

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

Judgment Reserved on: September 7, 2016

% *Judgment Delivered on: September 09, 2016*

+ **CRL.A. 446/2001**

BANEY SINGH & ORS.

..... Appellant

Represented by: Mr. Brijesh Sharma, Mr. J.P. Singh and Mr. Akash, Advocates.

versus

STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP for the State with SI Baldev Raj, PS Okhla Industrial Area.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal the appellants Baney Singh, Amar Singh, Harpyari, Hirdaya Ram and Bishan Swaroop challenged the impugned judgment dated 22nd May, 2001 convicting them for the offences punishable under Sections 323/354 read with Section 34 IPC in FIR No. 268/1998 registered at PS Okhla Industrial Area and the order on sentence dated 23rd May, 2001 directing them to undergo simple imprisonment for a period of one year and to pay a fine of ₹1,000 for the offence punishable under Sections 323 IPC and simple imprisonment for a period of two years and to pay a fine of ₹1,000/- for the offence punishable under Section 354 IPC. Since appellant no. 1 Baney Singh passed away on 15th October, 2006 and appellant no. 3 Harpyari passed away on 24th September, 2013, the appeal qua them stands abated and this Court is now concerned with appellant no. 2

Amar Singh, appellant no. 4 Hirdaya Ram and appellant no. 5 Bishan Swaroop.

2. Learned Counsel for the appellants contends that since no specific role was assigned to the abovementioned three appellants, the case under Sections 323/354 is not made out against them. It is also contended that there were glaring contradictions in the statement of PW-1, Phool Singh and his wife PW-2 Basanti.

3. Per contra learned APP for the State contends that even though no specific allegation was made against the appellants, however they have been named in the FIR and the statement of the witnesses. The three appellants were involved with Baney Singh and Harpyari in the commission of offence, thus Section 34 IPC is attracted.

4. The brief facts of prosecution case are that on 22nd April, 1998, PW-1, Phool Singh stated before the police that he works as a gardener. Amar Singh, Baney Singh, Hirdaya Ram and Bishan Swaroop resided in the neighbourhood whom he knew well. On 30th January, 1998, when he was talking to Mangu Ram about some money transaction, Harpyari, wife of Baney Singh, came and stated that PW-1 was a dishonest person as a result of which there was an altercation between the two and Phool Singh went back to his home. On the same night, Hirdaya Ram, Baney Singh, Amar Singh and Bishan Swaroop consumed liquor in the evening and started abusing him and also threatened to kill him. The same was reported to the police. On 16th February, 1998, when he returned home around 4:00 P.M., he heard some noise and saw that Harpyari was grappling with his wife Basanti, PW-2. On seeing PW-1, Hirdaya Ram, Baney Singh, Amar Singh and Bishan Swaroop who were standing there started molesting his wife and

pressed the breasts and cheeks of his wife. When PW-1 objected, all four of them left his wife and started beating him. In the meantime, Harpyari gave an iron rod to Baney Singh who hit Phool Singh on his head with the rod and Phool Singh became unconscious. When he regained consciousness, he informed the police, PCR van came and took him to AIIMS hospital. On the basis of this statement of Phool Singh, FIR No. 268/1998 was registered under Sections 305/343/354/506/34 IPC. During the course of investigation, Baney Singh and Hirday Ram were arrested on 23rd April, 1998, Bishan Swaroop was arrested on 4th May, 1998 and Amar Singh and Harpyari were arrested on 26th May, 1998.

5. PW-1, Phool Singh deposed before the Court in sync with his statement made before the police. He stated that his statement Ex. PW-1/A was recorded by the police pursuant to the direction of the court dated 22nd April, 1998. During his cross-examination, he denied the suggestion that Amar Singh was not present at the place of incident when the fight took place. He also stated that Hirday Singh was not present and was on duty.

6. PW-2, Basanti, wife of Phool Singh, deposed that on 16th February, 1998, at about 4:00 PM she had gone to fetch water where Harpyari was washing clothes. Harpyari threw her bucket and started abusing PW-2. In the meantime, Baney Singh, Amar Singh, Hirdaya Ram and Bishan Swaroop came and started grappling with her. Baney Singh touched her cheeks and breast and other appellants were grappling with her. Thereafter, Harpyari gave an iron rod to Baney Singh who gave blows to Phool Singh and he received head injuries.

7. PW-6, Dr. Millo Tabin, AIIMS Hospital exhibited the MLC of Phool Singh Ex.PW-6/A which was prepared by Dr. Shivali which noted the

following injuries:-

- *Irregular laceration present on right partial area.*
- *Fresh bleeding present and abrasion on both knuckles.*
- *Injury was simple caused by blunt object.*

8. From the perusal of the evidence, it is evident that the appellants have not been assigned any specific role by PW-2, Basanti the victim in this case, with regard to molestation except grappling which was also not stated to be with intention to outrage her modesty. As far as the offence under Section 323 IPC is concerned, the iron rod was given by Harpyari to Baney Singh to hit PW-1, Phool Singh. No overt act has been attributed to the abovementioned three appellants on this count nor is there any evidence to come to the conclusion that all the five accused came with the common intention to beat Phool Singh who was not even present at the spot initially and came later. Since Harpyari and Baney Singh have passed away, the offences punishable under Sections 323/354 IPC are not attributable to the abovenoted three appellants and Section 34 IPC is also not attracted in the present case because there was no common intention among the appellants, the appellants Amar Singh, Hirdaya Ram and Bishan Swaroop are entitled to be acquitted.

9. The appellant No. 2, 4 and 5 are acquitted of the charges for offences punishable under Section 323/354/34 IPC. They are in custody pursuant to non-bailable warrants issued against them vide order dated 17th August, 2016. The Superintendent, Tihar Jail will release the appellants Nos. 2, 4 and 5 forthwith if not required in any other case.

10. Appeal is disposed of.

11. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.
12. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 09, 2016/‘vn’