

(2014) 01 DEL CK 0236

In the Delhi High Court

Case No : Criminal A. No. 106 of 2010

Rajender Kumar and Others

APPELLANT

Vs

State (Govt. of NCT, Delhi)

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 308 320 324 325 34

Citation : (2014) 01 DEL CK 0236

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Keshav Kaushik, for the Appellant; Feroz Khan Ghazi, APP., for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—On 26.7.2004, on receipt of information with respect to an incident in Som Bazaar, C-10 Block, Vasant Kunj, S.I. Swadesh Prakash of Police Station Vasant Kunj reached the spot, where he came to know that the injured had been taken to hospital. Two (2) wooden sticks were, however, lying on the spot at that time. On reaching Safdarjung Hospital, the Investigating Officer found injured Surinder, Naresh and Sanjay admitted there. He recorded the statement of Sanjay, who told him that like other Mondays, that day also he had installed his shop of cosmetics in C-1 Block of Vasant Kunj, Behind Vasant Valley School. Rajinder S/o Chand Ram reached there along with his brothers, Mohan, Khem Chand and Naresh. Khem Chand installed his shop at the place where his brother Surinder used to arrange shop and when they raised objection, Rajinder, Mohan, Naresh and Khem Chand attacked them with lathis (wooden sticks) and saria (iron rod), as a result of which he as well as his brothers Naresh and Surinder sustained injuries. On the statement of Sanjay an FIR u/s 308 of IPC was registered and the wooden sticks which were lying on the spot were seized. Out of them one (1) stick was made of bamboo. Later, one iron rod is also alleged to have been recovered. The appellants before this Court were charged with

offences punishable u/s 308/324/34 of IPC to which they pleaded not guilty. The prosecution examined as many as sixteen (16) witnesses whereas four (4) witnesses were examined in defence. Vide impugned judgment dated 16.12.2009 and the order on sentence 6.1.2010, the appellants were convicted u/s 325 of IPC read with Section 34 thereof and were sentenced to undergo imprisonment of one (1) year each and to pay fine of Rs. 1,000/- each or to undergo SI for one (1) month each in default.

2. The complainant, Sanjay, came in the witness box as PW1 and stated that on 26.7.2004, when he and his brother Naresh were installing their shop, the appellants Rajender and Khem Chand objected and said that they would install a shop at that place. When he told them that he had been installing his shop at that place for many years, the appellants namely, Mohan, Khem Chand, Naresh and Rajinder returned and started beating him and his brother with saria and wooden sticks as result of which they received injuries. The police was then called and they were taken to hospital where his statement Ex. PW1/A was recorded. The witness also deposed regarding recovery of wooden sticks, Ex. P1 and Ex. P2 and iron rod, Ex. P3 from there and identified the wooden sticks Ex. P1 & Ex. P2 and the iron rod Ex. P3.

3. PW2, Naresh corroborated the deposition of PW1 and stated that when they were installing their shop, the appellants objected to the same which led to a quarrel taking place and the appellant Mohan gave iron blow on his head whereas the other appellants who were having wooden sticks with them caused injuries to his brothers.

4. PW3, Surinder also corroborated the deposition of PW1 & PW2 and stated that on the aforesaid date, the appellant Rajinder, who is the Pradhan of the area did not allow them to install their shop and thereafter all the four (4) appellants armed with iron rod and wooden sticks attacked them. He further stated that the appellant, Mohan, who was having an iron rod with him gave a blow on his head.

5. PW5 is an official from Safdarjung Hospital, who proved the MLC Ex. PW5/A prepared by Dr. Shishir Kumar of the Safdarjung Hospital. The MLC pertains to the injured, Naresh Kumar.

PW7, Constable Jai Singh stated about the recovery of the iron rod (Ex. P3) at the instance of appellant, Mohan, during the course of investigation, whereas PW9, Constable Dalip Singh deposed regarding seizure of two (2) wooden sticks from the spot vide memo Ex. PW1/B.

PW12, Inspector Swadesh Prakash is the Investigating Officer who deposed with respect to the statement of the complainant, seizure of wooden sticks from the spot and recovery of the iron rod at the instance of the appellant, Mohan.

