

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 25.02.2014
Date of Decision: 03.03.2014

+ CRL.A. 592/2013
SINGHASAN Appellant
Through: Mr.Prem Kumar with Mr.Rakesh,
Mr.Bhaskar and Ms.Priya Mahajan, Advocates

versus

STATE OF NCT OF DELHI Respondent
Through:Mr.Feroz Khan Ghazi, APP

+ CRL.A. 593/2013
MUNNA Appellant
Through: Mr.Prem Kumar with Mr.Rakesh,
Mr.Bhaskar and Ms.Priya Mahajan, Advocates

versus

STATE OF NCT OF DELHI Respondent
Through: Mr.Feroz Khan Ghazi, APP

+ CRL.A. 630/2013
KALLU Appellant
Through: Mr.Prem Kumar with Mr.Rakesh,
Mr.Bhaskar and Ms.Priya Mahajan, Advocates

versus

STATE NCT OF DELHI Respondent
Through: Mr.Feroz Khan Ghazi, APP

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

On 26th February, 2008, an information was received in the Police Control Room with respect to quarrel over teasing of a girl, in Gali No.3, Swaroop Nagar, Mukundkam Extension. The information when conveyed to Police Station Swaroop Nagar was recorded vide DD No.45B and Head Constable Naresh Kumar was informed about it on telephone. On the said date, Seema Devi, Sangeeta Devi, Devender Kumar and Anand Kumar were taken to Babu Jagjivan Ram Hospital in injured condition, by PCR officials.

2. When Head Constable Naresh Kumar reached the spot, he came to know that the injured had been taken to Hospital. On reaching the Hospital, he came to know that the injured Seema Devi, Anand Kumar and Devender Kumar had left the Hospital after taking treatment whereas Sangeeta Devi had been declared unfit for statement on her MLC. She had been sent to the Trauma Centre Hospital, Civil Lines. The Head Constable obtained the MLCs and reached the Trauma Centre, where Sangeeta Devi was still unfit for statement. No eyewitness, according to Head Constable Naresh Kumar, met him either in the Hospital or in the Trauma Centre. When Head Constable Naresh Kumar went to Hospital on 1st March, 2008, Satish, husband of Sangeeta Devi, was present there and his statement was recorded by him. The complainant told him that on 26th February, 2008, his daughter aged about 13 years, when she came home, complained to him that a boy named Kallu who was previously known to her and was employed in the

bakery of Singhasan in Swaroop Nagar, Mukundkam Extension had teased her. Thereupon, the complainant accompanied by Anand Kumar, Devender Kumar, Seema Devi and his wife Sangeeta Devi reached the bakery of Singhasan, in order to make Kallu see reason and not to tease her daughter in future. When they enquired in this regard, Singhasan who was the owner of the bakery as well as Munna and Kallu became angry and started quarrelling with them and giving beatings to them. Singhasan gave a blow on the head of his wife Sangeeta Devi using an iron rod for the purpose whereas Muna gave a danda blow on the head of Devender Kumar, as well as on the other parts. Kallu gave danda blow to his relative Anand Kumar and Seema Devi. Smt. Kiran, wife of Singhasan, also reached, in the meanwhile, and tried to intervene in the matter but she fell down during scuffle.

3. The case of the prosecution is that during the course of investigation, the appellant Singhasan got recovered an iron rod from his bakery whereas the other appellants got recovered one danda each from the said bakery. All the appellants were charge-sheeted under Section 308 of IPC read with Section 34 thereof.

4. Since the appellants pleaded not guilty of charge framed against them, 12 witnesses were examined by the prosecution whereas two witnesses were

examined in defence. The injured Sangeeta Devi came in the witness box as PW-1. In her deposition, she, *inter alia*, stated on 26th February, 2008, when her daughter complained to her about teasing by Kallu, she along with her brother-in-law Anand Kumar and her husband went to the bakery of Singhasan where all the three appellants, namely, Kallu, Munna and Singhasan were present. She claimed that appellants Munna and Singhasan were previously known to her since they were residing in the same colony.

