

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 01.04.2014

+ CRL.A. 121/2010

RAHUL & ORS.

..... Appellant

Through: Mr M.L. Yadav, Adv.

versus

STATE OF DELHI

..... Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

JUDGEMENT

V.K. JAIN, J.

On 06.07.2007, Police Station Mayur Vihar was informed of a quarrel at Chinda Village. The information was recorded vide DD No. 16A and a copy of the said DD was handed over to ASI Jai Pal for investigation. When the aforesaid police officer reached village Chinda, opposite Upkar Apartments, he came to know that the injured had been taken to LBS Hospital. No eye-witness met him on the spot. When he reached LBS Hospital, the eye-witness Narinder Singh was found present there and the statement of the said witness was recorded by him. Narinder Singh told the

police officer that on the previous day, a person namely Rahul had quarrelled with his father after taking liquor. He further stated that on 06.07.2007, when his father was sitting in front of the house, Rahul came there, whereupon his father asked Rahul as to why he was, in the night, quarrelling with him. Thereupon, Rahul slapped his father. According to Narinder Singh, when he tried to catch hold of Rahul, his uncle Balbir and Ashu came there armed with *lathis* and started beating his father with those lathis. When he tried to catch them, Rahul gave legs and fist blows to his father and he also was beaten by them. Seeing his father bleeding, they fled from the spot.

2. After completing investigation, all the three appellants were charge-sheeted under Sections 308/323/506/34 of IPC. They were charged under the aforesaid Sections and since they pleaded not guilty to the charge, the prosecution examined as many as seven witnesses in support of his case, whereas two witnesses were examined in defence.

3. The complainant Narinder Singh came in the witness box as PW-1 and inter alia stated that he knew the appellants, they being resident of a nearby house. According to him, on 05.07.2007, Rahul had quarrelled with his father and the matter was reported to Police Station Mayur Vihar. On

06.07.2009, at about 7.30 -8.00 AM, Rahul came out and abused his father. When his father objected, Rahul slapped him. Balbir and Ashu came with lathis in their hands and gave lathi blows to his father. When he tried to save his father, they gave beatings to him. When his father started bleeding from head, the accused persons ran away. The police came to the spot and took his father to LSB Hospital, where he was medically examined.

4. PW-2 Mahinder Singh is the father of the complainant. He inter alia stated that on 06.07.2009, at about 8.30 AM, when he was sitting outside his house, Rahul came there and asked him as to why he was sitting. Rahul then asked him as to why he had telephoned the Police Control Room in the night and then slapped on his face. Balbir then brought hockey and Ashu brought knife. He stabbed him on his left hand, whereas Balbir gave him hockey blow on his legs. Rahul also gave beatings to him.

5. PW-5 Dr. Sushil Kumar proved the MLC of Narinder Singh Ex.PW-5/A, whereas PW-7 Dr. S.N. Dass proved the MLC of Mahinder Singh Ex.PW-7/A.

6. In their statements under Section 313 of Cr.P.C., the appellants denied the allegations against them. The appellant Rahul denied having visited the house of Mahinder and claimed that no quarrel had taken place. The

appellant Balbir Singh, however, admitted that one day before the incident, a quarrel had erupted between Rahul and son of Mahinder. Similar admission was made by the appellant Amit Kumar.

7. DW-1 Parsuram stated that one year ago, he had seen Ashu and other accused persons as well as two other persons, including Mahinder, quarrelling with each other. He further stated that son of Mahinder had taken a Danda and tried to beat Ashu as well as other accused, but inadvertently he missed the blow and struck his father Mahinder.

DW-2 Mahender Singh stated that about 2 ½ years before his deposition, he found complainant Mahinder Singh standing outside his house and abusing Rahul. According to him, some scuffle had taken place between Rahul and Mahinder Singh and in the meanwhile son of Mahinder came there with *danda* and tried to give the *dunda* blow to Rahul, in the meantime Rahul sat down, as a result, danda blow hit Mahinder Singh and he received injury at the hands of his son.

8. Vide impugned judgment dated 15.01.2010, all the three appellants were convicted under Section 308/323/34 of IPC. Vide impugned Order on Sentence dated 19.01.2010, they were sentenced to undergo RI for three and a half (3½) years each under Section 308 of IPC and to pay a fine of Rs

5000/- each or to undergo RI for six months in default. They were further sentenced to undergo RI for six months each under Section 323/34 IPC. Being aggrieved from their conviction and the sentence awarded to them, the appellants are before this Court by way of this appeal.

9. A perusal of the MLC of Mahinder Singh Ex.PW-5/A would show that he had swelling over left side of forehead, besides CLW measuring 0.5X0.5 centimetre, over right upper lip. The complainant Narinder Singh had mild tender swelling near left eye and near elbow. Thus, the injuries suffered by Mahinder Singh as well as Narinder Singh were simple injuries.

10. It was held by the Hon'ble Supreme Court in Ved Kumari and another v. State and another [96(2002) DLT 820] that in order to constitute offence under section 308 IPC it must be proved (i) that the accused committed an act; (ii) that the said act was committed with the intention or knowledge to commit culpable homicide not amounting to murder and (iii) that the offence was committed under such circumstances if the accused by that act had caused death he could have been guilty of culpable homicide. It was further ruled that intention is a question of fact which is gathered from the acts committed by the accused and knowledge means awareness of the consequences of the act.

