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

Reserved on: 8th May, 2017
Pronounced on: 31st May, 2017

+ Crl. A. 110/2007

IKRAMUDDIN

..... APPELLANT

Through: Mr. Manish Kohli, Mr.
Manjit Pathak and Mr.
Pranav Joshi, Advocates

Versus

STATE (GOVT. OF NCT OF DELHI) RESPONDENT

Through: Mr. Tarang Srivastava, APP
with SI Omveer Singh, PS
Nand Nagri

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. The appellant was held guilty by judgment dated 14.11.2006 of the court of Additional Sessions Judge in sessions case no.100/2006 for offences punishable under Sections 452, 323, 308 read with Section 34 of Indian Penal Code, 1860 (IPC) and awarded punishment, by order on sentence dated 15.11.2006, in terms of which he is to undergo rigorous imprisonment for three years, one year and three years with fine of Rs.2,000/-, Rs.1,000/- and Rs.2,000/- respectively, on the three counts, all substantive sentences to run concurrently with benefit of set off granted under Section 428 of the Code of Criminal Procedure, 1973 (Cr. PC). By

the appeal at hand, he has assailed the said judgment and order on sentence.

2. The background facts leading to the impugned judgment and order on sentence may be taken note of at the outset.

3. From the evidence, and the submissions, some facts come out as indisputable or admitted. Randhir Singh (PW-4), then aged about 72 years, would live with his family in property described as 57, Sushila Garden, Mandoli Extension, Delhi within the jurisdiction of police station Nand Nagri. His family included his wife Jagbiri @ Jagbiro (PW-8), aged about 65 years, his sons Yogender (PW-1) aged about 25 years, Devender (PW-2) aged about 27 years and married daughter Munesh (PW-3). Concededly, the appellant was next door neighbor with whom Randhir Singh and his family had an on-going dispute respecting the ownership of a plot of land then in the occupation of the appellant. It was claimed by the appellant during the trial that the civil litigation respecting the said dispute eventually came up decided in his favour. But no documents in support have been submitted.

4. The appellant was taken to Guru Tegh Bahadur Hospital, Shahdara (hereinafter “the hospital”) at 6.00 a.m. on 23.04.2000 by HC Amar Singh of police station Nand Nagri where he was examined by Dr. Ravinder Chauhan. The medico legal certificate (MLC) (Ex. PW9/E) which was prepared by the examining medical officer was proved at the trial by Dr. R. Dayal (PW-9) since the present address of the examining medical officer could not be ascertained inspite of the efforts. The MLC (Ex.PW9/E) shows that the appellant was found to have suffered three external injuries,

they including two lacerated wounds, one below left eye and the other over right supra orbital ridge in addition to tenderness over the right lower leg and knee. It was admitted by PW-1 and other witnesses for the prosecution at the trial as is alleged by the appellant, that he (the appellant) had suffered the injuries as a result of assault on him by PW-1 and other members of his family.

5. The prosecution case is that on the night intervening 22 and 23.04.2000 while the family of Randhir Singh (PW-4) was sleeping inside the house, he (PW-4) with his wife (PW-8) and sons (PW-1 & PW-2) were on their respective cots in the compound of the house, as depicted by the site plan (Ex.PW13/B) prepared during investigation, other members of the family including daughter Munesh (PW-3) with her husband and another son Ravinder were sleeping inside. It is alleged that PW-1, PW-2, PW-4 and PW-8 woke up around 3.30 a.m. suddenly, upon being attacked with wooden sticks, by the appellant who was accompanied at that time with two associates. It is stated that the family retaliated and, in that process, caught hold of the appellant and raised alarm, in the wake of which the two associates of the appellant fled away though extending threats and firing in the air in the street outside. After being apprehended, the appellant was tied with ropes and assaulted by the family of Randhir Singh. It is stated that PW-1 rushed out to make a call on the phone number 100 of police control room (PCR) but found it not available and the PCR vehicle at Mandoli Chungi also not being located, he rushed to Harsh Vihar police post of the police station, ten minutes away, where he met SI Vikramjit Singh (PW-13), who was on duty.

