

Shiksha Vs. State

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Court : Delhi

Decided On : Jan-27-2014

Judge : Indermeet Kaur

Appellant : Shiksha

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :21.01.2014. Judgment delivered on:- 27.01.2014. CRL.A. 34/2006 SHIKSHA Through: versus STATE Through: + Appellant Mr.Rajesh Khanna, Advocate. Respondent Mr.Varun Goswami, APP along with SI Daya Kishan. CRL.A. 128/2006 SANJEEV TYAGI @ CHIDDI BOSE Appellant Through: Mr.Rajesh Khanna, Advocate. versus STATE Through: Respondent Mr.Varun Goswami, APP along with SI Daya Kishan. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The appellants before this Court are a mother and son. Shiksha is the mother and Sanjeev is her son. They are aggrieved by the impugned judgment dated 19.12.2005 wherein they had been convicted under Sections 307/325 read with Section 34 of the IPC. Accused Sanjeev Tyagi had been convicted separately under Section 25 of the Arms Act. Vide order of sentence dated 24.12.2005, each of them had been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo RI for 3

months for the offence under Section 307 of the IPC; for the offence under Section 325 of the IPC, each of them had been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.1,000/- each and in default of payment of fine to undergo RI for a period of 1 month. For the offence under Section 25 of the Arms Act, accused Sanjeev Tyagi had been sentenced to undergo RI for a period of 1 year and to pay a fine of Rs.500/- and in default of payment of fine to undergo RI for 1 month. These sentences were to run concurrently. 2 The version of the prosecution was unfolded in the statement of Renu (PW-1). She was the injured and the complainant. Her statement (Ex.PW-1/A) was recorded on the intervening night of 26-27.05.2004 after she had been declared fit for statement. The incident had occurred at 09:30 PM on 26.05.2004. As per Ex.PW-1/A when she along with her two children had gone to Budh Bazaar to purchase vegetables, on her way back she saw accused Sanjeev sitting on the road; he started abusing her with filthy language. On query, he stated that if she would not leave the place, he will kill her. PW-1 stated that she will report the matter to the police and went to the adjoining STD booth. Accused came there and snatched the receiver from her. She returned to her house. Accused Sanjeev reached her house and threatened to kill her because she had informed the police. He pulled out a knife and gave several blows upon her person. She suffered injuries on her chest, left wrist and abdomen. Her husband Mukhtiar Singh (PW-2) who had also reached, tried to intervene; accused Sanjeev gave him knife blows as well. His mother Shiksha gave brick blows to PW-1 and PW-2. Police removed the injured to the hospital. 3 Her statement (Ex.PW-1/A) was recorded on the following day. It was on this statement (Ex.PW-1/A), rukka (Ex.PW-12/A) was dispatched at 15 minutes past 12:00 midnight and the FIR was registered at 12:50 am. 4 The investigating team comprised of ASI Mangu Lal (PW-12), constable Satpal (PW-9) and constable Raj Kumar (PW-10) who reached the spot. This was pursuant to DD No.52-B (Ex.PW-7/A) which had been marked to them. Time in this DD has been mentioned as 09:45 pm. On reaching the spot, PW-12 was informed that the injured had been removed to the DDU hospital. MLCs of PW-1 and PW-2 were collected. 5 The MLC of PW-1 was proved as Ex.PW-3/A by Dr. Pooja Bhasin (PW-3). In her cross-examination, PW-3 admitted that the injuries caused on the victim are by a sharp object; they may have been caused by a blade also. 6 Dr. Rahul Singh (PW-4) had

