



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

CRL.A. 36/2021

Reserved on: 13.12.2021

Date of Decision: 14.03.2022

IN THE MATTER OF:

BALI

..... Appellant

Through: Mr. Ashok Mittal, Advocate.

versus

STATE THROUGH GOVERNMENT OF NCT

..... Respondent

Through: Ms. Neelam Sharma, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present appeal has been filed under Section 374(2) Cr.P.C. on behalf of the appellant assailing the judgment on conviction dated 29.10.2020 and the order on sentence dated 11.12.2020 passed by the learned ASJ-05, West District, Tis Hazari Courts, Delhi in Case No. 58264/2016 arising out of FIR No. 535/2015 registered under Section 307 IPC at P.S. Kirti Nagar, Delhi.

2. Vide the impugned judgment, the appellant was convicted for the offence punishable under Sections 308/34 IPC and the offence punishable under Sections 324/34 IPC. By way of the order on sentence dated 11.12.2020, he was sentenced as follows:-

(i) For the offence punishable under Sections 308/34 IPC, to undergo Simple Imprisonment for a period of 02 years, alongwith payment of fine of Rs.1,000/-,



in default whereof to further undergo Simple Imprisonment for a period of 01 month,

(ii) For the offence punishable under Sections 324/34 IPC, to undergo Simple Imprisonment for a period of 01 year, alongwith payment of fine of Rs.1,000/-, in default whereof to further undergo Simple Imprisonment for a period of 15 days.

Both the sentences were directed to run concurrently. The benefit of Section 428 Cr.P.C. was extended to the appellant.

3. Brief facts of the case, as noted by the Sessions Court, are as under :-

“1. On 18.09.2015, DD No.39A was assigned to SI Rajpal and thereafter, he alongwith Ct. Vijay went to the spot, where they came to know that injured have already been shifted to Acharya Bhikshu Hospital and thereafter, they also went to the said hospital where injured Bhagirath and injured Om Prakash met them under MLC No.10906 and MLC No.10801 respectively. Thereafter, SI Rajpal recorded the statement of injured/ complainant Bhagirath. In his complaint, injured/complainant Bhagirath alleged that on 18.09.2015 at about 11:00 AM, when his son-in-law namely Om Prakash was returning home from work, then on the way accused Bali and his associate (JCL), (both used to reside in his neighborhood) had called Om Prakash by saying “Haddi Kahan Se Aa Raha Hai”. On this, Om Prakash did not respond to accused Bali and his associate (JCL). However, after reaching home, Om Prakash disclosed the abovesaid fact to him (Bhagirath). Thereafter, complainant Bhagirath and Om Prakash went to the house of JCL i.e. associate of Bali, where they met Bali and his associate (JCL) as well as father of JCL namely Mani Ram and they complained the father of JCL namely Mani Ram against the accused Bali and JCL. Complainant also alleged that on this accused Bali and his associate (JCL) threatened them to kill and in the meanwhile, accused Bali had inflicted a knife blow on his cheek and accused Bali also inflicted knife blow on the stomach of Om Prakash and during the said incident, the associate of accused Bali i.e. JCL also caught hold him (complainant) and Om Prakash and also beaten them and thereafter, when they (complainant Bhagirath and Om Prakash) raised alarm then accused Bali and his associate (JCL) fled away from there.”



4. After completion of investigation, the charge sheet was filed against the appellant under Sections 307/34 IPC. The case was committed by the learned Metropolitan Magistrate to the Sessions Court, wherefore charges were framed against the appellant under Sections 307/34 IPC and Sections 326/34 IPC, to which he pleaded not guilty and claimed trial.

5. Learned counsel for the appellant contended that the appellant has been falsely implicated in the present case, as the injured persons had a prior dispute with the appellant's father over an amount of Rs.500/-. It was further contended that the appellant could not have been convicted under Section 324 IPC, as the weapon of offence was not recovered and resultantly, there was no opinion from the concerned Doctor.

6. Learned APP for the State, on the other hand, supported the impugned judgment. It was submitted that injuries were caused by the appellant on the stomach and face of the victims with a knife, and thus, the requisite intention and/or knowledge to attract the charged offences was present.