According to her, when she complained to Singhasan against Kallu for teasing her daughter, all the three accused took iron rods in their hand and assaulted her as well as brother-in-law Devender Kumar and Anand Kumar with the said rods. On receiving injuries, she became unconscious and was removed to Hospital from where she was shifted to Trauma Centre. She, however, also stated that she had seen iron rod only in the hand of Singhasan and did not know of the weapons carried out by other two accused. She identified iron rod (Ex.P-1) which she had seen in the hands of the appellant Singhasan, at the time of incident.

5. PW-2 Satish is the complainant in this case. He, *inter alia*, stated that on being informed by his daughter regarding teasing by Kallu, he along with his brother-in-law Anand Kumar, Devender Kumar, who is the brother of his brother-in-law, his sister-in-law Seema Devi and his wife Sangeeta Devi went

to the bakery of Singhasan. All the accused were found present there when they asked Singhasan to advise Kallu not to tease his daughter in future, all the accused persons starting beating them. According to him, Singhasan was carrying an iron rod and Munna and Kallu had one danda earh. Singhasan gave blow on the head of his wife whereas others hit Devender Kumar, Anand Kumar and Seema Devi. They also gave a danda blow to him. He further stated he informed Police Control Room and PCR Van reached the spot. First of all, they were taken to Babu Jagjivan Ram Hospital from where his wife was shifted to Trauma Centre, Civil Lines. According to him, on account of serious condition of his wife, she could not get treatment at Babu Jagjivan Ram Hospital. This witness also identified the iron rod Ex.P-1 and claimed that the said rod was used for assaulting his wife.

6. PW-3 Smt. Seema is the another injured in this case. She stated that when they reached the bakery of Singhasan, the accused person got annoyed, Singhasan was having iron rod in his hand and Munna and Kallu were having danda in their hands Singhasan gave blow from iron rod to her sister Sangeeta, whereas the other accused gave a danda blow to Devender Kumar, Anand Kumar and Satish. Satish informed the Police. Then they were taken to the Hospital. She also identified the iron rod Ex.P-1.

7. PW-4 Devender Kumar also corroborated the deposition of PW1 to PW3 with respect to their going to the bakery of Singhasan, the appellant Singhasan causing injury to Sangeeta Devi with an iron rod and the other appellants causing injury to them with danda blows.

8. PW5 Anand Kumar also corroborated deposition of other eye-witnesses and deposed regarding the appellant Singhasan giving a blow on the head of Sangeeta with iron rod and the appellant Munna and Kallu giving danda blows to them.

9. PW9 is the daughter of the complainant who deposed with respect to the appellant – Kallu teasing her and stated that she had complained to her parents in this regard whereupon they had gone to the bakery of Singhasan along with her relatives – Anand, Davinder and Seema.

10. PW6 Head Constable Naresh Chander stated that when he reached the spot on 26.02.2008, he came to know that the injured had been taken to Babu Jagjivan Ram Memorial Hospital (BJRMH). When he reached there, he came to know that Smt. Sangeeta had been referred to Trauma Centre whereas the remaining injured had been discharged. Smt. Sangeeta was unfit for statement. No eye witness met him in the hospital. According to him on 1.3.2008, Satish Singh, husband of Sangeeta Devi met him in Trauma Centre

where he recorded his statement Ex.PW2/A. Thereafter, the investigation was handed over to SI Pradeep Kumar.

PW8 – Constable D. Lachchi Naik stated that on 1.3.2008 the accused persons were arrested on being pointed out by the complainant Satish Singh and their disclosure statements Ex.PW8/A to PW8/C were recorded. Thereafter, accused Kallu and Munna got recovered one *danda* each whereas accused Singhasan got recovered a *saria*, which were seized by them after they had been sealed with the seal of PK.

PW10 is the record clerk of BJRMH who proved the MLC Ex.PW10/A to PW10/C. PW11 Dr. Neeraj Chaudhary identified the signatures of the treating doctor on the aforesaid MLC.

