

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

% Reserved on: 4th January, 2017
Decided on: 30th January, 2017

+ **CRL.A. 1205/2016**

PAWAN Appellant
Represented by: Mr. M.P. Sharma, Advocate.

versus

STATE Respondent
Represented by: Mr. Ravi Nayak, APP for the
State with ASI Prem Chand, PS
Ali Pur.

+ **CRL.A. 1206/2016**

DURGA Appellant
Represented by: Mr. M.P. Sharma, Advocate.

versus

STATE Respondent
Represented by: Mr. Ravi Nayak, APP for the
State with ASI Prem Chand, PS
Ali Pur.

+ **CRL.A. 1207/2016**

RAJINDER KUMAR @ AMAN Appellant
Represented by: Mr. M.P. Sharma, Advocate.

versus

STATE Respondent
Represented by: Mr. Ravi Nayak, APP for the
State with ASI Prem Chand, PS
Ali Pur.

+ **CRL.A. 1212/2016**

SUNNY

..... Appellant

Represented by: Mr. M.P. Sharma, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Ashok K. Garg, APP for
the State with ASI Prem Chand,
PS Ali Pur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Present appeals are being disposed off together as vide common impugned judgment dated September 27, 2016, Pawan, Durga, Rajinder Kumar @ Aman and Sunny were convicted for offences punishable Sections 308 and 323 read with Section 34 IPC. Vide order on sentence dated October 26, 2016 they were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- for offence punishable under Section 308/34 IPC and rigorous imprisonment for period of one year for offence punishable under Section 323/34 IPC.

2. Learned counsel for the appellants submits that neither the CT scan report of LJPN hospital has been exhibited on the basis of which injury was stated to be grievous in nature by PW-8 Dr. Avdesh Bhagat nor the doctor who conducted the aforesaid CT scan has been examined. In the absence of the opinion of the doctor, Section 308 IPC is not made out. Furthermore, no motive has been proved against the appellants by the prosecution. PW-1 Kulbeer Singh and PW-2 Balvinder have not supported the case of prosecution in Court and turned hostile. Kulbeer Singh, Balvinder and PW-3 Mohit Arora could not identify the appellants since it was dark due to

electricity failure. PW-5 Gulshan in his testimony had stated that there was a function going on and there were 20-30 persons present in the function, however, no one was made a witness. The dandas by which blows were given have not been recovered. Alternatively, it is prayed that the appellants be released on the period already undergone.

3. Per contra Learned APPs for the State submit that the case of the prosecution has been supported by PW-4 Rakesh Arora. Though Kulbeer Singh has not supported the prosecution case in its entirety, however he correctly mentions the place of incident and lends corroboration to the version of Rakesh Arora. Further with respect to the plea of alibi, no document has been placed on record to substantiate the same.

4. The sequence of events leading to the prosecution case are that on January 13, 2013, around 10:26 P.M., DD No. 94-B was received by PW-13 SI Jitender Joshi at PS Alipur stating that a quarrel has taken place at House Number 189, Punjabi Colony, Alipur. SI Jitender Joshi along with PW-6 Ct. Komal went to the place of incident from where he got to know that the injured had already been taken to SRHC Hospital. He along with Ct. Komal went to the hospital and found Kulbeer, Balvinder and Mohit admitted in the hospital. On January 14, 2013, statement of Kulbeer was recorded wherein he stated that on January 13, 2013, around 10:00 P.M., he was sitting outside the house of his friend Rakesh Arora at Flat no. 189, Sector B-4, Pocket 6, Punjabi Colony, Narela, Delhi along with his partner Balvinder, Mohit Arora s/o Rakesh Arora and Gulshan for celebrating Lohri. While they were celebrating the festival, Sunny, the appellant in CrI.A.1212/2016 who was the resident of the same locality came there and started dancing with them. Immediately thereafter, both the sons of Sudesh Kumar Pradhan namely

Aman and Pawan the appellants in Crl.As. 1205/2016 and 1207/2016 respectively and son of Chaman Lal namely Durga Mal @ Gauri the appellant in Crl.A. 1206/2016 came and also started dancing. When Balvinder asked them to leave, they all started grappling with him. When Kulbeer intervened to save him, they all caught hold of him and started beating him. In the meanwhile, Aman picked up a log of wood and hit Balvinder on his head. When Kulbeer tried to escape, all four of them obstructed his way, held him and again started beating. When Mohit, Rakesh Arora and Gulshan tried to save him, they quarreled with them also and fled away. Mohit took him to SRHC hospital. On the basis of this statement, FIR was registered under Sections 323/341/34 IPC at PS Alipur. On February 27, 2013, Rajinder Kumar @ Aman, Pawan, Durga Mal Sharma @ Gauri and Sunny were arrested. Charge sheet was filed wherein Section 308 IPC was also added. The appellants were acquitted of the offence punishable under Section 341/34 IPC but convicted for offences punishable under Sections 308 and 323 IPC as noted above.