7. I have heard learned counsel for the appellant as well as the learned APP for the State and perused the entire material placed on record.

8. In support of its case, the prosecution examined nine witnesses during the trial. *Bhagirath*, the injured/complainant, was examined as PW-1. He deposed that on 18.09.2015, the appellant along with the co-accused/*JCL*, who were residents of the same vicinity, had teased his son-in-law/*Om Prakash* by saying “*Haddi Kahan Jaa Rha Hai*”. *Om Prakash* complained about the incident to the uncle of *JCL*, on which both the accused got enraged and gave beatings to *Om Prakash*. The complainant was working nearby and reached the spot. On seeing



him, the appellant as well as the *JCL* fled away. It was further deposed that in the evening, he and *Om Prakash* went to lodge complaint with the parents of the accused. At about 7:00 or 7:30 p.m., while *Om Prakash* was outside their house, the appellant and the *JCL* started beating *Om Prakash*. When the complainant intervened to save him, the appellant gave a knife blow, which landed on his face/cheek. The appellant also stabbed *Om Prakash* in his stomach. On alarm being raised, both the appellant and the *JCL* fled away from the spot. The complainant, alongwith *Om Prakash*, was taken to *Acharya Bhikshu Hospital*, where his statement was recorded by the Police. He was discharged from the hospital on the same day. After about 28-30 days of the incident, the appellant and the *JCL* were apprehended and he had identified both of them in the Police Station. He again identified the appellant in the trial.

In his cross-examination, the complainant stated that *Om Prakash* along with his family was residing with him in the same house. He denied that on 18.09.2015, he and *Om Prakash* were working together. He deposed that on the day of the incident, he was given the work of constructing a boundary wall in a vacant plot in *C-Block, Mansarovar Garden, Delhi* and the father of the appellant was also with him. He admitted that a tip of Rs.500/- was given to him and others by one *Munna Lal*, however, he denied the suggestion that all of them including *Om Prakash* had celebrated the evening by indulging in a drinking session. He further deposed that he came to know about the incident at about 11 a.m. on 18.09.2015 and the Police was informed by them at 08:30 p.m., when they went to the Police Station. From the Police Station, they went to the said hospital. It was also deposed that his statement was recorded at *Acharya Bhikshu Hospital*. He admitted that he was not present when *Om Prakash* was teased by the accused. The complainant denied the suggestion that he sustained injuries on slipping and hitting an object or that *Om Prakash* had sustained injuries when



he came to help him. He also denied the suggestion that he had falsely implicated the appellant as he had a dispute with the appellant's father with respect to money.

9. *Om Prakash* was examined as PW-2. He deposed that on the day of the incident, he had left for his daily job at about 10 a.m. On receiving a call from his father, who asked him to bring some wood, he returned home. As he was returning home, the appellant and the *JCL* met him outside his house and the *JCL* called him by saying "*O Saadu Idhar Aa*". *Om Prakash* also stated that he was given beatings by both the accused. He further stated that he informed his father-in-law about the incident, whereafter they went to the house of the *JCL* to report the matter to his father. Pursuant thereto, the appellant and the *JCL* had a scuffle with them in which the appellant stabbed *Om Prakash* in the stomach and also gave a knife blow on the cheek of his father-in-law/*Bhagirath*.

In the cross-examination by the learned APP, the witness stated that on the day of the incident, both the appellant and the *JCL* had passed the comment "*Haddi Kahan Se Aa Raha Hai*". He further stated that before beating them, the appellant and the *JCL* had stated "*Tujhe Aaj Jaan Se Maar Dete Hain*".

In his cross-examination by the learned counsel for the appellant, the witness stated that when the incident took place, he was residing separately with his family as a tenant in a *jhuggi* adjacent to the *jhuggi* of *Bhagirath* and nobody else apart from his own family was residing with him. He denied the suggestion that on the day of the incident, he and *Bhagirath* were working together alongwith others, where they received a tip and celebrated the evening by indulging in a drinking session. He further denied the suggestion that both of them sustained injuries on some previous day due to fall. He also denied the suggestion that he and *Bhagirath* had falsely implicated the appellant as they had a money dispute with the appellant's father.