PW12 SI Pradeep Kumar is the Investigating Officer of the case who *inter alia* stated that he arrested the appellants on the pointing out of the complainant on 1.3.2008 and recorded their disclosure statements Ex.PW8/A to PW8/C. According to him, accused Kallu and Munna got recovered one *danda* each whereas the accused Singhasan got recovered an iron rod from the bakery.

11. In their statements under Section 313 Cr.P.C, all the appellants denied the allegations against them and claimed to be innocent. No alternative version of the incident in question, however, was given by any of them.

12. DW1 – Satya Narain Shah *inter alia* stated that on 26.2.2008, Singhasan and Munna were with them from 5 pm to 9 pm and during the aforesaid period a telephone call was received at about 8/8.30 pm with respect to a quarrel at the house of Singhasan and Munna. After 9 pm, both of them went to their house and later he came to know that the accused persons had been implicated in this case. Thus, according to the witness at the time the incident in question took place, the appellants – Munna and Singhasan were with him.

DW2 – Lovkesh Kumar stated that on 26.2.2008, he attended the inaugural function of the shop of Singhasan and remained there till 8.30/9 pm. According to him, the appellant – Singhasan remained present in the function which started at about 7 pm.

13. Vide the impugned judgment dated 15.03.2013 all the appellants were convicted under Section 325/34 of IPC for causing grievous injuries to Anand, under Section 323/34 for causing injuries to Devinder and Seema and under Section 308/34 of IPC for causing grievous injuries to Sangeeta. Vide impugned Order on Sentence dated 18.03.2013, all the appellants were sentenced to undergo RI for five years each and to pay fine of Rs.30,000/- each or to undergo SI for one year each in default under Section 308 of IPC. They were sentenced to undergo RI for three years each and to pay fine of Rs.9,000/- each or to undergo SI for six months each in default under Section

325 of IPC. They were further sentenced to undergo RI for one year each and to pay a fine of Rs.1,000/- or to undergo SI for one month each in default under Section 323 of IPC. Being aggrieved from their conviction and sentence, the appellants are before this Court by way of these appeals.

14. The impugned judgment has been assailed by the learned counsel for the appellants primarily on the following grounds:

- (i) There is delay of three days in lodging the FIR;
- (ii) The use and recovery of iron rod and *dandas* is highly doubtful since they are not the articles which would normally be found in a bakery;
- (iii) No offence under Section 308 read with section 34 of IPC is made out against the appellants – Munna and Kallu; and
- (iv) No witness from the public was joined in the alleged recovery of iron rod and lathies from the bakery.

15. As regards the delay in lodging the FIR, it appears to me from the facts and circumstances of the case that the complainant – Satish had not actually witnessed the incident and that is why he did not meet the HC Naresh either in BJRMH or in the Trauma Centre on 26.2.2008. The case of the prosecution is that as many as five persons led by the complainant – Sangeeta had gone to the bakery of the appellant – Singhasan on coming to know from the daughter of the complainant that the appellant – Kallu used to tease her. However,

there is no record of any treatment of the complainant either in BJRMH or elsewhere. It is difficult to accept that despite appellants being heavily armed, all persons other than the father of the girl would receive injuries at the hands of the assailants. In fact, father of the girl would be the most agitated person on being informed of eve-teasing of his daughter and, therefore, would be most aggressive when he goes to the place where his daughter was teased, either to complain about the eve-teasing to his employer as the case of the prosecution is or to teach him a lesson which is the other possibility in this case. Therefore, he would be the first target of assailants. That having not happened, as would be inferred from the absence of any record of his treatment his presence at the time of the incident becomes doubtful.

Though it has come in the deposition of the witnesses that the complainant had informed PCR about the incident, no record of the PCR has been produced to prove that it was the complainant Satish who had informed Police Control Room with respect to the incident in question. It appears to me that Satish was not present when his daughter complained about eve-teasing with her and it were his wife and other relatives who went to the bakery to protest against eve-teasing. That also explains why the complainant did not meet HC Naresh on that day, either in the hospital or in the Trauma Centre. The deposition of Head Constable Naresh shows that after 26.2.2008 he visited the Trauma Centre only on 1.3.2008 when the complainant was found present. It appears to me that on 1.3.2008, a report was lodged by the

complainant on the basis of the version given to him by his relatives who were already injured in the aforesaid incident and their injuries being simple were discharged, after giving first aid etc. to them.