6. As per the prosecution case, PW-13 upon being informed about events that had occurred, rushed to the house of PW-1 accompanied by HC Amar Singh and arranged for the injured persons and the appellant, found tied in ropes, to be taken to hospital for their medical examination and treatment. He recorded the statement (Ex. PW1/A) of Yogender (PW-1) and on the basis of his endorsement (Ex. PW13/A) got the FIR (Ex. PW6/A) registered in the police station. The FIR proved by HC Ami Chand (PW-6), the Duty Officer, confirms that it was recorded at 6.55 a.m. in the morning of 23.04.2000, the *rukka* having been dispatched at 6.40 a.m., the incident having occurred around 3.30 a.m. on 23.04.2000.

7. During the course of probe, besides other steps in investigation, SI Vikramjit Singh (PW-13), the investigating officer seized three wooden sticks (Ex. PW4/A to C), a knife found lying in the courtyard and an empty cartridge (P7) found lying in the street outside.

8. Report under Section 173 Cr.PC (charge-sheet) submitted on conclusion of investigation on 27.06.2001 stated that despite investigation and efforts, pursuant to the revelations made by the appellant, reference at the trial being made to disclosure statement (Ex. PW5/A), the two associates of the appellant involved in the incident could not be traced or located.

9. After cognizance had been taken, and compliance made with Section 207 Cr. PC, the case was committed to the court of sessions where, by order dated 05.03.2002, the appellant was put on trial on the charge for offences punishable under Sections 452 / 34, 308 / 34, 323/34 and 506/34 IPC.

10. The prosecution led evidence by examining fourteen witnesses, they being Yogender (PW-1); Devender (PW-2); Munesh (PW-3); Randhir Singh (PW-4); Constable Parvesh Kumar (PW-5); HC Ami Chand (PW-6); SI Dharmender Kumar (PW-7); Smt. Jagbiri (PW-8); Dr. R. Dayal (PW-9); HC Chokhe Lal (PW-10); Dr. Gyander Mittal, Sr. Resident, GTB Hospital (PW-11); HC Ramesh Chand (PW-12); SI Vikramjit Singh (PW-13); and Dr. Santosh Jena, Sr. Resident, Orthopedics, GTB Hospital (PW-14).

11. The appellant was examined under Section 313 Cr. PC on 26.07.2006 wherein he claimed to have been falsely implicated by a manipulated case. He claimed that the complainant party had itself illegally taken over the possession of his plot of land and had caused injuries to him having quarreled with him several times over property. He stated that on the date of the incident, the complainant side had a fight “amongst themselves” in which they sustained injuries. He examined one Jamshed (DW-1), a local resident in his defence.

12. The sessions court found the evidence for the prosecution worthy of reliance, in so far as the allegations of criminal trespass with preparation to cause hurt and of physical assault (leading to injuries being suffered by PW-1, PW-2, PW-4 and PW-8,) are concerned. It, however, found that the charge of criminal intimidation laid against the appellant had not been proved. Thus, while acquitting the appellant of the charge under Section 506 / 34 IPC, he was held guilty and convicted for the other offences.

13. The learned counsel for the appellant and learned additional public prosecutor have been heard at length. The record has been perused.

14. PW-1, PW-2, PW-4 and PW-8 deposed at the trial affirming the sequence of events substantially along the lines of the prosecution case. The prosecution sought to corroborate their respective version as to the injuries suffered by each of them, as indeed the nature thereof, on the basis of MLCs, which were proved through PW-9, PW-11 and PW-14. It is submitted by the appellant, however, that the examining medical officers not having been produced as witnesses in the court, the ocular account of the above mentioned witnesses respecting the result of medical examination cannot be taken as good proof. Reliance is placed on *Mohd. Yusuf and Anr. Vs. D & Anr.* AIR 1968 BOM 112 and *Gangamma and Ors. Vs. Shivalingaiah*, (2005) 9 SCC 359.

