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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24th August 2018

Decided on: 30th August 2018

CRL.A. 672/2015

RAKESH

..... Appellant

Through: Mr. Vijay Pratap Singh, Advocate

versus

THE STATE OF DELHI

..... Respondent

Through: Mr. Hirein Sharma, APP for State

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CRL.A. 283/2018

NEMWATI

..... Appellant

Through: Mr. Ansar Ahmed, Advocate

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Mr. Hirein Sharma, APP for State

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT

Dr. S. Muralidhar, J.:

1. These are two connected appeals, one by Rakesh (hereafter referred to as 'the accused') and the other by Nemwati (hereafter 'the victim'). The accused challenges the judgment dated 16th May 2015 passed by the learned Additional Sessions Judge, North West (hereafter 'the trial Court') in

Sessions Case No. 50/2014 arising out of FIR No. 151/2014 registered at Police Station ('PS') Sultan Puri convicting him for the offences under Sections 326 and 342 IPC as well as the order on sentence dated 19th May 2015 whereby for the offence under Section 326 IPC, he was sentenced to Rigorous Imprisonment ('RI') for five years along with fine of Rs.10,000/-, and in default of payment of fine to undergo simple imprisonment (SI) for one month whereas for the offence under Section 342 IPC he was sentenced to SI for one year along with fine of Rs.1,000/-, and in default of payment to undergo SI for one week. The accused was also directed to pay Rs.30,000/- as compensation to the victim under Section 357A Cr PC.

2. As far as the victim is concerned, she questions the impugned judgment in so far as the trial Court has acquitted the accused of the offence under Section 307 IPC and converted that offence into one under Section 326 IPC and sentenced him accordingly.

Charge

3. The charge against the accused as framed by the trial Court by the order dated 3rd July 2014 was that on the intervening night of 8th/9th February 2014 at 1 am at Jhuggi No. 260, near Bhalla Factory, HIG Labour Colony, Sultan Puri, he attacked his wife, the victim, with a kitchen knife causing grievous injuries to her nose, cheek and behind the ear; he also hit her head with a "Sil batta (piece of stone used for grinding)" as a result of which she fell unconscious; he then left her in the *jhuggi* and locked it from outside. He was charged with committing the offence of attempt to murder punishable

under Section 307 IPC and wrongfully confining the victim in the *jhuggi* thereby committing an offence punishable under Section 342 IPC.

Background facts

4. The accused and the victim were married on 19th June 2007. They have a son. Soon after the wedding, quarrels started between the couple. It appears that the accused was a widower at the time of his marriage to the victim. There were two-three complaints filed by the victim against the accused as regards her being beaten up by him. On his part the accused filed a case against the victim in the Rohini Courts seeking divorce. The victim filed a petition seeking restitution of the conjugal rights and also a separate case seeking maintenance for the son residing with her who was born out of the wedlock with the accused.

5. About two years prior to the incident, the victim had left the matrimonial home and started staying with her father at Mundka. At around 7 pm on 8th February 2014 the accused went to the house of the victim's father and after taking tea and snacks, informed Smt. Tara Wati (PW-4), mother of the victim, that he wanted to take the victim with him for the purposes of getting her medicines as she was unwell at the time. The victim left with the accused at around 8.30 pm, leaving their son behind with PW-4.

6. In response to PW-4's doubts about the victim accompanying the accused despite the pending court cases filed by them against each other, the accused assured PW-4 that he would take her to the court and subsequently get all matters between him and the victim settled.

7. Instead of taking the victim to buy medicines, the accused on the way informed the victim that he would take her to his *jhuggi* first and then take her for medicines later. He took her to his *jhuggi* near Bhalla Factory. The victim, having been assured by the accused that they should compromise their disputes and should start residing together, agreed to stay with the accused in his *jhuggi* on that night. According to her, since their son was five years old and in the interest of the child's future and her own future, she decided to stay with the accused in his *jhuggi*. There they talked to each other for some time. Thereafter, the accused suddenly brought out a kitchen knife and inflicted knife injuries on the victim's neck two or three times. He then took a heavy stone (*Sil Batta*) and hit her head giving her two or three injuries as a result of which she fell unconscious.

8. The victim regained consciousness at around 1 am on 9th February 2014. She somehow managed to drag herself till the door of the *jhuggi* as she was unable to get up and walk. She then realised that the door was locked from the outside. She then kept banging on the door from the inside and also started shouting.