16. A perusal of MLC Ex.PW10/A of Sangeeta Devi would show that she had a 6 cm CLW over mid-parietal region, besides multiple abrasions. Injured Seema, who was brought to the hospital with history of alleged assault had tenderness and swelling whereas Anand had CLW over his left thumb, which was 1 cm x 0.1 cm in size, besides CLW of the same size on his left index finger.

17. Smt. Seema Devi, Smt. Sangeeta Devi and Anand being the injured in this case, there can be no good reason to reject the testimonies of these witnesses as regards the injuries caused to them on 26.02.2008. In Mer Dhana Sida vs. State of Gujarat AIR 1985 SC 386, three injured witnesses had supported the prosecution. It was held by Hon'ble Supreme Court that as there were three injured witnesses, and we would require very convincing submissions to discard the evidence of the injured witnesses whose injuries would at least permit a reasonable inference that they were present at the time of occurrence. Undoubtedly, this is subject to the requirement that there must be

evidence to show that these witnesses received injuries in the same occurrence. Very cogent and convincing ground would be required to discard the evidence of the injured. In Machhi Singh vs. State of Punjab 1983 CrL.L.J.1457, ONE WITNESS Hakam Singh himself had sustained injuries in the course of incident in question, it was observed by Hon'ble Supreme Court that it was difficult to believe that he would implicate the persons other than the real culprits and that the evidence of that witness alone, was sufficient to bring home the guilt the appellants even if one were to exclude from consideration, the evidence of other PWs. Identical view was taken by the Hon'ble Supreme Court in a number of other cases including "Makan Jivan & Others Vs. The State of Gujarat", AIR 1971 SC 1797, "Hori Lal & Another Vs. The State of U.P.", AIR 1970 SC 1969, and "Jamuna Chaudhary & Others Vs. State of Bihar", AIR 1974 SC 1822.

18. It would be difficult for me to accept the contention that the iron rod and *dandas* etc are not likely to be found in a bakery. Normally bakery products such as biscuits, before baking, are kept in a tray and thereafter the tray is kept on a rod and shoved inside for baking. That also explains why the iron rod and *dandas* were found in the bakery on 1.3.2008.

19. Ex.PW8/A is the disclosure statement made by the appellant – Singhasan wherein he *inter alia* stated that the *dandas* and *sarias* had been concealed in the bakery and they could get the same recovered from there. Similar disclosure statements were made by the appellants – Kallu and Munna which are Ex.PW8/C and PW8/D respectively. Since pursuant to the aforesaid disclosure statements, the police officials discovered the information that the iron rod and *dandas* are lying in the bakery and the said statements were confirmed from the actual recovery of the iron rod and *sarias* from there, the statements are admissible in evidence under Section 27 of the Evidence Act to the above referred extent.

Since the iron rod and *dandas* were recovered pursuant to their disclosure statements which is admissible in evidence under Section 27 of the Evidence Act, it was not obligatory for the Investigating Officer to associate public witnesses in the aforesaid recovery, the provisions of Section 100 of Cr.P.C not applicable thereto. In State v. Sunil and Another, [(2001) 1 SCC 652, the blood stained knickers of the deceased were seized by the police pursuant to a disclosure statement made by the accused. No independent witness was, however, joined in the seizure. The seizure of the knickers was assailed on the ground that it was not attested by any independent witness. Rejecting the contention Supreme Court *inter alia* observed and held as under:

In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses....

.... But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code....Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the

document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.”

