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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : APRIL 25,2016

DECIDED ON : MAY 12,2016

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CRL.A. 140/2005

RAM NIVAS

..... Appellant

Through Mr. Anurag Jain, Advocate

versus

THE STATE

..... Respondent

Through Mr. Tarang Srivastava, APP.

RESERVED ON : MAY 06,2016

DECIDED ON : MAY 12,2016

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CRL.A. 132/2005

ATTREY @ ATTAR SINGH & ORS.

..... Appellants

Through Mr.Rohit K. Nagpal Adv. with
appellant in person.

versus

STATE NCT OF DELHI

..... Respondent

Through Mr.Amit Gupta APP

RESERVED ON : APRIL 25,2016

DECIDED ON : MAY 12,2016

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CRL.A. 143/2005

PARMOD

..... Appellant

Through Mr. Anurag Jain, Advocate

versus

STATE

..... Respondent

Through Mr. Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 08.02.2005 of learned Additional Sessions Judge in Sessions Case No.18/04 arising out of FIR No.50/2002 registered at Police Station Inderpuri whereby the appellant Ram Nivas (A-1), Chattar Singh (since expired), Atrey @ Atar Singh (A-2) and Parmod (A-3) were convicted for committing offences punishable under Section 308/34 IPC, they have filed the instant appeals. A-1 was further convicted by the said judgment for committing offence under Section 354 IPC. The appellants were sentenced to undergo Rigorous Imprisonment for four years with fine ₹10,000/- each under Section 308/34 IPC. A-1 was further sentenced to undergo RI for one year with fine ₹5,000/- under Section 354 IPC. The sentences were to operate concurrently.

2. Briefly stated the prosecution case as stated in the charge-sheet was that on 20.03.2002 at around 8.00 a.m. in front of House No.WZ-356, Village Dasghara, the appellants in furtherance of their common intention voluntarily inflicted injuries to Jai Singh, Satto and Babita with 'lathies' in an attempt to commit the offence of culpable homicide. They also inflicted injuries to Ajay and Kanta. The incident was reported to the police promptly. DD No.8A came into existence at 8.06 a.m. on 20.03.2002 on getting information about a quarrel at House No.WZ-356. DD No.9A was

recorded at 8.15 a.m. whereby the complainant informed the police that she was present near Dasghara near Balmiki Mandir and had sustained injuries on her head. Another DD No.11A at about 8.25 a.m. also came to be recorded at Police Station Inderpuri. The Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report. Statements of witnesses conversant with the facts were recorded. The accused persons were arrested; certain recoveries were effected. Upon completion of investigation, a charge-sheet was filed against all of them in the Court. In order to establish its case, the prosecution examined twelve witnesses. In 313 statement, the accused persons denied their involvement in the crime and pleaded false implication. They examined DW-1(Ram Kumar) in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been filed. It is relevant to note that Chattar Singh-appellant No.2 in Crl.A.No.132/2005 expired during the pendency of appeal and the proceedings against him were dropped as 'abated'.

3. I have heard the learned counsel for the parties and have examined the file. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. It overlooked the fact that despite availability of independent public witnesses, none was associated at any stage of the investigation. The injuries suffered by the victims were 'simple' in nature. Glaring infirmities emerging in the statement of the prosecution witnesses have been ignored without any cogent reasons by the Trial Court. The blood stained clothes which the injured were wearing at the time of occurrence were not produced during investigation and the 'lathi' allegedly recovered did not have any

bloodstains. Ingredients of Section 308 IPC are not attracted. The learned Additional Public Prosecutor urged that all the injured witnesses have corroborated each other and there are no sound reasons to disbelieve their version.

4. The occurrence in which Kanta (PW-1), PW-2 (Sapna), PW-3 (Jai Singh), PW-4(Ajay), PW-8 (Babita) and PW-9 (Satto) sustained injuries on their bodies are not under challenge. Specific suggestions have been put by the accused persons to the witnesses in the cross-examination that the quarrel had taken place due to PW-2 (Sapna), complainant's daughter who did not bear good moral character. When the accused persons objected to her conduct and behavior, the quarrel occurred. It is further suggested that the injuries were suffered by these individuals at the hands of their own relatives. PW-6 (Dr.Pradeep Saxena) medically examined PW-1 (Kanta) vide MLC (Ex.PW-6/A) and injuries suffered by her were opined 'simple' in nature caused by blunt object. He had also examined PW-4 (Ajay) vide MLC Ex.PW-6/B; he had suffered one clear lacerated wound 4 cm long on right frontal region. PW-7 (Dr.S.Saxena) examined Jai Singh vide MLC Ex.PW-7/A and opined that the injury suffered by him i.e. 3" CLW on occipital scalp, was 'simple' in nature. He also examined Satto vide MLC Ex.PW-7/B and gave the nature of injuries as 'simple'. Apparently, all these persons from the same family had sustained injuries on their person due to the quarrel that took place on 20.03.2002 at around 8.00 a.m.