In Bishan Singh and another v The State [(2007) 13 SCC 65], the injured suffered as many as seven injuries including three lacerated wound out of which two were on the scalp and one was on the right forehead. He also had a fracture with dislocation of wrist joint. The Apex Court, however, felt that the accused could not be convicted under Section 308 of IPC and the case would fall under Section 323 and 325 thereof.

In Velu lia Javelu v. State [2004 CrLJ 3783], when the prosecution witnesses were unloading the iron rods after parking their lorry in front of the factory, the accused came there in a van, questioned PW2 for parking his lorry in such a way which was preventing his vehicle from coming snide the factory, and that resulted in an altercation between them. Within a few minutes the accused armed with an iron pipe hit on the back side scalp of PW2. It was held that since the appellant caused the blow in a spur of moment and there was no proper planning or pre-meditation, the offences punishable under Section 308 of IPC was not made out and the appellant was guilty only of offence punishable under Section 324 thereof

11. The case of the prosecution is that the appellants had used lathis for causing injuries to Narinder Singh. Narinder Singh, as per the case of the prosecution, was not given any lathi blow. However, when Mahinder Singh

came in the witness box, he claimed that Balbir Singh had used hockey, whereas Ashu had used knife to cause injuries to him. Neither use of hockey nor the use of knife was alleged in the FIR. Therefore, it is quite obvious that Mahinder Singh has tried to make improvement in the case of prosecution by alleging use of hockey and knife. Mahinder Singh claimed that he was stabbed on his left hand. However, no stab injury on his person was found. He claimed that he was given knife blow on his leg, but, no injury on his legs was found. In these circumstances, use of any weapon by the appellants has become seriously doubtful. Use of lathi, though alleged in the FIR, was not claimed in the deposition of Mahinder Singh, whereas use of hockey or knife was neither claimed in the FIR nor is the same borne out from the injuries sustained by Mahinder Singh. In fact, even PW-1 Narinder Singh, who is none other than the son of Mahinder Singh, did not support his father as regard the alleged use of hockey and knife by the appellants.

12. It has come in the deposition of PW-1 that a report was made to Police Station Mayur Vihar with respect to an incident of quarrel which took place on 05.07.2007. However, no such complaint has been produced before the Court. Even the version given by PW-1 Narinder Singh, is quite

different from the version given by PW-2 Mahinder Singh. According to Narinder Singh, when his father had just left the house for his shop, Rahul came out and abused him and when he objected to the abuse, Rahul slapped him. On the other hand, according to Mahinder Singh, he was sitting outside his house when Rahul came there and asked him as to why he was sitting and then he asked him as to why he had called the Police Control Room in the night. Thus, the genesis of the incident given by Mahinder Singh does not match with the genesis given by Shri Narinder Singh. No weapon of any kind lathi, knife or hockey, has been seized during investigation.

13. In these circumstances, it appears to me that some quarrel had taken place between the appellants on one hand and Mahinder Singh and his son Narinder Singh on the other hand though the genesis of the said quarrel is not clear from the evidence produced by the prosecution. It also appears to me that during the aforesaid quarrel, some injuries were cause to PW-1 Narinder Singh and PW-2 Mahinder Singh though there is no credible evidence of the said injuries having been caused by a lathi or any other weapon. In any case, no injury was sustained either by Narinder Singh or Mahinder Singh at a vital part of the body. Therefore, even if it is assumed

that lathis were used by the appellants for causing injuries to Narinder Singh and Mahinder Singh, considering the nature of injuries sustained by them and the parts of the body where the injuries were found, it would be difficult to say that the said injuries were caused with such intent or knowledge and under such circumstances that if the appellants by their act had caused death, they would be guilty of culpable homicide not amounting to murder. The charge under Section 308 of IPC, therefore, is not made out against the appellants. They, however, are liable to be convicted under Section 323 of IPC read with Section 34 thereof for causing injuries to PW-1 Narinder Singh and PW-2 Mahinder Singh.

14. For the reasons stated hereinabove, the appellants are acquitted of the charges under Section 308 of IPC, but their conviction under Section 323 of IPC read with Section 34 thereof is maintained. The learned counsel for the appellant states, on instructions, that the appellants are ready to pay Rs 25,000/- each, as compensation, which may be divided in equal share between the injured Narinder Singh and Mahinder Singh. The appellants, therefore, are given benefit of probation and are released on furnishing bonds of peace and good conduct for a period of one year each in the sum of Rs 10,000/- each with one surety of the like amount to the satisfaction of the

Trial Court within three weeks. The appellants shall also pay Rs 12,500/- each, as compensation, to both the injured person, meaning thereby that each of the appellants shall pay Rs 12,500/- to Narinder Singh and Rs 12,500/- to Mahinder Singh by way of pay order in their respective names. The total compensation payable by all the three appellants would thus be Rs 75,000/-, which will be divided equally between Mahinder Singh and Narinder Singh. The pay order shall be submitted to the Trial Court along with the bonds. The learned Trial Judge shall accept the bonds, subject to the pay orders being submitted along with the bonds and shall release the pay orders to the injured Mahinder Singh and Narinder Singh. In the event of default in paying the compensation and/or furnishing the bonds in terms of this order, the appellants shall undergo RI for one year each.

The appeal stands disposed of.

LCR be sent back, with a copy of this judgment.

APRIL 01, 2014
BG

V.K. JAIN, J.