9. Subhash Tiwari (PW-5) who lived in the neighbourhood in the Labour Colony in Sultan Puri was woken up by his neighbours and informed that noises were coming from the adjoining *jhuggi*. PW-5 then went to the adjoining *jhuggi* and found it locked from the outside. Meanwhile someone had made a call to the Police Control Room.

10. The PCR form (Ex.PW-15/A) shows that the call was made to the police at 2.09 am with the caller's name being given as Ram Achal (PW-3) and with the information being "*ghar ka lock band hai aur andar se kisi ladies ki rone ki awaj aa rahi hai*". The location was given as "*Bhalla factory ki jhuggi HGI Labour Colony, Shiv Mandir ke paas, Sultan Puri, F-7 ke paas*". It was noted in the right hand column of the PCR form at 3:37 am that the victim had come to her father-in-law's house and that there was an old pending case against her husband. When the neighbours and the father-in-law opened the door by breaking open the lock they found the victim in a pool of blood and that they had taken her to the hospital. The PCR form further noted "*lady ke right side kaan ke pass chaku jaisa ghav hai, sir mein bhi kayi ghav hai or naak par pather se marne ka nishan hai lady ne bataya pati ne mara hai, shadi ko 8 years ho gaye or 5 years ka ladka hai.*"

11. The above part of the noting in the PCR form finds corroboration in the statement of PW-3 himself as he was a resident in the neighbourhood and when he heard the cries of a female coming from the *jhuggi* in question, he requested his neighbours to wake up and he himself called the PCR. PW-3 knew the accused from earlier as being the landlord of Jhuggi No.260 in which the victim was found. In fact he volunteered that the accused was the landlord of four or five rooms in the premises and he himself i.e. PW-3 was residing in one of the rooms. He confirmed that the PCR van came and the room was opened and he noticed the victim in an injured condition. Although he could not confirm that the victim was the wife of the accused, he volunteered that that was because he had never seen her earlier. In his

cross-examination, he stated that he did not remember when he last saw the accused prior to the date of the incident. Otherwise he stood by his version about the police coming there, the lock of the *jhuggi* being broken and the victim being rescued.

12. The fact that it was the police who broke open the door is confirmed by Assistant Sub-Inspector (ASI) Hukam Chand (PW-9). On receipt of the PCR information, he went to the spot and found that Jhuggi No. 260 was locked from outside but from inside the *jhuggi* the cries of a women were heard. He noticed that 10-15 public persons had gathered there. He then obtained a hammer from one of the neighbours, broke open the lock and entered the *jhuggi* and found the victim lying on the floor inside, smeared in blood. She disclosed her name as Nemwati (PW-1) and informed PW-9 that it was her husband who had injured her and had gone away after locking her inside the *jhuggi*. They took her in the PCR Van to Sanjay Gandhi Memorial Hospital. Hardly anything emerged in the cross-examination of PW-9 to shake his version.

Medical evidence

13. Then there is the MLC (Ex.PW-18/A) which reveals that the victim was brought at the Sanjay Gandhi Memorial Hospital (SGM Hospital) at 3.30 am on 9th February 2014 by HC Hukam Chand (PW-9) with alleged history of assault. The injuries were noted as grievous and she was referred to surgery. This part of the evidence is confirmed by Dr. M. Das (PW-18), who on examining her on 9th February 2014 when she was brought to the hospital

noticed the following injuries on her:

- “1. Sharp injury, left side cheek, chin of mandible and one lacerated wound left cheek.
2. Sharp injury right side above ear 3 cm and back 4 cm.
3. Lacerated wound on bridge of nose exposing bone.”

14. PW-18 also confirmed the examination of the victim conducted by Dr. Madhur, the then Senior Resident (SR Surgery) of SGM Hospital as well as the endorsement of Dr. Nitin another SR Surgery of SGM Hospital regarding opinion as to the nature of injuries. He also exhibited a subsequent MLC on 10th February 2014 (Ex.PW-16/B) which showed that this MLC confirmed that the victim had been admitted in the emergency ward. Her blood samples were taken and preserved as were her *Salwar* and *Kurta* which were then handed over to the police officials. There was no cross-examination of this witness.