15. Noticeably, the cases cited related to civil disputes, the documents in question being in the nature of acknowledgement in writing or a deed of transfer of title. In contrast, nearer home, the view taken in *Gaya Prasad Pal Vs. State*, 235 (2016) DLT 264; *Anil Kumar & Ors. Vs. State*, 233 (2016) DLT 645; *Crl. Appeal No.649/2014, Ram Sagar Vs. State*, decided on 25.08.2015; and *Crl. A. Nos.802 & 571/2011, Wasim Hassan and Ors. Vs. State*, decided on 06.04.2016 upholds the approach adopted by the trial court in the matter at hand. With the author of MLCs not being available, the prosecution legitimately relied on other medical officers to prove the relevant records.

16. PW-9 proved the MLCs of Yogender (Ex. PW9/B), Devender (Ex. PW9/C), Randhir Singh (PW-9/B), Jagbiro (PW9/A) and of the appellant himself (Ex. PW9/E). He affirmed that he was acquainted with the handwriting and signatures of the author of these documents, having come across the same in the ordinary course of official duties, the doctor having left the services of the hospital and his present whereabouts being not known. Though it is correct that he would also state that he had no personal knowledge about this case, the proof of the contemporaneous record prepared by the examining doctor who was on duty at the relevant point of time in the government hospital, as supported by their respective oral testimony about the injuries suffered, leaves the court with no hesitation in accepting the above evidence and acting upon it.

17. In the above context, one may also refer to the evidence of PW-11 and PW-14 whereby the nature of injuries of PW-8, PW-2 and PW-4 respectively was proved to be grievous. It needs to be noted here that evidence clearly shows that PW-2 had suffered a fractured right arm leading to a steel rod to be implanted; PW-4 suffering a fracture of the left humerus bone; while PW-8 had sustained fracture in her sixth rib. The oral testimony of these witnesses affirming such injuries having been suffered by them was not contested by any effective cross-examination. Thus, there is no doubt that the prosecution was successful in proving that PW-2, PW-4 and PW-8 had suffered grievous injuries in the early morning hours of 23.04.2000. The injuries of PW-1, however, were simple in nature, their description as per MLC (Ex. PW9/D) being three bruises and a lacerated wound on right parietal area.

18. On careful perusal of the evidence of PW-1, PW-2, PW-4 and PW-8, it is clear that all of them in unison, point finger at the appellant as one of the three assailants who had entered the compound of their house sometime around 3.30 a.m. on 23.04.2000 and who, with his said associates, had assaulted on them with wooden sticks, three wooden sticks (Ex. PW4/A to C) were found lying scattered in the compound of the house which were seized during the investigation by the IO, in the presence of PW-3, vide memo (Ex. PW3/C). The said seizure memo also indicates that the IO had found a knife (Ex. P5), which was button actuated with a blade of 14 cm length, in the compound during the said investigation and it was also seized vide the same seizure memo, after its sketch (ex. PW3/A) had been prepared. There is no clarity in the evidence, however, as to which of the three intruders had wielded the said knife. The recovery of the knife from the scene of incident only shows that the intruders had possibly come armed with the knife. Since the knife is not shown to have been the use to inflict any injuries, it having been found at the scene of incident, such evidence cannot lead to anything more being attributed, particularly to the appellant, who was caught at the scene of incident. But, the recovery of the empty cartridge (Ex.P7) outside the house in the street lends corroboration to the statements of the witnesses of the incident, particularly PW-3, about the two associates of the appellant, who fled away and who could not be traced, having fired in the air. This leads, *inter alia*, to the conclusion that the said associates, who fled away, were carrying a firearm with them.

19. It does appear that the trial court, in the impugned judgment, extensively referred to document (Ex. PW5/A) attributed to the appellant as his disclosure statement, drawing assurance from the fact that the said disclosure statement had led to recovery of a liquor bottle. Some of the observations of the trial court in the impugned judgment in this context, without doubt, were unwarranted. It appears the learned trial judge forgot the basic rule against self incrimination and the law contained in the provisions of Sections 24 to 27 of the Evidence Act. The contents of document (Ex. PW5/A) represent a statement made by the appellant, in custody, to the police which, by itself was inadmissible unless and except to the extent it could be shown that it had led to discovery of a fact, such fact essentially being incriminating in nature. The recovery of a liquor bottle, with which there is no purported connection of the appellant, even if proved, would hardly fit in within the meaning of a relevant fact discovered in wake of disclosure.

