

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

CRL. A. 1093/2019

Reserved on : 19.11.2019

Date of Decision : 02.12.2019

IN THE MATTER OF:

UMESH KUMAR

... Appellant

Through: Mr. Archit Upadhayay (DHCLSC)

Versus

STATE (NCT OF DELHI)

... Respondent

Through: Ms. Manjeet Arya, APP for State
with ASI Praveen Kumar, P.S.
Anand Parbat

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present appeal has been filed assailing the judgment of conviction dated 02.08.2019 and order on sentence dated 02.08.2019 passed by the Addl. Sessions Judge in FIR No. 430/2016 registered under Sections 308/354B/354/323/506 (Part-I)/509 IPC PS Anand Parbat.
2. The appellant was convicted and sentenced to undergo SI for 6 months for the offence punishable under Section 323 IPC and SI for 1 year for the offence punishable under Section 354 IPC. It was directed that both the sentences would run concurrently. The benefit of Section 428 Cr.P.C. was also awarded by the trial court.
3. The facts of the case, as noted by the trial court, are reproduced below:-

"2. The translation of the statement of the complainant Soni Ex.PW3/A on the basis of which the case has been registered is reproduced as below: -

"I am residing at CN-178, Punjabi Basti, near Gumband, Gali no.3, Baljeet Nagar, Delhi. My sister Sunita and jija Umesh also reside with me in the said house. My sister Sunita and jija Umesh are residing separately for the last about two years and Umesh used to harass my sister. On 14.09.2010, I along with my sister were sleeping in the house and at about 11:30 pm, Umesh came there and started quarrelling with my sister Sunita. Upon our objection and asking him to leave the place, he started abusing and used filthy language. He became furious and started beating my sister with iron chain on her head; blood started oozing from her head and she fell down but he continued gave beatings to her. I tried to save Sunita upon which he caught hold of me and torn my suit, pulled me towards him and punched me on my face and chest. Thereafter, he left the spot and I called the PCR on 100 number who took us to the hospital. No complaint was made on the day of incident being the family matter. Again on 17.09.2016, Umesh came to the house and started abusing and threatened to kill us and thereafter, this complaint was made."

3. Upon receiving PCR call vide DD No.38A dated 14.09.2016 regarding quarrel, SI Manish Kumar along with Ct. Ratan reached at the spot i.e. CN-178, Gali No.3, Punjabi Basti, Baljeet Nagar, Delhi where they came to know that injured has already been taken to Hospital by PCR Van. In the meantime, upon receipt of telephone call from the Duty Officer, it was informed that injured had been admitted to Lady Hardinge Hospital. PW9 SI Manish Kumar thereafter reached the hospital and collected the MLC of the injured persons i.e. Soni, Sunita and Umesh (accused); Soni and Sunita did not give their statements being the family members as Umesh was husband of Sunita.

On 17.09.2016, complainant Soni made complaint regarding the incident vide her statement Ex.PW3/A recorded by W/Ct. Pinki (PW5) which was endorsed by PW9 SI Manish Kumar vide his endorsement Ex.PW9/A and FIR was registered vide Ex.PW2/A after making the endorsement on rukka Ex.PW2/B by PW2 H.Ct. Shri Krishan. PW9 SI Manish Kumar came back at the spot and prepared the site plan Ex.PW9B and recorded the statement of other witness Sunita. On 20.09.2016, accused was arrested vide arrest memo Ex.PW8/A; his personal search was conducted vide memo Ex.PW8/B. The accused has also pointed out the place of occurrence vide pointing out memo Ex.PW8/C. On 21.09.2016, statement of complainant Soni under Section 164 Cr.P.C. was recorded. After the completion of investigation, charge sheet was filed in the court on 20.07.2017.”

4. On 04.12.2017, charge was framed under the aforesaid sections of the FIR. The appellant pleaded not guilty and claimed trial. During trial, the prosecution examined total 8 witnesses.

MATERIAL WITNESSES

5. Soni, the complainant/injured was examined as PW3. She is the sister of Sunita, who is the wife of the appellant. She deposed that in the year 2016, at about 11:30 pm, she was present at the house of her sister, who was ill. At that time, the accused had beaten her with iron chain and while she tried to save her sister, the appellant pulled her *dupatta* and put his hand on her breast. The appellant had inflicted injuries on the head of her sister as a result of which blood started oozing out. She dialled number 100 and police arrived and took them to hospital. She further deposed that the appellant while trying to run away, fell down and got injured. He was also treated in the same hospital. She was cross-examined by the learned Additional PP for the State. During her cross-examination, she admitted

that the incident occurred on 14.09.2016. She also admitted the place of the incident, which was the house where her sister was residing with the appellant. She also admitted that while she was trying to save her sister, the appellant tore her suit and pulled her towards himself. When she objected, the appellant gave punch blows on her face and breast and also threw her on the floor. She also admitted that the appellant had given multiple blows with iron chain on the head of her sister and they were taken to Lady Hardinge Hospital by the police. She also admitted that since it was a family dispute, they did not give any statement to the police on that day but two days later, i.e., on 17.09.2016, when she was present at her sister's house, the appellant again abused and threatened to kill them following which they made a complaint to the police. Her statement recorded under Section 164 Cr.P.C. was exhibited as PW3/B. During her cross-examination by the counsel for the accused, her testimony remained unimpeached.

