



2025:DHC:11870



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

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+ **CRL.A.906/2017**

VIVEK KUMARAppellant

Through: Appellant in person.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Pradeep Gahalot, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred under Section 374(2) Cr.P.C., whereby the appellant seeks setting aside of the judgment of conviction dated 21.08.2017 passed by the learned Additional Sessions Judge/Special Judge (NDPS), Dwarka Courts, whereby the appellant was convicted for the offences punishable under Sections 308/452/34 IPC and acquitted against the charge under Section 506 IPC.

Vide the impugned order on sentence dated 31.08.2017, the appellant was sentenced to undergo RI for a period of 2 years along with payment of fine of Rs.10,000/-, in default whereof he would undergo SI for 3 months, for the offence under Section 308 IPC. The appellant was further sentenced to simultaneously undergo RI for a period of 2 years along with payment of fine of Rs.10,000/-, in default whereof he would undergo SI for 3 months,



for the offence under Section 452 IPC. The benefit under Section 428 Cr.P.C. was granted to the appellant.

2. Notably, the appellant faced trial along with his parents, *Sh. Naresh Kumar* and *Smt. Madhubala*. While *Naresh Kumar* expired during pendency of the trial and the proceedings *qua* him were abated vide order dated 08.12.2024, *Madhubala* was released on probation.

3. As per the case of the prosecution, DD No. 72B came to be registered at P.S. Dabri. The said DD was assigned to SI *Bhagwan Singh*, who, along with Ct. *Rohtash*, reached the spot of the incident, where they were informed that the injured persons had already been removed to the hospital. The two injured, *Ved Prakash* and *Nirmala Devi*, were found admitted. While *Ved Prakash* was not fit for statement, the statement of *Nirmala Devi* was recorded, wherein she stated that her daughter, *Renu*, was married to the appellant. She further claimed that the appellant had started harassing her daughter for dowry and for which FIR No. 267/2012 under Sections 498A/406 IPC at P.S. Dabri was registered. In proceedings related to that case, the appellant had preferred an application seeking anticipatory bail, which came to be dismissed. On this, the appellant along with his mother and father came to the complainant's house, armed with hockey stick and *dandas*, and inflicted injuries upon her as well as her husband, *Ved Prakash*. When their daughter, *Renu*, tried to intervene, injuries were inflicted upon her also with *dandas*. The appellant threatened them and left the spot. On this statement of the complainant, the subject FIR No. 466/12 under Sections 308/452/506/323/34 IPC was registered.



4. On completion of investigation, charges were framed against all the accused persons under Sections 452/308/34 IPC; and an additional charge under Section 506 IPC was also framed against the appellant. All the accused pleaded not guilty and claimed trial.

5. The injured *Ved Prakash* was examined as PW-5. He deposed that on 04.12.2012, the accused persons entered their house, armed with hockey stick and *dandas*. The appellant gave him 3-4 blows with the hockey stick, stating that he would kill and would not leave him. When his wife, *Nirmala Devi*, came to intervene, she was hit on the shoulder with *dandas* by the parents of the appellant, i.e., co-accused, *Naresh Kumar* and *Madhubala*. The appellant had also hit the witness with the hockey stick on his left hand and buttocks. He suffered injuries on his head and buttocks. He identified the clothes he was wearing at the time of the incident upon the same being produced in Court as Ex. P1, P2, and P3. The broken pieces of the hockey stick were exhibited as Ex. P4 and the *danda* used by *Naresh Kumar* as P-5.

In cross-examination, he was confronted with his statement recorded under Section 161 Cr.P.C., wherein it was not stated that he was hit on his head 3-4 times by the appellant with a hockey stick. His statement also did not record that the appellant had threatened him by saying that he would kill and would not leave him, and he was confronted with the same. The factum of *Naresh Kumar* and *Madhubala* causing injuries by way of a *danda* had also not been stated by the witness in the said statement. Similarly, he was also confronted with the factum of the appellant hitting him on his left hand not being stated earlier. He further admitted that he had not stated to the I.O.



that the appellant had hit him on his buttocks or that he had sustained injuries on his buttocks.

6. The injured *Nirmala Devi* was examined as PW-8. She deposed along the same lines as her husband, *Ved Prakash* (PW-5).

7. Their daughter, *Renu*, who was examined as PW-9, stated that besides the proceedings under Section 498-A IPC, proceedings for divorce and maintenance had also been filed.

