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Vijay Jaln Vs. State

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Court : Delhi

Decided On : Oct-17-2014

Judge : Pradeep Nandrajog

Appellant : Vijay Jain

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: October 09, 2014 Judgment Delivered on: October 17, 2014 % + CRL.A. 18/2000 RAJESH & ORS. Represented by: ..... Appellants Ms.Rebecca M.John, Sr.Advocate instructed by Mr.Harsh Bora, Advocate versus THE STATE (NCT OF DELHI) ..... Respondent Represented by: Mr.Varun Goswami, APP Inspector Braj Mohan, PS Farsh Bazar CRL.A. 49/2000 VIJAY JAIN Represented by: ..... Appellant Mr.Dinesh Mathur, Sr.Advocate instructed by Mr.Akshay Bipin, Advocate versus STATE Represented by: ..... Respondent Mr.Varun Goswami, APP Inspector Braj Mohan, PS Farsh Bazar CRL.A. 27/2000 MURARI LAL & ORS Represented by: ..... Appellants Mr.K.K.Sud, Sr.Advocate instructed by Mr.Vishal Dabas and Mr.Ajay Tushir, Advocates versus STATE Represented by: CRL.A.Nos.18/2000 & conn.matters ..... Respondent Mr.Varun Goswami, APP Inspector Braj Mohan, PS Farsh Bazar Page 1 of 17 CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Crl.A.No.18/2000 filed by Rajesh, Munna Lal, Prakash Chand, Subhash Chand and Ashok has to be decided only with respect to Rajesh, Munna Lal and Subhash Chand, because Prakash Chand died on November 23, 2002 and Ashok died on May 04, 2009, and as recorded in the order dated August 21, 2013, the criminal appeal abates as regards Prakash Chand and Ashok. Along therewith Crl.A.No.49/2000, filed by Vijay has to be decided. The reason being that all of them have been convicted vide decision dated December 15, 1999 in FIR No.183/1985 PS Farsh Bazar.

2. Co-accused Swaroop Chand died during trial and hence proceedings against him were dropped by the learned Trial Judge on May 26, 1998.

3. Whereas Vijay Kumar has been held guilty for having committed the offence punishable under Section 302 IPC as also the offences punishable under Section 147, Section 148 and Section 326 IPC read with Section 149 IPC, Rajesh, Munna Lal and Subhash Chand have been held guilty for the offence punishable under Section 147, Section 148 and Section 326 IPC read with Section 149 IPC.

4. Vide order on sentence dated December 22, 1999, where Vijay has been sentenced to undergo imprisonment for life and pay fine in sum of `1,00,000/-, in default to undergo rigorous imprisonment for three years for the offence punishable under Section 302 IPC and Vijay, Rajesh, Munna Lal and Subhash Chand have been directed to undergo rigorous imprisonment for six months and pay fine in sum of `1,000/- each and in default to undergo rigorous imprisonment for three months for the offence punishable under Section 147 IPC. For the offence punishable under Section 148 IPC they have been sentenced to undergo rigorous imprisonment for one year and pay fine in sum of `1,000/-, in default to undergo rigorous imprisonment for three months. For the offence punishable under Section 326 read with Section 149 of the Penal Code they have been sentenced to undergo rigorous imprisonment for three years and pay fine in sum of `5,000/- in default to undergo rigorous imprisonment for one year. The sentences have been directed to run concurrently.

5. Crl.A.No.27/2000, filed by Murari Lal, Anil Kumar S/o Murari Lal, Ramnik, Om Prakash, Anil Kumar S/o Baij Nath and Raj Kumar is also being decided along with

Crl.A.No.18/2000 and Crl.A.No.49/2000 notwithstanding the appellants of Crl.A.No.27/2000 being convicted by a separate decision but of even date (December 15, 1999). All of them have been convicted for the offence punishable under Section 147 IPC, Section 148 IPC, Section 323 read with Section 149 IPC and Section 427 read with Section 149 IPC, for which offences they have been sentenced to undergo rigorous imprisonment for a period of six months and pay fine in sum of `1,000/- and in default to undergo rigorous imprisonment for three months; to undergo rigorous imprisonment for one year and pay fine in sum of `1,000/-, in default to undergo rigorous imprisonment for three months; to undergo rigorous imprisonment for three months and pay fine in sum of `1,500/-, in default to undergo rigorous imprisonment for three months; to undergo rigorous imprisonment for three months and pay fine in sum of `500/-, in default to undergo rigorous imprisonment for one month. The sentences have been directed to run concurrently. The order on sentence is dated December 22, 1999 i.e. of the same date on which the order on sentence was passed in the other case.