6. Sunita, the wife of the appellant, was examined as PW4. She deposed that on 14.09.16, she along with her sister and daughters were present at her house when the appellant came and during the course of arguments with her, hit her on the head with an iron chain because of which blood started oozing out. The appellant also quarrelled with her sister and tore her clothes and fled away. Her sister called police on 100 number, who then took them to hospital. She also stated that she got 14 stiches on her head. After 2-3 days, the appellant again came to her house and created a scene. The witness was cross-examined by learned Additional PP for the State. She admitted that the appellant had initially abused her and when her sister objected the same, he gave multiple blows on her head with an iron chain. While her sister was trying to save her, the appellant

tore her suit and forcibly pulled her towards himself and also gave punch blows on her face and breast. She admitted that the appellant had again come to their house on 17.09.16 and started abusing and threatening them. During cross-examination by the learned counsel for the accused, she admitted that a cross case under Sections 324/323/341 IPC was registered against her at the instance of the appellant.

7. Dr. Kshitij Kumar Singh, SR Surgery, Lady Hardinge Medical College, Delhi was examined as PW 6. MLC of Sunita and the appellant was exhibited as Ex. PW6/A and PW6/C respectively. He identified the signatures of Dr. Hari at point A, who, by then, had left the services of the hospital. As per the endorsement on the MLC, the patient i.e. Sunita had suffered head injury mentioned as one CLW over parietal region of size 3 x 0.5 cm and another CLW present over right parietal region of size 2 x 0.5 cm. The injuries were opined to be simple. The witness also identified the signatures of Dr. Hari on the MLC of the appellant. As per the MLC of the appellant, the appellant had suffered an injury on his head of the size 3 x 0.5 cm and abrasion present over parietal region of the head. The witness was not cross-examined on behalf of the appellant.

8. Dr. Munesh, CMO, Lady Hardinge Medical College, Delhi was examined as PW7. He exhibited the MLC of Soni (Ex.PW7/A) and identified the signatures of Dr. Sindhu who had prepared the said MLC. The nature of injuries was opined to be simple. The witness was not cross-examined on behalf of the appellant.

9. I have heard Mr. Archit Upadhyay, learned counsel for the appellant as well as Ms. Manjeet Arya, learned APP for the State and also gone through the records of the case.

10. Learned counsel for the appellant has contended that there are variations between the statements of the witness Soni, as to when the call to the PCR was made. He has referred to DD No. 38A as well as the statement of the witness recorded by the police during the investigation. I do not find any merit in this contention as the appellant has neither denied the incident nor raised any doubt about the MLC of the witness as well as his own MLC. As per the admitted case, both the witnesses as well as the appellant were injured in the incident dated 14.09.16. The appellant and the injured witnesses were admitted in the same hospital around the same time. Their MLCs were duly proved and exhibited by PW6 and PW7. The appellant had chosen not to even cross-examine the aforesaid medical witnesses or had disputed his own MLC. The appellant at the time of his statement recorded under Section 313 Cr.P.C., while answering question no. 5 admitted that police had taken the appellant as well as PW3 and PW4 to the hospital. While answering question no. 18 and 19, he admitted that he had received injuries on the occipital region of his head and was medically examined in the Lady Hardinge Hospital by Dr. Sindhu.

11. A perusal of the deposition of the complainant and her sister would show that in their cross-examination, no question was put with respect to allegation of Section 354 IPC. Learned counsel for the appellant has contended that there are material inconsistencies in the statement of the witness, Soni. He has submitted that in her statement to the Police, the witness has stated about tearing of *suit* but in the statement recorded under Section 164 Cr.P.C., *dupatta* was mentioned. It is significant that the appellant had not cross-examined the witness on these aspects at all. A perusal of the statement of the witness, Soni shows that she was consistent in all her statements about tearing of *suit* and pressing / punching her

breast. Even in her statement recorded under Section 164 Cr.P.C., the witness has stated about pressing of her breast. I do not find the variations to be of material nature. No other argument was raised on behalf of the appellant.

12. In view of the above discussion, I find no infirmity in the conclusion reached by the trial court. The appeal filed by the appellant is dismissed. Consequently, the conviction as well as sentence of the appellant as handed down by the trial court is upheld.

13. Copy of this judgment be communicated to the trial court as well as to the Jail Superintendent for information and necessary compliance.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 02, 2019
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