8. The prosecution examined Dr. *Kamalkant Jain* as PW-1 and the MLC of the injured *Ved Prakash* was exhibited through him as Ex. PW-1/A. The MLC of *Nirmala Devi* was exhibited through Dr. *Atul Singh Tomar* (PW-2) as Ex. PW-2/A. Dr. *Piyush Kumar Singh*, Sr. Resident (Ortho), DDU Hospital, New Delhi was examined as PW-3. He opined the nature of the injuries in the case of *Ved Prakash* as grievous, and in the case of *Nirmala Devi* as simple. The prosecution further examined Dr. *Dhananjay Kumar*, Medical Officer, DDU Hospital, New Delhi as PW-15 and Dr. *Manoj Kumar Goyal*, Medical Director, Goyal Hospital, Aggarwal Chowk, Chander Vihar, New Delhi as PW-19. The FSL report was exhibited by the I.O. of the case, SI *Bhagwan Singh* (PW-17).

9. The appellant, who appears in person, submits that he has suffered through the agony of a protracted trial in the present case for the last 13 years; and he submits that he has remained in custody for 8 months in connection with the present case, and for 4 months in connection with the maintenance proceedings. He submits that, having understood the consequences, he does not wish to press the present appeal on merits and instead prays that his sentence be modified to the period already undergone.



He also undertakes to deposit the fine amount imposed upon him by the Trial Court within a period of 4 weeks, if not already done.

10. With the assistance of the learned APP for the State, I have examined the evidence on record.

11. A perusal of the testimonies of the injured witnesses, PW-5 and PW-9 (whose injuries stand duly proved in view of the medical evidence on record), shows that they have given a cogent account of the incident in question. It is trite law that the testimony of an injured witness stands on a high pedestal and is not to be discarded without good reason¹. Both the witnesses have been consistent with respect to the core allegations involved in the present case, i.e., the appellant along with his parents committing house trespass in the home of the injured witnesses and inflicting injuries upon them.

12. With that being said, however, the fact that the testimony of *Ved Prakash*/PW-5 contains material improvements over his earlier statement recorded under Section 161 Cr.P.C. also cannot be ignored. He had not stated in the said statement that the appellant hit him on the head 3-4 times using a hockey stick, or that the appellant had threatened him by saying that he would kill him and not leave him, or that the appellant had hit him on his left hand and buttocks. These allegations were introduced only at the time of his Court deposition; and this becomes especially relevant in light of the fact that the medical evidence on record shows that the injuries suffered by *Ved Prakash*/PW-5 were a fracture on his ulna bone and in the shaft of his metacarpal bone.

¹ Abdul Sayeed Vs. State of Madhya Pradesh, (2010) 10 SCC 259.



13. A bare reading of Section 308 IPC shows 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.

14. A gainful reference in this regard may be made to the decision in Bishan Singh & Anr. Vs. State² wherein, while holding the conviction of the accused under Section 308 IPC unsustainable, the Supreme Court 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.”

15. Every incident of inflicting injury, even if grievous in nature, does not *ipso facto* lead to a conclusion that the 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.

16. This Court is of the considered view that no intention or knowledge on the part of the appellant to cause death at the time of inflicting of injuries is made out from the testimonies of the two injured witnesses in the present case. Accordingly, the conviction of the appellant under Section 308 IPC is not sustainable; however, the prosecution case insofar as the appellant entering the house of the injured witnesses and inflicting injuries upon them is concerned, the same stands proved beyond reasonable doubt.

17. The role attributed to the appellant is of giving blows to PW-5 with a hockey stick, and the injuries sustained by PW-5 as a result were opined to be grievous in nature. Accordingly, the conviction of the appellant under Section 308 IPC is modified to one under Section 325 IPC, which deals with voluntarily causing grievous hurt. The conviction of the appellant under Section 452 IPC is upheld.

18. Now, the matter turns to the question of sentence.

19. Considering the mitigating factors as pleaded by the appellant, and in view of the fact that the conviction of the appellant has been altered from Section 308 IPC to Section 325 IPC, the substantive sentences imposed upon the appellant for the offences under Sections 325 and 425 IPC are

² (2007) 13 SCC 65



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modified to the period of custody already undergone by him. The sentence in default of payment of fine, however, is maintained. The appellant shall deposit the fine amount within a period of 4 weeks, if not already deposited; and a receipt of the same shall be furnished to the concerned I.O. In case of failure to deposit the fine amount, the appellant shall serve the sentence in default of payment of fine.

20. The present appeal is disposed of in the above terms.

21. A copy of this judgment be communicated to the Trial Court as well as the Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 23, 2025

pmc