

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

DECIDED ON : FEBRUARY 10, 2015

+ CRL.A. 408/2002

(1) OM PARKASH & ANR.

..... Appellants

Through : Mr.Pawan Madan, Advocate.

versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP.

Mr.Ram Bhawn Singh, Mr.Sudhir

Singh, Ms.Sushila Devi and

Ms.Ishwanti, Complainants present in
person.

ASI Rajpal Singh, PS Mehrauli.

+ CRL.A. 423/2002

(2) MAHENDER SINGH DAHIYA & ORS.

..... Appellants

Through : Mr.N.Hariharan, Sr.Advocate with

Mr.Sanjay Sood and Mr.Vaibhav

Sharma, Advocates.

versus

STATE OF DELHI

..... Respondent

Through : Ms.Kusum Dhalla, APP.

Mr.Ram Bhawn Singh, Mr.Sudhir
Singh, Ms.Sushila Devi and
Ms.Ishwanti, Complainants present in
person.
ASI Rajpal Singh, PS Mehrauli.

+ **CRL.A. 409/2002**

(3) NARENDER & ANR.

..... Appellants

Through : Mr.Mahinder Singh, Advocate.

versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP.

Mr.Ram Bhawn Singh, Mr.Sudhir
Singh, Ms.Sushila Devi and
Ms.Ishwanti, Complainants present in
person.
ASI Rajpal Singh, PS Mehrauli.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Appellants Mahender Singh Dahiya s/o Dariyao Singh (A-1);
Mahender Singh s/o Kanwal Singh (A-2); Rajroop (A-3) ; Om Parkash
(A-4); Ravinder Kumar (A-5); Narender (A-6) and Depender (A-7) have
filed the above separate appeals to impugn a judgment dated 18.03.2002

of learned Additional Sessions Judge in Sessions Case No.638/96 arising out of FIR No.64/89 under Sections 148/149/308 IPC registered at Police Station Mehrauli by which they were held guilty for committing offences under Section 148 IPC and under Section 308 IPC read with Section 149 IPC. By an order dated 17.04.2002, they were sentenced to undergo RI for three months under Section 148 IPC and RI for one year under Section 308 read with Section 149 IPC. Both the sentences were to operate concurrently. It is relevant to note that one Ashok Kumar s/o Tolram was also charge-sheeted along with the appellants, however, he absconded during trial and was declared Proclaimed Offender as per order dated 23.11.1996.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 12.3.1989 at about 12.00 noon, the complainant Sudhir Singh, his father, brother and sister-in-law were sitting in their 'gher'. About 15/20 persons including the accused came and started demolishing the wall of their 'gher'. When the complainant and his relations objected to that, the assailants entered inside the 'gher' and started beating them with lathis and stones. Some of the assailants were armed with pistols and guns. They criminally intimidated the complainant and his relations. It is alleged that accused Mahender Singh took gun

from one of the assailants and fired twice or thrice and the bullet hit right thigh of his brother. His sister-in-law sustained injuries on her head and other body parts. His father and another sister-in-law also received injuries. The complainant sustained stone blow on his face and lathi blow on his right shoulder. Police arrived at the spot and took the injured to the hospital. The injured were medically examined. FIR was lodged with the police. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against all the appellants and one Ashok Kumar in the court. The prosecution examined ten witnesses to establish their guilt. In 313 statement, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the appeals in hand have been instituted.

3. During the pendency of the appeals, Om Prakash s/o Mahipat Ram (appellant in Crl.A.No.408/2002) (A-4), Mahender Singh Dahiya S/o Dariyao Singh (A-1) and Rajroop s/o Udai Singh (A-3) (appellants in Crl.A.No.423/2002) expired. The proceedings against them were dropped as abated.

4. During the course of arguments, the learned counsel for the appellants on instructions stated at Bar that the contesting appellants have

given up challenge to the findings of the Trial Court on conviction. They, however, prayed to take lenient view as the matter has been settled with the complainant/victims. To this, learned APP for the State has no objection.

5. Since the contesting appellants have opted not to challenge the findings of the Trial Court on conviction and there is ample evidence to establish their guilt as testified by the injured witnesses coupled with recovery, their conviction is affirmed.

6. Regarding sentence, it has come on record that the quarrel had taken place on a trivial issue. Both the parties are related to each other. During pendency of the appeals, the matter was settled and compounded. Application was filed to record settlement/compromise. State was asked to verify if the complainant/victims had arrived at the settlement willingly without any fear or influence. Report was submitted by the State to the effect that the compromise was executed with the free consent of the parties in the month of August, 2014. Statements of victims were also recorded in that regard. Today also in the court victims Mr.Ram Bhawn Singh, Mr.Sudhir Singh, Ms.Sushila Devi and Ms.Ishwanti are present. I have made inquiries from them if they have settled the dispute with the appellants of their free will and without any

fear or pressure. They have stated that all the disputes have been resolved with the appellants and they have no objection if lenient view is taken.

7. The occurrence took place on 12.03.1989. The appellants have suffered the agony of trial/appeal for about 25 years. Three appellants have since expired. Mahender Singh (A-2) is now aged about 75 years and is handicap. No useful purpose will be served to send the appellants in detention specially when the complainant/victims have settled the dispute with them. The appellants are not previous convicts and are not involved in any other criminal case. They are the first offenders. They belong to respectable families.

8. Considering the mitigating circumstances, age of the appellants, their antecedents and the circumstances in which the offence was committed, it is expedient that the appellants should be released on Probation of good conduct. Hence, instead of sentencing them at once to any punishment, they are directed to be released on their furnishing personal bond in the sum of ₹25,000/- each with a surety in the like amount each for a period of two years. They are directed to appear and receive the sentence when called upon during this period and in the meantime to keep peace and be of good behaviour. The necessary bonds

shall be furnished by the appellants within one month before the trial court.

9. The appeals stand disposed of in the above terms. Copy of this order be sent to the concerned Jail Superintendent for information. Trial court record be sent back along with a copy of this order.

(S.P.GARG)
JUDGE

FEBRUARY 10, 2015

sa