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

Date of decision: 14th May, 2015

+ CRL.A. 319/2013

UMA NATH & ORS.

..... Appellants

Through: Mr.S.B.Dinkar, Advocate along with
the appellants in person.

versus

STATE OF DELHI

..... Respondent

Through: Ms.Fizani Hussain, Additional Public
Prosecutor for the State along with
Sub-Inspector Umesh Rana from
Police Station Ashok Vihar, North
West District, Delhi.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. Feeling aggrieved by the judgment dated 01.02.2013 and order on sentence dated 06.02.2013 vide which the appellants were convicted for offence under Section 308/34 IPC and sentenced to undergo rigorous imprisonment for a period of one and a half years each and fine of Rs.1000/- in default, to undergo simple imprisonment for two months in Sessions Case No. 14/2011 arising out of FIR No. 42/2010 under Section 308/323/324/452/506/120B/34 IPC, present appeal has been preferred.

2. The prosecution case succinctly stated, is as follows.

3. A complaint was filed by the complainant Ashok Kumar before learned Additional Chief Metropolitan Magistrate, District Court Rohini alleging therein that the accused persons are his neighbours. On 31.12.2008 on the eve of New Year some hot arguments took place between both parties on trifling issues but the matter was compromised with the intervention of common friends and neighbours. On 15.02.2009 again, the accused persons started quarrelling with the uncle and aunt of

the complainant and when their behaviour was objected, the accused persons started hurling filthy abuses to them and also assaulted them physically in the street. Again on 08.03.2009 in the evening at about 5.30 pm in a pre-planned manner, the accused persons forcibly entered into the house of the complainant fully armed with iron rods. They attacked the complainant and his family members with iron rods and sticks causing grievous head injuries to complainant and his brother who started bleeding. The matter was reported to the police by dialling 100 number. The complainant and his brother were taken to BJRM Hospital where he and his brother were given 8 and 6 stitches respectively in their heads. The accused persons are in collusion with the police so FIR was not registered against them. The complainant had to take recourse to the provisions under Section 156(3) Cr.P.C to get the FIR lodged. On the directions of learned Metropolitan Magistrate, the FIR was registered and investigation of the case was handed over to ASI Naresh Kumar who, after completion of investigation, filed the chargesheet for offence under Section 308/452/506/34 IPC. Charge for offence under Section 452/506(II)/308/34 IPC was framed against the accused persons to which they pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution examined 13 witnesses. All the accused in their statements recorded under Section 313 Cr.P.C have either denied the prosecution evidence put to them or expressed their ignorance about it. Five defence witnesses were examined by them in their defence.

5. Vide impugned judgment, the learned District & Sessions Judge, North-West convicted the appellants for offence under Section 308/34 IPC, however, they were acquitted of the charge for offence under Section 452/506(II)/34 IPC. Feeling aggrieved, present appeal has been preferred.

6. At the outset, learned counsel for the appellant, under instructions from the appellants, submits that he does not challenge the conviction of the appellants on merits, however, he submits that parties are close

relatives and during the pendency of the appeal, the matter has been mutually compromised vide compromise deed dated 22.04.2014 as such, a liberal view be taken regarding the quantum of sentence. It is further stated that the incident had taken place on a trifling issue and only simple injuries were sustained by the injured persons. The appellants belong to poor strata of society and have clean antecedents. They are not involved in any other case. Both the injured Rakesh and Ashok Kumar are also present in person and are duly identified by the Investigating Officer of the case. Their statements have been recorded separately wherein they admit having entered into a mutual compromise vide compromise deed dated 22.04.2014. They further states that the appellants are sons of their Bua. In view of the settlement between the parties, they do not want any action against the appellants.

7. So far as the conviction of the appellants under Section 308/34 IPC is concerned, the same was rightly not challenged by learned counsel for the appellants in as much as from the corroborative testimony of the prosecution witnesses, it was established that the accused persons were armed with iron rods, cricket wicket and wooden sticks and caused head injuries on the person of PW-12 and PW-5. The medical evidence of the head injuries of these two victims is proved by PW-6 Dr.Gopal Krishna by proving two MLCs Ex.PW6/A and Ex.PW6/B which shows head injuries on both these injured persons.

8. Coming to the quantum of sentence, keeping in view the fact that the matter has been mutually settled between the parties who are close relatives as the appellants are sons of Bua of the injured persons, the antecedents of the appellants are clean and the Investigating Officer of the case has verified that the accused persons are not involved in any other case, the appellants also remained in jail for few days, as such, ends of justice will be met if the appellants are given an opportunity to reform themselves. As such, sentence of the appellants is modified to the extent that they are ordered to be released on probation for a period of one year

on furnishing personal bond in the sum of Rs.15,000/- with one surety in like amount to maintain peace and good behaviour failing which, to serve the sentence awarded to them by the learned District & Sessions Judge. They are further directed to pay a sum of Rs.10,000/- each as compensation to be shared equally by both the injured Rkesh and Ashok Kumar within two weeks, receipt of which be placed on record. The surety bond for keeping peace and good behaviour be furnished before the Registrar of this Court within a period of two weeks.

The appeal stands disposed of accordingly.

Trial court record be sent back.

Order dasti.

(SUNITA GUPTA)
JUDGE

MAY 14, 2015
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