

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

**RESERVED ON : 21ST APRIL, 2017
DECIDED ON : 16TH MAY, 2017**

+ CRL.A. 381/2014

BIMLA

..... Appellant

**Through : Mr.Aman Gaur proxy counsel for
Mr.Rajesh Anand, Advocate.**

VERSUS

THE STATE & ORS

..... Respondents

**Through : Mr.G.M.Farooqui, APP.
Mr.Harsh Jaidka, Advocate, for R-2
to 4 and R6.**

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Aggrieved by a judgment dated 19.12.2013 of learned Addl. Sessions Judge in Sessions Case No.01/12 arising out of FIR No.1030/06 PS Najafgarh, the instant appeal has been preferred by the appellant - Bimla to challenge respondents' acquittal under Sections 308/452/34 IPC. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. At the outset, it may be recorded that the respondent No.5, Jagbir Singh has since expired and proceedings against him have been dropped as 'abated'. It is also pertinent to note that cross-case vide FIR

No.1031/2006 registered under Sections 308/323/34 IPC at PS Najafgarh was registered against Surinder Singh, Randhir Singh, Sheela @ Sushila, Bimla Devi (the present appellant) and Anju @ Piku. By a judgment dated 19.12.2013 in Sessions Case No.33/12 the accused therein have since been acquitted. The complainant Narinder has challenged the said acquittal in Crl.A.457/2014 listed before this Bench.

3. It is also to be noted that State is not aggrieved by the acquittals of the respondents in the present appeal and in Crl.A. 457/2014. It is only the victims who have preferred appeals to challenge the acquittals. It is relevant to note that both the parties are related to each other and live in the same vicinity. Several disputes were pending between the parties over ancestral property prior to the incident. The occurrence had taken place on 28.10.2006 at around 06.45 p.m. when Abhishek – Randhir Singh’s son was bursting crackers and it was objected to by the respondents Ranvir Singh and Sontosh Devi. A quarrel took place among both the sides in which Bimla Devi and Anju (the victims in this case) and Narinder and Yogender, the victims in Crl.A. 457/2014, suffered injuries.

4. DD No.44A (Mark PW-10/PA) regarding the incident was received at around 08.05 p.m. at PS Najafgarh. The investigation was assigned to PW-10 (ASI Dilbagh Singh) who along with Const. Narender went to the spot at Raghavpur village. On reaching there, he came to know that the injured had already been taken to hospital. He did not find any eye witness at the spot. In the meantime, he received DD No.50A (Mark PW-10/PB) and came to know that Anju and Bimla (victims in the instant case) were admitted at Aryan Hospital, Gurgaon, in injured condition. This DD was recorded at 10.30 p.m. at PS Najafgarh. PW-10 (Dilbagh Singh) went

to Aryan Hospital and returned to the spot after recording Bimla's statement (Ex.PW-2/A). DD No.53A (Mark PW-10/PC) was received from RTRM Hospital regarding admission of Yogender and Narender in injured condition there. He made endorsement (Ex.PW-10/B) over Ex.PW-2/A and lodged First Information Report. PW-10 (Dilbagh Singh) along with Const.Ajay Kumar then went to RTRM Hospital and came to know that Narender Singh was fit to make statement; Yogender had already left the hospital after getting medical treatment. He recorded Narender Singh's statement (Ex.PW-10/PD) and lodged First Information Report. Apparently, the Investigating Officer without verifying the detailed facts opted to lodge case / cross-case against the assailants. No attempt was made to ascertain as to who was the aggressor and perpetrator of the crime. It was also not ascertained if any of the individuals had sustained injuries in self-defence. It is, thus, unclear as to who was the author of the crime. Conveniently, the investigating agency filed charge-sheet in both the FIRs against the individuals named by the complainants in their respective statements. The Trial Court after perusal of the evidence recorded in both the FIRs and on appreciation of the evidence acquitted all the accused persons in both the FIRs.