6. The FIR in which these appellants were accused is FIR No.184/1985 PS Farsh Bazar.

7. It is a case of two cross complaints resulting in registration of FIR No.183/1985 in which Rajesh, Munna Lal, Prakash Chand, Subhash Chand, Ashok and Swaroop Chand were named as accused and FIR No.184/1985 in which Murari Lal, Anil Kumar S/o Murari Lal, Ramnik, Om Prakash, Anil Kumar S/o Baij Nath and Raj Kumar were named as accused.

8. The two cross FIRs were registered concerning an incident of rioting which admittedly took place on May 24, 1985 at 4:00 PM, and the place is a street in Bara Bazar, Shahdara on which the accused on either side had shops wherefrom they were carrying on business.

9. The gladiators on the two sides were : (i) Murari Lal, his sons Ashok (who died due to injuries suffered at the incident) and Anil Kumar; his brothers Raj Kumar and Om Prakash, and the son of Om Prakash named Ramnik, and one Anil S/o Baij Nath who was married to the sister of Murari Lal; (ii) Swaroop Chand, his sons Munna Lal and Subhash Chand along with Subhash Chands son Ashok and

Prakash Chand, the brother of Swaroop Chand and his sons Vijay and Rajesh.

10. We shall be referring hereinafter to the group of Murari Lal as Group-A and the other group of Swaroop Chand as Group-B. The site plan to scale Ex.PW-4/A in the criminal trial in which Group-B was the accused would depict the place where the incident took place and would be as under:518 512 Bara Bazar Street Namkeen 11. Being relevant for decision in the appeal, shop No.518 belongs to Murari Lals Group and shop No.512 belongs to Swaroop Chands Group. The Namkeen shop belongs to one unknown person where snacks used to be prepared by frying food stuff in a kadhai and to stir and sieve the fried food stuff a palta was used.

12. The origin of the incident, consistently deposed to by witnesses on either side is that on May 24, 1985 the officials of the Food Department of Delhi Administration reached Bara Bazar Shahdara to lift samples of food. As the word spread in the market that the officials were lifting samples the shopkeepers pull down their shutters. There were allegations and counter allegations. Lala Swaroop Chand accused Lala Murari Lal of having organized the raid and Lala Murari Lal accused Lala Swaroop Chand of having organized the raid. Needless to state witnesses appearing at the trial against Murari Lal and others i.e. members of Swaroop Chands Group deposed that Lala Murari Lal and his group were the aggressors and vice versa.

13. Insp.Vinod Kumar who appeared as PW-3 in the criminal trial against Group-A and as PW-13 in the criminal trial against Group-B was handed over DD No.24-A which was recorded at PS Farsh Bazar at 4:05 hours and he proceeded to Bara Bazar Street because the information was that two groups were rioting in Bara Bazar Street. He learnt that one Ashok S/o Prakash Chand and a few other injured persons had been taken to the hospital. He recorded the statement Ex.PW-1/A of Vijay Kumar PW-1 in which Vijay Kumar named members of the Group-A as the ones who had formed an unlawful assembly and attacked shop No.512 of Vijay. He also recorded the statement Ex.PW-1/A of Murari Lal in which he named the members of Group-B as the ones who formed an unlawful assembly and attacked shop No.518 of Murari Lal and during the assault oil was thrown on his son Ashok

causing scalding injuries.

