kant along with his brother Kaman Kumar and father Sahdev Raj along with a 4th person came there. There was a history of ill-will between the accused and the family of the complainant. The accused was armed with a screw driver; other persons had clubs in their hands. Ashok Kumar was accosted by the accused and told that he would be killed and this time they had come with full preparation. Kaman Kumar and Sahdev Raj assaulted PW-2 who sustained injuries on his head, back and leg; his brother was also attacked and injured. Matter was reported to the police; police reached the spot. The accused was overpowered at the spot; injured were removed to the hospital.

4 This version of the prosecution has been unfolded in the statement of PW-2 which was recorded at 04:30 pm on 19.12.2000 and which had formed the basis of the rukka (Ex.PW-8/A) pursuant to which the present FIR under Sections 308/323/34 of the IPC had been registered.

The injured were PW-2 and PW-3. PW-2 had sustained simple injuries. This is evident from their MLCs Ex.PW-4/A & Ex.PW-1/A. PW-3 had been examined on 19.12.2000; opinion on his injury was given subsequently i.e. on 12.01.2001 after he had been referred to LNJP hospital as also to the Trauma Center; injuries noted were a CLW 4.5 cm in length over parietal area of scalp; abrasion over left ankle and both knees as also bruise over right flank were noted.

5 Apart from PW-2 and PW-3, another public witness Virat Sharma (PW-6) had also been examined. He did not support the version of the prosecution.

6 The investigation was marked to SI Dhan Singh who along with HC Ram Kumar (PW-5) had reached the spot. HC Kanwar Sen (PW-8) was already present at the spot. Deposition of PW-8 being that he being a beat constable and posted at PS Anand Vihar had learnt about a quarrel in the MCD parking; when he reached the spot, he overpowered the accused and snatched the screw driver from him. SI Dhan Singh came thereafter. The appellant, having been apprehended at the spot, was arrested vide memo Ex.PW-5/B. The screw driver was taken into possession vide Ex.PW.PW-5/A.

7 In the statement of the accused persons recorded under Section 313 of the Cr.PC, they pleaded innocence; submission being that it was a false implication.

8 Witness in defence is not relevant in the present appeal. This witness had been produced qua the role of co-accused Kaman Kumar who has since been acquitted. Relevant would it be to state that the charge-sheet had in fact been filed against three persons namely Sahdev Raj and Kaman Kumar being father and son of the present appellant under Sections 308/323/34 of the IPC of whom the appellant alone has been convicted. His conviction was recorded under Section 308 of the IPC; he had been acquitted under Section 323 of the IPC. The other two co-accused had been acquitted of all charges i.e. of Section 308 & 323 of the IPC.

9 On behalf of the appellant, arguments have been addressed by learned senior counsel Mr. R.N. Mittal. The first and foremost submission of the learned senior counsel for the appellant is that since the appellant alone is involved in the present appeal, the other two co-accused having been acquitted, Section 34 is not attracted and the testimony of the witnesses of the prosecution has to be viewed keeping

in view the individual role attributed to the appellant. Attention has been drawn to the testimony of Ashok Kumar (PW-2) who is the complainant; submission being that the entire role has been attributed to the other co-accused who have been acquitted; admittedly as per PW-2, the appellant was armed with a screw driver. It is his version that PW-2 was attacked with a screw driver; the injuries upon his person being simple do not spell out that any screw driver was used. Attention has also been drawn to the testimony of PW-3. Submission being that this was a general statement made on oath that all the accused persons had attacked him. There is also no reference that the appellant had attacked PW-3 with a screw driver. Submission being reiterated that MLC of PW-3 (Ex.PW-1/A) also does not show that nature of the injuries suffered by the victim were in any manner connected with a screw driver. Attention has also been drawn to the testimony of PW-8 who has stated that he had apprehended the appellant. Attention has been drawn to the testimony of PW-2 who has stated that MCD officials had come and saved him; submission being that PW-8 had reached the spot 25 minutes after the incident; incident having occurred at 02:00 pm, it would be difficult to believe that the accused who had allegedly

been overpowered by the MCD officials continued to stand there and had not absconded. Submission being that there is no explanation why the MCD officials have not been examined. It is pointed out that ingredients of offence under Section 308 of the IPC are not made out. Reliance has been placed upon 2011 (1) JCC 269 Prem Singh Vs. State Govt. of NCT of Delhi to support his submission that where the conviction under Section 308 of the IPC had been set aside, the appellants could not have been convicted under Section 323 of the IPC as the ingredients of the two offences are entirely different. Vice versa, the appellant having been acquitted under Section 323 of the IPC, the conviction under Section 308 of the IPC cannot be sustained. At best the offence under Section 323 of the IPC is made out. The appellant already having suffered 4 months incarceration, he should be released forthwith.