20. The learned counsel for the appellant – Singhasan relied upon Velu lia Javelu v. State [2004 CrLJ 3783]. In the aforesaid case, when the prosecution witnesses were unloading the iron rods after parking their lorry in front of the factory, the accused came there in a van, questioned PW2 for parking his lorry in such a way which was preventing his vehicle from coming snide the factory, and that resulted in an altercation between them. Within a few minutes the accused armed with an iron pipe hit on the back side scalp of PW2. It was held that since the appellant caused the blow in a spur of moment and there was no proper planning or pre-meditation, the offences punishable under Section 308 of IPC was not made out and the appellant was guilty only of offence punishable under Section 324 thereof

In the case before this court, there was no pre-planning or pre-meditation. In the normal course of human conduct, when the daughter of the complainant complained to her family members with regard to the teasing by the appellant – Kallu, they must have got agitated and gone to the bakery of the appellant – Singhashan where Kallu at that time was employed, so as to

either teach him a lesson or at least to protest against Kallu for teasing the young girl. This must have led to an altercation between the appellants and the injured persons. Since the iron rod and *lathies* were readily available in the bakery, the appellants picked them up for causing injuries to the injured witnesses. This is not the case of the prosecution that the *lathies* and iron rods were brought from some other place. Therefore, it would be difficult, in the facts and circumstances of the case, to say that the appellants/ accused caused injuries to the witnesses with such intention or knowledge and under such circumstances that if they by their act had caused the death of the injured persons they would be guilty of culpable homicide not amounting to murder.

21. The case of the prosecution is that the appellant – Singhasan used an iron rod where the other appellants used *lathies/ dandas* for causing injuries to the witnesses. The length of the *danda* alleged to have been used by the appellant - Kallu was found two and a half feet whereas the length of the *danda* alleged to have been used by the appellant – Munna was to be two feet and half inch. The aforesaid *dandas* in my view cannot be said to be deadly weapons.

While picking up *lathies* for causing injuries to the witnesses, the appellants Munna and Kallu could not have anticipated that the appellant – Singhasan would use an iron rod for causing injuries to Smt. Sangeeta or any other person. Therefore, in the facts and circumstances of the case, it cannot

be said that they share a common intention with the appellant – Singhasan to cause injuries with the iron rod and that too on a vital part of the body such as her scalp. Therefore, the appellants – Kallu and Munna are liable only for their individual acts and not for the act of the appellant- Singhasan.

22. It was held by the Hon'ble Supreme Court in Ved Kumari and another v. State and another [96(2002) DLT 820] that in order to constitute offence under section 308 IPC it must be proved (i) that the accused committed an act; (ii) that the said act was committed with the intention or knowledge to commit culpable homicide not amounting to murder and (iii) that the offence was committed under such circumstances if the accused by that act had caused death he could have been guilty of culpable homicide. It was further ruled that intention is a question of fact which is gathered from the acts committed by the accused and knowledge means awareness of the consequences of the act.

23. In Bishan Singh and another v The State [(2007) 13 SCC 65, the injured suffered as many as seven injuries including three lacerated wound out of which two were on the scalp and one was on the right forehead. He also had a fracture with dislocation of wrist joint. The Apex Court, however, felt that the accused could not be convicted under Section 308 of IPC and the case would fall under Section 323 and 325 thereof.

24. A perusal of the MLC of Smt. Seema would show that she had only tenderness and swelling and no injury on any vital part of her body was found. A perusal of the MLC of the injured Anand would show that the injury was found only on his thumb and left index finger. Thus, no lathi blow was given on any vital part of the injured Smt. Seema or Anand. Considering the nature of injuries sustained by the aforesaid witnesses, coupled with the size of the lathi/ dandas used by the appellants – Kallu and Munna, they would be guilty of only of offence punishable under Section 323 of IPC for causing injury to Smt. Seema and Anand and the charge under section 308/34 of IPC does not stand established against them.