14. Two FIRs as above noted were registered against members of Group-A and Group-B.

15. Put in a tabular form the MLCs of Murari Lals Group-A and Swaroop Chand Group-B would evince as under:Group-A Clean lacerated/incised(unclear) wound of 1 cm on left side of forehead. Loss of upper part of left middle finger. 30%-40% burns on the front of chest, back of chest and front of abdomen. 7%-9% burns in both upper limbs Murari Lal Ex.PW-5/A (5:10PM) Deceased Ashok Ex.PW-5/B (5:05PM) Anil Kumar s/o Murari Lal Om Prakash Ramnik Anil s/o Baijnath Raj Kumar - - - - - - Swaroop Chand Ex.PW-6/A (5:20PM) Munna Lal Ex.PW-3/B (5:50PM) Vijay Ex.PW-6/B (5:35PM) CRL.A.Nos.18/2000 & conn.matters Group - B Clean lacerated wound of 3cm length on left parietal region on scalp. Clean lacerated wound of 1cm length on right upper lip. Abrasion on back. Clean lacerated wound (1/2)inch x (1/2)inch x (1/4) inch over posterior fontanal region on the back of the head. Tenderness over the left loin but bony injury. Contrusion over the nail of left index finger. Clean lacerated wound on right parietal region of scalp. Page 6 of 17 Clean lacerated wound on right middle finger. (length illegible) Lacerated wound 2inches x 1inch x (1/2)inch over left temporo-occipital region of head. Rajesh Ex.PW-3/A (5:45PM) Subhash Chand Ashok@Tota Prakash Chand - - - - 16. Ashok son of Murari Lal died on June 09, 1985 and the cause of death is septicaemia due to the burn injuries caused by scalding oil.

17. At the criminal trial of Murari Lals group, Vijay Kumar, Rajesh Kumar, Munna Lal and Swaroop appeared as PW-1, PW-2, PW-4 and PW-5 respectively and deposed in sync, albeit with minor variations on which nothing turns, deposing that the accused were armed with hockey sticks, dandas and bottles and attacked Swaroop Chands group, save and except Munna Lal who said that Murari Lal was armed with a danda and Om Prakash with a hockey stick.

18. Relevant would it be to note that the witnesses have spoken in the plural without stating as to who caused the lacerated wounds to Swaroop Chand, Munna Lal, Vijay and Rajesh.

19. At the criminal trial of Swaroop Chands group, Murari Lal appeared as PW-1, Anil Kumar son of Murari Lal as PW-2, Om Prakash as PW-6, Raj Kumar as PW-7 and Anil Kumar son of Baijnath as PW-9. As per Murari Lal, Rajesh was carrying a palta (a cooking equipment having a round thin plate with holes attached to a handle, seen in sweetmeat shops for making boondi which is ultimately used to prepared ladoos). Prakash Chand was armed with a saria. Subhash Chand with a hockey stick. As per him, Rajesh struck him with the palta on his head and as he tried to ward of the blow he suffered an injury on his hand. Prakash Chand gave a blow on his head with a saria, Subhash Chand hit him on his back and hips with a hockey stick and that Swaroop, Munna Lal and Ashok inflicted fist and kick blows on him. As per him when his son Ashok intervened to snatch the hockey stick from Subhash Chand, Swaroop Chand hit Ashok on the head and Vijay picked up a bucket and filled with boiling oil and poured it on Ashok.

20. Anil Kumar PW-2 deposed that all accused collected near his shop and started assaulting his father. As per him Munna Lal, Subhash and Swaroop Chand inflicted fist and kick blows on his father. Rajesh injured his fathers fingers, Prakash Chand inflicted a blow on his fathers head with a rod and Subhash Chand hit his father with the hockey stick. Vijay brought hot oil in a bucket and poured it on Ashok. Om Prakash PW-6, Raj Kumar PW-7, Anil Kumar PW-9 and Ramnik PW-10 also deposed likewise with minor variations, each one assigning role of pouring hot oil on Ashok to Vijay and Murari Lals finger being cut by the blow by a palta by Rajesh.

21. Witnesses on one side being accused on the other, it is apparent that the witnesses would speak half truths for the reason Murari Lal and his group had to account for the injuries suffered by four members of the Swaroop Chands group and likewise Swaroop Chand and his group had to explain the injuries suffered by Murari Lal and the deceased Ashok. In testimony of neither witnesses injuries suffered by members of the opposite group have been explained. Whereas Swaroop Chand and his group accused Murari Lal and his group of attacking them at shop No.512, Murari Lal and his group accused Swaroop Chand and his group of attacking them at shop No.518; and thus inherent would be the argument that the injuries caused to the opposite group members were in exercise of right of

private defence.

22. It thus becomes critical to determine whether at all there was an aggressor group and whether at all a group formed an unlawful assembly with the object of assaulting a member or all the members or the shop of the other group. This would subsume the place of the origin of the fight.