5. In the instant case, the material witnesses examined are PW-2 (Bimla), PW-4 (Sushila), PW-5 (Anju Kataria) and PW-7 (Surender). They all are related to each other closely. No independent public witness from the neighbourhood was associated or joined at any stage of investigation. It has come on record that the injuries sustained by Bimla and Anju were simple in nature. PW-3 (Dr.Anil Sharma) proved the MLCs Ex.PW-3/A (of PW-Anju) and Ex.PW-3/B (of PW-Bimla). In the cross-examination, he

informed that in the MLC (Ex.PW-3/B) prepared at around 09.40 p.m., it was not mentioned therein if the injured was conscious or unconscious. The victims did not explain as to what had prompted them to travel about 15 – 20 k.m. to get medical treatment for simple injuries suffered by them at Aryan Hospital, Gurgaon. Ex.PW-3/A and Ex.PW-3/B do not reflect if the injuries sustained by the victims were caused by ‘blunt’ or ‘sharp object’. These do not disclose if the victims were conscious or oriented at the time of medical examination. They also do not tell if any specific treatment was given for the injuries sustained by the victims. Nothing is clear if any of the victims was admitted at Aryan Hospital for any duration.

6. Admittedly, Narender and Yogender had also sustained injuries on their bodies in the occurrence. The victims in the instant case did not explain as to how and in what manner they had sustained injuries. PW-3 (Dr.Ravinder Kumar) in FIR No. 1031/2006 proved the MLC (Ex.PW-3/A) pertaining to Narender. PW-8 (Dr.Someswar Bordoloi) proved the MLC (Ex.PW-8/A) pertaining to injuries of Yogender at RTRM Hospital. Non-explanation of injuries on the person of Narender and Yogender also cause dent to the prosecution case. Apparently, the prosecution has suppressed the genesis and the origin of the occurrence and has not presented true version. The omission on the part of the prosecution / victim to explain the injuries on the person of the accused Narender and Yogender assumes much importance as the evidence in this case consists of only of interested witnesses. Since the injuries were sustained by Narender and Yogender in the course of same transaction, the prosecution was expected to explain it.

7. The Trial Court has noted various discrepancies, inconsistencies and infirmities in the statements of the prosecution

witnesses. In her complaint (Ex.PW-2/A) forming basis of the FIR in hand the injured Bimla did not assign / attribute specific and definite role to the respondents. It was not informed if any one of them was armed with any specific weapon. Her conduct is also unreasonable and unnatural. As per complaint (Ex.PW-2/A) after Santosh Devi allegedly opposed bursting of crackers by Abhishek, she, without any demur, went inside the kitchen. Jagbir Singh and his wife, Vidya were not present at the scene at that time. It is unclear as to why, without any apparent motive, Jagbir Singh and his wife Vidya would commit trespass and dragged Bimla from the kitchen outside in the courtyard to inflict injuries on her body. Material testimony is that of PW-7 (Surender) father of PW-5 (Anju Kataria) and brother-in-law of PW-2 (Bimla). He deposed that on 28.10.2006, while watching TV in his house he was informed by children that a quarrel had taken place outside the house; he did not rush to the spot. In the cross-examination, he informed that he came outside the house that night when the assailants had left the spot. His conduct is quite astonishing. It is unbelievable that after hearing commotion outside the house, he would not come out to intervene. It is again unclear as to why he had not accompanied the injured to hospital for their medical examination. PW-7 (Surender) did not assign any role whatsoever to any of the respondents in the incident. PW-5 (Anju Kataria) did not depose if her father Surender was present in the house that time. She also did not offer any reason as to why her father did not come outside the room to intervene. PW-7 (Surender) Sushila's husband did not testify if any of the respondents had trespassed inside the house during his presence.

8. The Trial Court has discussed all the relevant aspects to record respondents' acquittal. The findings are based upon fair appreciation of the evidence and deserve no intervention.

9. The appeal lacks in merits and is dismissed. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MAY 16, 2017 / *tr*