20. The erroneous approach of the trial court to above effect, however, cannot lead to the conclusion that the case of the prosecution should be disbelieved. The evidence of crucial witnesses (PW-1, PW-2, PW-4 and PW-8), each of whom suffered injuries, is consistent as to the complicity of the appellant cannot be wished away. In *Rohit Vs. Govt. of NCT of Delhi*, Crl. A. No.453/2016, decided on 24.08.2016, a division bench of this court, observed as under :-

“26. ...It has to be borne in mind that the presence of Nisha (PW-2) at the scene of incident, midway the attack, is duly corroborated by the injuries suffered by herself at the hands of the appellant in the same transaction. The

testimony of an injured witness in these circumstances carries great value and cannot be wished away. [see Jodhan Vs. State of Madhya Pradesh, (2015) 11 SCC 52; Abdul Sayeed vs. State of M.P. : (2010) 10 SCC 259; Ramlagan Singh Vs. State of Bihar: (1973) 3 SCC 881; Malkhan Singh Vs. State of UP. (1975) 3 SCC 311; Vishnu vs. State of Rajasthan, (2009) 10 SCC 477; Balraje vs. State of Maharashtra, (2010) 6 SCC 673 and Jarnail Singh vs. State of Punjab: (2009) 9 SCC 719]”

21. The evidence of injured witnesses is duly corroborated by that of PW-3, daughter of the house, who was sleeping inside. She may herself not have seen the assault on members of his family in the course of happening but then she had come out on hearing cries and came face to face with the two accomplices of the appellant who had run away after extending threats. She also saw the appellant having been over powered and tied down before being handed over to the police.

22. Argument is raised with reference to *Ram Praksh Arora Vs. The State of Punjab*, AIR 1973 SC 498; *Ram Lakhan Singh and Ors. Vs. The State of Uttar Pradesh*, AIR 1977 SC 1936; *Bhagwan Singh Vs. The State of Rajasthan*, AIR 1976 SC 985; *Bir Singh and Ors. Vs. The State of Uttar Pradesh*, AIR 1978 SC 59 and *Lakshman Prasad Vs. State of Bihar*, AIR 1981 SC 1388 to the effect that the above mentioned witnesses are related to each other and, therefore, interested and consequently ought not be believed. While it is true that in the case of related witnesses, their evidence requires a little closer scrutiny. But then, merely because the witnesses are related to the victim, it does not mean that they are interested in false implication. It will have to be borne in mind that all the four crucial

witnesses, they being PW-1, PW-2, PW-4 and PW-8, were also injured in the same incident, the injuries of the last three being not superficial but grievous in nature. This by itself, lends assurance to their word. In absence of any theory as to why they would falsely implicate a person other than the one responsible for the injuries suffered by them.

23. In *Abid and Ors., Vs. State (NCT of Delhi)*, Crl. A. No. 129/2015 decided on 07.09.2015, a division bench of this court, observed as under :-

“63. It is common that the witnesses tend to exaggerate. Improvements or variations in the ocular version only puts the Court to caution requiring a closer scrutiny of the eye-witness account. A witness who is related to the victim does not per se become suspect. Allowance has to be given for exaggerations or embellishments and the evidence of even an "interested" witness may be accepted and acted upon, provided the contradictions, inconsistencies, exaggerations or embellishments do not convert the prosecution case altogether into a new story or render it impossible for grain to be separated from chaff or be such as to make the truth and falsehood inextricably mixed up [Subal Ghorai Vs. State of West Bengal, JT 2013 (4) SC 527 and Sheesh Ram Vs. State of Rajasthan, (2014) 3 SCC 689].”