Evidence of PW-1

15. Then we have the evidence of the victim (PW-1) herself, who has spoken of all the above facts and has also confirmed that her statement was recorded by the police in the hospital (PW-1/A). She also identified a knife which was found at the spot by the Crime Team headed by Inspector Anil Kumar (PW-13). In fact PW-13 had found at the spot the blood stained kitchen knife as well as the blood stained *Sil Batta*. While PW-1 was able to identify the knife, she was unable to identify the stone as she was hit from behind. PW-1 was subjected to extensive cross-examination but on the material aspect of the accused having come to her father's house and taken her with him on the evening of 8th February 2014, then having been attacked

by him with the vegetable knife and the *Sil batta* inside the *jhuggi* at around 1.00 am, she was totally unshaken and stood firm.

Trial

16. When the incriminating circumstances that emerged from the above evidence were put to the accused under Section 313 Cr PC, he denied most of them. He admitted that the victim had filed a complaint against him and his family members about dowry demand; that she had filed a case for restitution of conjugal rights and maintenance; and that he had filed a case against her for divorce.

17. The accused claimed not to have been present in Delhi on 8th February 2014. He pleaded *alibi*. According to him, he had left Delhi on 2nd February 2014. He had gone to Pratap Garh City, Mirza Ka Bagh, U.P as his younger brother was to be married on 29th February 2014. He admitted that the police had reached there on 11th February 2014 and brought him back to Delhi. He denied that he had taken the victim to Jhuggi No.260 although he admitted that it was his *jhuggi*.

18. The accused also admitted that the clothes recovered from the victim i.e. the jacket and pant were in fact his. However, according to him, since he and the victim had been staying together for two months at the house of the father of the victim after the matrimonial dispute had arisen and he had taken the victim from the Court of the Magistrate where proceedings for alimony were ongoing, his clothes were available at the house of the victim and therefore those clothes were planted in the case. According to him he

had been falsely implicated in the case because of the matrimonial disputes between him and the victim.

Defence evidence

19. The accused examined himself as DW-1 and again stated that he had on 2nd February 2014 gone to his native village at Mirza Ka Bagh. However, in his cross-examination he admitted that he did not have train tickets to show that he had indeed gone to his native village on the said date. In fact he did not examine anyone from his village who could have confirmed this fact.

20. Narain Singh, the father of the accused, was examined as DW-2. He made a desperate attempt by bringing with him a purported diary maintained by the victim which he purportedly got from her room in her absence. This was marked as Ex.DW-2/A but was objected to as a mode of proof by the prosecution. DW-2 also attempted to tarnish the character of the victim by alleging that she had an affair with someone else about which he had questioned her and that even before marrying the accused, the victim had eloped with that person and married him. However, there was absolutely no evidence to substantiate all of this. Most importantly, when the victim was cross-examined, no such question was put to her.

Findings of the trial Court

21. On an analysis of the above evidence, the trial Court rightly came to the conclusion that the prosecution had proved beyond reasonable doubt that the Appellant had injured the victim at the time, date and place mentioned in the charge. The trial Court also concluded that the accused had wrongly

confined the victim, left her injured in an unconscious state inside the *jhuggi* by locking it from the outside. Consequently, there was no doubt, as far as the trial Court is concerned, that the offence under Section 342 IPC had been made out.

22. Thereafter the trial Court proceeded to discuss whether the evidence showed the commission of the offence under Section 307 IPC. According to the trial Court, neither the kitchen knife nor the *Sil Batta* were deadly or dangerous weapons and if the accused had really intended to cause the death of the victim, “he could have easily arranged some more dangerous knife/dagger or some other deadly weapon of offence.”

23. The trial Court further observed that if the accused intended to cause the death of the victim “he could have done this crime at any other place including the house of parents of PW-1.” The trial Court posed the question “why would he have brought PW-1 to his Jhuggi in case he really wanted to get rid of her by causing her death. After all he would not have created evidence against himself.” Further according to the trial Court, when the victim fell unconscious “it was all the easier for the accused to have done whatever he wanted in case he really wished to kill PW-1. But he did not do it and instead left the Jhuggi by closing the door from outside.” Therefore, according to the trial Court, the accused did not intend to cause the death of the victim. This persuaded the trial Court to convert the offence to one of causing grievous injuries under Section 326 IPC while acquitting the accused of the offence under Section 307 IPC. The trial Court then

proceeded to sentence him for the offences under Section 342 and 326 IPC in the manner noticed hereinbefore.

24. The Court has heard the submissions of learned counsel for the accused, learned counsel for the victim and learned APP for the State.