opined the injuries of PW-1 as grievous; this was on the basis of the orthopedic report evidencing a fracture on the wrist of the victim. 7 Dr. Renu Sehgal (PW-5) had examined the husband of the victim i.e. PW-2. His MLC was proved as Ex.PW-5/A. There were 6 injuries noted upon his person. Injuries No.1 to 3 were sharp and injuries No.4 to 6 were blunt. 8 PW-12 in the course of investigation had prepared the site plan (Ex.PW-12/E). As per his version, the site plan was prepared on 09.06.2004. Learned counsel for the appellants has drawn attention of this Court to the version of PW-10 wherein in his cross-examination he has admitted that he had given his statement to the Investigating Officer (Ex.PW-10/DX) wherein he had stated that the Investigating Officer had prepared the site plan at the instance of Mukhtiar Singh. This statement was recorded on 27.05.2004. Submission of the learned counsel for the appellants being that the site plan of 27.05.2004 has been deliberately suppressed and it was a second site plan which was prepared on 09.06.2004. Further submission of the learned counsel for the appellants on this score being that there is no explanation as to why the STD booth has not been depicted in this site plan. The place of incident is also doubtful; the site plan has depicted the incident outside the house of PW-1 wherein PW-1 and PW-2 have both stated that the incident had occurred inside the house. Doubt on the prosecution version is created on this count as well. To support this submission, reliance has been placed upon 1997 JCC263Narain Singh & Anr. Vs. State; submission being that where the place of occurrence is disputed and the prosecution itself is confused about it, story of the prosecution has refuted. Reverting back to the evidence which has been led by the prosecution, learned counsel for the appellants has pointed out that lady constable Pushpa (PW-8) who was also a part of the investigative team, in her crossexamination, has stated that she could not recollect whether the Investigating Officer had prepared the site plan at the instance of PW-2 i.e. Mukhtiar Singh. Site plan whether prepared at the instance of PW-1 or PW-2 is not clear. 9 In the statement of the accused persons recorded under Section 313 of the Cr.PC, they have pleaded innocence; submission being that they have been falsely implicated in the present case; it was a dispute of Rs.200/- which the accused had refused to give to PW-2 who was in a drunken state which has led to this false implication. Learned counsel for the appellants has also drawn attention of this Court to the

crossexamination of PW-1 and PW-2; submission being that this defence has been projected even in their cross-examination apart from the additional defence that the incident had occurred in the Budh Bazaar when a dispute had arisen between PW-1 and PW-2 with the mangoes seller on the price of mangoes. 10 Learned counsel for the appellants has in fact projected a sixfold defence. His first submission is that the ingredients of Section 307 of the IPC are not made out; intention and imensea are missing. It is pointed out that the supplementary statement of PW-1 had been recorded 2 days later i.e. on 29.05.2004 where for the first time, the victim while improving her statement had stated that the accused persons had attacked her with the intention to kill her and her husband. This essential ingredient was missing in her first statement. This is a material improvement. The second improvement in the supplementary statement is the fact that the victim in her supplementary statement had stated that the accused was armed with a knife. This was also missing in the first statement. The injuries as per the MLC are not penetrating; they are not on any vital part; they are also not opined to be dangerous. Offence under Section 307 of the IPC is not made out. The second argument is on the place of incident; as noted supra, it is pointed out that the versions of PW-1 and PW-2 suggest that the incident had taken place inside the house whereas the site plan (Ex.PW-12/E) suggests that the incident had taken place outside the house. The knife purported to have been recovered at the behest of Sanjeev was from an open place. It was not subjected to an expert opinion i.e. neither to the doctor and nor was it sent to the CFSL. Reliance has been placed upon 2006 (2) CC Cases (HC) 87 State Vs. Mohd. Akhtar & Others to substantiate a submission that where a knife was recovered at the instance of the accused but no effort was made to connect the knife with the offence, benefit of doubt must accrue to the appellant as the investigation was noted to be faulty. No public witness had also joined the recovery. Recovery is clearly doubtful. The fourth argument is the enmity angle. Submission being that it has come on record that the parties were inimical towards one another. The dispute was over water and enmity being a double edged weapon, this had been used by the complainant party to falsely implicate the accused. It has also been argued that adverse inference for not joining any member of PCR or from the STD booth must be drawn against the prosecution. They would have been the best witnesses to