24. The appellant argued through counsel that the statements of the witnesses of the scene suffered from inconsistencies and contradictions. It is argued that there was no occasion for the appellant or anyone on his behalf to threaten the complainant party if the plot of land was already in his possession. It is stated that the motive attributed is doubtful, the theory being absurd. It is pointed out that while PW-1 and PW-2 speak about the arrival of the police

around 4.00 a.m. and their continued presence till 2.30 p.m. on 23.04.2000, PW-5 Constable Parvesh Kumar spoke about information resulting in the police setting out from the police post at about 4.15 am, he (PW-5) and the IO (PW-13) stating that the police had not remained at the spot since they had to proceed to the hospital with the injured persons.

25. Having subjected the evidence to acute scrutiny, this court finds no substance in the above mentioned arguments. It is a case of direct evidence where the appellant is shown to have been overpowered, and apprehended, and handed over to the police at the spot. The appellant does not question the theory that there was an on-going dispute over the property. Even if he were in possession of the plot of land, which was the subject matter of such dispute, that by itself, would not mean that the civil dispute was over. In the face of direct evidence, it is for him to explain the acts of commission shown committed by him. The contradictions referred to above are inconsequential and do not go to the root. It is well settled that small contradictions or infirmities by themselves cannot disturb the larger picture if the prosecution case otherwise inspires confidence.

26. In *Anil Kumar & Ors. Vs. State*, 233 (2016) DLT 645, it was observed as under :-

49. It is well settled that it is not every contradiction that gives rise to doubts as to the truthfulness of the prosecution evidence. For a doubt stemming from a contradiction on account of improvement or omission in the testimony of a witness to be of any import or effect, it must not only be one that can be reasonably drawn but also one that goes to the root of the matter. In a previous

judgment in Criminal Appeal No. 453/2016, titled Rohit @ Mona v. Govt. of NCT of Delhi, decided by us on 24th August, 2016, we summarized the law thus:--

34. Small embellishments or variations in the statements of material witnesses, not of any significant import, cannot be allowed to be used to question the credibility of their version which is otherwise consistent and corroborative of each other and carrying a ring of truth. Some exaggerations or embroidery in the description of the sequence of events witnessed by them, particularly when they are called upon to depose in the court at some distance of time from the date of the incident, are quite natural. After all, they depend on human memory which is generally susceptible to become fainter with each passing day and definitely cannot be photographic, nor synchronizable with a universal watch giving the ability to each individual to peg a particular event to a particular stroke of the hour with exactitude."

27. Indeed, there is a difference in the version of PW-1 and that of the others with regard to the injuries suffered by the appellant. While PW-3 stated that the appellant had sustained injuries as he was trying to free himself from the ropes with which he had been tied down, PW-4 stated that the appellant was assaulted in self-defence. PW-1, however, was very candid when he acknowledged even in the FIR that after being over powered, the appellant was roughed up by him and the family, he having used a wooden stick for such purposes, such assault being explained as one occurring in the heat of the moment.

28. Interestingly, the appellant suggested to PW-1 during his cross-examination that he had been waylaid outside the house at about 6.00 a.m. by him (PW-1) and other members of the family at

the time he (the appellant) was on his way to fetch milk and beaten up, rendering him unconscious. This was denied by the witness. When PW-2 entered the witness box, it was simply put to him in the cross-examination that the complainant side, consisting of 7-8 members had given beating to the appellant. No particulars as to the date, time or place of such assault were put to the witness who replied in similar tone denying the suggestion as incorrect. In contrast, when PW-3, the daughter of the family, was deposing, it was suggested to her by the appellant that she alongwith other members of the family had entered the house of the appellant with the intention of taking forcible possession and, in that course, had given beatings to him and to the wife and children of the appellant attracting the local residents who had gathered in the wake, the injuries having been suffered by the complainant side at the hands of the neighbours who were trying to intervene. During the testimony of PW-4, the theory of the appellant being waylaid while he was going to fetch milk at about 6.00 a.m. on 23.04.2000 was revived alongwith that of intervention by the neighbours, they having assaulted the complainant side. PW-4 obviously would deny that to be a fact. A general suggestion to PW-8 about he having been given beatings by the family of the complainant was similarly refuted.

