

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27th January, 2016

+ CRL.A. 640/2011 & Crl. MA 18063/2012

PAWAN CHADDHA Appellant
Through: Mr. Suman Kapoor, Advocate
versus
STATE Respondent
Through: Mr. Akshay Malik, Additional Public
Prosecutor for the State.
Sub Inspector Mahesh Singh, P.S. Pandav
Nagar.

+ CRL.A. 966/2011

LAJPAT RAI VERMA Appellant
Through: Mr. Gurmeet Singh, Advocate along with
appellant in person.
versus
PAWAN KUMAR CHADDHA & ORS. Respondents
Through: Mr. Suman Kapoor, Advocate
Mr Ashok Kumar Garg, Additonal Public
Prosecutor for the State.
Sub Inspector Mahesh Singh, P.S. Pandav
Nagar.

+ CRL.A. 947/2013

LAJPAT RAI VERMA Appellant
Through: Mr. Gurmeet Singh, Advocate along with
appellant in person.
versus
MUKESH CHAND & ANR. Respondents
Through: Mr. Suman Kapoor, Advocate
Mr Ashok Kumar Garg, Additonal Public
Prosecutor for the State.
Sub Inspector Mahesh Singh, P.S. Pandav
Nagar.

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CRL.A. 1572/2013

VIKAS CHADDHA & ANR Appellants
Through: Mr. Suman Kapoor, Advocate
versus
STATE GOVT OF NCT OF DELHI Respondent
Through: Mr Ashok Kumar Garg, Additonal Public
Prosecutor for the State.
Sub Inspector Mahesh Singh, P.S/ Pandav
Nagar.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide judgment dated 29.03.2011, learned Additional Sessions Judge (East), Karkardooma Courts, Delhi in case FIR No.365/2008 under Section 308/34 registered at Police Station Pandav Nagar, Delhi convicted the appellant – Pawan Chadha for offence under Section 308 and Section 323/34 IPC while co-accused Vikas Chadha and Mukesh Chadha were held guilty and convicted under Section 323/34 IPC.

2. Vide order dated 31.03.2011, convict – Pawan Chadha was sentenced to undergo rigorous imprisonment for a period of three (3) years for offence under Section 308 IPC and was also directed to pay fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of one month. He was further sentenced to undergo simple imprisonment for a period of six months for offence under Section 323/34 and to pay a fine of Rs. 1,000/-, in default to undergo simple imprisonment for a period of 15 days. The sentences were to run concurrently. The appellants/ convict – Vikas and Mukesh were ordered to be released on probation of good conduct for a period of six months on furnishing a personal bond in the sum of Rs.10,000/- each with one surety in the like amount to keep peace and good behaviour.

3. Feeling aggrieved, initially the appellant – Pawan Chadha preferred an appeal being Crl. Appeal No.640/2011. The complainant filed Crl. Appeal Nos. 966/2011 and 947/2013 seeking enhancement of sentence of the convicts Pawan Chadha and Mukesh Chadha respectively. Thereafter, convicts Vikas Chadha and Mukesh Chadha filed Crl. Appeal No.1572/2013 challenging the impugned judgment vide which they were convicted under Section 323/34 IPC.

4. Since all appeals are arising out of the common judgment, as such, the same are taken up together.

Prosecution case:

5. The police machinery swung in action on receipt of DD No.71B regarding a quarrel on 02.09.2008 by Head Constable Govind Sahai (PW2), who alongwith Constable Sushil Kumar (PW4) reached the spot i.e. A-98, Pandav Nagar, Delhi where he met the complainant Lajpat Rai Verma in injured condition, who was bleeding from his head. After preparing injury report, he sent the complainant to LBS Hospital alongwith Constable Sushil. After collecting MLC of the injured, he recorded the statement of the complainant Ex.PW1/A on which he prepared a *ruqqa* and got the case FIR registered. During the course of investigation, statement of witnesses was recorded. After completing investigation, charge-sheet was submitted against all the three accused persons. The charge for offence under Section 308 IPC was framed against accused Pawan Chadha whereas charge for offence under Section 323/34 IPC was framed against accused Pawan Chadha, Vikas Chadha and Mukesh Chadha.