explain the incident but they have been deliberately withheld. To support this submission, reliance has been placed upon a judgment of the Division Bench of Punjab and Haryana High Court reported as 1997 (2) RCR471Gurnam Singh Vs. State of Punjab; submission being that whether material witnesses had not been examined, adverse inference for not examining them had been drawn; this was especially for the reason that had these witnesses been produced, they would have come out with the truth. Lastly learned counsel for the appellants has drawn attention of this Court to the MLC of both PW-1 and PW-2. It is pointed out that the serial number of MLC of PW-2 was prior in time to the serial number of the MLC of PW-1 but the version of the prosecution is contrary; version of the prosecution being that PW-1 was medically examined at 10:40 pm whereas PW-2 was medically examined at 11:15 pm. This documentary evidence is irreconcilable with their ocular versions. On all counts, benefit of doubt must accrue to the appellants and they are entitled to an acquittal. 11 Arguments have been refuted by the learned counsel for the State. It is pointed out that on no count, does the impugned judgment suffers from any infirmity. It is pointed out that the ingredients of Section 307 of the IPC are clearly made out and there is no bar either in recording a supplementary statement in the course of investigation or reading such a statement. In the instant case, there have been no improvements in the supplementary statement as has been sought to be pointed out by the learned counsel for the appellants. Reliance has been placed upon JT2009(2) SC140State of M.P. Vs. Kashiram and Others. It is submitted that to justify a conviction under Section 307 of the IPC, it is also not essential that bodily injuries capable of causing death should have been inflicted; the intention may be deduced from other circumstances and even without reference to the actual wound. Reliance has also been placed upon a judgment of a co-ordinate Bench of this Court decided in Crl. Appeal No.912/2009 on 17.12.2012 wherein it had been noted that not only a supplementary statement is permissible to be recorded by the Investigating Officer but such a statement which only elicits further and fuller details has to be necessarily read. The common intention on the part of both the accused to commit the offence is also writ large. Merely because the brick has not been recovered would not detract from the substantive offence under Section 307 of the IPC which otherwise stands fully proved. 12 Arguments have been heard. Record has been

perused. 13 PW-1 has reiterated the averments made by her in her complaint. She has deposed that on the fateful day i.e. 26.05.2004 at about 08:0009:00 pm when she was returning back to her house along with her two small children after purchasing vegetables from Budh Bazaar, accused Sanjeev who was sitting in front of her house started abusing her and on questioning, he threatened her that he will kill her. PW-1 went to nearby STD booth to make a call to the police. When she reached home, accused Sanjeev followed her and again threatened her that he would kill her as she had informed the police. He gave several blows with a knife which hit her chest, shoulder and abdomen. Blood started oozing out. When her husband (PW-2) returned home, he was also attacked by accused Sanjeev with a knife and he also sustained injuries on his left arm. The co-accused Shiksha, the mother of Sanjeev, gave brick blows both to PW-1 and to PW-2. 14 The site plan (Ex.PW-12/E) has reflected the place of the incident. This is at point A. This is just outside the entrance of the house of PW-1. This site plan is not in conflict with the ocular version of PW-1. Her testimony when read as a whole clearly shows that accused Sanjeev had started giving filthy abuses to PW-1 when she was outside her house. After she had made a call to the police from the nearby STD booth, she reached her house. This terminology i.e. on her reaching the house does not in any manner suggest that she was inside the house when the occurrence took place. This is also the version of PW-2. There is thus no conflict between this document (Ex.PW-12/E) and the place of incident as having been depicted outside the entrance to the house of PW-1 and the oral testimonies of PW-1 and PW-2 on this point. The STD booth not having been depicted in the site plan also does not detract the authenticity and veracity of the site plan. 15 Submission of the learned counsel for the appellants that there were two site plans and this is event from the cross-examination of PW-10 is a submission bereft of force. The Investigating Officer is PW12. He had prepared the site plan. His version is clear on this point. He has stated that he could not prepare the site plan on the fateful day i.e. on 26.05.2004. He had prepared it on 09.06.2004 at the pointing out of PW-1. This has been corroborated both by PW-1 and PW-2. PW-10 had joined investigation only on 27.05.2004 when the accused persons were arrested. Although in his cross-examination, he had stated that in his statement to the Investigating Officer, he had stated that the site plan had been prepared at the

