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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 277/2011
CHAP SINGH@ CHAPU Appellant

Through: Mr. Sunil Mehta, Adv.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Amit Ahlawat, APP for State
with ASI Sukhbir and ASI Davender,
P.S. Dabri.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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28.05.2015

Appellant has been convicted under Sections 323/325/34 IPC and sentenced to undergo rigorous imprisonment for three years with fine of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for one month under Section 325/34 IPC; as regards offence under Section 323/34 IPC is concerned, appellant has been sentenced to pay fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for six months.

Aggrieved by his conviction and also sentence handed down by the trial court, appellant has preferred this appeal.

FIR was registered on the complaint of Madan (PW2). In the FIR, PW2 had alleged that on 19th September, 2008 at about 11:00 pm he was standing near Mother Dairy Booth, Indira Park along with his friend Jagdish

(PW3). Co-convict Beg Singh @ Biloo (since deceased) along with 2-3 friends picked up a quarrel with them on the pretext that they had been blocking their way and thereafter gave beatings to Madan and Jagdish by fists and kicks resulting injuries to them. Jagdish fell down on the road and became unconscious after he was beaten up by Beg Singh @ Biloo and his friends. PW3 Madan stated in the FIR that he can identify the friends of Beg Singh @ Biloo if they are brought before him.

Subsequently, appellant was arrested on 28th January, 2010, that is, after more than one year of the incident. No test identification parade was got conducted by the Investigating Officer. PW2 Madan and PW3 Jagdish have identified the appellant in Court on 27th August, 2010 for the first time.

PW2 and PW3 have corroborated the incident as alleged in the FIR. During the trial MLCs of PW2 Madan and PW3 Jagdish have also been proved as Ex. PW1/A and PW5/A which indicated that PW2 had sustained simple injuries by blunt object; whereas PW3 sustained dangerous injuries. Trial court has found the testimony of PW2 and PW3 trustworthy and reliable and has concluded that Beg Singh @ Biloo along with appellant had assaulted PW2 and PW3 by fists and kicks resulting simple injuries to PW2 Madan and dangerous injuries to PW3 Jagdish, thus, was guilty of having

committed offences under Sections 323/325/34 IPC.

I have learned counsel for the appellant, learned Additional Public Prosecutor and perused the trial court record carefully. A perusal of FIR makes it clear that appellant has not been named in the FIR. It is an admitted fact that appellant is brother-in-law of Beg Singh @ Biloo and was living in the same area. For the first time PW3 Jagdish named the appellant in his statement recorded after six months of the incident. He did not name appellant as the assailant for six months even though Investigating Officer contacted him after the incident. PW2 was also living in the same area. It is, thus, not probable that his name was not within his knowledge or that of PW3 Jagdish.

PW7 ASI Sukhbir Singh is the Investigating Officer. He has deposed, in his cross-examination, that he contacted PW3 Jagdish in the hospital on 21st September, 2008 to record his statement, however, PW3 refused to make any statement on the pretext that he would give his statement after his treatment. It is not the case that PW3 was unfit for making a statement. PW3 was not declared 'unfit for statement' by the doctor. Even though he was fit for making statement, he did not make any statement before the Investigating Officer naming his assailants. He, for the first time, made his

statement after six months and took name of appellant.

Appellant was not even arrested after 18th March, 2009 when the statement of PW3 Jagdish was allegedly recorded. He was arrested after about 10 months for which no explanation has been given. It is trite law that delay in recoding statement of injured/eye witness, if not explained, creates suspicion about the veracity of version of such witnesses. Delay has not been explained. There is, thus, probability of coloured version creeping in such statement.

As regards Beg Singh @ Biloo is concerned, he was named in the FIR, however, appellant was not named in the FIR. Appellant was related to Beg Singh @ Biloo. He is his brother-in-law and which fact was within the knowledge of the witnesses. Despite this he was not named, inasmuch as, it was not stated in the FIR that brother-in-law of Beg Singh @ Biloo was with him at the time of incident. Instead, the case set up in the FIR is that Beg Singh @ Biloo and his friends had extended beatings. The above facts have not been taken note of by the trial court.

For the foregoing reasons, I am of the view that appellant is entitled to benefit of doubt resulting in his acquittal. Accordingly, appeal is allowed and impugned judgment is set aside.

Appeal is disposed of in the above terms.

A.K. PATHAK, J.

MAY 28, 2015

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