6. In order to substantiate its case, prosecution in all examined 13 witnesses. All the accused in their statements recorded under Section 313 Cr.PC pleaded their innocence and alleged false implication in this case. It was alleged that the complainant had slipped from the stairs and received some injuries in the presence of Bunny Mehra who tried to take him to the hospital but the complainant refused and got registered a false case taking advantage of the injuries. The complainant wanted to take money for vacating the premises through Sardar Mangal Singh and Sardar Mahender Singh. In support of their defence one witness, namely, Sardar Mangal Singh (DW1) was examined.

7. Vide impugned judgment, all the three accused were convicted and sentenced as mentioned hereinbefore.

Submissions of appellants:

8. Assailing the findings of the learned Trial Court, learned counsel for the appellants submits that out of 13 witnesses examined by the prosecution, the material witnesses were the complainant – Lajpat Rai Verma (PW3), Bunny Mehra (PW6) and Madhu Verma (wife of the complainant) – PW11. It is further submitted that Bunny Mehra did not support the case of the prosecution. As regards, PW11, she in fact is not an eye witness to the incident and has made material improvements in her testimony. The whole case rests on the testimony of the complainant. However, the complainant himself admitted that he had fallen down, therefore, the defence taken by the appellants that he had sustained injuries due to fall from stairs is more probable. Further, the concerned doctor who had prepared the MLC of the injured was not examined. The wife of the complainant had made material improvements by deposing that her husband had undergone heart surgery which fact was not stated by her in her statement under Section 161 Cr.PC nor the complainant deposed so. Moreover, there is nothing on record to show that the appellant was aware about the heart surgery of the complainant. The weapon of offence has also not been recovered. Under the circumstances, the prosecution failed to bring home the guilt of the accused beyond reasonable doubt as such they are entitled to be acquitted. Alternatively, it is submitted that there was only a single injury, there was no premeditation and the incident took place on the spur of moment. The accused did not go to the house of the complainant to cause any injury. Had there been any intention on the part of the appellant to cause death of the complainant, he would not have left him by giving only a single injury. Moreover, there

was no hostility between the parties prior to this incident. It is only after this incident that an eviction petition was filed by the owner of the property – Pawan Chadha in which an eviction order has been passed. The appeal preferred by the complainant against the said order has been dismissed and he has been granted two years time to vacate the premises. The complainant is still residing in the tenanted premises. It is further submitted that it is not a case of conviction under Section 308 IPC and at the most provisions of Section 323 IPC are attracted. Reliance was placed on ***Bishan Singh & Anr. v. The State***, AIR 2008 SC 131; ***Ramesh v. State***, 2010 (I) JCC 796; ***Sunder v. State***, 2010 (1) JCC 700; ***Raju @ Rajpal and others v. State of Delhi***, 2014 (3) JCC 1894; ***Ashok Kumar and another v. State of Delhi***, Crl. Appeal No. 17/2011 decided on 20.02.2015 and ***Desh Raj v. Kewal Krishan and others***, 2010(1) JCC 48.

Submissions of the complainant:

9. Learned counsel for the complainant, on the other hand, submits that the accused concealed the material facts before the learned Additional Sessions Judge and it was never disclosed that accused Mukesh Chadha was involved in another case and an FIR was registered against him. Had this fact been disclosed, he would not have been granted the benefit of probation. Moreover, since Pawan Chadha has been convicted with the aid of Section 34 IPC, therefore, even accused Mukesh Chadha is liable to be convicted under Section 308 read with 34 IPC. As regards merits of the case, it was submitted that presence of none of the accused at the spot has been disputed. The impugned judgment does not suffer from any infirmity which calls for any interference as such the appeals preferred by accused persons/ appellants deserve to be dismissed and their sentence be enhanced. Reliance was placed on ***Ayyub and others v. State of Uttranchal***, 2006 (Crl. L.J) 1227.

Submissions of Additional Public Prosecutor for the State:

10. Learned Additional Public Prosecutor for the State submits that the testimony of the complainant finds due corroboration from the medical evidence and the impugned judgment does not call for any interference.

