



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

% Reserved on : 11.12.2024
Pronounced on : 14.01.2025

+ **CRL.A. 455/2009**

MITHLESH KUMAR & ORS.Appellants
Through: Mr. Keshav Ranjan and Mr. Godsan
George, Advocates

versus

STATERespondent
Through: Ms. Manjeet Arya, APP for State with
SI Kavish Rana PS Laxmi Nagar,
Delhi

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted against the judgement of conviction dated 28.04.2009 and order on sentence dated 30.04.2009 passed by Additional Sessions Judge, East District, Karkardooma Courts in the case arising out of FIR No. 859/2007 registered under Sections 308/323/34 IPC at P.S. Shakarpur, Delhi.

Vide the impugned judgement, the appellants were convicted for the offence under Section 308 IPC and sentenced to undergo rigorous imprisonment for a period of one year. The appellants were also convicted under Section 323 IPC and sentenced to undergo simple imprisonment for a period of three months. Additionally, they were all directed to pay a fine of Rs 5,000/- each, in default whereof, they were directed to further undergo



simple imprisonment for a period of 3 months. The benefit of Section 428 Cr.P.C. was also given to the appellants.

2. The facts, in a nutshell, are that the complainant, *Bhure*, on 21.11.2007 at about 8.30 PM tried to stop the appellants from passing through his onion fields. The appellants refused and started giving beatings to him by *Dandas*. When *Deen Dayal*, the father of *Bhure* tried to intervene, he was also given beatings. The incident was also witnessed by one *Mahender*, who took the complainant and his father to Lal Bahadur Shastri Hospital. Thereafter they went to the police station to report the matter and the present FIR came to be registered. Charges were framed under Sections 308/323/34 IPC.

3. In trial, a total of 8 witnesses were cited by the prosecution to prove its case. The injured *Bhure* and *Deen Dayal* were examined as PW1 and PW3 respectively. *Mahender*, who witnessed the incident was examined as PW2. *Dr. M.N. Singh*, who examined the x-ray plates of the injured was examined as PW6. *Dr. Sushil Kumar*, who examined the injuries of the victims was examined as PW7. The other witnesses were formal in nature, who deposed relating to various aspects of investigation. On the other hand, the accused persons, in their statement recorded under Section 313 Cr.P.C. claimed innocence and false implication. They also examined one *Roshan Lal* as DW1 who deposed that the appellants were invited in his daughter's wedding and were serving *baratis* (the wedding guests) at the time of incident.

4. Learned counsel for the appellants submits that the appellants are innocent and have been falsely implicated in the present case. He submits



that the Trial Court failed to appreciate the various contradictions in the testimonies of the witnesses. He contends that at the time of the incident the appellants were serving the *baratis* of DW1 and their presence at the spot of incident is highly unlikely.

5. The appeal has been vehemently opposed by Learned APP for the State who submits that the appellants have been rightly convicted by the Trial Court. He submits that PW1 and PW3 had identified the appellants and their testimonies are corroborated by the testimony of PW2, who was an eyewitness to the incident and has fully supported the prosecution case. As to the plea of alibi of the appellants, learned APP submits that the appellants did not examine any in-laws of DW1, who could identify them.

6. I have heard the counsels for the parties and have perused the documents which have been placed on record.

7. Coming to the parameters which need to be looked at when assessing whether an offence has been committed under Section 308, the prosecution is obligated to prove that the accused had committed the act with the intention or knowledge to commit culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death, he would have been guilty of culpable homicide. As such, the intention or knowledge on the part of the accused, is to be deduced from the circumstances in which the injuries had been caused, the nature of injuries, the weapon of offence and the seat of injury i.e., portion of the body where such injury was inflicted.

8. It has been noted by the Trial Court that PW1 in his testimony has stated that on 21.11.2007 at around 8.30 PM, the appellants tried crossing



his onion fields and when he protested, they started beating him with *dandas* and gave him injuries on head and other body parts. He also stated that when his father PW3 tried to intervene, they hit him too and that PW2 took them to the hospital. PW3 has also stated that when he tried to intervene and save his son PW1 who was being attacked by the appellants, he was given beatings by *dandas*. He also testified as to the presence of PW2 who witnessed the incident. PW2 has also stated to witnessing the appellants give beatings with *dandas* to PW1 and PW3 and also deposed to taking them to the police station and hospital.

9. In so far as PW3 is concerned, PW6 in his testimony stated that no bone injury was found in his X ray plates. As per the MLC (Ex. PW 7/1), the injuries of PW3 were opined to be simple in nature. PW1 suffered hairline fracture of left second and third metacarpals (fingers). PW1 also had a lacerated wound over right parietal region of scalp about 4.5cm x 0.5cm with fresh oozing of blood and other minor injuries. Though initially the nature of injury in the MLC of PW1 was opined to be grievous, subsequently however, considering the surgical notes, the opinion regarding the nature of injuries was revised to be simple in nature.

10. Considering the aforesaid and after going through the evidence on record as well as the impugned judgment, this Court is of the considered view that there is no infirmity in the judgment of the learned Trial Court. Hence, I find no grounds to interfere with the same.

11. At this stage, learned counsel for the appellants, on instructions, states that he does not challenge the conviction on merits, however, prays that considering the financial condition and lack of antecedents, the sentence



awarded to the appellants be modified to the period already undergone by them.

12. The appellants are stated to belong to the poor strata of society and have no criminal antecedents. While the appellant No.1 has a mother and father, the appellant No.2 is married having two brother and three sisters, appellant No.2 is not having parents and having one sister to look after. The Court is also conscious of the fact that the case pertains to an incident which is stated to have occurred 17 years ago and even the impugned judgement was delivered 15 years ago. Consequently, while maintaining the appellants' conviction, in view of the above discussed mitigating facts and circumstances, their sentence is modified to the period already undergone by them.

13. Accordingly, the appeal is disposed of in the above terms. Bail bonds of appellants are cancelled and sureties stand discharged.

14. A copy of this order be communicated to the concerned Jail Superintendent as well the Trial Court alongwith the records.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 14 , 2025/ry