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

+ **CRL.A. 17/2011**

Decided on 20th February, 2015

ASHOK KUMAR & ANR. Appellants
Through Mr.Sunil Chaudhary, Adv.

versus

STATE OF DELHI Respondent
Through Mr.Yogesh Verma, APP for the State.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. By the judgment dated 19th November, 2010 appellants have been convicted under Sections 452/308/34 Indian Penal Code, 1860 (IPC, for short). Appellant no.2 has been given benefit of The Probation of Offenders Act, 1958 by the trial court and has been released on probation of two years of good behaviour and to maintain peace, on furnishing personal bond of ₹30,000/- with one surety in the like amount vide order on sentence dated 24th November, 2010. Appellant no.1, by the same order, has been sentenced to undergo three years of rigorous imprisonment under Section

452 IPC with a fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment of three months; to undergo rigorous imprisonment of three years with the fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment of three months under Section 308 IPC. Both the sentences have been directed to run concurrently. Benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has also been given to appellant.

2. Aggrieved by the conviction as also the sentences awarded, appellants have preferred this appeal.

3. Complainant in this case is real sister of appellant no.1. Appellant no.2 is sister-in-law (wife of appellant no.1). Complainant alleged in the FIR that parties were embroiled in property dispute regarding partition of the property wherein she was living, that is, 3808/6, Kanhiya Nagar, New Delhi-110034. This property was owned by the mother of appellant no.1. Complainant as well as appellant no.1 were living in same property in different portions. On 24th July, 2007 at about 2.00 p.m., appellant no.1 armed with a danda came along with appellant no.2 in the portion of the premises which was in the possession of complainant and asked her to

vacate the same and when she refused, he gave beatings to her with the danda causing injuries on her person. She was removed to hospital.

4. It emerges from the record that complainant did not make any statement to the police official who had reached the hospital on receipt of information about the quarrel, on the pretext that she will make statement only after consulting her lawyer. Subsequently, complainant filed an application under Section 156 (3) of Cr.PC before the Metropolitan Magistrate and pursuant to the directions of the Magistrate, FIR was registered. Complainant gave details about the previous quarrels and also the details of the property disputes in her complaint. She alleged that appellant no.1 was compelling her to vacate the premises and on this count, used to quarrel with her. She further stated that on 24th July, 2007 appellant along with appellant no.2 gave beatings to her with the danda. It may be noted that injuries have been opined by the doctor as simple caused by blunt object.

5. During the trial complainant stepped in the witness box as PW-6 and supported her version as contained in FIR. Trial court has found her testimony to be trustworthy and reliable and has convicted the appellant for having trespassed the property of complainant and assaulting her with such

intention and knowledge and under such circumstances that, if by that act, appellants had caused death of the complainant, they would have been guilty of culpable homicide not amounting to murder. It has been further held that appellants were sharing common intention at the time of assault. Trial court was also of the view that since appellants had trespassed the property of complainant while assaulting her, they were also guilty of committing offence under Section 452 IPC.

6. I have heard learned counsel for the appellants, learned Additional Public Prosecutor and perused the trial court record. Appellants' counsel has not disputed the happening of incident. Even otherwise, I have carefully perused the testimony of PW6 and find that she has withstood the test of cross-examination and her statement in examination in chief has remained un-shattered in her cross-examination. As regards the incident dated 24th July, 2007 is concerned, in my view trial court has rightly accepted her version that appellant no.1 along with appellant no.2, intercepted the complainant, picked up a quarrel with her and thereafter appellant no.1 assaulted the complainant by a danda, which he was carrying with him. However, it has to be seen as to whether the acts of the appellants attract the ingredients of offences under Sections 308 and 452 IPC. As

regards Section 34 IPC is concerned, the same is attracted since appellants were sharing common intention, which fact is apparent from the sequence of events as detailed hereinabove. Appellant no.1 and appellant no.2 had gone together and both of them had picked up a quarrel with the complainant. At that time, appellant no.1 was armed with a danda in his hand and which fact was within the knowledge of appellant no.2. Appellant no.1 gave beatings to complainant with the danda in the presence of appellant no.2 and she supported the appellant no.1 in this act. She played active role in the incident with the appellant no.1.

7. Section 308 IPC envisages 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. In this case neither such intention nor knowledge can be gathered from the nature of injury sustained by the victim and also the circumstances in which such injuries had been caused. In this case, there used to be quarrel between the appellants and complainant over the property owned by their mother. Complainant and appellants were living in the same property. From the sequence as narrated by the complainant, it appears that a quarrel erupted all of a sudden over the property wherein appellant no.1 in the heat of

passion gave beatings to the complainant. Nature of injuries are not such which will be sufficient to indicate that appellants had any intention or knowledge that by their this act they would have caused death of complainant. It is trite law that intention and knowledge has to be gathered from the circumstances in which injuries are caused and also from the nature of injuries sustained by the victim. Accordingly, I am of the view that ingredients of Section 308 IPC are not attracted in this case and the case fall within the ambit and scope of Section 321 IPC which envisages that whoever voluntarily with intention causes hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person, is said “voluntarily to cause hurt”. Section 323 IPC provides punishment for voluntarily causing hurt. Section 323 provides imprisonment for a term which may extend to one year, or with fine which may extend to ₹1000/-, or with both.

8. As regards offence under Section 452 IPC is concerned, the same is also not attracted in this case. Section 452 IPC provides that whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful

restraint, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine. In this case, a perusal of FIR shows that no allegation has been made in the complaint that appellants had forcibly entered in the room of complainant and had assaulted her. In para 12 of the FIR complainant has stated that on 24th July, 2007 accused persons attacked her with dandas with motive to kill and injuries were caused on her head. Accordingly, in my view appellants cannot be convicted under Section 452/34 IPC. Their conviction under Section 452 is set aside.

9. For the foregoing reasons, conviction of the appellants under Section 308/34 IPC is set aside and appellants are convicted under Section 323/34 IPC. Appellant no.2 has not been awarded any sentence. She has been extended benefit of Probation of Offenders Act. The sentence awarded to her requires no interference. As regards appellant no.1 is concerned, his sentence is modified to the period already undergone by him besides imposing fine of ₹1000/-. Appellant no.1 is further directed to pay compensation of ₹60,000/- to the complainant namely Rekha. Compensation be deposited by the appellant no.1 before the trial court within eight weeks. In case compensation is not deposited, appellant no.1

shall have to undergo simple imprisonment for six months. The amounts already deposited towards fine shall be given adjustment of while making deposits in terms of this order. Out of the amount deposited in court, ₹60,000/- be released to the complainant, namely, Rekha.

10. Appeal is disposed of accordingly.

A.K. PATHAK, J.

FEBRUARY 20, 2015

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