10. *Dr. S.K. Kakran*, Chief Medical Officer, *Acharya Bhikshu Hospital* was examined as PW-3. He deposed that on the day of the incident, both the victims were brought to the hospital between 10:55-11:00 p.m. Their medical examination was done by him, whereafter their MLCs were prepared. The witness proved the MLCs of *Om Prakash* and *Bhagirath*. He also proved the endorsement made by *Dr. Pankaj Sareen* on the respective MLCs after examination of the victims, according to which the nature of injuries was simple.

In cross-examination, the witness stated that a person could sustain the injuries mentioned in the MLCs if he stood up and hit against a pointed object.

11. *HC Upendra Tiwari* was examined as PW-4. He deposed that on the day of the incident, he was posted at P.S. Kirti Nagar and was working as Duty Officer. At about 9:07 p.m., he received information from wireless operator to the effect that a person had been stabbed during a fight which took place opposite Kirti Nagar police station. The witness deposed that he had recorded this information vide DD No.39A (Ex.PW4/A) and assigned the information to *SI Rajpal*.

12. *Const. Sandeep Kumar* was examined as PW-6. He deposed that on 31.10.2015, the appellant came to the police station with his father and after interrogation by the Investigating Officer, he was arrested.

13. *Const. Vijay Singh* was examined as PW-8. In his cross-examination by the learned counsel for the appellant, he stated that the incident took place in the *jhuggis* of *Kamla Nehru Park*, i.e., outside the park. He also deposed that the Investigating Officer had not recorded statements of the public persons at the spot in his presence.



14. The Investigating Officer/*SI Rajpal* was examined as PW-9. He deposed that on receipt of information about the incident, he had reached the spot, where he was informed that the two injured persons had been removed to *Acharya Bhikshu Hospital*. He had gone to the aforesaid hospital and collected the MLCs of the injured persons. He had made inquiry from *Bhagirath* who informed that the injuries were caused to him and *Om Prakash* by the appellant and the *JCL* with a sharp object. It was further deposed that both the injured were discharged at about 5 or 6 a.m. from the hospital. It was also deposed that on 31.10.2015, the appellant came to the police station with his father, whereafter his interrogation was conducted and he was arrested. The witness stated that on the disclosure of the appellant, the police officials went to *Tanki Wala Park* situated in *Ramesh Nagar*, but the weapon of offence i.e., *keel* (nail) stated to be thrown in the park could not be recovered.

In cross-examination, the witness admitted that he did not record the statement of any of the neighbors, where the alleged incident had taken place. He stated that enquires were made, but he did not record their names. It was further deposed that he did not remember whether he had made any enquires from the injured persons as to whether they had gone for work on the day of the incident. He admitted that he did not obtain the Call Data Records (CDR) of the injured persons and the appellant to ascertain their presence at the spot of incident. It was also admitted that he had not recorded the statement of *Mani Ram*, i.e. the relative of the accused to whom the victims had gone in the evening to report the incident of teasing. The witness stated that the accused had themselves come to the police station. He further deposed that the accused persons were medically examined, however, no such examination report was available on the judicial file.



15. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein he stated that he was falsely implicated in the present case and the complainant had sustained injuries himself prior to the day of the alleged incident.

16. Needless to state, the position of law on the credibility and reliability of an injured witness is well-settled. In this regard, the Supreme Court in Abdul Sayeed v. State of Madhya Pradesh reported as **(2010) 10 SCC 259** has held as follows:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]”

17. In the present case, a perusal of the testimonies of *Bhagirath* and *Om Prakash* would show that both, the first as well as the second incident, have been described without there being any material improvement or contradiction. Reportedly, both the victims received injuries at the hand of the appellant. The factum of their having received injuries is duly corroborated by their MLCs, which were prepared immediately after the second incident. Further, there is no delay in registration of the case. In these facts, this Court finds the testimonies of the injured witnesses to be both credible and reliable.



18. Before proceeding further, it is deemed apposite to advert to Section 308 and Section 324 of the IPC, which prescribe as follows:-

Section 308 IPC

“308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.”