Discussion:

11. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

Crl. Appeal No.640/2011

12. The most material witness is the complainant – Mr Lajpat Rai Verma on whose statement (Ex.PW3/A), the police machinery swung in motion. He substantiated the initial statement made by him to the police by deposing in the Court that he was residing as a tenant under the appellant - P.K. Chadha. He could not give the date of incident correctly by deposing that due to injuries suffered by him, he is not mentally fit, but it was between 13/18.09.2008 at about 7.30 pm he had gone to ground floor to tender rent to Pawan Chadha and offered him a cheque of Rs.6,600/- towards rent for the month of September, 2008 and he received the cheque. Pawan Chadha asked him to enhance the rent from that month itself, however, the complainant requested him to increase the rent from October, 2008. On this accused misbehaved with him and pushed him as a result of which he fell down. The appellant – Pawan Chadha then picked up a saria and tried to give a blow with it, which he tried to save with his hand and the blow struck him on his right wrist. When he tried to run from that place to save himself, accused picked up a wooden leg of a cot and hit him with it on his head. When he raised a cry, both the sons of the accused came there and started beating him with legs and fists. He then called his wife Madhu Verma who came down and she too was beaten by the accused. He started bleeding profusely from his head. In the meanwhile, one Bunny

Mehra, residing opposite his house came down on hearing his voice. Other persons also gathered. Someone informed the PCR. Police came and took him to LBS Hospital where he was treated. On seeing the police, the accused persons fled away threatening that they will not leave him alive.

13. PW6 – Bunny Mehra did not support the case of prosecution as he deposed that on 02.09.2008, on hearing noise of Mr Lajpat Rai Verma “*main gir gaya, main gir gaya, mujhe chot lag gai*”, he came out of his house and saw him lying on the road near stairs. He was having injuries on his head. He took him to the hospital situated at Pandav Nagar in a rickshaw. His son also reached at the hospital and he returned back. In cross examination, he denied having made any statement mark ‘A’ to the police.

14. PW11 – Smt. Madhu Verma is the wife of the complainant – Mr Lajpat Rai Verma. She has also deposed that on 02.09.2008, her husband had gone to pay cheque to the landlord – Pawan Chadha on the ground floor where he was having his office. After ten minutes on hearing cries of her husband, she rushed down and saw that Pawan Chadha and his two sons Vikas Chadha and Mukesh Chadha were beating her husband with legs and fists. She tried to intervene but Pawan Chadha caught hold of her by her neck and gave fist blow on her right shoulder and also abused her. In her presence, Pawan Chadha who was holding a leg of cot gave a blow on the vertex of head of her husband and he started bleeding profusely. Pawan Chadha knew that her husband had undergone heart surgery and used to keep ill despite that he continued beating him. Someone called PCR which arrived and took them to LBS Hospital.

15. As regards PW6 is concerned, he has chosen not to support the case of the prosecution. Although this witness deposed that he had taken the complainant to hospital in a rickshaw, however, as per the record on receipt of DD No.71B regarding a

quarrel, Head Constable Govind Sahai had reached the spot with Constable Sushil. There they met complainant who was injured and bleeding from his head. He sent the complainant to LBS Hospital alongwith Constable Sushil. His testimony finds corroboration from Constable Sushil who took the injured to LBS Hospital and got him admitted there. MLC Ex.PW5/A also corroborates their version as in the column of 'brought by' the name of Constable Sushil finds mention. Moreover, this is not even the case of the appellants as according to them, Bunny Mehra tried to take the complainant to hospital but he refused.

16. As regards PW11 – Madhu Verma, who claimed to be an eye witness regarding giving a blow with the leg of a cot on the head of her husband by Pawan Chadha, same does not find corroboration from the complainant, according to whom, after he was given the blow with the leg of a cot on his head by Pawan Chadha, he raised a cry for help and then both the sons of accused Pawan Chadha came. Then they started beating him with legs and fists and thereafter he called his wife, who came down and she too was pushed by the accused. The effect of the same, at the most, can be that the wife of the complainant reached the spot when the complainant was beaten by all the three accused persons with legs and fists but she is not an eye witness to the incident of accused Pawan Chadha giving a blow with the leg of a cot on the head of the complainant.

17. The fact, however, remains that there is the testimony of complainant who has supported the case of prosecution on all material particulars. It is settled proposition of law that a conviction can be based on the solitary testimony of a witness. Learned counsel for the complainant relied upon *Vadivelu Thevar vs The State Of Madras*, AIR 1957 SC 614 where the appellants were charged with murder and were convicted on the

sole testimony of a witness. The Hon'ble Supreme Court on consideration of relevant authorities and provisions of Indian Evidence Act laid down the following proposition:

"10. ...

