
(2013) 08 DEL CK 0187
In the Delhi High Court
Case No : Criminal Appeal 774 of 2000

Sham Lal	Vs	APPELLANT
The State (NCT of Delhi)		RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 308, 325

Citation : (2013) 3 JCC 2247

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Saahila Lamba, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.—Sham Lal (the appellant) challenges conviction in Sessions Case No. 257/1997 arising out of FIR No. 344/1996 PS Hauz Khas by which he was held guilty for committing offence u/s 308 IPC. By an order dated 14.11.2000, he was sentenced to undergo RI for one year with fine Rs. 10,000/-. Allegations against the appellant were that on 11.05.1996 at about 09.30 A.M. near Khel Gaon Road he fractured Gaya Baksh's parietal bone with fists with an attempt to commit culpable homicide. During the course of investigation, the Investigating Officer SI Prem Chand lodged First Information Report after recording Babu Ram's statement (Ex. PW-2/1). The accused was arrested. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted u/s 325/308 IPC. The prosecution examined eight witnesses. In his 313 statement, the accused pleaded false implication and stated that he was not the author of the injuries to the victim. Considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant perpetrator of the crime u/s 308 IPC.

2. During the course of arguments appellant's counsel on instructions stated at bar that the appellant has opted not to challenge his conviction u/s 308 IPC. She

however, prayed to take lenient view as the appellant had already undergone 25 days in custody in this case and is not a previous convict.

3. I have heard the counsel for the parties and have examined the record. PW-1 (Gaya Baksh), the victim in his Court statement attributed specific role to the appellant for inflicting injuries on his body. The appellant did not opt to cross-examine him. The testimony of the victim remained unchallenged. PW-2 (Babu Ram) corroborated the version of PW-1 in its entirety and narrated the incident in detail as to how and under what circumstances the appellant while driving a blue line bus hit Gaya Baksh with fist blows and caused injuries to him. Again, he was not cross-examined. PW-1 and PW-2 did not nurture any grievance/enmity with the accused to falsely implicate him in the incident. They were not acquainted with him. There is no conflict between ocular and medical evidence. MLC (Ex. PW-8/A) reveals that the victim sustained fracture of parietal bone. It stands established that the appellant was the author of the injuries caused to the victim.

4. Conviction of the appellant u/s 308 IPC, in my view, cannot be sustained. The incident took place all of a sudden without any prior meditation. The appellant had no enmity with the victim. He got engaged when PW-1 (Gaya Baksh) challenged him and objected to his driving the bus in a rash and negligent manner. The appellant did not like the comments, came down from the bus and thrashed him with fists. He was not armed with any deadly weapon. He took the injured to the hospital by hiring a TSR and admitted him there. Offence u/s 308 postulates doing of an act with such intention or knowledge and under such circumstances that if one by that caused death, he would be guilty of culpable homicide not amounting to murder. In the instant case, the intention of the appellant was to beat the victim for the comments made by him. There was no enmity between the two. The appellant in a sudden flash of anger hit Gaya Baksh with fists and it resulted in the fracture of the bone. It was a case u/s. 325 IPC whereby the appellant inflicted grievous hurt on the victim's body voluntarily.

5. The appellant has already remained in custody for 25 days. He has suffered trial since 1996. He is not a previous convict and is not involved in any other criminal case. He has already deposited fine Rs. 10,000/-. He has four kids to maintain. He has opted to pay compensation to the victim. Taking into consideration all these mitigating circumstances, no useful purpose will be served to send the appellant in custody to serve the remaining period of sentence and in the interest of justice, sentence order is modified and the appellant is sentenced for the period already undergone by him in this case with fine Rs. 10,000/- u/s 325 IPC. He is, however, directed to pay Rs. 20,000/- as compensation to the victim-Gaya Baksh who sustained grievous injuries on his body and remained admitted in hospital for about seven days for no fault of his. Rs. 20,000/- shall be deposited before the Trial Court within one month and the Trial Court shall issue notice to the victim-Gaya Baksh to receive and collect the compensation amount along with Rs. 10,000/- which was awarded as compensation out of fine. The appeal stands disposed of in the above terms. Trial Court record be sent

back forthwith.