10 On behalf of the State, it is pointed out that the impugned judgment does not call for any interference. PW-2 and PW-3 have been categorical in their deposition and their version is fully supported by the medical evidence i.e. MLCs (Ex.PW-4/A and Ex.PW-1/A) respectively. The accused was apprehended at the spot; the screw driver was also seized. Attention has been drawn to Ex.PW-1/A; submission being that

a blunt injury i.e. CLW noted in Ex.PW-1/A could have been caused by a screw driver and to support his submission reliance has been placed upon lecture notes by Dr. D.W. Sadler, Department of Forensic Medicine, University of Dundee. Further submission being that even if on the same sets of evidence two of the co-accused have been acquitted, by separating the grain from chaff, the third accused could be convicted and for this proposition reliance has been placed upon JT 2014 (2) SC 296 Sheesh Ram and Others Vs. The State of Rajasthan. There is no reason also as to why the accused would have been falsely implicated; no such motive has been spelt out.

11 Arguments have been heard. Record has been perused.

12 PW-2 Ashok Kumar was the complainant and the injured. He has deposed that on the fateful day i.e. on 19.12.2000 while he along with his brother Vijay Kumar (PW-3) had gone to the MCD Office and was standing and waiting in the park, accused Raman Kant armed with a screw driver along with two other persons came there and hit PW-2 causing injuries on his shoulder and back; the appellant hit the screw driver on the front of his neck, stomach and legs; danda blows were given by all of them to PW-2. Further deposition being that other co-

accused Kaman Kumar and Sahdev hit danda on his brother Vijay Kumar as a result of which he became unconscious and started bleeding; people gathered there and they were taken to the hospital; in the evening PW-3 was referred to trauma centre and then was taken back to the SDN hospital and referred to the Irwin hospital.

13 In his lengthy cross-examination, PW-2 admitted that on the date of the incident, he had come to the Court to attend the proceedings in FIR No.202/97 under Sections 420/467/468 of the IPC which had been registered at the behest of co-accused Sahdev Raj; PW-2 had been accompanied by his brother PW-3. He admitted that quarrel continued for about 10 minutes. He denied the suggestion that on the date of the incident, co-accused Kaman Kumar (who is an Advocate) was conducting a case in the Court of the SDM. He has further admitted that in the aforementioned FIR registered under Sections 420/467/468 of the IPC, his brother (PW-3) had remained in jail for 10 days. PW-2 was confronted with various portions of his earlier statement (Ex.PW-2/A) wherein in the earlier statement it had not been recorded that the appellant had beaten him with danda or that the appellant had hit screw driver in his stomach.

14 PW-3 was the second injured namely Vijay Kumar. He has deposed on the same lines as his brother i.e. PW-2. He has on oath stated that the accused persons present in Court had come with one more person while he along with his brother was standing in the MCD park; they were threatened; all the three persons gave 'danda' blows to PW-3 on his head. PW-3 started bleeding and became unconscious; he regained conscious after 1- ½ months. They also hit the screw driver on the shoulder, neck and stomach of PW-2. He admitted that on the fateful day, they had come to the Karkardooma Court to attend proceedings in FIR No. 202/1997 wherein he was an accused and this was on the complaint of co-accused Sahdev Raj. He admitted that he remained in judicial custody for 10 days in the said FIR. He denied the suggestion that the present case is a counterblast to FIR No.202/1997 or because of that enmity, accused has been falsely implicated. He denied the suggestion that on the fateful day Kaman Kumar (Advocate) had gone to attend proceedings in SDM Court at Preet Vihar.

15 Virat Sharma (PW-6) purported to be an eye-witness did not support the case of the prosecution and as such there would be no useful purpose served in examining his version.

16 HC Kanwar Sen (PW-8) being a beat constable had reached the spot at 2:25 pm where he had noted that PW-2 and PW-3 were lying in an injured condition. As per his deposition, he overpowered the accused and snatched the screw driver from his hand. Investigation was thereafter handed over to SI Dhan Singh. Injured were removed to the hospital. He admitted that 10-15 persons gathered at the spot. He admitted that he was not a witness to the incident.

