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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: August 18, 2017

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CRL.A. 944/2002

PRADEEP KUMAR & ANR.

..... Appellants

Through: Mr.Ranjeet Pandey, Advocate

versus

STATE

..... Respondent

Through: Ms.Kusum Dhalla, APP for the
State with W/SI Anita, PS
Paschim Vihar

PRATIBHA RANI, J. (Oral)

1. The appellants are challenging their conviction and order on sentence dated 17th September, 2002 whereby they have been held guilty under Section 323/34 IPC and ordered to be released on probation for a period of six months.

2. The case FIR No.871/1997 under Section 308/186/353/332/34 IPC was registered at Police Station Paschim Vihar on the basis of statement made by the complainant Sh.Surender Yadav (PW-9) at DDU Hospital where he was admitted. SI Rajiv Dudiya, who visited the hospital, obtained the opinion of the doctor regarding the fitness of the injured to make the statement and thereafter recorded the statement Ex.PW13/A which is to the effect that on 20th October, 1997 at about

8:00 pm the appellant Praveen Kumar came to the restaurant of the complainant to collect some payment for the electrical work done by him. The complainant made part-payment and asked to collect the balance later on. The appellant Praveen Kumar abused the complainant and left after extending threat. The complainant closed the restaurant and returned to his house. At about 8:30 PM, the appellant Praveen Kumar along with his brother came to the house of the complainant and they started hurling abuses. When the complainant came out of his house, appellant Praveen Kumar threw a brick on him which hit on his head. On hearing the cries of the complainant another injured Rahul reached there to save him. Other persons also collected there. Both the appellants started throwing pieces of bricks on the police officials who arrived at the spot and one of the brick hit DHG Const.Madan Lal. The injured were removed to DDU Hospital by the PCR Van. The appellants were charged for committing offence punishable under Section 308/34 IPC and thereafter on the application of the State, additional charge for committing offence under Section 323 read with Section 34 IPC was also framed for causing simple injury by blunt object to Rahul and DHG Const.Madan Lal.

3. Prosecution examined 14 witnesses to prove its case. Both the appellants during their examination under Section 313 Cr.P.C. denied their involvement and stated that they have been falsely implicated at the instance of the complainant in connivance with the local police. Two defence witnesses were examined to prove the motive for false implication.

4. The appellants are challenging their conviction mainly on the following grounds:

(i) No independent witness has been examined in respect of the occurrence and material contradictions in the statement of the prosecutrix have been ignored by the learned Trial Court.

(ii) The doctor who prepared the MLC Ex.PW-12/1 has not been examined.

(iii) The prosecution story to the extent that PW-2 Delhi Home Guard (DHG) Const. Madan Lal also suffered injury at the hands of the appellant has been disbelieved.

(iv) Statements of defence witnesses have been wrongly discarded.

(v) In the impugned judgment the date of incident is mentioned as 21st October, 1997 whereas as per FIR the incident is dated 20th October, 2017.

5. Learned counsel for the appellants has submitted that the appellant Pradeep is a Government servant. No injury was caused by any of the appellants and they have been falsely implicated in this case. The injury suffered by Surender Yadav was due to slipping on the muddy road as admittedly it was drizzling at that time. It is also contended that PW-8 Rahul Yadav used to sit on the restaurant being run by Surender Yadav who is his cousin. Surender Yadav received injury when some customers at the restaurant had a fight with him in drunken state.

6. I have perused the Trial Court Record. The date of incident has been stated to be 20th October, 1997 at about 8:00 pm and the correct date of occurrence has been recorded by the learned Trial Court in the

charge as well para 2 and para 5 of the impugned judgment.

7. The testimony of PW-2 DHG Const. Madan Lal has not been disbelieved by the learned Trial Court. Rather learned Trial Court has recorded that he did receive injury when the stones were being pelted. Learned Trial Court relied upon the statement of PW-1 HC Sunil Kumar who stated that when the police party reached the spot, large crowd had collected there. **A scuffle was going on between Praveen, Pradeep and Rahul. When PW-1 HC Sunil Kumar intervened during the scuffle going on, then a stone hit DHG Const. Madan Lal.** Learned Trial Court appreciated the testimony of PW-1 Sunil Kumar and PW-2 DHG Const. Madan Lal in the context that **if the two appellants were indulging in the scuffle with Rahul and Surender Kumar and other people were pelting stones one of the stone hit on the head of Const. Madan Lal which could not have been pelted by the two appellants who were engaged in the scuffle.** Learned Trial Court also noted that due to darkness DHG Cosnt. Madan Lal could not have seen as to who pelted the stone which hit him. The contradiction pointed out by the learned counsel for the appellants have been found to be not material contradictions but only in respect of procedural requirement.

8. Learned Trial Court after appreciating the evidence, convicted the appellants for offence punishable under Section 323/34 IPC for the following reasons:-

“31. The learned defence counsel has pointed out some contradictions from the statements of the witnesses. Those contradictions are mainly regarding the

proceedings etc. I have already observed that the statement of Surender Yadav is believable to hold that the two accused had come to his house with common intention and caused him injuries. Consequently, the contradictions, which have arisen due to the statements of the witnesses, who participated in the investigation or the police officials, who arrived there due to the call received by the PCR or by the local police, cannot be material enough to discard the statement of Surender Yadav. The net result is that the prosecution has been able to establish that the two accused with common intention caused injury on the person of Surender Yadav.

32. Now, the question for consideration is as to whether the accused had caused injury to Surender yadav with such intention and preparation that their act can be described to cover the offence punishable under section 308 IPC. I have already observed from the statement of Surender Yadav that the two accused had not come to his house while armed with any weapon. The pieces of bricks were lying outside his house and accused Pradeep picked up one of such brick piece and hit on the person of Surender Yadav. The MLC of Surender Yadav is Ex.PW-12/1. The prosecution failed to examine the doctor, who prepared the MLC or examined the patient. The record clerk of t the DDU Hospital appeared into the witness box to identify the hand-writing and signatures of Dr.Rani Bora, who prepared the MLC, Ex.PW-12/1. The MLC speaks that the injury was simple caused with blunt object. The police arrived at the hospital immediately after the incident and the doctor declared the patient fit for statement. The patient was conscious or oriented. There is nothing on the record to suggest that Surender Yadav was kept in the hospital for any surgery because of

the injury on his person. Considering all these circumstances, I find that it cannot be said that the injury on the person of Surrender Yadav could have been fatal. The case of the prosecution cannot be covered for the offence punishable under section 308 IPC. The offence against the accused persons stand proved for the offence under section 323 read with section 34 IPC.

9. The defence witnesses have been discarded for the reason that they were examined to prove the previous enmity between the two families.

10. The learned Trial Court before convicting the appellants under Section 323/34 IPC had considered the effect of non-examination of the doctor who prepared the MLC, testimony of the prosecution witnesses which proved that both the appellants were not only present at the spot but scuffle with the complainant/injured was going on and stone pelting was also going on when the police arrived at the spot.

11. Having regard to all the circumstances and on careful scrutiny of the Trial Court record as well the finding of the learned Trial Court, I am of the opinion that impugned judgment does not call for any interference having regard to fair application of the standards which the High Court as an Appellate Court has to follow while re-appreciating the evidence and returning its own finding. For the foregoing reasons the appeal is devoid of any merit and is dismissed.

12. The LCR be sent back along with copy of the order.

PRATIBHA RANI, J.

AUGUST 18, 2017/ 'hkaur'