(1) *As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.*

(2) *Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.*

(3) *Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.*

11. *In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's I Law of Evidence -9th Edition, at pp. 1 100 and 1 101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be*

weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact.

Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.*

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above approach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in

coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

18. In view of the same, conviction can be based on the solitary testimony of a witness. It is only as a matter of prudence that the Courts insist upon corroboration. Such corroboration, in the instant case, is available through medical evidence. The MLC of the complainant was prepared by Dr D. Chandra. Since this doctor had left the services of the hospital and his present whereabouts were not available in the records of the hospital, as such, Dr S.B. Jangpangi (PW10) appeared and deposed that as per the MLC following injuries were observed on his person:

- (i) CLW 8x2x.5 cms over central parieto occipital region.
- (ii) Swelling and tenderness right forearm and wrist.
- (iii) Abrasion 1x1 cm over right wrist.

The testimony of the complainant that accused Pawan Chadha tried to give a saria blow and while he saved the same with his hand, the saria struck him on his right wrist, finds corroboration from the injuries as per the MLC which reflects that there was swelling and tenderness right forearm and wrist. Similarly, his testimony that he was hit with a wooden leg of a cot on his head as a result of which he started bleeding profusely, finds corroboration from the medical evidence which reflects that there was CLW 8x2x.5 cms over central parieto occipital region. Moreover, complainant sustained injuries in the incident. It is settled law that testimony of an injured witness stands on a high pedestal than any other witness. That being so, even if PW6 – Bunny Mehra did not support the case of the prosecution or the wife of the complainant reached the spot after he was hit by wooden leg of a cot on his head, there is no reason to disbelieve the testimony of the complainant who stood the test of cross examination and despite lengthy cross examination, nothing material could be elicited to discredit his testimony. Moreover, none of the appellants have disputed their presence at the spot at the time of the incident.

19. The appellants had taken the plea that the complainant slipped from the stairs and sustained injuries and in order to substantiate this plea they examined Mangal Singh - DW1, who deposed that after slipping from stairs, the complainant hit himself on a column and sustained injuries as his head struck with a pillar. Learned Trial Court rightly referred to the photographs placed on record by the complainant and observed that under no circumstances a person could hit his head with a pillar after falling from

the staircase as the said pillar was at a great distance from the staircase and parallel to the staircase.

20. The other plea taken by the appellants is that the complainant demanded money through Sardar Mangal Singh and Sardar Mahender Singh for vacating the house. Earlier also, he had received money from one Chunnilal for vacating the tenanted house. The complainant had categorically denied the suggestion regarding demanding any money for vacating the house. Sardar Mangal Singh, examined as DW1, has nowhere deposed that any money was demanded by the complainant through him for vacating the house. Sardar Mahender Singh has not been examined by the appellants. Under the circumstances, there is no merit in this plea taken by the appellants. Although at the fag end of the trial, the appellants took the plea that the complainant had received money for vacating the house from one Chunnilal and DW1 also deposed in this regard. However, no such suggestion was given to complainant and such a plea taken for the first time in the statement of accused recorded under S.313 Cr.PC and then by examining DW1, does not inspire confidence . Learned Trial Court has evaluated the evidence led by prosecution in correct perspective in arriving at a conclusion that it was the appellants who had inflicted injuries on the person of the complainant.

21. The next question which arises for consideration is as to whether the act of accused Pawan Chadha in causing injuries on the person of the victim, attracts ingredients of offence under Section 308 IPC. In order to constitute an offence under Section 308 IPC it is to be proved that the said act was committed by the accused with the intention or knowledge to commit culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death, he would have been guilty of culpable homicide. The intention or

knowledge on the part of the accused, is to be deduced from the circumstances in which the injuries had been caused as also the nature of injuries and the portion of the body where such injuries were suffered. In this case, no previous enmity or dispute between the appellants and the complainant could be proved. There was no premeditation. The quarrel had taken place on a trivial issue. The nature of injuries suffered by the complainant were opined to be simple caused by blunt object. Apparently, the injuries were not caused with the avowed object or knowledge to cause his death. PW11 was not put to any serious harm though she had also reached the spot. Sons of Pawan Chadha were not found present at the spot initially when according to complainant he had gone to tender rent. It was only subsequently that they reached the spot and even at that time, as per the complainant's own version, they gave only legs and fist blows. It was a case where the injuries were caused in a quarrel which took place on a trivial issue i.e. for enhancement of rent and the appellants caused simple hurt with blunt object to the victim – Lajpat Rai Verma. Merely because the injuries were found on the head, it cannot be said that such injury was caused with an intention to commit culpable homicide.