During the pendency of these appeals

25. During the pendency of the above appeals, at a certain stage, the accused had offered to resume living with the victim and his son and a settlement was reached before the Delhi High Court Mediation and Conciliation Centre ('DHCMCC') on 10th April, 2017. Taking the said settlement agreement on record, this Court by an order dated 17th April, 2017 granted the accused interim bail for a period of one month to enable the parties to comply with the terms of the settlement.

26. However, it became apparent that the accused was not prepared to adhere to the terms of the settlement. The Court made repeated efforts as is evident from the orders dated 17th May 2017, 19th July 2017, 21st July 2017, 26th July 2017 and 23rd August 2018 to bring about a further reconciliation of the differences between the parties. During this period the interim bail of the accused was kept extended. On 20th September 2017, the accused and his father were present in Court and again a statement was made that the accused would take on rent a separate room where the accused and the victim would stay together. However, none of these assurances were adhered to by the accused. The Court noted on 6th March 2018 that there was a stalemate and no settlement was possible.

27. In a desperate attempt, in the course of final arguments of the present appeals on 1st August 2018, the accused again renewed his offer to take back the victim and gave the assurance that 50 sq. yds. out of 200 sq. yds. of his father's property would be transferred by his father to the victim and the child. The victim however stated, and rightly so, that she was unable to trust the accused. The accused even assured the Court that the arrears of maintenance which were to an extent of Rs. 3.1 lakh would be cleared by him and that he would also pay a further sum of Rs. 2 lakhs to the victim and the child if one month's time was granted to him.

28. The Court was informed that the accused had a balance of Rs.40,000/- in his account with the State Bank of India, Mundka branch. By the order dated 1st August 2018 the Court gave the accused an opportunity to prove his bona fides by requiring him to be present on 2nd August 2018 at 2.15 p.m. with a demand draft in the sum of Rs.37,000/-, favouring the victim. It must be recalled here that at this stage, the accused was still on interim bail. However, the accused again failed to adhere to his assurance.

29. On 2nd August 2018 when the case was called out only a proxy counsel was present for the accused and he informed the Court that the accused did not propose to come to the Court. The Court was then constrained to cancel the interim bail and direct the accused to be taken into custody immediately. Thereafter the case was listed on 24th August 2018 when the accused was directed to be produced in custody.

Analysis and reasons

30. The evidence on record unmistakeably points to the guilt of the Appellant for causing grievous injuries on the victim. The only defence of the accused appears to be of *alibi* which he miserably failed to prove. It is clearly a false plea which he could not substantiate.

31. Learned counsel for the accused did take this Court through the evidence once again. Having carefully perused the evidence of the victim (PW-1), Sh. Ram Achal (PW-3) a neighbour who lived next to Jhuggi No.260 and that of the victim's mother (PW-4), it is brought out clearly that the accused did take the victim from her father's house on the evening of 8th February 2014 assuring her and PW-4 that he would get her medicines and then persuaded her to accompany him to Jhuggi No.260 where at around 1 am on 9th February 2014 he attacked her with the kitchen knife and subsequently with the *Sil Batta* thereby causing her grievous injuries.

32. The medical evidence also fully corroborates the version of the victim. She stood firm in her cross-examination and therefore her evidence is entirely truthful and believable.

33. Added to this is the fact that the accused failed to substantiate his plea of *alibi*. The pathetic attempt by his father (DW-2) to doubt the character of the victim was rightly rejected by the trial Court.

Section 307 IPC

34. The Court is of the view that while the trial Court got it right by confirming the guilt of the accused for the offence under Section 342 IPC, the trial Court went completely wrong in acquitting him of the offence under Section 307 IPC. The ingredients of the offence punishable under Section 307 IPC stand fulfilled in the present case. To bring home the charge that the accused in fact intended to murder the victim, it has to be shown by the prosecution that the accused had both the intention and the knowledge that the injuries caused by him would in fact result in the death of the injured person.

35. In *Sarju Prasad v. State of Bihar AIR 1965 SC 843*, the Supreme Court held that merely the fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not in itself sufficient to take the act out of the purview of Section 307 IPC.

36. In *Hari Kishan v. Sukhbir Singh AIR 1988 SC 2127*, the Supreme Court opined:

“Under Section 307 IPC, what the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of ‘attempt to murder’. Under Section 307, the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, and the part

of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.”