instance of Mukhtiar Singh but this witness not being present at the time when the site plan was prepared would naturally not know at whose instance the Investigating Officer had prepared the site plan. It was PW-9 who had joined the investigation with PW-12 on 09.06.2004; PW-9 has categorically stated that the site plan had been prepared on 09.06.2004 at the instance of PW-1. In no manner, can it be said that there were two site plans and one site plan had been suppressed. This argument is not substantiated. 16 Statement of PW-1 was recorded twice. Her first statement (Ex.PW-1/A) which was recorded on 27.05.2004 pursuant to which the FIR had been registered. Her supplementary statement (Ex.PW-1/B) was recorded on 29.05.2004. Trite it to say that the investigation agency was well within its power to record a supplementary statement; such a supplementary statement however should not be contrary and in conflict with the earlier version of the said witness. The statement of PW-1 recorded on 29.05.2004 (Ex.PW-1/B) has been perused. There is no doubt that in this statement for the first time PW-1 has stated that the accused persons had attacked her and her husband with the intention to kill them. These words have probably been added by the Investigating Officer as per his wisdom in order that he could bring the offence within the ambit of Section 307 of the IPC. The gist of the first statement of PW-1 (Ex.PW-1/A) had also described the incident in detail. The specific role attributed to accused Sanjeev and to his mother as also the place and point where PW-1 and PW-2 had suffered injuries had been elucidated. Even presuming that part of the supplementary statement of PW-1 wherein it has been specifically stated that the offenders had attacked PW-1 and PW-2 with the intention to kill them is substracted, the incident as otherwise detailed cannot be lost sight of. 17 The second argument of the learned counsel for the appellants that the supplementary statement contained another significant improvement which was to the effect that the knife which was the weapon of offence was in possession of Sanjeev Tyagi and this is another improvement is clearly incorrect. PW-1 in her first statement has stated that knife injuries had been inflicted upon her and her husband. Mere fact that she has not stated that the knife was in possession of accused Sanjeev at that time does not amount to an improvement; in fact it is an elucidation and detail of the manner in which the incident was committed. 18 Reverting back to the cross-examination of PW-1, she has stuck to

her stand. She has reiterated that both the accused persons had attacked her when she had reached the entrance of her house. The role attributed to Sanjeev Tyagi was that he had attacked her with a knife; his mother had attacked her with a brick. So also is her version qua the role of her husband. She denied the suggestion that the accused have been falsely implicated because of a dispute of Rs.200/- which had been demanded by PW-2 from Sanjeev Tyagi when he was in a drunken state. She further denied the suggestion that this incident had actually occurred at Budh Bazaar over a dispute on the price of mangoes where injuries had been suffered by PW-1 and PW-2. 19 PW-2 the husband of PW-1 had also been categorical in his version. He has reiterated the averments made by his wife. He deposed that when he reached his house after returning from work, he saw accused Sanjeev Tyagi attacking his wife. She has sustained injuries on her chest and abdomen; blood was oozing out. When he tried to intervene, he was also attacked by Sanjeev and he sustained injuries on his left arm and wrist. Specific role has been attributed by PW-2 to coaccused Shiksha as well; the mother of Sanjeev who had attacked both PW-1 and PW-2 with a brick. 20 This witness was subjected to a lengthy cross-examination. He denied the suggestion that a dispute had arisen with him over a sum of Rs.200/- which he had demanded from Sanjeev and this was the reason for his implication. He also denied the second suggestion that this incident had occurred at Budh Bazaar when PW-1 and PW-2 had sustained injuries over the price of purchase of mangoes. 21 Relevant would it be to state that the defences given to PW-1 and PW-2 are both conflicting defences. It appears that the defence is confused. Whether the incident had occurred because of a dispute of Rs.200/- which PW-2 had demanded from Sanjeev or whether PW-1 and PW-2 had sustained injuries at Budh Bazaar when they had gone to purchase mangoes is not clear to the appellant himself. Where the defence itself is conflicting and confused, how it is possible to convince the Court on this point is difficult to understand?. 22 The medical record of PW-1 and PW-2 fully supports their ocular versions. The MLC of PW-1 (Ex.PW-3/A) shows that she was medically examined at 10:40 pm. Her MLC shows four injuries. They read as under:

1. C/w present over distal (L) forearm underlying fracture (lenders bone) exposed c- deformity +ve.

2. C/w present over (L) Breast over areolar region just lateral to nipple 6x10x0.5 cm.
3. 2 C/w present over (L) enguival region measuring 2x0.5x0.5 cm and 1x0.5x0.2 cm respectively.
4. C/w present over lateral aspect of (L) arm 2.5x0.5 cm.