5. The incident of quarrel was reported to the police without any delay and DD No.8A came into existence at 8.06 a.m. itself. In her statement (Ex.PW-1/A) the complainant Kanta gave detailed account as to how and in what manner the quarrel had originated and how they were

assaulted by the accused persons with 'lathies'. The accused persons are named in the FIR. Since the FIR was lodged promptly, there was least possibility of the complainant to concoct a false story in such a short interval.

6. In her Court statement, the complainant appearing as PW-1 proved the version given to the police at first instance without any variation. She deposed that on 20.03.2002 at around 8.00 a.m. after performing morning prayer, she was present outside her house. The accused persons were grazing their buffaloes in front of their house near DDA land. A-1 uttered foul/abusive words about her daughter to which she objected. On that, all the accused persons started assaulting her. On her raising alarm, her husband Jai Singh, son Ajay, sisters Satto and Babita and daughter Sapna came out of the house to intervene. All the accused persons carrying 'lathies' also assaulted them and inflicted injuries to them on various body organs. They were taken to Ram Manohar Lohia Hospital where her statement (Ex.PW-1/A) was recorded. She further testified that A-1 had put his hand on her breast in that assault with bad intention to outrage her modesty. In the cross-examination, she denied that her daughter was of bad character or that the accused persons used to complain about it. She further denied that the incident took place due to her daughter Sapna. None of the accused sustained any injury that day. She further deposed that her daughter had earlier told her that the accused persons used to tease her. She volunteered to add that since they were poor, they did not take any action against them. She denied that injuries were caused to them by their own family members over the complaint of her daughter's character.

7. PW-2 (Sapna) has corroborated her mother's version on material aspects. She also implicated the accused persons for inflicting injuries to them. Similar is the testimony of PW-3 (Jai Singh), PW-4(Ajay), PW-8 (Babita) and PW-9 (Satto). They all were cross-examined at length. However, no material infirmities or discrepancies could be elicited to disbelieve their version. No ulterior motive was assigned to all these witnesses for falsely implicating the appellants. Their presence at the spot was not denied. Inconsistent and contradictory suggestions have been put to them in the cross-examination.

8. All these material prosecution witnesses who were injured in the quarrel were not expected to let the real offenders go scot free and to falsely implicate the appellants with whom they had no prior enmity. The appellants admitted that the injured lived in their neighbourhood and no serious quarrel had taken place between them prior to the incident. It has come on record that the accused persons allegedly used to object to the conduct and character of the complainant's daughter and that had led to the altercation in question. The accused persons had no business to suspect complainant's daughter's character or to object to it. Victims were unarmed whereas accused persons had 'lathies' meant to keep control over buffaloes. Specific and definite roles have been attributed to each of the accused persons in inflicting injuries to so many injured persons of the same family who intervened to save the complainant. Apparently, the accused persons were aggressors and authors of the crime whereby in furtherance of common intention they caused injuries to the complainant and her family members. No sound reasons exist to disbelieve the testimony of injured witnesses. The findings of the Trial Court that the appellants were perpetrators of the crime

cannot be faulted. Minor discrepancies/infirmities highlighted by the appellants' counsel are of no consequence as these do not affect the core of the prosecution case.

The ocular testimony of the injured witnesses has been corroborated by medical evidence. As discussed above, there is no conflict between the two. All the injured persons have corroborated each other on material aspects and have named the appellants to be the assailants. A-1's conviction under Section 354 IPC is on sound footing as there are specific allegations that he had put hand on the complainant's breast during assault. Victim Kanta is not imagined to level such serious allegations regarding outraging of her modesty to put herself in disrepute. Certain suggestions have been put in the cross-examination that A-1 and A-3 used to love PW-2 (Sapna) and wanted to express their love. On one hand they accuse complainant's daughter to be a girl of immoral character and on the other hand claim to have love for her. This contradictory version does not appeal to mind.

