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

+ **CRL.A. 610/2003**

UDEY SINGH

..... Appellant

Through: **Mr. Gaurav Shamar, Standing
Counsel, DHCLSC.**

versus

STATE

..... Respondent

Through: **Mr. Amit Ahlawat, APP for the State
with SI Rohit, P.S. Sultanpuri.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

27.02.2024

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1. The present appeal under Section 389(2) read with Section 482 of the CrPC challenges the judgment of conviction and order on sentence dated 29.08.2003 and 30.08.2003 respectively, passed by Sh. R.S. Arya, learned ASJ, Delhi, whereby the present appellant has been convicted under Section 323 of the IPC and have been sentenced to undergo simple imprisonment for a period of 1 year alongwith fine of Rs. 1,000/- in default of payment of fine simple imprisonment for a period of three months.
2. The appeal was taken up for hearing on 03.01.2024, whereby notice was issued to the appellant through the SHO concerned and report with regard to the said notice has come back with remarks that despite best efforts, the present appellant could not be traced.
3. In view of the above, since the appeal pertains to the year 2003, Mr. Gaurav Sharma, learned Standing Counsel from the Delhi High Court Legal Services Committee is appointed to represent the present appellant.



4. The relevant facts as per the prosecution are as under:-

That according to prosecution version the Complainant Ashok Kumar stated that he worked at Anand Prabat in a private company and reached house at about 7.45 P.M. and saw that his mother Om Wati deceased his wife Hemlata and his sister Manorma were standing outside on the road and another side his neighboror Udey Singh, Ram Gopal and Vishnu juvenile offender all sons of Sh. Chokhey Lai and Smt. Bhagwati W/o Udey Singh (convict) and Smt. Kamlesh W/o Ram Gopal since acquitted were standing in front of their house both parties were exchanging abuses. The Complainant inquired from his brother Sushi 1 Kumar as what was going on and Sushi 1 Kumar told that he was flying kite and he cord of the kite got entangled in the Antenna on the house of the Udey Singh and Udey Singh cut the cord of the kite. Sushi 1 Kumar commented in a sarcastic manner on this act of Udey Singh that although Udey Singh always projected himself as rich person yet he turn dishonest over a petty kite Rs.2/- . Accused Udey Singh went inside his house and came out with iron Saria on seeing all this the mother Omwati, sister Manorma and wife Hemlata of the Complainant came running to save brother Sushi 1 Kumar from the assault upon which Accused Udey Singh said that now let these person first be taught a lesson. Accused Udey Singh then assaulted mother Omwati by giving Saria blow on head and also gave beating to sister Manorma and his wife Hemlata with that Saria. When Complainant intervene to save the Juvenile offender Vishnu immediately brought the Gun from inside the house and aimed at Complainant but immediately Smt. Omwati mother of the Complainant came infront of the Complainant the bullet was fired which hit on the left side of the abdomen and also back of the , Omwati was injured. Thereafter, Ram Bopal Accused snatched Bun from the hand of Vishnu and fired at Hemlata wife of the Complainant which hit on her leg mother Omwati. Wife Hemlata and sister Manorma all fell down on the road. Omwati became unconscious several people came on the spot all-the three Accused went in side / their house, some body informed the Police. Complainant removed Omwati to DDU hospital where doctors declared dead. After some time police brought his wife Hemlata and sister Manorma in police ambulance in the hospital and got them admitted. They had also sustained injuries.

That on the basis of the complaint S.I. Harbans Lai recommended registered of this case for the offences under Section 302/307 read with Section 34 of the IPC and also for the offence under Section 27 of the Arms Act. Investigation was conducted by S.I. Harbans Lai and Accused Udey Singh and Ram Bopal were sent up for trial for the offence under



Section 302/307 read with Section 34 of the IPC and Section 27 Arms Act and the third Accused namely Vishnu was also sent up for trial for the said offences whose challan was sent to the Children Court.

That Vishnu Juvenile offender was tried in the Children Court and was released on Probation.

That Ram Gopal and Udey Singh were tried in the Court of Shri R.S. Arya ; Addl. Sessions Judge, Delhi and vide order dated 29.5.2003 both the Accused have been acquitted of the charge under Section 302/307/34 and 27/54/59 of the Arms Act but Udey Singh has been convicted under Section 323 IPC and has been sentenced to undergo S.I. for one year and to pay fine of Rs.1000/- in default of payment of fine S.I. for three month, fine paid.