25. As far as appellant – Singhasan is concerned, the consistent deposition of the witnesses show that he had used iron rod for causing injuries on her. Even if the recovery of the iron rod from his bakery, pursuant to the disclosure statement made by him is excluded from consideration, the oral deposition of the witnesses is sufficient to prove the use of iron rod by him. A perusal of the MLC of injured Smt. Sangeeta Devi would show that she had a clean lacerated wound on her parietal region. Thus, the iron blow to her was given on a vital part of her body. However, only one iron rod blow appears to have been given to her since besides CLW, she had only abrasion over her face. This, despite having an iron rod with him, the appellant – Singhasan

refrained from giving multiple blows from the said weapon on vital part of body of the injured. It would, therefore, be difficult to say that the aforesaid appellant caused injuries other with the intention or knowledge to commit culpable homicide not amounting to murder and that had his act resulted in death of Smt. Sangeeta Devi, he would have been guilty of culpable homicide.

26. However, this can hardly be disputed that an iron rod would be a deadly weapon. The expression ‘deadly weapon’ has not been defined anywhere in the Indian Penal Code. The ordinary meaning of the expression ‘deadly weapon’ would be an object which if used as a weapon of offence is likely to cause death. It would be difficult to dispute that if an iron rod is used as a weapon of offence for causing injuries on a vital part of the body such as scalp of the injured, it is likely to cause his/her death. Therefore, the appellant – Singhasan would be guilty of offence punishable under Section 324 of IPC for causing injuries to Smt. Sangeeta, with an instrument which, if used as a weapon of offence is likely to cause death. It would be pertinent to note here that there is no evidence of the injuries sustained by Smt. Sangeeta Devi being grievous. The expression grievous hurt has been defined in Section 320 of IPC. There is no evidence which would prove the injuries of Smt. Sangeeta Devi fall in Class Firstly, Secondly, Thirdly, Fourthly, Fifthly or Sixthly of Section 320 of IPC. There is no credible evidence of any fracture or

dislocation of bone or teeth. There is no evidence that the injury caused to Smt. Sangeeta Devi could be dangerous to her life. Neither the doctor who examined her has been produced nor PW11 – Dr. Neeraj Chaudhary opined that the injuries sustained by her could have endangered her life. There is no evidence of the aforesaid witnesses having been discharged from the hospital after twenty or more days. There is no evidence of her being in severe bodily pain or having been to follow her ordinary pursuits for that much period. Therefore, her injuries cannot be said to be grievous punishable under Section 320 of IPC.

Though, the doctor opined the injuries of Anand to be grievous, his MLC does not explain how the said injury as opined to be grievous. The injured had CLW on his left thumb and left index finger, but there is no evidence of his having any fracture or dislocation. The injuries sustained by him therefore is not covered by the clause Firstly, Secondly, Thirdly, Fourthly, Fifthly, Sixthly or Seventhly of Section 320 of IPC. Since the doctor who treated him in the hospital has not been examined, there is no evidence of the injuries sustained him being dangerous to his life. Admittedly, he was discharged from the hospital on 26.02.2008 itself. Therefore, it would be difficult to say that the injuries caused to him to remain him in severe bodily pain for twenty or more days or that he was unable to follow his ordinary pursuits for such period.

27. For the reasons stated hereinabove, the appellant – Singhasan is convicted under Section 324 of IPC whereas the appellants – Munna and Kallu are convicted under Section 323 thereof. The appellants, however, are given benefit of probation and are released on furnishing bonds of peace or good conduct to the tune of Rs.10,000/- each with one surety each in the like amount. The term of the bond to be furnished by the appellant – Singhasan would be two years whereas the term of bond to be furnished by the appellants – Kallu and Munna would be one year each. During the period of bond, they shall maintain peace and observe good conduct. They shall refrain from committing any crime during the aforesaid period. The appellant – Singhasan shall also pay Rs.30,000/- as compensation to the victim Smt. Sangeeta whereas the appellants – Munna and Kallu shall pay Rs.5,000/- each as compensation to the injured Anand and Seema respectively. In default of paying the compensation and/or furnishing bond of peace and good conduct, the appellant – Singhasan shall undergo RI for two years whereas the appellant – Kallu and Munna shall undergo RI for one year each.

The appeals stand disposed of accordingly.

One copy of this order be sent to the concerned Jail Superintendent.

Trial court record be returned with a copy of this order.

MARCH 03, 2014/*shitu*/rd

V.K. JAIN, J.