Section 324 IPC

“324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

19. A bare reading of Section 308 IPC would show that to prove the commission of an offence thereunder, two ingredients are required to be established: -



- (i) that an act was committed, and
- (ii) that the act was committed with such intention or knowledge and under such circumstances that, if death was caused by the act, the accused would be guilty of culpable homicide not amounting to murder.

20. On the other hand, to prove the commission of an offence under Section 324 IPC, the ingredients required to be established are as follows:-

- (i) that hurt was caused by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal
- (ii) that such hurt was caused voluntarily
- (iii) that the case is not covered by Section 334 IPC.

21. It is noted that the Supreme Court, in Bishan Singh and Another v. State reported as (2007) 13 SCC 65, while holding the conviction of the accused under Section 308 IPC unsustainable, had held as follows:

“11. Before an accused can be held to be guilty under Section 308 IPC, it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing. There cannot be any doubt whatsoever that such an intention or knowledge on the part of the accused to cause culpable homicide is required to be proved. Six persons allegedly accosted the injured. They had previous enmity. Although overt act had been attributed against each of the accused who were having lathis, only seven injuries had been caused and out of them only one was grievous, being a fracture on the arm, which was not on the vital part of the body.



12. The accused, therefore, in our opinion, could not be said to have committed any offence under Section 308 IPC. The same would fall under Sections 323 and 325 thereof.”

(emphasis added)

22. In Roop Chand v. State (NCT) of Delhi reported as **MANU/SC/0969/2020**, while modifying the conviction of the appellant from one under Section 308 IPC to that under Section 324 IPC, the Supreme Court observed as under:-

“12. Accepting true what the injured has deposed, we find it difficult to hold that the Appellant had any intention or knowledge to inflict such injury which could cause the victim's death within the meaning of culpable homicide not amounting to murder. The Appellant had in a fit of rage inflicted singular injury on the left temple of the injured and made no attempt to repeat such attack or strike a second blow, which indicates that he did not intend to cause any fatal injury. Similarly, given the facts of this case, it would be far-fetched to hold that the Appellant knew that his actions were likely to cause the death of the injured.

13. We are, thus, of the opinion that the evidence on record falls short of establishing the requisite ingredients of Section 308 of Indian Penal Code, though the Appellant is undoubtedly guilty of voluntarily causing hurt with a sharp-edged weapon within the meaning of Section 324 of Indian Penal Code.”

23. Based on a reading of judicial dicta on the issues involved in the present case, suffice it to note that every incident of stabbing with a knife/sharp object, if proved, does not *ipso facto* lead to a conclusion that death of the injured was likely by the act of the accused. In fact, the nature of the actual harm/injury, if any, resulting from the act is inconsequential under Section 308 IPC. What is required to be proved is the intention or knowledge on the part of the accused to cause the act under such circumstances that if death was caused, the act would be adjudged as culpable homicide not amounting to murder. Needless to add, the said intention or knowledge has to be discerned from the facts and



circumstances of each case, including the nature of injuries suffered by the victim(s) and the kind of weapon(s) used.

24. In the present case, it is seen that the information regarding the alleged incident was initially received and recorded vide DD No.39A (Ex.PW4/A), wherein it was noted that a person had been stabbed in a fight in front of the gate of P.S. Kirti Nagar. However, on inquiry, it was revealed that the incident in question had taken place in the *jhuggis* of Kamla Nehru Camp, whereafter the police officials proceeded there and found that the injured had been removed to *Acharya Bhikshu Hospital*.

25. As per the prosecution case, two incidents had taken place between the accused persons and the victims. The first incident took place in the morning of 18.09.2015 when the appellant reportedly teased *Om Prakash* and gave beatings, which was not reported. The second incident occurred when *Om Prakash*, along with *Bhagirath*, went to the house of the *JCL* in the evening of the same day to complain to his father about the first incident. As alleged, the appellant was also present at the time at the house of the *JCL*. A scuffle took place and the victims got injured. From the testimony of PW-1, it is apparent that the appellant hurled a blow at him only when he intervened.

