

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

**RESERVED ON : 16th JANUARY, 2018
DECIDED ON : 13th FEBRUARY, 2018**

+ CRL.A. 552/2008
RAMESH SHARMA & ORS. Appellants
Through: Mr. A.K. Mishra, Advocate.
versus
STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Tarang Srivastava, APP.

+ CRL.A. 725/2008
RUDAL YADAV Appellant
Through: Mr. A.K. Mishra, Advocate.
versus
THE STATE (NCT OF DELHI) Respondent
Through: Mr. Tarang Srivastava, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 17.04.2008 of learned Addl. Sessions Judge in Sessions Case No.325/2006 arising out of FIR No.164/2004 PS Rohini by which the appellants – Ramesh Sharma (A-1), Umesh Sharma (A-2) and Rudal Yadav (A-3) were held guilty for committing offences punishable under Sections 452/342/394/34 IPC read with Section 397 IPC and under Section 411 IPC, the instant appeals have been preferred by them. By an order dated 03.05.2008,

the appellants were awarded various prison terms with fine. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 19.02.2004 at around 06.30 p.m. at B-7/220-221, Sector-IV, Rohini, Delhi, the appellants in furtherance of common intention committed robbery upon Shobha Bansal and in the process caused grievous hurt to her, Lochan and Gaurav. The assailants were armed with deadly weapons and after committing house tress-pass, they robbed the complainant of ₹16,000/-. The incident came to be recorded at the Police Station vide Daily Diary (DD) No.28 (Ex.PW-15/A) on 19.02.2004 at 07.18 p.m. at PP Vijay Vihar, Police Station Rohini. The injured were taken to Shri Balaji Hospital (Pvt.) Ltd., Pitampura for medical examination. After recording statement of the victim / complainant - Shobha Bansal (Ex.PW-4/A), the Investigating Officer lodged First Information Report. The appellants were arrested at the spot and certain recoveries were effected from their possession. Necessary proceedings were conducted at the spot. Statements of the witnesses conversant with the facts were recorded. The exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellants in the Court for commission of the aforesaid offences. In order to establish its case, the prosecution examined fifteen witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. No defence evidence was produced. The trial resulted in conviction as mentioned previously.

Being aggrieved and dissatisfied, the instant appeals have been preferred.

3. I have heard the learned counsel for the parties and have examined the file. At the outset, it may be mentioned that the assailants were acquainted with the victims before the crime. Undisputedly, the assailants are carpenters by profession and had worked with the victim - Shobha's husband (Tarsem Bansal) in his construction business at various sites on different occasions. It is also admitted that the appellants had also carried out certain work at the victim's residence for two or three days prior to the incident. In 313 Cr.P.C. statements, the appellants admitted that on the day of occurrence they had visited the spot. They did not dispute that the victim and her children (Lochan and Gaurav) had not sustained injuries. Their plea is that they had gone to demand their dues from the victim's husband who was not available at the house that time. The victim and her children picked up a quarrel with them on demand of their legal dues. In the process, due to fall, the victim – Shobha and her children suffered injuries.

4. The victims were taken to Shri Balaji Hospital (Pvt.) Ltd. soon after the crime by the Tarsem Bansal, complainant's husband. They were all medically examined vide MLCs [(Ex.PW-1/A of Lochan Bansal), (Ex.PW-1/B of Gaurav Bansal) and (Ex.PW-1/C of Shobha Rani)]. The nature of injuries suffered by all of them was opined 'grievous'. The arrival time of the patients at the hospital is around 07.35 p.m. In the alleged history, there is specific mention that the victims were hit and assaulted at their residence at around 07.30

p.m. by the assailants who had worked as carpenters in their house. Apparently, the involvement of the appellants in the crime was disclosed to the examining doctor without any delay. Perusal of the MLCs reveals that the victims had sustained injuries on various body organs. Gaurav Bansal and Lochan Bansal were aged around 13 and 15 years, respectively. PW-1 (Dr.P.K.Jain) proved the MLCs (Ex.PW-1/A to Ex.PW-1/C). In the cross-examination, he denied if the injuries suffered by the victims could take place due to 'fall'. Apparently, the injuries found on the bodies of the three victims were caused by the assailants and it was not the result of 'fall'. It is highly improbable that all the victims would sustain injuries suddenly at the same time and that too due to 'fall'. The defence claimed by the appellants deserves outright rejection.