17 The MLC of PW-3 is proved as Ex.PW-1/A. As already noted, the injury was opined to be 'simple'. This opinion on the injury was given on 12.01.2001 although the incident is dated 19.12.2000. This was for the reason that the patient (noting injury of 4.5 cm CLW in length over parietal area of scalp) had been referred to Sushruth Trauma Centre for a CT scan and thereafter to the LNJP hospital. The opinion recorded in Ex.PW-1/A on 12.01.2001 states that CT scan shows a normal study and the report has been handed over to the Investigating Officer. On the basis of the aforementioned report, the injury was noted to be 'simple'. The patient when brought into the SDN hospital also showed that the patient was conscious; his vitals were stable; blood pressure being 100/70 and pulse rate being 88. Loss of consciousness on two occasions has also

not been noted in this MLC.

18 The MLC of PW-2 was proved as Ex.PW-4/A; five abrasions were noted on toe, left arm, left shoulder, right ankle and right shin; dressing of the wounds was conducted and the injuries being noted as 'simple', the patient was discharged on the same day.

19 It is largely the oral versions of PW-2 and PW-3 coupled with the MLC Ex.PW-1/A (Vijay Kumar) which has been relied upon by the trial Court to convict the appellant under Section 308 of the IPC.

20 Charges framed against the three accused persons were as follow:-

"I, O.P. Gupta, Addl. Sessions Judge, Karkardooma Courts, Delhi, do hereby charge you Raman Kan Vaid S/o Sh. Sahdev Raj Vaid (2) Sahdev Raj Vaid S/o Sh. Amar Dass Vaid and (3) Kaman Kumar Vaid S/o Sh. Sahdev Raj Vaid as under:-

That on 19.12.2000 at 02:20 PM at MCD office parking area at Karkardooma, Delhi you all in furtherance of your common intention with another person (not arrested/traced) voluntarily caused simple blunt injury to Ashok Kumar Chopra and thereby committed an offence punishable under Section 323/34 IPC and within the cognizance of this Court.

Secondly on the aforesaid date, time and place you all in furtherance of your common intention with another person (not arrested/traced) beat and hurt Vijay Kumar with such intention or knowledge and under such circumstances that, if by that act, you had caused the death of said Vijay Kumar, you would have been guilty of culpable homicide not amounting to murder and thereby committed an offence

punishable under Section 308/34 IPC and within the cognizance of this Court.

And I hereby direct you that you all be tried by this Court for the said offence.

ASJ:KKD

The charge has been read over and explained to the accused persons in their own language and are questioned as under:-

Q. Do you plead guilty or claim trial.

Ans. I plead not guilty and claim trial.

I plead not guilty and claim trial.

I plead not guilty and claim trial.

RO & AC

14.05.2000

ASJ:KKD”

21 All the accused persons had been acquitted of the charge under Section 323 read with Section 34 of the IPC which was the charge of having caused a simple hurt to Ashok Kumar. The second charge which was under Section 308/34 of the IPC was with reference to Vijay Kumar; having caused such injury upon Vijay Kumar with intention or knowledge that they could even cause death of the said person. On this charge, the appellant Raman Kant has alone been convicted; his father Sahdev Raj and brother Kaman Kumar have been acquitted. Admittedly Section 34 of the IPC cannot be invoked. It is the role of the individual accused i.e. the appellant before this Court which has to be

seen dehors support from Section 34 of the IPC.

22 There is however no dispute to the proposition that the entire evidence of a witness even if his testimony has led to the acquittal of the other accused, can be relied upon for the conviction of a third accused.

The Apex Court in Sheesh Ram (Supra) while relying upon JT 2003 (2) SC 191 Rizan & Anr. Vs. State of Chhattisgarh in this context has noted herein as under:-

“So far as the acquitted accused are concerned, the evidence of these witnesses qua them is found to be exaggerated. But, on account of that, their entire evidence cannot be discarded. All these witnesses stated that the acquitted accused had lathis and they dealt lathi blows on PW-5 Bhagwan Singh. This part of their evidence is disbelieved. It is true that these witnesses have improved the prosecution story to some extent. But, that improvement or that exaggerated version can be safely separated from the main case of the prosecution. So far as the main prosecution case is concerned, all the witnesses are consistent. This is not a case where truth and falsehood are inextricably mixed up. Witnesses tend to exaggerate the prosecution story. If the exaggeration does not change the prosecution story or convert it into an altogether new story, allowance can be made for it. If evidence of a witness is to be disbelieved merely because he has made some improvement in his evidence, there would hardly be any witness on whom reliance can be placed by the Courts. It is trite that the maxim 'falsus in uno falsus in omnibus' has no application in India. It is merely a rule of caution. This is not a case where the grain and chaff are inextricably mixed up. The evidence of eye-witnesses is not discrepant on the material aspect of the prosecution case. Reliance can, therefore, be placed on them.”