22. In ***Bishan Singh & Anr.*** (supra), six appellants were convicted by the trial Court under Section 308/147/149 for assaulting the complainant with lathis. The appellants came in appeal before the Supreme court where it was held that accused can be held guilty under Section 308 IPC if there was requisite intention or knowledge on their part to commit culpable homicide. Six persons allegedly accosted the injured. They had previous enmity. Although overt act had been attributed against each of the accused who were having lathis, 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. Therefore, it was held that appellants cannot be said to have committed any

offence under Section 308 IPC and were instead held liable to be convicted under Section 323 and 325 IPC.

23. In **Ramesh** (supra), this Court altered the conviction from 308/34 to 323/34 and reduced the two years sentence to probation. It was held that assault was not premeditated and merely because an injury was found on the head, it cannot be said that such an injury was caused with the intention to commit culpable homicide.

24. Similarly, in **Sunder** (supra), this Court altered the conviction of the appellant from Section 308 to 323 IPC and reduced the six months imprisonment to probation. It was held that in order to prove offence under Section 308 IPC, prosecution was required to prove that the injury was caused with such intention or knowledge and under such circumstances that if it had caused death, the act of appellant would have amounted to culpable homicide not amounting to murder. The entire incident took place during the course of altercation and there is no intention to cause culpable homicide when weapon of offence used is *a wooden lemon squeezer*.

25. **Again in Raju @ Rajpal** (supra), this Court altered the conviction from Section 308 to 323/34 and reduced the sentence to probation. It was held that the quarrel had taken place on a trivial issue. The appellants have clean antecedents and are not involved in any criminal activities. The nature of injuries were simple and injuries were not caused with the avowed object or knowledge to cause death.

26. Similarly in **Ashok Kumar** (supra), this Court altered the conviction of Section 308 IPC to Section 323/34 IPC and reduced the sentence to probation and compensation. It was held that from the sequence narrated by the complainant, it appears that a quarrel erupted all of a sudden over the property and the appellants in the heat of passion gave beatings to the complainant. Injuries were opined by the doctor as

simple caused by a blunt object. Nature of injuries are not such which will be sufficient to indicate that the appellants had any intention or knowledge that by this act they would have caused death of complainant.

27. In ***Desh Raj*** (supra), the revision petition was filed by the complainant against the acquittal of the respondents under Section 308 IPC by the Sessions Judge and conviction of the respondents only under Section 323/34 IPC. Sessions Judge sentenced them to undergo probation for one year taking into account that the accused persons were not previous convicts, the parties used to live in the same building and there used to be frequent quarrels between both the parties on petty issues. It was held by this Court that the trial court had acted on the lines of reformative and retributive purpose on sentencing and had given due regard to the age, character and antecedents of the offender. The power to grant probation is the discretion of the court which is to be exercised according to the circumstances of each case. This discretion has been exercised fairly hence revision was dismissed. In ***Ayyub*** (supra) relied upon by counsel for the complainant, facts were entirely different. In this case, accused persons armed with lathies went to the field and started beating injured, which showed their premeditation. Moreover, despite convicting the accused under Section 308/34 IPC, their sentence was reduced from two years to one year only.

28. The present case is squarely covered by these authorities. Learned Trial Court has convicted the appellant under Section 308 IPC on the ground that the appellant Pawan Chadha initially hit the complainant with a saria. He fell down. When he tried to stand up, he was again given a blow with a wooden leg of the cot on vital part of the body i.e. head. Moreover, PW11 deposed that Pawan knew that her husband has undergone heart surgery despite that he continued beating him. Thus knowledge that the

accused could have caused death by his act is implicit in his act. The Trial Court overlooked the fact that there was no premeditation. The entire incident took place on the spur of the moment. Injuries were opined to be simple. There were material improvements in the testimony of PW11 regarding knowledge of the accused that her husband had undergone heart surgery as no such statement was made in earlier statement recorded under Section 161 Cr.PC. Even complainant has not deposed so.