9. To proceed under Section 308 IPC, it is not essential that the injury actually caused to the victim should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under such circumstances that, if by that act caused death, he would be guilty of culpable homicide not amounting to murder. If an accused does not intend to cause death or any bodily injury, which he knows to be likely to cause death or even to cause such bodily injury as is sufficient, in the ordinary course of nature to cause death, Section 308 IPC would not apply. It depends upon the facts and

circumstances of each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death. The nature of weapon used, the intention expressed by the accused at the time of the act, the motive of commission of offence, the nature and size of the injuries, the parts of the body of the victim selected for causing injuries, severity of the blow or blows and the conduct of the accused are important factors which may be taken into consideration in coming to a finding whether in a particular case, the accused can be proceeded under Section 308 IPC.

10. In the instant case the quarrel had taken place all of a sudden on 20.03.2012 at about 8.00 a.m. The complainant Kanta was present outside her house and the accused persons had come in front of her house to graze buffaloes. There was no pre-planning. The accused persons were not armed with any deadly weapons. 'Lathies' in their hands were meant to control buffaloes which they used to graze. The altercation originated when they allegedly objected to the conduct and character of the complainant's daughter which was highly objected to by her. Initially, the quarrel had taken place with the complainant, who sustained only certain abrasions on her body. Nature of injuries sustained by her was determined as 'simple' by the MLC. On her raising hue and cry/alarm, other injured persons came out of house to intervene and save her. Apparently, the accused persons were not aware about their presence inside the house at that time. Their arrival at the spot was sudden and unexpected. They all suffered injuries 'simple' in nature by blunt object. They were taken to Ram Manohar Lohia Hospital. There is nothing on record to show if any of the injured remained admitted at the hospital for any specific duration. There was no previous history of

enmity or hostile relations between the complainant and the assailants. No repeated forceful blows were inflicted on the injured persons. None of the victims were found to have suffered any fracture. These injuries were not sufficient to cause death in the ordinary course of nature. Under these circumstances, it cannot be inferred with certainty that injuries were inflicted with the avowed object or intention to cause bodily injuries capable of causing death. Merely because certain superficial injuries were found on various body organs including head of the victims, it cannot be said that such injuries were caused with an intention to commit culpable homicide. It was a simple case of scuffle/quarrel between the parties where injuries were inflicted voluntarily and for that the assailants can be held guilty for causing hurt under Section 323/34 IPC. In view of this, the conviction under Section 308/34 IPC is altered to Section 323/34 IPC.

11. The appellants have been sentenced to undergo Rigorous Imprisonment for four years with fine ₹10,000/- each. Nominal rolls reveal that they have undergone about more than six months incarceration besides remission for some duration. Nominal rolls further reveal that they are not previous convicts and are not involved in any other criminal case. Their overall conduct in jail was satisfactory. A-2 is aged around 75 years. The appellants have suffered ordeal of trial/appeal for about 14 years. One of the accused Chattar Singh has since expired. The appellants have offered to pay reasonable compensation to the victims.

12. Considering the facts and circumstances of the case, no useful purpose will be served in sending the appellants to custody for the incident which happened suddenly in 2002. Nothing has come on record to show if after enlargement on bail, the appellants indulged in any such criminal

activity or intimidated the complainant or caused hurt to the complainant or her family members. They have clean antecedents. Considering their offer to pay reasonable compensation to the victims, the period already undergone by them in this case is taken as their substantive sentence. The appellants shall, however, deposit the fine imposed by the Trial Court (if unpaid) within two weeks and default sentence for its non-payment will be Simple Imprisonment for one month each.

13. A-1, A-2 and A-3 shall deposit ₹75,000/-, ₹40,000/- and ₹35,000/- respectively as compensation to the victims. This payment shall be deposited in the Trial Court within two weeks and shall be released to the victims i.e. ₹1,00,000/- the complainant and her family members Sapna, Jai Singh and Ajay as a whole and ₹50,000/- shall be paid equally to her sisters Satto and Babita after due notice.

14. The appeals stand disposed of in the above terms. Trial Court record be sent back forthwith along with the copy of the order. Intimation be sent to the Superintendent Jail. Bail bonds and surety bonds (if any) stand discharged.

(S.P.GARG)
JUDGE

MAY 12, 2016/sa