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Court : Delhi

Decided On : Aug-18-2011

Judge : Mukta Gupta, J.

Acts : Indian Penal Code (IPC) - Sections 325, 34, 452, 308, 323

Appeal No. : Crl. Appeal No. 405/2000

Appellant : Khazan Singh and ors.

Respondent : State

Advocate for Def. : Mr. Pawan Bahl, Adv.

Advocate for Pet/Ap. : Mr. M.R. Chawla, Adv.

Judgement :

1. By this appeal, the Appellants have challenged their conviction in case FIR No. 284/1996 under Section 325/34 IPC and Section 452/34 IPC and sentence for Rigorous Imprisonment for a period of one year on both the counts which was to run concurrently. During the pendency of the present appeal, Appellant No.1 Khazan Singh died. Hence, appeal qua him stood abated vide order dated 9th September, 2010. Since the Appellants were not present initially bailable warrants were issued pursuant to which Appellant No.2 Mangat Singh was present. However, Appellant No.3 Pritam Singh was not present as he was not found residing at the given address and, thus, non- bailable warrants were issued on 9th

September, 2010. On 17th February, 2011, the surety of Appellant No.3 appeared in Court and stated that he had informed the Appellant No.3 to be present, however he still did not appear. Again non-bailable warrants were issued against Appellant No.3 to be executed through SHO concerned. On 16th March, 2011 the surety of Appellant No.3 appeared. The surety bond was discharged as the surety of Appellant No.3 had fully cooperated and made all efforts to trace Appellant No.3 and non-bailable warrants issued against Appellant No.3 were executed with the cooperation of the surety. Since the Appellant No.3 had misused the concession of order dated 17th July, 2000 suspending the sentence, the order was recalled and he was directed to undergo the remaining sentence. Thus, presently Appellant No.2 is on bail whereas Appellant No.3 is in custody.

2. Learned counsel for the Appellants contends that the dispute is between the families of two brothers, PW2 Balwant Singh is the injured witness. PW3 Khanda Singh is the father of the injured, PW1 Jawant Singh and PW4 Uttam Singh are brothers. PW4 though is the brother of injured, however, he turned hostile. The Trial Court concluded that there was no intention to commit culpable homicide hence exonerated the Appellants for offence under Section 308 IPC and convicted them for offences under Section 325/34 IPC. No doctor has appeared in the witness box. The MLCs have been exhibited by the record clerk and hence it cannot be said that it has been proved that the injury was grievous in nature. Even the Trial Court concluded that the injury cannot be treated to be grievous, and still convicted the Appellants for offences under Section 325/34 IPC. The Appellant No.1 who has since died and PW3, the father of the injured are real brother. Though the allegations are that the injured were assaulted by danda and kulhari, however no recovery of weapon of offence can be said to have been made at the instance of Appellants. Reliance is placed on Prem Singh and Ors. v. State 2011 I AD (DELHI) 175 to contend that Section 325 or Section 323 IPC is not a minor offence of Section 308 IPC and hence the Appellants cannot be convicted for the offence under Section 323 IPC as well. The conviction under Section 452/34 IPC is also not sustainable as the incident took place in the open veranda outside. In the alternative, it is argued that the Appellant No.3 has now been in custody for more than four months and in view of the prolonged trial they have faced, the Appellant should be released on the period already undergone.

3. Learned APP on the other hand contends that PW2 Balwant Singh is an injured witness and PW1 Jawant Singh his brother is a natural witness. PW3, the father of PW1 & PW2 is an eye-witness and the testimony of these witnesses cannot be discarded lightly. The contention that the Doctor has not been examined is erroneous as Doctor Anu Kapoor was examined as PW11 who brought the X-ray plates. The learned Trial Court has held that the injuries are grievous in nature as X-ray plates and report were exhibited by Doctor. The judgment of this Court in Prem Singh and Ors. (supra) is not applicable to the facts of the present case and, thus, there is no merit in the appeal and the same be dismissed.

4. I have heard learned counsel for the parties and perused the record. PW1 has stated that on 12th April, 1996 at about 12.15 AM at night he was sleeping in his house and on hearing the shouts/cries from the house of his brother Balwant Singh which is opposite his house, he rushed towards his brother and saw that Khazan Singh, Appellant No.1 since deceased was present there with a kulhari, Mangat Singh, Appellant No.2 was having a danda in his hand and his other son was having a lathi in his hand. He identified all the three Appellants correctly in the Court. He stated that Appellant No.1 hit the blow by the kulhari on the person of his brother Balwant Singh, PW2 and the other Appellants were waving their lathis and dandas. The Appellant No.1 was also abusive and was stating that whosoever would come in their way would be dealt with like this. Since the brother of PW1 was drenched with blood he tied his head with clothes and removed him to the hospital. PW2 Balwant Singh is an injured witness who has stated that on 12th April, 1996 he was sleeping in his house at about 11.00 or 12.00 night Khazan Singh and his two sons came and started beating him due to which he became unconscious. He received injuries on his hands and head. He identified his clothes which were blood-stained. PW3 Khanda Singh the father of PW1 and PW2 has also appeared in the witness box and stated that about a year ago his son was sleeping in the Aangan of his house where he was also sleeping. Appellant No.1 was carrying a kulhari in his hand and Appellants No. 2 & 3 were carrying a danda and a lathi in their hands respectively. He identified all three accused. He further stated that they all started beating his son with the weapons they were carrying. Since bulb was on, he could see all three accused running away from the spot. His son then took the injured son to the hospital. PW 3 identified the blood-stained