5. Learned counsel appearing on behalf of the appellant submits that the learned ASJ, while convicting the present appellant under Section 323 of the IPC has erred on account of the fact that the testimony of the witnesses has been disbelieved on certain aspects and is further recorded in the judgement that there are material contradiction in the statement of PW-1, Ashok Kumar. However, the appellant has been found guilty for offence under Section 323 of the IPC for giving simple injuries to Smt. Manorama and Smt. Hemlata. It is further submitted that the order of sentence is also harsh in view of the fact that the present appellant was never a previous convict nor involved in any other case. It is further submitted that the present appellant had suffered trauma of 14 long years and the learned ASJ did not give the benefit of Section 428 of the CrPC to the present appellant. The present appellant was also in custody for a period of 5 and half months during investigation and trial of the present case.

6. Heard learned counsel for the parties and perused the record.

7. Learned ASJ, while discussing the present appellant in the impugned judgment, records as under:-

“16. So far as the role of accused Udai singh is concerned, he has



through out been assigned the role of beating with Saria. All the eye witnesses PW.1, PW 4. PW.5 and PW.10 have categorically stated and deposed on oath that, accused Udai Singh had brought a Saria from inside the house and gave beatings to the ladies namely Omwati, Hem Lata and Manorama. All these eye-witnesses are all one in corroborating each other while stating this role of the accused Udai Singh- Anyhow, say that. Omwati deceased also sustained injuries with Saria is a false statement as the medical record does not speak so. However, it is smt. Manorama Devi PW.4 who received four injuries, out of which three injuries are CLW (clean Lacerated wound) and fourth injury was Swelling on the right hand which was due to fracture in right 5th metacarpal bone- as is revealed in MLC Ex. FW. 14/A. Secondly, PW-5 Smt. Hem Lata also sustained one injury which is 1-1/2 inch (One & half inch) CLW over frontal parietal region. These injuries on the persons of Smt. Manorama Devi and Smt. Hem Lata were possible by blunt weapon. Anyhow, these injuries are all simple. However, injury No.4 on the person of smt. Manorama. Devi was grievous as stated to be fracture but: there is no X-Ray and skygram. So all injuries were termed as simple injuries.

17. Further, the accused Udai Singh cannot be said as having shared common intention with accused Vishnu in causing bullet injuries on the person of deceased Omwati and injured Hem Lata. There is no such evidence on record to establish that accused Udai Singh was sharing common intention with delinquent accused Vishnu. The act of accused Udai Singh of causing injuries with Saria to injured Manorama and Hem Lata is an independent act entirely isolated from the act of accused Vishnu. Moreover, the act of causing injury with Saria by accused Udai Singh preceded the act of accused Vishnu causing bullet injury on the person of deceased Omwati. The act of causing injury with Saria had almost finished before the act of shooting. These are the reasons that Udai Singh cannot be held guilty as having shared common intention with delinquent accused Vishnu who caused bullet injuries on the person of Omwati.”

8. As per the prosecution case, there was a fight between the two parties. The presence of the appellant has been proved by the prosecution as established by the eye-witness on account of the testimonies of the PW-1, PW-4, PW-5 and PW-10. The said testimonies have been corroborated by the



MLC (Ex-PW 14/A).

9. In view of the above, there is no ground to interfere with the order of conviction and the same is upheld.

10. So far as the order on sentence is concerned the nominal roll dated 18.01.2024 requisitioned from the concerned Jail Superintendent reflects that the present appellant had undergone a period of 5 months and 6 days as on 30.08.2023 as an undertrial. The incident pertains to the year 1989 and after suffering a trial of 14 years the present appellant was convicted for offence under Section 323 of the IPC. The order on sentence does not given benefit of Section 428 of the CrPC to the present appellant.

11. In totality of the facts and circumstances of the case, no useful purpose will be served by sending the present appellant to undergo further incarceration, in view of the mitigating factors, as pointed out hereinabove. In the interest of justice, the order on sentence dated 30.08.2003 is modified and reduced to the period of sentence already undergone by the appellant, i.e., 5 months and 6 days, as per the nominal roll dated 18.01.2024 to meet the ends of justice. The fine of Rs. 1,000/- has already been paid.

12. The appeal is partly allowed and disposed of accordingly.

13. Pending application(s), if any, also stand disposed of.

14. Bail bonds furnished by the appellant stand discharged.

15. Copy of the order be sent to the concerned Jail Superintendent, for necessary information and compliance.

16. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

FEBRUARY 27, 2024/sn