23. Neutral witnesses testimony would thus be relevant and we find that at the forefront would be the testimony of Ct.Shyam Singh PW-20 (in the Sessions Trial against Swaroop Chand and others). He has admitted that the photographs Ex.PW-20/1, Ex.D-2, Ex.D-3, Ex.D-4 and Ex.D-5 were taken by him at the scene of the crime and we find from the photographs that neither shop No.512 nor shop No.518 has been damaged. The scene of the crime is the road segment of Bara Bazar between shop No.512 and shop No.518. The road segment is about 60 feet. The place where oil was detected is about 15 feet from the western corner of shop No.512 and hence about 45 feet away from where the eastern corner of shop No.518 exists. The trail of oil is from the Namkeen shop.

24. Insp.Vinod Kumar PW-13 has categorically deposed that the photographs in question depict the scene of the crime.

25. Anil Kumar S/o Baij Nath PW-9 has also admitted that said photographs depict the scene of the crime.

26. There being no damage to either shop No.512 or shop No.518, it has to be held that there is no evidence that members of either group formed an unlawful assembly with the object of attacking the shop of the other group. Faced with inimical and interested witnesses in the two cross cases for the reason witnesses in one case were the accused in the other and vice versa, it is apparent that both group of witnesses would speak the half truth. But the photographs we have referred to above and the site plan to scale to which we have made a reference, keeping in view the consistent version of both groups that the raid by officers of the Food Department had led to a mutual bickering between the two groups which festered from around 11:00 AM till 4:00 PM on May 24, 1985, probablizes that remonstrance between the two groups suddenly fled up and all of a sudden a

mutual fight took place at which handy objects lying such as an iron rod, a hammer etc. were used. No hockey stick has been recovered either from the scene of the crime or pursuant to the disclosure statement made by any accused. The site plan to scale records spot H on the street where an iron rod was lying and spot I where a small hammer was lying. Spot J is the place from where a palta was picked up.

27. If we look at the MLCs of Murari Lals Group we find that only Murari Lal and deceased Ashok were injured and no other member of said group was injured. Therefore the claim of eye witnesses of Murari Lal group that members of Swaroop Chands group came armed with a palta, saria and hockey stick etc. is not believable. The members of Swaroop Chands group were 7 in number and if 7 people armed themselves and launch an assault on the other group, injuries would be found on members of the other group and not merely two. Further, the injuries on Murari Lals group are : (i) Burning by scalding hot cooking oil on Ashok and (ii) use of a palta on Murari Lal. The injuries on Swaroop Chands group have been suffered by four persons: (i) Swaroop Chand, (ii) Munna Lal, (iii) Vijay and (iv) Rajesh. The injuries are clean lacerated wounds, besides contusions and abrasions and tenderness. Whereas Swaroop Chand has two clean lacerated wounds on the head and the lip and an abrasion, Munna Lal has one clean lacerated wound on the head and contusions on the left index finger besides tenderness over the left loin. Vijay has suffered two clean lacerated wounds, one on the head and the other on the right middle finger. Rajesh has a lacerated wound on the head. The injuries tell their own story. Four members of Swaroop Chands group has been assaulted and the assailants had blunt objects in their hands.

28. The scene of the crime and the injuries suffered by the two groups would evince that as exchange of words between the two groups which started at 11:00 AM continued till 4:00 PM, the remonstrance led to a sudden quarrel in which the two sides jostled with each other and during the jostling few members of Murari Lals group picked up handy objects lying nearby such as a small hammer and an iron rod. The balance of power shifted resulting in injuries suffered by Swaroop Chands group and then realizing that to equal the balance or probably under the feeling of being overpowered, two members of Swaroop Chand seeing the palta

and the hot scalding oil boiling in a kadhai in the Namkeen shop, rushing to the shop. One arming himself with a palta and the other lifting a container filled with hot scalding oil. Rajesh was the one who picked up the palta and hit Murari Lal with the palta causing the wound on the left side of forehead, which as per the MLC Ex.PW-5/A is not clearly described and it is not clear whether the wound is incised or lacerated. He struck a second blow directing its trajectory towards the head of Murari Lal who instinctively put his hands on his head to save the head and in the process received the blow on the left middle finger resulting in the upper part of the left middle finger being severed. It is apparent that the sharp edge of the round thin plate having holes of the palta has caused the injury.

