

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

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Reserved on: 3rd May, 2018

Decided on: 5th September, 2018

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CRL.A. 718/2017

SANTOSH KUMAR

..... Appellant

Represented by: Mr.Azhar Qayam, Advocate

versus

STATE

..... Respondent

Represented by: Ms.Meenakshi Chauhan, APP
for the State with SI Dinesh, PS
Aman Vihar

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Santosh Kumar challenges the impugned judgment dated 14th March, 2017 convicting him for the offence punishable under Section 325 IPC in FIR No. 862/2014 registered at PS Aman Vihar and the order on sentence dated 20th March, 2017 directing him to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹15,000/- and in default whereof to undergo rigorous imprisonment for a period of two months.

2. Learned counsel for the appellant contends that since the appellant has undergone approximately 1 year and 9 months, thus, he be released on the period already undergone.

3. Learned APP for the State on the other hand contends that the impugned judgment and the order on sentence suffers from no illegality. Santosh Kumar has been rightly convicted on the basis of testimony of

Pooja duly corroborated by medical evidence.

4. Process of law was set into motion on 11th August, 2014 at 12:15 P.M. when information was received stating that a lady has been beaten by her husband and was lying in pool of blood at A-255, Agar Nagar, Som Bazaar, Kumar Sweets, Near Reliance Tower. Aforesaid information was recorded vide DD. No. 27PP (Ex.PW-5/A) and was entrusted to HC Nem Singh who along with Constable Niranjan went to the spot wherein they got to know that the injured was taken to Sanjay Gandhi Hospital by PCR van and the house was found to be locked. Thereafter, they went to Sanjay Gandhi Hospital and collected the MLC of the injured Pooja. Pooja was referred to Safdarjung Hospital. Consequently they went to Safdarjung Hospital where Pooja was found to be admitted but she was not fit for statement. HC Nem Singh prepared the rukka (Ex.PW-5/B) on the basis of which FIR No. 862/2014 (Ex.PW-3/B) was lodged at PS Aman Vihar for the offence punishable under Section 308 IPC.

5. Further investigation of the case was handed over to ASI Suresh Dutt. On 13th August, 2014 he visited Safdarjung Hospital from where he got to know that the injured has been discharged. Thereafter, he went to the spot but injured was not found there. Thus, efforts were made to trace the injured but in vain.

6. On 7th September, 2014, ASI Suresh Dutt again visited the place of incident and met injured Pooja. On enquiry, Pooja pointed out towards her husband Santosh as the person who had inflicted injury on her. Santosh was arrested vide arrest memo Ex.PW-7/A, his personal search was conducted vide Ex.PW-7/B and his disclosure statement was recorded vide Ex.PW-7/C. One hammer (Ex.P1) was recovered at the instance of Santosh which was

taken into possession vide Ex.PW-7/D. Site plan Ex.PW-9/A was prepared at the instance of Pooja. After completion of investigation charge sheet was filed. Vide order dated 24th January, 2015 charge was framed for the offence punishable under Section 308 IPC.

7. Pooja was examined as PW-2 in court wherein she deposed that on 10th August, 2014 she was residing with the husband Santosh at house No. 255, Agar Nagar, Prem Nagar, Delhi. At that time she was pregnant by seven months and in the night when she was sleeping Santosh hit her with a hammer on her head. She also showed her left side of head, face and ear and pointed towards her broken teeth and that the son born to her after the incident is also having eye problem. She further stated that her daughter aged 5 years was threatened by the appellant and ran away after bolting the door from outside. After being hit with the hammer, she became unconscious and regained consciousness in Safdarjung hospital. During her cross examination she stated that it was correct that a quarrel had taken place between her and Santosh during the day regarding money. She denied the suggestion that at about 11:00 P.M. Santosh came after drinking liquor and when she objected, he hit her with hammer or that she was not sleeping at the time when Santosh hit her with hammer. She also denied the suggestion that she had sustained injuries after falling from the stairs.

8. Dr. Mahipal Singh (PW6) CMO, SGM Hospital, Mangolpuri, Delhi stated that on 11th August, 2014 he had examined Pooja, prepared the MLC Ex.PW-6/A and found the following injuries:

- (i) *Nasal bleed present.*
- (ii) *Active left ear bleed present.*
- (iii) *Swelling over left eye (black eye)*

(iv) *An abrasion over left ear*

9. Dr.Abhinav Bansal (PW-10), SR, Neuro Surgery, Safdurjang Hospital deposed that as per the report Ex.PW-10/A-2, there was depressed fracture of left temporal bone with hemorrhagic contusion in left temporal lobe and fracture of sphenoid and lateral wall of left orbit. Nature of injury was opined to be dangerous to life. He exhibited his opinion as Ex.PW-10/B.

10. Appellant in his statement recorded under Section 313 Cr.P.C. stated that he was falsely implicated in the present case. He was not present at his house. He had gone to his native village in Darbhanga, Bihar and he came back from Darbhanga, Bihar on receipt of phone call from Delhi, however, he led no evidence to prove his plea of alibi.

11. From the evidence on record, it is proved beyond reasonable doubt that the appellant Santosh hit his wife Pooja with a hammer. The same has been duly proved by the testimony of Pooja duly corroborated by her MLC Ex.PW-6/A and the medical opinion Ex.PW-10/B.

12. Considering the evidence on record, the nature of injury caused and the weapon of offence used, this Court finds no reason to set aside the impugned judgment of conviction or modify the order on sentence.

13. Appeal is dismissed.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

September 05, 2018

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