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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. No.558/2001**

Date of Decision : 11TH MAY, 2017

RAHAT ALI APPELLANT
Through Mr.M.L. Yadav, Adv.

Versus

STATE OF NCT DELHI & ANR. RESPONDENT
Through Mr.Punna Lal Sharma, Additional
Public Prosecutor for the State.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J

1. Aggrieved by the judgment of conviction dated 11th June, 2001 convicting the appellant finding him guilty under Sections 308 & 323 of the Indian Penal Code (IPC) and order on sentence dated 12th July, 2001, sentencing him to rigorous imprisonment for one year and to pay fine of Rs.5,000/-, in default of fine, to further undergo rigorous imprisonment for two months while extending the benefit of Section 428 Cr.P.C., the present appeal has been filed.

2. The facts giving rise to the present appeal are within the narrow compass. It emerges from the record that an electric motor belonging to Khalid, a builder, had been stolen upon which Rahat

Ali, the appellant herein, and the two accused went to one Ganga in order to make enquiries. Thereafter, Ganga and Gaurav were taken to the roof of Mughal Arts Building, Zakir Nagar, Nafis Lane where they were enquired by the accused. Ganga & Gaurav did not disclose anything upon which they were not only assaulted but were given electric shocks. The appellant Rahat Ali gave a slap blow to Ganga upon which he lost his balance and fell from the roof of the third floor as a result of which he sustained injuries. Thereafter, both Ganga and Gaurav were taken to the hospital wherein the X-Ray report showed that Ganga was found to have fractured his femur shaft and left wrist and the injuries were declared as grievous in nature. It transpires that an intimation to the police control room was given to the effect that Khalid had captured a thief near house no.82/1, Zakir Nagar, which was recorded in DD No.27 pursuant whereunto, statement of Ganga was recorded and FIR was registered and after completion of investigation, the accused persons were arrested.

3. The appellant was held guilty by the learned Additional Sessions Judge, New Delhi and by an order dated 12th July, 2001, sentenced to undergo rigorous imprisonment for a period of one year and also to pay fine of Rs.500/-, in default further RI for two months for his conviction under Section 308/323/34 of the IPC.

The benefit of Section 428 of the Cr.P.C. was given to the appellant.

4. The main grounds of challenge are that there was no corroboration to the evidence adduced by the prosecution in the trial of the case and that the conviction was solely based upon uncorroborated evidence of PW 1 Ganga Kumar Sharma and PW 2 Gaurav Kumar Sharma. The fact that the intention being the first and foremost ingredient, was absent. The fact that PW 2 Gaurav Kumar Sharma did not depose regarding giving electric shock to him and was contrary to the statement of PW 1 Ganga Kumar Sharma, had not been considered. The fact that though eight-ten persons were sleeping at the place where PWs 1 & 2 were also sleeping, none of them had been interrogated or examined for the purpose of ascertaining the true facts. The prosecution failed to produce the weapon i.e. lathies as well as the clothes of PW 1 & PW 2 stained with blood as had been deposed by PW 2 in cross-examination. PW 7 who was the investigating officer, in his deposition stated that there was no parapet wall on the roof of the building while PW 1 & PW 2 have given the height of the parapet wall as 2 ft. And 3 ft. respectively, which is contrary to the deposition of PW 7. The deposition of PW 1 Ganga Kumar Sharma is contrary to the report of MLC as well as the deposition

of the doctors. PCR officials were not produced by the prosecution.

5. In support of his contention, learned counsel for the appellant relies on ***Ramphool Vs. State 2001(93) DLT 366*** in which case the appellant who was released on bail about six years

6. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellant was rightly held guilty under Sections 308 & 323 of the IPC. It is submitted by him that an intimation was received by the Police Control Room to the effect that Khalid had captured a thief near House No.82/1, Zakir Nagar, which information was flashed to PS Srinivas Puri and when intimation regarding admission of Ganga was given to the police, SI Kanta Prasad Kukreti first went to the place of occurrence and from there, to hospital and that statement of the injured Ganga was recorded. It revealed from the complaint, inquiry & investigation that the electric motor of Khalid was stolen upon which Rahat Ali (appellant herein) suspected Ganga and Gaurav. Thereafter, the accused Rahat Ali with the other two accused namely Israr Hussain and Laik Ali, went to Ganga to make enquiries upon which Ganga & Gaurav were taken to the roof where they were assaulted and when Ganga was given a slap blow by the accused Rahat Ali, Ganga lost his balance as a result of

which he fell from the roof of third floor and sustained grievous injuries.