29. Section 141 of the Indian Penal Code reads as under:

141. An assembly of five or more persons is designated an unlawful assembly, if the common object of the persons composing that assembly is - First -To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or Second - To resist the execution of any law, or of any legal process; or Third - To commit any mischief or criminal trespass, or other offence; or Fourth - By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth - By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

30. The underlying principle of Section 141 of the Penal Code is that law discourages tumultuous assemblage of men so as to preserve the public peace. The essence of an offence under the Section is the combination of five or more persons, united in the purpose of committing a criminal offence, and the consensus of the purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit. Law does not declare the mere assemblage of men, however large, illegal. But where the assemblage is inspired

by an illegal object as specified in Section 141 of the Penal Code, the offence is committed.

31. A riot is an unlawful assembly in a particular state of activity, which activity is accompanied by the use of force or violence. It is only the use of force that distinguishes rioting from an unlawful assembly. As to the fact of constituting the offence of rioting, there should be at least five persons and force should be used in prosecution of the common object. If during rioting deadly weapons are used, an offence under Section 148 of the Penal Code ensues. If a penal offence is committed by any member of the unlawful assembly in furtherance of the common object the offence contemplated by Section 149 of the Penal Code is committed.

32. If there is evidence that one group formed an unlawful assembly and assaulted the other group, notwithstanding the other group being five or more than five persons, would be entitled to the right of private defence and injuries caused on the aggressors, subject to the force used to defend being proportionate to the gravity of the threat, would not render the defence group liable for any penal action.

33. The suddenness of a quarrel militates against a common object being entertained by the members of the assembly. As held in the decision reported as AIR 1989 SC1822 State of U.P. vs. Jodha Singh, a sudden quarrel does not attract Section 141 or Section 147 or Section 148 or Section 149 of the Penal Code.

34. A sudden quarrel is always the result of remonstrance and is thus without any premeditation. Thus, in a sudden quarrel if more than five persons form a group on either side, it cannot be said that the members of the group form an unlawful assembly. As held in the decision reported as AIR 1973 SC2505 Lalji vs. State of U.P, in such a case, each of the accused persons is liable for his own acts and not vicariously liable for the acts of others. As held in the decisions reported as AIR 1970 SC219Kanbi Nanji vs. State of Gujarat and AIR 1971 SC335Munir Khan vs. State of U.P. in a mutual fight there is no common object. Both parties suddenly indulge in a stray fight resulting in injuries to persons of both groups. Only those persons who are proved to cause the injuries can be held guilty for the offence

individually committed by them.

35. It may sometime happen that two parties make an issue of something and that issue becomes the pretext for a fight. The two groups armed themselves to see who are the better men. The ensuing duel between the parties is planned by members of both groups. In such case, members of both the groups would be guilty of forming an unlawful assembly. If the fight ensues they would be guilty of rioting as well.

36. Speaking of the two impugned decisions we find that the learned Trial Judge who has authored two separate judgments of even date has observed that witnesses on both sides have concealed some truth, but strangely has held both groups as aggressors. He has held that both groups formed an unlawful assembly. Convicting Murari Lal and others in Sessions Case No.56/1999 relating to FIR No.184/1985, in paragraph 17 of the decision a categoric finding has been returned that Murari Lal and others formed an unlawful assembly to attack Vijays shop No.512. This is the reason why Murari Lal and others have been convicted for the offences under Section 147, Section 148, Section 427 and Section 323 read with Section 149 IPC. By a separate judgment of even date members of Swaroop Chand and his group have been convicted holding that they had formed an unlawful assembly with the common object to beat Murari Lal and his group and this is the reason why save and except Vijay who has been convicted for the offence punishable under Section 302 IPC, all others including Vijay have been convicted as noted in paragraph 4 above.

37. Now, it cannot be that both groups were aggressors.

38. For the evidence noted by us hereinabove it is apparent that it is the case of a sudden mutual fight, not preceded by any group assembling with any particular object and thus we hold that neither group formed an unlawful assembly. The mutual fight cannot be treated as rioting because rioting as per Section 146 of the Indian Penal Code must be preceded by an unlawful assembly followed by use of force or violence by members thereof. The question of anybody being thus liable under Section 148 of the Indian Penal Code does not arise. The question of a common object of any unlawful assembly and hence the vicarious liability

contemplated by Section 149 of the Penal Code would also not arise.