23 Injuries No.2 to 4 were opined to be sharp; injury No.1 was opined to be blunt. This opinion has been given subsequent in time to her statement (Ex.PW-1/A) and it fully supports their oral version given by PW-1 who had in Ex.PW-1/A described that whereas accused Sanjeev had attacked her with a knife; his mother had inflicted brick injury upon her. The X-ray of the victim shows that she had suffered a left forearm fracture. Nature of the injuries suffered by PW-1 were grievous. 24 The MLC of PW-2 (Ex.PW-5/A) shows that he was examined at 11:15 pm. Six injuries noted upon his person; they read as under:

1. C/w involving 1st web space and ventral aspect of (L) thumb at base 4x2x1.5 cm upto the first metacarpophalangeal joint (joint visible and tendons cut).
2. C/w 3x1x1.5 cm posterolateral aspect right forearm middle 1/3rd .
3. C/w 7x1x1cm posterolateral aspect right arm middle 1/3rd .
4. Linear abrasion 3 in No.approx 5 cm each (2) over right shoulder and once over right scapular region.
5. Swelling, abrasion and bruise (L) temporal region.
6. Small abrasions over forehead and nose.

25 Injuries No.1 to 4 were sharp and injuries No.5 & 6 were blunt. This also supports his ocular version that he had been attacked by Sanjeev who was armed with a knife whereas co-accused Shiksha was armed with a brick. 26 The submission of the learned counsel for the appellants that the MLC number of PW-2 is 11632 which is an earlier serial number to the MLC of PW-1 which has a serial number 11680 but the time of the medical examination of PW-1 and PW-2 shows

that PW-1 was examined prior in time to PW-2 and thus the MLC of PW-2 having an earlier serial number cannot be reconciled with this version is an argument bereft of force. As has been rightly pointed out by the learned public Prosecutor in medico legal cases where the victims are brought in for a medical examination, understandably there is a rush; the MLC papers are prepared in advance prior to the actual examination by the concerned doctor. It is apparent that the MLCs of both PW-1 and PW-2 had been prepared with all details and information already recorded; since both PW-1 and PW-2 had been brought into the hospital together, the writing work for PW-2 must have been done prior in time but PW-1 who had sustained more serious injuries was examined first as is evident from her MLC. Her time of examination was 10:40 pm and that of PW-2 was 11:15 pm. This is the evident answer to this argument of the learned counsel for the appellants. However, even presuming for the sake of argument that there is a difference between the serial numbers, it does not detract from the medical record which clearly shows that PW-1 and PW-2 had been injured details of which find mention in the aforementioned documents. 27 Non examination of STD booth owner and PCR person also does not affect the merits of the controversy as they could in no manner be said to be witnesses who were material to the incident. Record of the PCR is however part of the Court record. Constable Lakhmi Chand (PW-7) has categorically deposed that at 09:45 pm he received information in PS Punjabi Bagh about a quarrel near the peepal tree of the STD book. This DD was reduced into writing vide Ex.PW-7/A. PW-7 has admitted that this information was given by the wireless operator. Thus non-examination of person from the PCR and STD booth, not being material to the incident in question, does not reinforce this submission of the learned counsel for the appellants. 28 The knife which was the weapon of offence had been recovered vide memo Ex.PW-10/D. It had been recovered on the same day i.e. on 27.05.2004 pursuant to the disclosure statement of accused Sanjeev Tyagi from the bushes near the main gate of DDA, opposite Hastal village. The sketch of the knife Ex.PW-1/C has also been perused. The recovery memo has been attested by constable Raj Kumar (PW-10) who has testified to this effect. He had joined the Investigating Officer. There is no reason to disbelieve this recovery. However it has come on record that this knife was not shown to the doctor for his opinion as to whether the weapon which had caused

the injuries upon the victim is the same weapon. There is no explanation by the Investigating Officer as to why no such effort was made. The knife was also not sent to the CFSL. There is also no evidence that there was any blood on the knife. The recovery of the knife thus become inconsequential and has to be ignored. 29 The submission of the learned counsel for the appellants that it was only in the supplementary statement of PW-1 which was recorded on 29.05.2004 that the ingredients of offence under Section 307 of the IPC had been detailed; submission being that an otherwise reading of the complaint (Ex.PW-1/A) would not justify the conviction of the appellants under Section 307 of the IPC. 30 The facts established are that an incident had occurred in which PW-1 and PW-2 had sustained injuries details of which have been described in their medical record. The question however which arises for decision is as to whether the ingredients of offence as contained in Section 307 or not. Section 307 of the IPC reads as under:- Section 307 in The Indian Penal Code, 1860 307. Attempt to murder.-- 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 murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life]., or to such punishment as is hereinbefore mentioned. Attempts by life- convicts. Attempts by life- convicts.- 2[When any person offending under this section is under sentence of 1[imprisonment for life]., he may, if hurt is caused, be punished with death.]. Illustrations (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued A would be guilty of murder. A is liable to punishment under this section (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has committed the offence defined by this section, though the death of the child does not ensue. (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of 3[the first paragraph of]. this section. (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A' s keeping; A has not yet committed the offence in this section. A places the food on Z' s table or delivers it to Z' s

servants to place it on Z' s table. A has committed the offence defined in this section.