7. The nominal roll of the appellant has been called for which reflects that as on 19th August, 1999, the appellant had undergone incarceration of fifteen days. The appellant was released on bail pursuant to the order dated 19th August, 1999 passed by Mr.N.K. Goel, Additional Sessions Judge, Delhi.

8. The prosecution had examined as many as seven witnesses. PW 1 Ganga Kumar Sharma in his statement stated that he identified the accused Rahat Ali. However, this witness did not identify the other persons. This witness further stated that the other persons could be identified by PW 2 Gaurav Kumar Sharma who could tell their names. PW 2 Gaurav Kumar Sharma in his statement identified all the accused persons. PW 3 HC Krishan Pal and PW 6 Ct.Randhir visited the place of occurrence. PW 3 sent the injured to hospital. It also appears from the record that PW 4 Dr.D.N. Bhatnagar had proved the MLC (Ex.PW 5/A) of the injured PW 1 Ganga Kumar Sharma. Since the doctor who prepared the MLC was not available, PW 4 Dr.D.N. Bhatnagar was deputed to prove the MLC. The report of X-Ray which was prepared by Dr.Manish, was proved by PW 5 Dr.Dheeraj Gandhi. PW 7 Inspector K.P. Kukreti who was the investigating officer,

corroborated and testified the statement of PW 1 Ganga Kumar Sharma & PW 2 Gaurav Kumar Sharma.

9. Thus, it is clear from the testimonies of the witnesses, particularly from the statement of PW 1 & PW 2; the complaint, inquiries and report of the investigations that there arose a quarrel over theft of electric motor. The accused including the appellant herein, had not lodged any report of theft instead tried themselves to solve the theft of motor. The allegation of the accused that there was no motive, cannot be considered to be true inasmuch as there was no reason for PWs 1 & 2 implicating the accused falsely and that the injured Ganga Kumar Sharma would have suffered self inflicting injuries. It is clear that the appellant Rahat Ali had given electric shock to the Ganga Kumar Sharma. The appellant also gave slaps to Ganga Kumar Sharma and Gaurav Kumar Sharma and kept on assaulting Ganga as a result of which he came near the edge of the roof i.e. at parapet wall (which was of two feet height) and fell from the room resulting in fracture of femur shaft left and left wrist. PW 7 Inspector K.P. Kukreti who was the investigating officer, corroborated and testified the statement of PW 1 Ganga Kumar Sharma & PW 2 Gaurav Kumar Sharma. It also reveals from the records that PW 2 had admitted that the electric motor belonged to Rahat Ali. It is clear that PW 3 HC Krishan Pal and

PW 6 Ct.Randhir visited the place of occurrence. PW 3 sent the injured to hospital. It also appears from the record that PW 4 Dr.D.N. Bhatnagar had proved the MLC (Ex.PW 5/A) of the injured PW 1 Ganga Kumar Sharma.

10. The act of the appellant would, thus, fall under Section 325 of the IPC, in causing grievous injury to the complainant and not under Section 308 IPC for attempting to commit culpable homicide.

11. The testimonies of PW 1 Ganga Kumar Sharma & PW 2 Gaurav Kumar Sharma have been duly corroborated by the statement of other witnesses. Their testimonies coupled with the report of the doctor, bring the accused within the four corners of Section 325 of the IPC. All the above witnesses were cross-examined at length but the defence failed to put any dent to their testimony. The witnesses remained firm with regard to their depositions.

12. Keeping in view the above scenario, the conviction of the appellant is converted from Sections 308 & 323 IPC to Section 325 IPC. The appellant is directed to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- under Section 325 IPC, in default of fine, to further undergo rigorous imprisonment for two months while extending the benefit

of Section 428 Cr.P.C.

This appeal is disposed of in the above terms.

(P.S.TEJI)
JUDGE

MAY 11, 2017
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