29. The above suggestions during the cross-examination do not fit in with the defence plea in the statement under Section 313 Cr. PC noted earlier. If the prosecution witnesses had suffered injuries at the hands of the neighbours, there was no occasion for the appellant to claim that they had fought amongst themselves. This,

at least, would not explain his own injuries. His witness (DW-1) admitted during cross-examination that he would not know what had happened prior to 6.00 am or 6.30 a.m. when he had come across the appellant in the custody and control of the complainant party.

30. In the face of consistent evidence of PW-1, PW-2, PW-3, PW-4 and PW-8, this court has no hesitation in upholding the conclusion reached by the trial court to the effect that the appellant, with two of his associates, had entered into the house of the PW-4 in the wee hours of 23.04.2000, armed with wooden sticks and a fire arm, thus having made preparation to cause assault on the members of the family and, after having entered the said house, suddenly attacked PW-1, PW-2, PW-4 and PW-8 with wooden sticks while each of them was asleep on their respective cots. As a result of the said attack, all the said witnesses suffered injuries, the injuries of PW-2, PW-4 and PW-8 being grievous in nature.

31. The appellant had been put on trial, *inter alia*, on the charge of offence under Section 308 IPC. After taking note of the evidence particularly the opinion about the nature of injuries suffered, the trial court proceeded to hold the appellant guilty, amongst others, for offence under Section 308 / 34 IPC. There is, however, no discussion in the impugned judgment as to how the trial court had found that the assault by the appellant and his associates on the persons of the above mentioned witnesses to be in the nature of an attempt to commit culpable homicide. Undoubtedly, the attack with wooden sticks was intentional and indiscriminate. The wooden sticks were used to inflict a number of injuries. But, there is

nothing on record to show that any of the said injuries, or blows, were directed at such vital parts of the body of the victims as were likely to cause death. Going by the overall facts and circumstances, and the nature of the injuries suffered, particularly their respective *situs*, intention to cause death, or likelihood of death being result of the injuries intended to be caused, cannot be inferred against the appellant. In these circumstances, the charge under Section 308 IPC cannot be held to have been brought home. The conviction on this account, therefore, will have to be set aside.

32. The evidence clearly shows that the appellant and his associates had entered the house of PW-4 after having made preparation for causing hurt. The charge under Section 452 IPC, thus, stands duly established and the finding returned by the trial court is upheld. PW-2, PW-4 and PW-8 suffered grievous injuries. This court is satisfied that the prosecution evidence proves that such injuries were inflicted voluntarily by the appellant with the assistance of two accomplices. Since the weapons used in such assault were blunt wooden sticks, the prosecution is held to have been successful in proving the guilt of the appellant for the offence punishable under Section 325 read with Section 34 IPC. In the case of PW-1, the injuries being simple in nature, the conviction of the appellant under Section 323 / 34 also is upheld.

33. In above facts and circumstances, the appeal against the judgment dated 14.11.2006 is partly allowed so as to convert the conviction from one for offences under Sections 452 / 323/ 308/ 34 IPC into one for offences under Sections 452 / 34 IPC, 325/34 IPC and 323/34 IPC.

34. Though the conviction for offence under Section 308 / 34 IPC has been set aside, and the appellant has been held guilty and convicted, instead for offence under Section 325 / 34 IPC, having regard to the nature of the attack, and the extent of injuries caused, this court is not inclined to disturb the order on sentence, the punishment awarded by the trial court, in the opinion of this court, being already lenient. Thus, while adopting the punishment meted out by the trial court for offence under Section 308 / 34 IPC as the punishment for offence under Section 325 / 34 IPC, the appeal is dismissed.

35. Pending hearing on the appeal, the sentence had been suspended and the appellant was enlarged on bail by order dated 06.07.2007. The appellant is now directed to surrender to custody forthwith and undergo the sentence. A copy of this judgment shall be sent to the trial court, and also the Station House Officer of police station Nand Nagri, for taking appropriate steps to ensure due compliance by the appellant with the above direction.

36. Needless to add, in case the order is not complied with, all necessary follow up action shall be taken by the trial court, and the police, for taking the appellant in custody to make him undergo the sentence.

37. A copy of this judgment shall also be sent to the Superintendent Jail.

(R.K. GAUBA)
JUDGE

MAY 31, 2017

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