31 It necessarily encompasses an intention or knowledge on the part of the offender. In order to amount to an attempt to murder, the act committed must be such that if not prevented or intercepted, it would be sufficient to cause death of the victim. An offence under Section 307 of the IPC is a very serious offence and it requires the very same factors to be proved as are noted to prove an offence under Section 302 of the IPC except in this case the act falls short of a death of the deceased which is necessary under Section 302 of the IPC. 32 Testimonies of PW-1 and PW-2 and the medical evidence tested on this touchstone do not establish the ingredients of Section 307 of the IPC. It could not be said that the appellants had the common intention to cause the death of PW-1; neither is the ocular version of PW-1 corroborative on this point and nor is the medical evidence. The intention for an attempt to murder has to be gathered from all circumstances and not necessarily from the consequence that ensue. The nature of the weapon used, the manner in which it is used, the motive for the crime and severity of the blows inflicted upon the parts of the body are some of the factors which may be taken into account for consideration of an intention. 33 In the instant case, what was the immediate cause of quarrel between Sanjeev Tyagi and PW-1 was that filthy abuses were being given by Sanjeev Tyagi to PW-1 to which she objected. Thereupon, the accused accosted her and threatened her; when she informed the police from the STD booth and was almost at the entrance of her house, accused Sanjeev Tyagi attacked her with the knife. It is not a case there was already an enmity brewing between the parties; there is no such evidence on this count. It is also not the version of the prosecution that the accused had gone somewhere to procure the knife. It was a pocket knife and was in his possession. His mother joined him and hurled brick injuries upon PW-1. PW-2 intervened; he was also attacked. PW-1 suffered a fracture of her left forearm. The other injuries as described in the MLC cannot be said to be of such a depth or penetration of such a level of danger that they could cause the death of the victim. However, since PW-1 had sustained a fracture, the nature of her injuries were termed as grievous. PW-2 had admittedly received simple injuries. He had been discharged on the same day. 34 In these circumstances, this Court is inclined to modify the

conviction from Section 307 of the IPC to Sections 326/34 of the IPC and not for an attempt to murder. 35 In AIR 1993 SC1256 Pashora Singh and Another Vs. State of Punjab, the Supreme Court had an occasion to deal with a conviction which had been suffered by the appellants under Sections 307/34 of the IPC. There were two injured in that case; one injured had suffered two gandasa blows and the second injured had suffered one gandasa blow. One of these injuries was on the head. It was also a case of earlier grievance between the parties. The conviction was altered from Section 307 to one under Section 326 of the IPC. 36 The appellants have been sentenced for a maximum period of 5 years and have also been directed to pay fine. Fine has since been paid. The offence relates to the year 2004. It is more than a decade old. The appellants i.e. both the mother and son have no previous criminal antecedents; they have already suffered an agony of trial both before the trial Court as also before the appellate Court. This Court has been informed that accused Sanjeev Tyagi has undergone incarceration for a period of 2 years and about 4 months which includes the remission earned by him. His mother Shiksha has undergone incarceration of almost about 3 months including the remission. 37 Under Section 326 of the IPC, the sentence of imprisonment may be of either description for a term which may extend to 10 years as also fine. In the fitness of things, the incident being 10 years old; parties being neighbours; the appellants i.e. both the mother and son have already suffered a protracted trial; they not having abused the process of bail since their release; their conduct being satisfactory at the time when they were incarcerated; the period of sentence already undergone by each of them is the sentence imposed upon them. However, in addition to the fine which has already been imposed, they shall pay a sum of Rs.20,000/- each which amount shall be paid within two weeks from today to the complainant. The Investigating Officer who is present in Court ensures compliance. In case the fine is not paid, the original sentence imposed upon the appellants shall be revived. 38 With these directions, the appeals are disposed of.INDERMEET KAUR, J JANUARY27 2014 A