

**Sanjay Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Jan-23-2014

**Judge :** S. P. Garg

**Appellant :** Sanjay Kumar

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

23. d January, 2014 + CRL.A.No.7/2012 & CrI.M.B.95/2014 SANJAY KUMAR .....  
Appellant Through : Mr.Shailendra Babbar, Advocate. VERSUS STATE .....  
Respondent Through : Mr.Lovkesh Sawhney, APP. CORAM: MR. JUSTICE  
S.P.GARG S.P.GARG, J.

(ORAL) 1. Sanjay Kumar (the appellant) has preferred the present appeal to challenge his conviction under Sections 308/452 IPC by a judgment dated 12.12.2011 in Sessions Case No.110/09 arising out of FIR No.467/07 registered at Police Station Bawana. By an order on sentence dated 15.12.2011, he was awarded Rigorous Imprisonment for five years with fine `5,000/- under Section 308 IPC and Rigorous Imprisonment for three years with fine `5,000/- under Section 452 IPC.

2. Allegations against the appellant were that on 28.08.2007 at about 10.45 A.M. at the house of R.K.Verma at Village Pooth Khurd, Delhi, he committed criminal

trespass and inflicted injuries to Kishore. The police machinery was set into motion when Daily Diary (DD) No.58B (Ex.PW7/A) was recorded at 11.15 P.M. at Police Station Bawana regarding the incident of quarrel. The investigation was assigned to SI Jai Kumar who lodged First Information Report after recording Kishores statement (Ex.PW-3/A) on 29.08.2007. conversant with the facts were recorded. Statements of witnesses After completion of investigation a charge-sheet was submitted in the court against the accused; he was duly charged and brought to trial. The prosecution examined ten witnesses to prove his guilt. In 313 statement, the accused denied his complicity in the crime and pleaded false implication. After considering the contentions of the parties and appreciating the evidence on record, the Trial Court by the impugned judgment held the appellant guilty for the offences mentioned previously.

3. During the course of arguments, appellants counsel confined his arguments regarding correctness of the conviction under Section 308 IPC and pleaded that ingredients of Section 308 IPC were not attracted. The court finds substance in the plea of the appellants counsel. It has come on record that the appellant and the accused were acquainted with each other prior to the occurrence and had visiting terms. Complainant in the cross-examination as PW-3 admitted that Sanjay was known to him for about six or seven months prior to the incident and had arranged a job for him. He used to accompany him on his motorcycle. Subsequently, the complainant suspected the accused to have illicit relations with his wife. For that reason, on the day of occurrence he declined to have conversation with him on telephone. It caused annoyance to the appellant and he rushed to his house with a hockey and inflicted injuries to him. It further reveals that the victim was taken to Maharishi Balmiki hospital by his wife Meenu on 28.08.2007 at about 11.20 P.M. He was conscious and oriented but did not lodge any report with the police. MLC (Ex.PW-2/A) records that Meenu declined to have any police investigation. Efforts were made to settle the dispute. When no compromise took place, on 29.08.2007, the complainant lodged the report with the police. It has further come on record that injuries sustained by the victim were on his nose and forearms which were not vital organs of the body. The injured was not admitted in the hospital and was discharged on the same day after first aid. Apparently, the injuries sustained by him were not dangerous or sufficient to cause death in the ordinary course of

nature. The appellant had also sustained injuries and was taken to hospital but the Investigating Officer did not place on record MLC to ascertain the nature of injuries sustained by him. Injuries on the accused remained unexplained. The injuries on the victim were opined grievous caused by blunt object. The victims wife did not appear in the witness box to prove allegations of criminal intimidation. Offence punishable under Section 308 postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. In the instant case, the circumstances referred above are not such that the appellant had any such intention or knowledge while inflicting injuries with a hockey to the victim and suffice would it be to say that the appellant voluntarily caused grievous injuries with blunt object to the victim and the offence committed by him was covered under Section 325 IPC. The conviction is accordingly altered from Section 308 IPC to Section 325 IPC. Nominal roll dated 20.01.2014 reveals that the appellant has suffered incarceration for two years, one month and fifteen days besides earning remission for seven months and fourteen days as on 18.01.2014. His overall jail conduct is satisfactory. Though he is involved in some other criminal cases but there is nothing on record to show if he has been convicted in any of these cases. Taking into consideration the facts and circumstances of the case, the substantive sentence of the appellant is reduced to three years under Section 325 IPC from Rigorous Imprisonment for five years under Section 308 IPC. Other terms and conditions of the sentence order are left undisturbed.

4. The appeal stands disposed of in the above terms. CrI.M.B. No.95/2014 also stands disposed of. Trial Court record be sent back forthwith. (S.P.GARG) JUDGE  
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