37. In *Bappa alias Bapu v. State of Maharashtra (2004) 6 SCC 485*, the victim had accompanied the accused to go watch a movie. While returning on a bicycle, the accused suddenly got down from the bicycle and stabbed the victim on his stomach and back and pressed his neck. While negating the contention that keeping in view the nature of the injuries sustained, the offence cannot be said to be one covered by Section 307 IPC, the Supreme Court held as under:

“It is sufficient to justify a conviction under Section 307 IPC if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

38. If the evidence in the present case is carefully perused, it is apparent that the weapons used in the present case were indeed dangerous weapons. The Court is unable to appreciate the finding of the trial Court that the kitchen

knife and the *Sil Batta* were not sufficiently dangerous weapons or that if the accused really wanted to kill the victim, he should have used 'more dangerous' weapons.

39. In *Mathai v. State of Kerala (2005) 3 SCC 260* the Supreme Court explained what the expression 'dangerous weapon' was as under:

"16. The expression "any instrument which, used as a weapon of offence, is likely to cause death" (Section 326) has to be gauged taking note of the heading of the section. What would constitute a "dangerous weapon" would depend upon the facts of each case and no generalisation can be made.

17. The heading of the section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted by this Court in *State of U.P. v. Indrajeet (2000) 7 SCC 249* there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. As noted above, the evidence of the doctor (PW 5) clearly shows that the hurt or the injury that was caused was covered under the expression "grievous hurt" as defined under Section 320 IPC. The inevitable conclusion is that a grievous hurt was caused. It is not that in every case a stone would constitute a dangerous weapon. It would depend upon the facts of the case. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 the expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would

throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable.”

40. Merely because the kitchen knife and *Sil Batta* are readily available in most homes does not make them any less dangerous. A kitchen knife used on the vital parts of a person’s body can cause serious damage, like in the instant case where there are serious grievous incised wounds on the neck of the victim, and this itself is a clear demonstration of how dangerous a weapon a kitchen knife really is.

41. Further the accused did not merely leave the victim in a bloodied condition by walking away from the *jhuggi* by ‘closing the door’. What the trial Court has omitted to mention is that he locked the *jhuggi* from the outside thus making it certain that the victim could not escape. Leaving her inside the *jhuggi* with such grievous wounds in a bloodied state, knocking her unconscious by attacking her head with a grinding stone (*Sil Batta*) and then locking the *jhuggi* from the outside are all steps that fulfil the ingredients of Section 307 IPC. There was no question that the accused did not intend that the victim should in fact slowly bleed to death. Having been sure that she was rendered unconscious, he perhaps did not expect her to become conscious at any stage soon after and then cry out for help. Fortunately for the victim, she survived this brutal attack and managed to raise an alarm.

42. The victim has continued to suffer the consequences of those grievous

injuries as is evident from what transpired later to which a reference will be made presently. In the considered view of the Court, the evidence on record proves beyond reasonable doubt that the accused intended to murder the victim by causing her grievous injuries which, but for her rescue by the neighbours and the police, would have undoubtedly left her dead.

43. Consequently, it is held that the trial Court erred in acquitting the accused of the offence under Section 307 IPC. His conviction for the offence under Section 326 IPC is therefore set aside and the accused is hereby convicted for the offence punishable under Section 307 IPC.

Sentence

44. It is mentioned in the memorandum of appeal of the victim that her parents have had to spend, even at the time of the filing of the appeal by her, a sum of Rs.50000/- for her treatment. She has suffered permanent disfiguration of her face. Indeed she continues to bear the scars of the brutal attack on her by the accused even till now, in every sense of the term.

45. That brings us to the aspect of the sentence awarded by the trial Court. While the Court leaves undisturbed the conviction and the corresponding sentence awarded to the accused for the offence under Section 342 of the IPC, as far as the offence under Section 307 IPC is concerned, the Court convicts the accused to RI for a period of seven years along with fine of Rs.1 lakh and in default of payment to undergo SI for six months. The fine amount shall be paid to the victim as and when deposited. Additionally, the Court refers the case of the victim to the Delhi State Legal Services

Authority ('DSLISA') for determination of the appropriate compensation payable to her under the Victims Compensation Scheme under Section 357A Cr PC.

46. The impugned judgment and order on sentence of the trial Court shall stand modified in the above terms. While CrI. A. No. 672/2015 by the accused is dismissed, CrI. A. No. 283/2018 by the victim is disposed of in the above terms. The TCR be returned together with a certified copy of this judgment. A copy of this judgment be delivered forthwith through Special Messenger to the Secretary, DSLISA for compliance.

S. MURALIDHAR, J.

VINOD GOEL J.

AUGUST 30, 2018

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