39. All accused on either side have to be acquitted of the offences punishable under Section 147, Section 148 and Section 149 of the Indian Penal Code, and we order accordingly.

40. In a sudden mutual fight the person causing the injury alone is liable for his own acts.

41. Pertaining to the injuries caused to Swaroop Chand, Munna Lal, Vijay and Rajesh, as noted hereinabove the said four injured persons who appeared as PW-1, PW-2, PW-4 and PW-5 have deposed in the plural : simply deposing that the accused group came armed with hocked sticks, danda and bottles and attacked them, without specifying as to who hit whom. It has to be kept in mind that Murari Lals group comprised 7 persons, one of whom Ashok died as a result of hot scalding oil being thrown on him during the sudden free fight. The injuries suffered by Swaroop Chand, Munna Lal, Vijay and Rajesh are lacerated wounds and thus have to be the result of a blunt object.

42. It does happen that in a melee in which two groups having seven members each indulge in a free fight, it becomes impossible for the victims who are also participating in the fight to remember who injured whom. But the injuries suffered by both groups cannot be ignored at the same time.

43. The injuries suffered by Swaroop Chand, Munna Lal, Vijay and Rajesh are opined to be simple injuries, and we speak from the MLCs. From the evidence on record it emerges that members of the Murari Lal Group indulged in a mutual fight with members of Swaroop Chands group and blunt objects were used to cause injuries to Swaroop Chand, Munna Lal, Vijay and Rajesh. It is settled law that common intention can be formed at the spur of the moment and by the participative acts of the members of a group the same can be inferred. Thus, at best all members of Murari Lals group would be liable to be punished for the offence punishable under Section 323 IPC.

44. As regards the injuries caused to Murari Lal and Ashok, the consistent evidence is that Rajesh S/o Prakash Chand hit him with the palta. The palta is not a weapon, it is an implement to fry. It was a handy object lying at the Namkeen shop. The resultant injury caused is grievous and thus the offence committed by Rajesh is punishable under Section 325 IPC and not Section 326 IPC.

45. As regards the death of Ashok S/o Murari Lal, the consistent evidence is that during the free fight Vijay went to the Namkeen shop and filled up scalding cooking oil in a container and threw the same on Ashok. Thus, the offence committed by Vijay is not murder but culpable homicide not amounting to murder inasmuch as he has to be attributed knowledge that by his wanton act death of the victim may occur. Indeed, Ashok died after 15 days of the incident. The post-mortem report shows that he had suffered burn injuries covering 30% - 40% of the body area. The offence committed by Vijay is thus punishable under Section 304-II IPC.

46. To bring the curtains down we dispose of the appeals acquitting the appellants in the two appeals of the offences and hence the conviction under Sections 147, 148, 149 and 427 IPC.

47. We convict the appellants of Crl.A.No.27/2000 i.e. Murari Lals group for having committed an offence punishable under Section 323 IPC and noting that all of them have undergone simple imprisonment for periods ranging between 8 days to 12 days, noting further that the incident took place more than 29 years ago, we sentence them to undergo the imprisonment for the period already undergone and pay fine in sum of `5,000/- each and in default to undergo simple imprisonment for one month.

48. We dispose of Crl.A.No.18/2000 acquitting the appellants save and except Rajesh of the charge framed against them for the reason injuries caused to Murari Lal and Ashok have been identified as having been caused by Rajesh and Vijay alone. As regards appellant Rajesh we convict him for the offence punishable under Section 325 IPC and for which we sentence him to undergo simple imprisonment for six months and pay fine in sum of `1,000/-, in default to undergo simple imprisonment for one month.

49. We dispose of Crl.A.No.49/2000 filed by Vijay acquitting him of the charges under Sections 147, 148 and 326 read with 149 IPC. We alter his conviction for having committed an offence punishable under Section 302 IPC to having committed an offence punishable under Section 304-II IPC for which we sentence him to undergo rigorous imprisonment for 5 years and pay fine in sum of `1,000/-, in default to undergo simple imprisonment for one month.

50. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE OCTOBER17 2014 mamta

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