5. In the complaint (Ex.PW-4/A) lodged soon after the occurrence, the complainant implicated all the appellants for causing injuries to all of them after gaining entry inside the house while they all were armed with various weapons. She gave graphic account of the incident. In her Court statement as PW-4, she proved the version given to the police at first instance without any variation whatsoever. She recognised the assailants to be the perpetrators of the crime; she attributed specific and definite role to each of the assailants in committing the crime. She deposed that on 19.02.2004 when she and her children Gaurav and Lochan were present in the house, at around 06.30 p.m., all the three appellants rang the door bell. Her son Gaurav opened the door. On that, the appellants came inside the house and bolted it. A-3 gave an iron blow on Gaurav's head and inserted it in

his stomach. A-1 hit her daughter's head with an iron rod and A-2 hit her with a 'Bhisoli' on her head. Thereafter, the appellants demanded key of the almirah or else they would kill her. Due to fear, she handed over the key of the almirah to A-1; he opened it and removed two packets of currency notes of ₹50 denomination and two packets of ₹10 denomination and one black colour purse containing ₹4,000/- and certain visiting cards. After removing the cash, the appellants took them to another bedroom and gave beatings mercilessly. Thereafter, the appellants went towards the roof after confining them inside the bedroom. On their raising alarm, many public persons gathered outside the house. The appellants closed the door of the staircase from inside while fleeing. Certain individuals entered their room from the balcony and opened it; they were brought out. In the meantime, her husband Tarsem Bansal arrived at the spot and took them to Balaji Hospital; from there, they were referred to Apollo Hospital at 02.00 a.m. Gaurav was referred to Ganga Ram Hospital. Her statement (Ex.PW-4/A) was recorded by the police. The witness identified various articles and the weapons recovered at the spot. In the cross-examination, she informed about the arrest of the appellants at the spot. She denied if the injuries suffered by her were due to fall. She further denied that the accused persons were falsely implicated due to non-payment of their legal dues.

6. This Court finds no sound reasons to disbelieve the testimony of this witness who suffered grievous injuries on her body. Nothing was suggested to her as to how much amount was due to be paid to the appellants. The appellants had no occasion to visit the

complainant's house in the absence of her husband. It was not revealed as to for how much period the dues were payable by the complainant's husband. The accused persons did not furnish any explanation as to what had prompted them to close the door from inside to demand their dues. It has come on record that entry inside the house by the public persons was gained by jumping from the balcony. Apparent motive of the assailants was to commit robbery as they had got an opportunity to work at the victims' house for two or three days and perhaps were aware of the topography and other circumstances inside the house. Not only the robbery was committed but grievous injuries were inflicted to the complainant and her minor children.

7. PW-2 (Gaurav Bansal) and PW-3 (Lochan Bansal) - other victims have fully supported the prosecution and have corroborated the testimony of PW-4 (Shobha Bansal) in its entirety. They have also implicated the accused persons and have assigned a specific role to each of them in inflicting injuries and committing robbery inside their house. Their cross-examination did not yield any worthwhile discrepancies or infirmities to disbelieve their version. The children were not expected to make a false statement against the appellants who had already worked in their house and no untoward incident had happened that time. For the alleged non-payment of dues, the children were not believed to suffer grievous injuries on their bodies.

8. PW-5 (Tarsem Bansal) - victim's husband and PW-11 (Sunil Aggarwal) - an independent public witness, strengthen the case of the prosecution and lend assurance to the victims' complaint.

Various exhibits were examined at Forensic Science Laboratory and blood of human origin was found on various articles. Apprehension of the appellants at the spot by the public persons is another significant feature establishing their guilt. The appellants after the commission of the crime had attempted to flee the spot through the staircase. However, before they could succeed, they were apprehended by the police with the aid and assistance of the public persons who had gathered outside the house after hearing the sound of alarm raised by the victims. Recovery of the robbed articles and the weapons of the crime from the possession of the appellants are other incriminating circumstances against the appellants.

9. In 313 Cr.P.C. statements, the appellants did not furnish plausible explanation to the incriminating circumstances proved against them. They did not produce any evidence to show as to for what particular period they had worked with the complainant's husband and were not paid their wages. Nothing is on record to show if at any time prior to the occurrence, the appellants had demanded any such wages from the victim's husband at his place of work. They did not examine any of their co-workers to support their case.

10. Learned Trial Court has discussed all the relevant aspects. The impugned judgment is based upon fair appreciation of the evidence. Appellants' involvement in the crime has been established beyond reasonable doubt and no different view whatsoever can be taken. Evidence adduced by the prosecution is clinching and the appellants are liable for commission of the offences for which they have been rightly convicted by the Trial Court.

11. The crime committed by the accused is highly serious and grave. The innocent inmates of the house were inflicted grievous injuries on their bodies for no fault of theirs. The appellants had gained confidence of the victims while working at their house as carpenters and attempted to commit robbery using deadly weapons when the victim's husband was away from the house. The Court can well understand the trauma suffered by the complainant and minor children when they had to be confronted with three assailants armed with deadly weapons inside the house. The appellants deserve no leniency.

12. The appeals are unmerited and dismissed.

13. The appellants shall surrender before the Trial Court on 22nd February, 2018 to serve out the remaining period of sentence.

14. Trial Court records be sent back forthwith with the copy of the order.

15. Intimation be sent to the Superintendent Jail.

भारतमेव जयते

(S.P.GARG)
JUDGE

FEBRUARY 13, 2018 / tr