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

+ Crl. A. No. 343/2011

Decided on 18th May, 2015

RAJ KUMAR @ RAJU & ORS.

..... Appellants

Through: Mr. Jitendra Kr. Dhingra, Adv. with
appellants in person

versus

STATE

..... Respondent

Through: Mr. Yogesh Verma, APP along with
SI Yogesh , P.S. Timarpur

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Appellants have been convicted under Section 308/34 of the Indian Penal Code, 1860 (the Code, for short) and sentenced to undergo rigorous imprisonment for a period of three years each with fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for a period of three months.

2. Aggrieved by their conviction as also the sentences handed down to them by the trial court, appellants have preferred this appeal.

3. Appellant nos. 1 to 3 are real brothers. Appellant no. 4 was the tenant of appellant nos. 1 to 3 at the relevant time. Injured persons namely, Deepak Shukla, Dinkar Shukla, Panna Lal and Kiran Shukla are neighbours of appellants. Dinkar Shukla, Panna Lal and Kiran Shukla are brother, father and sister-in-law of Deepak Shukla. FIR No.224/2008 was registered at Police Station Timarpur under Sections 308/323/325/34 of the Code, on the complaint of Deepak Shukla. He alleged in the FIR that on 6th May, 2008, at about 7 AM, he was sitting in his veranda when appellant no. 3 picked up a quarrel with him on the pretext that he had misbehaved with his nephew, namely, Hunny and slapped him. Appellant nos. 1, 2 and 4 also arrived there and gave beatings to him by the dandas which they were having in their hands. When Dinkar Shukla, Panna Lal and Kiran Shukla intervened, they were also beaten by the appellants. In the quarrel, appellant no. 3 also gave a bottle blow on the head of Panna Lal.

4. PW1 Deepak Shukla, PW2 Geeta, PW5 Dinkar Shukla and PW6 Panna Lal have corroborated the version as contained in the FIR. Their depositions on material points have remained unshaken in their cross-examination, that is, about extending beatings by the appellants to them. Trial court has found their statements to be trustworthy and reliable. I have

also perused their statements and find them to be trustworthy and reliable witnesses and am of the view that trial court has rightly accepted their versions to conclude that appellants, in furtherance to their common intention, had assaulted Deepak Shukla, Dinkar Shukla, Panna Lal and Kiran Shukla by dandas after a verbal duel ensued between the appellant no.3 and Deepak Shukla on a trivial issue. During the course of hearing, learned counsel for the appellants has failed to point out any material discrepancy in their statements so as to make them unreliable and untrustworthy. Prosecution has succeeded in proving that appellants had assaulted the above-named persons in furtherance to their common intentions.

5. The next question, which needs attention of this Court, is whether ingredients of offence under Section 308 of the Code are attracted in the facts of this case. A perusal of MLC of the injured persons makes it clear that except Panna Lal, all other injured have received simple injuries. Injuries of Panna Lal have been opined to be grievous in view of the fracture sustained by him in his forearm, which is not a vital part of the body. Such an injury is not likely to result in death of a person.

6. Section 308 of the Code stipulates that whoever does any act with such intention or knowledge and under such circumstances that, if he by that

act caused death, he would be guilty of culpable homicide not amounting to murder. Intention and knowledge has to be gathered from the nature of injuries and also the circumstances in which such injuries are caused by the accused. In this case, a quarrel erupted between the neighbours all of a sudden on the ground that Deepak (complainant) scolded the nephew of appellant no. 3 and son of appellant no. 1. In fact, a verbal altercation resulted in the physical fight, wherein appellants, appear to have assaulted the other injured persons in a rush of blood. Assault was not premeditated nor predetermined. Nature of injuries as also the circumstances in which injuries have been caused by the appellants do not disclose intention or knowledge on their part to cause culpable homicide.

7. In *Bishan Singh and Anr. Vs. The State*, AIR 2008 SC 131, Supreme has held as under:-

“Before an accused can be held to be guilty under Section 308 IPC, it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing. There cannot be any doubt whatsoever that such an intention or knowledge on the part of the accused to cause culpable homicide is required to be proved. Six persons allegedly accosted the injured. They had previous enmity. Although overt-act had been attributed against each of the accused who were having lahtis, only seven injuries had been caused and out of

them only one of them was grievous, being a fracture on the arm, which was not the vital part of the body”.

8. For the foregoing discussions, conviction of the appellants is altered to Sections 325/34 of the Code as regards their act of voluntarily causing grievous hurt to Panna Lal is concerned and under Section 323/34 of the Code with regard to their causing simple injuries to other injured persons. Accordingly, appellants are convicted under Sections 323/325/34 of the Code.

9. Appellants have remained in judicial custody for about a month. They have no past criminal records. Appellants have also not indulged themselves in any other crime post this case though they have remained on bail during the trial as also during the pendency of the appeal. Incident took place six years ago. Keeping in mind the totality of circumstances, while reducing the substantive sentence of imprisonment to the period already undergone by them, sentence of fine is increased to ₹35,000/- by each of the appellants and in default of payment of fine to undergo simple imprisonment for a period of one year each. Fine of ₹10,000/- is stated to have been deposited by each of the appellants. Let remaining amount of ₹25,000/- be deposited by each of the appellants before the trial court within six weeks. It is made clear that out of the fine so deposited, ₹25,000/- be released by the

trial court to each of the injured persons, namely, Deepak Shukla, Dinkar Shukla, Panna Lal and Kiran Shukla towards compensation to them.

10. Appeal is disposed of in the above terms.

A.K. PATHAK, J.

MAY 18, 2015

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