PW15, Dr. S.K. Chandan, proved the MLCs, Ex. PW15/A and Ex. PW15/B which are in the hand of Dr. Vishnu and Dr. Charan respectively. PW16, Dr. Amita Malik, proved the X-ray reports, Ex. PW16B & Ex. PW16/C in respect of injured Surinder

and Naresh respectively though no fracture was found on the body of the complainant, Sanjay. Fracture of the parietal bone was found during X-ray of the injured.

6. In their statement u/s 313 Cr.P.C., the appellants denied the allegations against them and stated that PW1 to PW3 had a quarrel with someone else, who wrongly named them. DW1, Suresh Chand, stated that on 26.7.2004, the appellant Rajinder was sitting with him when they came to know about a quarrel in the market. When they reached the spot, they found Naresh and Surinder lying injured and also noticed some boys scaling the wall of a nearby park and fleeing away. DW2, Surender, stated that when they reached the spot after the quarrel, the assailants had already fled. DW3, Ramesh Aggarwal, stated that from 4 to 6 p.m. on the birthday of Mohan, they were requesting him to give them a party and later they came to know that they had been implicated in a case. DW4, Balak Ram, stated that Mohan Singh was at his shop on the day of quarrel.

7. I see no reason to disbelieve PW1 to PW3. They having been the victim of violence, there could be no reason for them to exonerate the real culprits and implicate innocent persons for the injury caused to them. In *Mer Dhana Sida Vs. State of Gujarat*, three injured witnesses had supported the prosecution. It was held by Hon''ble Supreme Court that as there were three injured witnesses, and we would require very convincing submissions to discard the evidence of the injured witnesses whose injuries would at least permit a reasonable inference that they were present at the time of occurrence. Undoubtedly, this is subject to the requirement that there must be evidence to show that these witnesses received injuries in the same occurrence. Very cogent and convincing ground would be required to discard the evidence of the injured. In *Machhi Singh and Others Vs. State of Punjab*, ONE WITNESS Hakam Singh himself had sustained injuries in the course of incident in question, it was observed by Hon''ble Supreme Court that it was difficult to believe that he would implicate the persons other than the real culprits and that the evidence of that witness alone, was sufficient to bring home the guilt the appellants even if one were to exclude from consideration, the evidence of other PWs. Identical view was taken by the Hon''ble Supreme Court in a number of other cases including *Makan Jivan and Others Vs. The State of Gujarat*, *Hori Lal and Another Vs. State of U.P.*, , and *Jamuna Chaudhary and Others Vs. State of Bihar*,

8. The learned counsel for the appellants, when confronted with the overwhelming evidence against the appellants in the form of depositions of PW1 to PW3 corroborated by their respective MLCs and the X-ray reports in respect of PW2 and PW3 fairly concedes that the conviction of the appellants u/s 325 of IPC read with Section 34 thereof cannot be faulted with, in the facts & circumstances of the case. The grievous hurt to PW2 and PW3 is duly established from the X-ray reports which show fracture of parietal bone and fracture of bone is included in the definition of grievous hurt as defined in Section 320 of IPC. Therefore,

conviction of the appellants u/s 325 of IPC read with Section 34 thereof is affirmed.

9. Coming to the sentence, the learned counsel for the appellants states that all the three appellants spent some time in jail, though he concedes that the time spent in custody runs into days and not into months. He, however, seeks benefit of probation for the appellants on the ground that they are not previous convicts and the injury to PW1 to PW3 was caused in the course of a quarrel which took place due to a dispute as to who was entitled to install shop at a particular place. He further submits that admittedly there was no pre-planning and no motive to cause grievous hurt to PW2 and PW3. In my view, the facts & circumstances of the case, the appellants can be extended benefit of probation subject to their suitably compensating the injured persons. The appellants are directed to pay Rs. 5,000/- each to the injured Sanjay and Rs. 10,000/- each to the injured Naresh and Surinder as compensation. Subject to the appellants paying the aforesaid compensation within four (4) weeks from today, they shall be released on furnishing personal bonds of peace and good conduct in the sum of Rs. 25,000/- each with one (1) surety each of the like amount for a period of one (1) year. During the period of bonds, the appellants shall maintain peace and good conduct. They shall appear as and when directed to receive sentence. In default of paying compensation within four (4) weeks and/or furnishing bonds of peace and good conduct within one (1) week from today, the appellants shall undergo the sentence awarded to them by the trial court.

The appeal stands disposed of.

The LCR be sent back along with a copy of this order.