5. Kulbeer deposed that on January 13, 2013, when Lohri celebrations were going on at the house of Rakesh Arora, it was dark as there was electricity failure and suddenly he got injuries on his head as a result of which he became unconscious. He stated that he did not know who attacked him as it was dark. During his cross examination, he voluntarily stated that he himself did not see Sunny coming there and dancing followed by Aman, Pawan and Durga but the same was disclosed to him by Rakesh Arora in the hospital. He denied the suggestion that his statement was correctly recorded by the police. He also denied the suggestion that the appellants had caused injuries to him.

6. Balvinder deposed that on January 13, 2013, he along with his partner Kulbeer had gone to the house of Rakesh Arora to celebrate Lohri. Mohit Arora and Gulshan were also attending the said occasion. Around 10:00 P.M., some persons came there and started beating them. He sustained injuries on the left side eye brow and on the right back of his head. He fell down on ground and sustained injuries on his body. He further stated that neither he knew nor did he see the faces of the persons who administered beatings to him. During his cross examination, he denied that he had stated that the appellants quarreled with them and gave beatings. He also denied that Aman picked up a wooden log to hit him, but he escaped and Kulbeer sustained injuries because of the said blow.

7. Mohit Arora stated that Durga Mal @ Gauri and Aman picked up the wood/danda and gave blows to him and Kulbeer. He further stated that on January 12, 2013, when all the appellants were drinking liquor on the pulia, his father Rakesh Arora objected to their drinking in a public place. The appellants abused and threatened his father. As a result, he made a call at 100 number. The father of Aman and Pawan namely Pradhan Suresh tendered apology and told them that his sons would not repeat the incident again and the matter was settled.

8. Rakesh Arora deposed in sync with the testimony of Mohit Arora. During his cross examination, he stated that 25-30 guests were attending the function. He also stated that there were three street lights and he had also made arrangement for lighting outside his house.

9. Gulshan corroborated the version of Mohit Arora and Rakesh Arora.

10. PW-8 Dr. Avdesh Bhagat, Medical Officer, SRHC Hospital, had examined Kulbeer and prepared his MLC Ex. PW- 8/A. On local

examination, clean lacerated wound of size 1 X 0.5 cm over right parietal area was found. He opined that the injury was grievous in nature. He further stated that on May 31, 2013, he perused the CT scan of head of Kulbeer which was prepared by LJPN Hospital and found fracture on right temporal bone. He stated that he had also examined Balvinder and prepared his MLC Ex. PW-8/B. On local examination, there was swelling over right parietal area, clean lacerated wound of size 2 X 0.2 cm over left malar eminence and abrasion over forehead. He opined the injury as simple in nature. He further stated that he examined Mohit and on local examination found swelling, tenderness over right arm as noted in MLC Ex. PW-8/C. He opined the nature of Mohit's injury as simple.

11. Thus though Kulbeer and Balvinder failed to identify the appellants as the assailants they were identified by Mohit Arora, Rakesh Arora and Gulshan. The plea of the appellants is that there was no light at the time of incident and thus no witness could have identified the assailants but prosecution witnesses have deposed about electricity being present. Moreover, since as per all the witnesses Lohri was being celebrated, thus there would have been sufficient light for victims to identify the assailants. Thus, on the basis of the evidence on record, I find no infirmity in the conviction of the appellants for offence punishable under Section 308/323/34 IPC. Appeals are accordingly dismissed.

12. Keeping in view the nature of injuries and the circumstances under which they were inflicted, the sentence of imprisonment awarded for three years is on a higher side. The sentence of the appellants is modified and reduced to rigorous imprisonment for a period of one year for offence punishable under Section 308 read with 34 IPC and to pay a fine of

₹10,000/- in default whereof to undergo simple imprisonment for 2 months. For offence punishable under Section 323 read with 34 IPC, sentence is reduced to rigorous imprisonment for six months. Both sentences to run concurrently. Similar view was taken by this Court in the decisions reported as MANU/DE/1209/2004 Ram Naresh v. State of Delhi, MANU/DE/4408/2013 Sunil @ Shelly etc. v. State, ILR (2014) 2 Del 1038 Deep Chand v. State and MANU/DE/0838/2015 Nuruddin and Ors. v. State.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 30, 2017
‘ga’