26. According to the allegations levelled, the appellant had hurled two blows at the time of the second incident – one at *Bhagirath*, which landed on his cheek, and the other at *Om Prakash*, which resulted in injury on his stomach. In the MLCs of the victims, the nature of the injuries sustained was opined to be '*simple*'. As per the testimony of the Investigating Officer, both the victims were discharged from the concerned hospital on the same/next day.

The victims have alleged that the injuries were inflicted on them by the appellant using a knife. A perusal of the testimony of PW-9/Investigating
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Officer would show that *Bhagirath* informed him that the injuries were caused by 'some sharp object'. Admittedly, no weapon has been recovered during the investigation. In this regard, it is noted that after obtaining the MLCs from the hospital, no subsequent expert opinion was sought by the investigating agency on the nature of the weapon used to commit the alleged offence.

27. Further, even though there are allegations against the accused that after inflicting of injuries, they had caught hold of the injured witnesses and given them beatings, it is not the prosecution case that the injuries allegedly given with a knife were inflicted while the injured witnesses were restrained in order to render them incapable of defending themselves.

28. It is worthwhile to note that from the testimonies of the two injured witnesses in the present case, no intention or knowledge on the part of the appellant to cause death at the time of inflicting of injuries is made out. Moreover, despite intention or knowledge to cause the impugned act forming an essential ingredient of Section 308 IPC, no question in the regard appears to have been put to the appellant at the time of his examination under Section 313 Cr.P.C.

29. In this regard, it is deemed profitable to underline the position of law on the examination of an accused under Section 313 Cr.P.C.

30. The significance of the examination of an accused Section 313 Cr.P.C. has been captured by the Supreme Court in State of Uttar Pradesh v. Mohd. Iqram and Another reported as (2011) 8 SCC 80, where it was observed as follows:-

“21. ...The court cannot place reliance on incriminating material against the accused, unless it is put to him during his examination under Section 313 CrPC. Thus, the High Court committed an error



by taking into consideration the inadmissible evidence for the purpose of deciding the criminal appeals and holding the person guilty who had already been acquitted by the trial court. The post-mortem report had been examined at the time of framing of the charges. The trial court did not frame any charge under Section 376 IPC or Section 376 read with Section 511 IPC. More so, no witness had ever mentioned anything in this respect. Thus, it is beyond any stretch of imagination of any person, how such observations could be made by the High Court.

22. No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material, it is the duty of the court to examine the accused and seek his explanation on incriminating material that has surfaced against him.

“22. Section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 CrPC cannot be used against him and have to be excluded from consideration.”

(Vide Sharad Birdhichand Sarda v. State of Maharashtra, State of Maharashtra v. Sukhdev Singh, SCC p. 741, para 50 and Paramjeet Singh v. State of Uttarakhand, SCC p. 449, para 22.)”

31. In Satbir Singh and Another v. State of Haryana reported as (2021) 6 SCC 1, it has been opined by the Supreme Court that examination of an accused under Section 313 Cr.P.C. cannot be treated as a mere formality. Relevant excerpt from the decision is extracted hereunder:-

“Conclusions

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38.6. It is a matter of grave concern that, often, trial courts record the statement under Section 313 CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313 CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

38.7. The court must put incriminating circumstances before the accused and seek his response...”

32. While underscoring that the procedure under Section 313 Cr.P.C. is a facet of the principles of natural justice, the Supreme Court in Pramila v. State of Uttar Pradesh reported as **2021 SCC OnLine SC 711** recently observed thus:-

“9. ...It has repeatedly been held that the procedure under Section 313 CrPC is but a facet of the principles of natural justice giving an opportunity to an accused to present the defence. The burden of proof on an accused in support of the defence taken under Section 313 CrPC is not beyond all reasonable doubt as it lies on the prosecution to prove the charge. The accused has merely to create a doubt. It will be for the prosecution then to establish beyond reasonable doubt that no benefit can flow from the same to the accused...

10. In Janak Yadav v. State of Bihar, (1999) 9 SCC 125, it was observed as follows:

“5. Section 313 CrPC prescribes a procedural safeguard for an accused facing the trial to be granted an opportunity to explain the facts and circumstances appearing against him in the prosecution's evidence. That opportunity is a valuable one and cannot be ignored. It is not a case of defective examination under Section 313 CrPC where the question of prejudice may be examined but a case of no examination at all under Section 313 CrPC and as such the question



whether or not the appellants have been prejudiced on account of that omission is really of no relevance....”