23 The conviction sustained by the Sessions Judge against the appellant is under Section 308 of the IPC for having caused injuries upon Vijay Kumar with an intent and knowledge that by his act, the appellant could have even caused his death and thereby committing an act amounting to culpable homicide.

24 On this touchstone, the versions of PW-2 and PW-3 have been scrutinized. PW-2 as noted supra had stated that the appellant had a screw driver in his hand and other two accused were armed with dandas. Accused persons hit him with the weapons that they had; he received injuries on his shoulder and back; the appellant hit the screw driver on his neck, stomach and leg; all the accused have given danda blows to him; this deposition concerned Ashok Kumar which is not the charge which has to be answered. What this Court is concerned with is the injuries upon PW-3 i.e. Vijay Kumar. In this context, PW-2 had deposed that Kaman and Sahdev had hit danda blows on his brother Vijay Kumar as a result of which Vijay become unconscious and he started bleeding profusely. Vijay was given stitches. In this entire examination-in-chief, PW-2 had not uttered a word about the appellant having caused any injury to his brother Vijay.

25 PW-3 Vijay Kumar has on oath deposed that all the three accused had come with another person whom he does not know; they threatened to kill him; they all gave danda blows on his head; they then hit dandas and screw driver on the shoulder, neck and stomach of his brother. As noted supra, injuries on the person of Ashok Kumar are not relevant; it is only the injuries received by Vijay Kumar which have to be answered.

26 In his cross-examination, PW-3 has stated that he regained consciousness after 1- ½ months. His MLC has been proved as Ex.PW-1/A. In this MLC a CLW 4.5 cms over the parietal area of the scalp, abrasions over left ankle and both knee and bruise over right flank have been noted. Learned public prosecutor on a specific query and in terms of the record available has admitted that the victim was discharged on the same day; injuries opined were simple and this opinion had been given on 12.01.2001 after reference of the victim to the LNJP hospital as also to the Sushruth Trauma Centre and after his CT scan had been conducted which evidenced a normal study. All this has been noted in his MLC Ex.PW-1/A.

27 Adverting back to the testimony of PW-3, role attributed to the

appellant along with other two persons is that all the three had given danda blows on his head. This is the only incriminating piece of evidence which is against the appellant. Learned counsel for the appellant on this score has argued that the victim (PW-3) has received only one CLW on his scalp; whether this danda blow was the result of the injuries caused by the appellant or the other two accused (now acquitted) has not been proved. Admittedly no specific role has been attributed to the appellant. In fact from the version of PW-2 what is borne out is that the appellant was armed with a screw driver and it was the other two accused who had dandas in their hands. The fact that the appellant was armed with a screw driver has also been narrated by PW-3 in his version. It is also not the version of the prosecution that the appellant was armed with a screw driver as also a danda. In this scenario, it would be difficult to believe this version of PW-3 that it was the danda blow inflicted by the appellant which had caused the injury on his parietal region. The evidence on record in fact shows that the appellant was armed with a screw driver and the other two co-accused were armed with dandas.

blunt injury (as is noted in Ex.PW-1/A) i.e. on the parietal region of the victim can also be caused by a screw driver and to support this submission he has relied upon the lecture notes of the Department of Forensic Medicine, University of Dundee wherein it has been stated that a blunt wound can be caused by a screw driver. This proposition may be correct but it has to be examined in the light of the each case. It is not the case either of PW-2 or PW-3 that the appellant had caused any injury on PW-3 with the screw driver. PW-2 has in fact not attributed any role to the appellant for having caused any injury upon PW-3. He has spoken of injuries caused to him for which the accused had been charged under Section 323/34 of the IPC and for which all the accused stand acquitted and that part of the judgment has attained a finality as the State has not filed any appeal.

29 PW-3, at the cost of repetition, has stated that all the three accused persons have given danda blows on his head. The version of the prosecution is that the appellant was armed with a screw driver and not with a danda. Thus obviously the danda blows inflicted upon his head pursuant to which he sustained injuries was not caused by the danda blow given by the appellant but probably by the dandas of the other co-

accused.

30 In this aforementioned scenario, the prosecution having failed to prove the charge that it was the appellant who had caused the injuries (as detailed in Ex.PW-1/A) upon the victim Vijay Kumar, benefit of doubt has to accrue in favour of the appellant and he is entitled to an acquittal.

31 The impugned judgment convicting the appellant in this background clearly suffers from an illegality. It is accordingly set aside.

32 Appeal is allowed. The appellant is acquitted. His bail bond is cancelled; surety is discharged. File be consigned to record room.

INDERMEET KAUR, J

FEBRUARY 18, 2014

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