29. Under the circumstances, I am of the view that ingredients of Section 308 IPC are not attracted in this case and the case falls 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 for a term which may extend to one year or fine which may exceed up to Rs.1,000/- or both.

30. For the foregoing reasons, the conviction of the appellant – Pawan Chadha under Section 308 IPC is set aside and he is convicted under Section 323 IPC.

31. Accordingly, this appeal filed by the appellant – Pawan Chadha is partly allowed by altering his conviction from Section 308 IPC to Section 323 IPC while maintaining his conviction under Section 323/34 IPC.

32. As regards quantum of sentence, admittedly, it was basically a landlord and tenant dispute. There is nothing on record to show that the appellant – Pawan Chadha has any previous criminal record. Keeping in view these facts, the appellant – Pawan Chadha is ordered to be released on probation on his furnishing personal bond in the sum of Rs.10,000/-with one surety in the like amount, to maintain peace, tranquillity

and good behaviour for a period of two (2) years to the satisfaction of concerned Trial Court. He is further directed to pay a sum of Rs.75,000/- as compensation to the complainant – Lajpat Rai Verma. The compensation amount be deposited before the Trial Court concerned within eight (8) weeks from pronouncement of this judgment. In case, the compensation amount is not deposited by him, he shall have to undergo simple imprisonment for a period of six (6) months. The amount already deposited towards fine shall be given adjustment while making deposit in terms of this order. The compensation amount, if deposited, be released in favour of the complainant – Lajpat Rai Verma by the Trial Court.

Crl. Appeal No.966/2011.

33. This appeal has been filed by the complainant seeking enhancement of sentence of convict Pawan Chadha, during the course of arguments, no cogent ground was given by learned counsel for the appellant seeking enhancement of the sentence. In any case, in view of the fact that while deciding the Crl. Appeal No.640/2011 preferred by Pawan Chadha, his conviction under Section 308 IPC has been set aside, therefore, there is no merit in this appeal and the same is dismissed.

Crl. Appeal No.947/2013

34. This appeal has been filed by the complainant seeking enhancement of sentence of convict Mukesh Chadha, the same has been filed primarily on the ground that he could not have been granted benefit of probation as he was involved in another criminal case. It is alleged that pursuant to an information received under Right to Information Act, it has been revealed that this accused was involved in another criminal case bearing FIR No.315/2005 Police Station Pandav Nagar, Delhi and had this fact was disclosed, he would not have been granted benefit of probation.

35. Section 360 Cr.PC which provides for release of an accused on probation so far as is material for the present purpose reads as under:

“360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is-convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2)..”

36. A bare perusal of this Section goes to show that the accused is not entitled to be released on probation if he is “convicted” of an offence. However, as per averments made in appeal itself, this accused was facing trial in a case under Copyright Act in FIR No.315/2005 Police Station Pandav Nagar, Delhi. Admittedly, it is not even the case of the complainant that he was convicted in this case. That being so, mere pendency of another criminal case that too under Copyright Act is no bar to grant of probation to the appellant – Mukesh Chadha. As such, there is no merit in this appeal Same is accordingly dismissed.

Crl. Appeal No.1572/2013

37. This appeal has been filed by the convicts Vikas Chadha and Mukesh Chadha challenging their conviction under Section 323/34 IPC is concerned, the same is devoid of merit as there is testimony of the complainant that when he raised alarm these appellants, being the sons of Pawan Chadha came and they joined Pawan Chadha in giving him leg and fist blows. Not only that, they also gave blows to the wife of the complainant. His testimony finds substantial corroboration in this regard by PW11 Madhu Verma. Under the circumstances, this appeal is dismissed.

38. The sum up of the aforesaid discussion is that Crl. Appeal Nos. 966/2011 and 947/2013 filed by the complainant and Crl. Appeal Nos. 1572/2013 filed by Vikas Chadha and Mukesh Chadha are dismissed. The Crl. Appeal No.640/2011 filed by Pawan Chadha is disposed of by altering his conviction and modifying the sentence, as mentioned hereinbefore.

All the appeals stand disposed of accordingly.

Pending CM also stands disposed of.

Trial Court record be sent back forthwith.

(SUNITA GUPTA)
JUDGE

JANUARY 27, 2016/*rd*