33. At this stage, it is deemed apposite to cite the decision in Anwarul Haq v. State of U.P. reported as (2005) 10 SCC 581 where, while maintaining the conviction of the accused under Section 324 IPC despite non-recovery of the alleged weapon of offence, the Supreme Court had held as follows:-

“11. We find that the trial court has analysed in great detail the evidence of eyewitnesses, including that of PW 1, the injured and therefore there is no scope for interference. The plea that the weapon used was not a dangerous weapon had never been urged before the trial court or the High Court. Whether weapon is a dangerous weapon or not has to be gauged only on the factual basis...

12. ...The expression "an instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this section.

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15. Eyewitnesses in the present case have described the knife, and merely because the knife has not been recovered during investigation same cannot be a factor to discard the evidence of PWs 1 and 2. Wounds noticed by the doctor (PW 3) also throw considerable light in this aspect. The doctor's opinion about the weapon, though theoretical, cannot be totally wiped out. In that view of the matter the appellant has been rightly convicted under Section 324 IPC.

(emphasis added)

In light of the above decision, non-recovery of the alleged weapon of offence in the present case is held to be of no consequence, as both injured victims have consistently deposed that they were inflicted injuries with a knife.



34. Considering the foregoing, the nature of injuries suffered by *Om Prakash* and *Bhagirath*, which as per their MLCs were 0.5 cm deep, as well as the fact that even as per the prosecution case, only a single knife blow was given to each victim, of which the second was given to *Bhagirath* only when he intervened, this Court is of the opinion that the injuries caused to the victims were the outcome of a sudden fight and the act of the appellant, though voluntary, was not caused with such intention or knowledge and/or under such circumstances that if death was caused of the victim(s), the appellant would have been guilty of culpable homicide not amounting to murder. Accordingly, the essential ingredients to establish commission of offence under Sections 308/34 IPC cannot be culled out from the facts of the present case.

35. However, at the same time, it is noted that the factum of injuries having been inflicted on the victims with a knife, i.e., a '*dangerous weapon*' in terms of Section 324 IPC, has been consistently deposed by *Bhagirath* as well as *Om Prakash*, who are both injured eye-witnesses and whose testimonies have been found reliable. Besides the testimonies of the victims, the allegations in the present case are corroborated by the MLCs of the victims which were prepared on the day of the incident and which have been duly proved during trial by *Dr. S.K. Kakran* (PW-3).

36. In view of the aforesaid, the present appeal is allowed. The appellant is held not guilty of offence punishable under Sections 308/34 IPC and his conviction is altered to one under Section 324 IPC.

37. At this stage, this Court takes note of the submission made on behalf of the appellant that at the time of offence he was about 21 years of age, and is the sole bread earner of his family, having responsibility of aged parents as well as two minor children aged 1½ and 2½ years. Further, the incident in question



dates back to the year 2015. The appellant is also not stated to be involved in any other case and his overall jail conduct has been reported to be satisfactory.

38. Prior to rendering an opinion on the aspect, reference may be made to an observation by the Supreme Court in Roop Chand (Supra), which has a bearing on the appellant's submission and weighs with this Court:-

“15. It would be trite to note that Courts must award punishment in a judicious manner, after taking into account various relevant circumstances including the gravity and nature of offence, motive of the crime and other attendant circumstances. Applying these parameters, we are of the considered view that ends of justice would be adequately met if the sentence of the Appellant is reduced to the period which he has already undergone.”

39. Based on the overall facts and circumstances of the case, in particular the fact that the nature of injuries received by the victims has been opined to be 'simple' in their respective MLCs, this Court is of the opinion that interest of justice would be served by directing to modify the sentence of the appellant to the period already undergone by him, subject to payment of compensation of Rs.15,000/- each by the appellant to the injured persons within a period of 8 weeks from the date of this judgement, in default whereof he shall undergo Simple Imprisonment for 01 month. It is ordered accordingly.

40. A copy of the judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 14, 2022

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