clothes of his injured son. He also identified the kulhari, lathi and danda recovered from the house of the Appellants as the weapons with which injuries were inflicted. PW4 Uttam Singh has turned hostile. The weapons namely kulhari, danda and lathi were produced by PW5 HC Jagat Singh and it was found that they were in an unsealed condition. It is not even the case of the Prosecution that the weapon of offences were sealed.

5. PW8 R.S. Khera the Record Clerk AIIMS has appeared in the witness box and has identified the handwriting of Dr. Anupam Singh on the MLC. The original MLC was seen and returned. PW 9 Head Constable Mohd. Yusuf is the Investigating Officer who has stated about the investigation conducted by him along with PW10 Constable Virender PW10. Both of them have deposed about the injury on the person of PW2 and recovery of weapon of offence from Appellant No.1. PW11 Dr. Anu Kapoor is the Radiologist from AIIMS who has exhibited X-ray report Ex.PW11/A which is in the handwriting of Dr. Anil Malik who had examined the X-ray plate No. 13504. Dr. Anu Kapoor has identified the handwriting and signatures of Dr. Anil Malik. This witness has not been cross-examined.

6. The defence of the Appellants is a simple denial and that they have been falsely implicated due to property dispute in the family and litigation was pending in the Court. No defence witness has been examined. A perusal of the testimony of PW1 and PW2 clearly shows that the Appellant No.1 gave blows by Kulhari on the head whereas Appellants No. 2 & 3 gave danda and lathi blows resulting in the injuries. There can be no dispute that three of them came with a pre-meditated intention in the dead of the night and committed this offence in the veranda inside the house of the injured PW2. PW2 in his cross-examination has clarified that there was an iron gate in the house which was always kept open and he was sleeping inside the veranda of the house. Thus, the contention of the learned counsel for the Appellant that there is no house-trespass as the offence took place in the verandah is incorrect and is liable to be dismissed. There is no ground to interfere with the conviction of Appellants for offences punishable under Section 452/34 IPC.

7. As regards the conviction for offences under Section 325/34 IPC the manner in which the three Appellants had come armed with Kulhari, lathi and danda and inflicted injuries in the head of PW2 it can be concluded that the injury were caused in furtherance of common intention to cause grievous hurt. While committing injury the Appellant No.1 had also exhorted, thus, further proving this intention.

8. The reliance of the learned counsel for the Appellants on the decision of this Court in Prem Singh and Ors. (supra) is wholly misconceived. In the said case, the Appellants before this Court were Prem Singh and Vikas. This Court came to the conclusion that there was no pre-meditated fight and the injuries were inflicted on the spur of the moment. The injury on the head of injured Rajia therein was inflicted by one Bhaleru who was not the Appellant. There was no role of the Appellants Prem Singh and Vikas in the said injury. For the injuries on Israfi and Mohd. Ibrahim the Appellants therein Prem Singh and Vikas were liable to be convicted for offence under Section 323/34 IPC. However, for this charge they had been acquitted and there was no State appeal against acquittal filed. Thus, Appellants therein could not be convicted for offence under Section 323/34 IPC. The charge for 308/34 IPC was for inflicting injury on Rajia wherein the Appellants therein had no role to play and, thus, they could not be convicted for offence punishable with 308/34 IPC for having caused simple hurt to Israfi and Mohd. Ibrahim under Section 323/34 IPC.

9. In the present case the Appellants came with the pre-meditated intention as held above and inflicted injuries on the head and hand by Kulhari, lathi and danda. Thus, there is no infirmity in the judgment of the Learned Trial Court convicting the Appellants for offence punishable under Section 325/34 IPC. I find no ground to interfere with the conviction of Appellants No. 2 & 3 for offence punishable under Section 325/34 and 452/34 IPC. The Appellants have been awarded imprisonment for a period of one year. I find no ground to further reduce the said sentence.

10. Consequently, the appeal is dismissed. The bail bond and the surety bond of the Appellant No.2 are cancelled. He be taken into custody to undergo the remaining part of his sentence. Appellant No.3 is already in custody. He would

undergo the remaining sentence. Appellant No.3 be informed through the Superintendent, Tihar Jail.

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