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

% *Date of decision: September 12, 2023*

+ **CRL.L.P. 515/2019**

STATE

..... Petitioner

Through: Mr. Yudhvair Singh Chauhan, APP for
the State SI Satyawar, P.S. Kirti
Nagar.

versus

KAMLESH BAHADUR

..... Respondent

Through: Mr. Vishesh Wadhwa, Ms. Swadha
Gupta and Mr. Ayush Singh,
Advocates from DHCLSC.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

CRL.L.P. 515/2019

1. Leave granted.
2. The application is disposed of.

Criminal Appeal no. (to be numbered)

1. The present Criminal appeal is filed under section 378(1) Cr.P.C. to impugn the judgment dated 25.03.2019 passed by the Court of Dr. Shahabuddin, Additional Sessions Judge/Special Judge (NDPS), West District, Tis Hazari Courts, Delhi in SC no. 58241/2016 arising out of FIR bearing no.0197/2016 registered under section 308 IPC at P.S. Kirti Nagar



whereby the respondents were ordered to be acquitted for the offences punishable under section 308 IPC.

2. As per the prosecution, ASI Rakesh on 08.04.2016, after receipt of DD no.17A reached at Acharya Bhikshu Hospital where injured/Sushila Devi was found to be under treatment vide MLC bearing no.12687 E.No. 38080/2016. Thereafter, the statement of the complainant/ Sushila Devi was recorded, wherein she stated that on 08.04.2016, she had asked Anita who is her neighbour to keep the garbage aside on which Anita picked up the garbage in her hand and made a gesture of throwing it towards jhuggi of complainant/ Sushila Devi and said “I will throw it into your house”. In the meantime kamlesh Bahadur/respondent who is the husband of Anita gave a blow by *danda* on the head of complainant/ Sushila Devi and she sustained injuries on arm and hand. The Complainant/ Sushila Devi was taken to Acharya Bhikshu Hospital. The Investigating Officer, after conclusion of the investigation filed the charge-sheet for the offence punishable under section 308 IPC. The Trial Court of Sh. Rakesh Kumar-I, ASJ, Special Judge (NDPS), West District, Tis Hazari Courts, Delhi vide order dated 21.08.2017 framed the charge for the offence punishable under section 308 IPC against the respondent to which he pleaded not guilty and claimed trial.



The prosecution had examined 08 witnesses including the injured/Sushila Devi as PW-2 and the doctor as PW-5. The statement of the respondent was recorded under section 313 Cr.P.C on 20.03.2019 wherein he pleaded false implication and denied the incriminating evidence against him. The respondent preferred to lead defence evidence and accordingly, DW-1/ R.P Singh and DW-2 i.e respondent himself (under section 315 Cr.P.C) got examined.

3. The Trial Court of Dr. Shahabuddin, Additional Sessions Judge/Special Judge (NDPS), West District, Tis Hazari Courts, Delhi vide judgment 25.03.2019 opined that the respondent is entitled for the benefit of doubt and accordingly the respondent was ordered to be acquitted. The relevant part of the judgment dated 25.03.2019 is reproduced as under:-

22. On the basis of above mentioned discussion, coupled with entire oral as well as documentary evidence on record, produced on behalf of both sides, as discussed above, this Court is of the considered view that ingredients of the offence section 308 IPC are not made out against accused herein qua this matter, beyond reasonable doubt. In other words, the prosecution side has miserably failed to prove the guilt of the accused, in this case, beyond reasonable doubt, for the alleged offence, for which charge has been framed against him. Accordingly, the accused Kamlesh Bahadur is entitled for benefit of doubt and consequently he is entitled for acquittal in this case. Hence, this accused is hereby acquitted for offence u/s 308 IPC for which charge was framed against him in this case.



4. The Additional Public Prosecutor argued that the impugned judgment was passed in utter disregard of the evidence brought on record by the prosecution and during the course of the arguments, referred the testimony of the injured i.e. PW-2/Sushila Devi. The Additional Public Prosecutor also referred the medical evidence by arguing that the PW-2/Sushila Devi was admitted in the hospital and she received injuries. The Trial Court was not justified in acquitting the respondent.

5. The counsel for the respondent during the course of the arguments, has referred cross-examination of PW-2/Sushila Devi wherein she could not tell the distance between her jhuggi and that of the Anita, her neighbour. PW-2/Sushila Devi could not say as to who had put the garbage outside her jhuggi, she also did not remember the date when the *danda* which was used in the commission of crime was recovered and she did not remember whether she had signed her statement or not. The counsel further stated that there are material contradictions in the testimony of witness. The Trial Court was justified in acquitting the respondent.

6. The perusal of the testimony of PW-2/Sushila Devi reflects that she has supported the case of the prosecution and deposed that on 08.04.2016 at about 09:15 A.M., she asked Anita, her neighbour to keep the garbage aside



which was lying near the entry gate of the house, on which Anita picked up the garbage in her hand and made a gesture of throwing it towards her jhuggi. The respondent also came out of his house with a *danda* and gave a blow on the head of PW-2/Sushila Devi. PW-2/Sushila Devi during the cross-examination also deposed that she sustained injuries on her head in the scuffle.

7. The prosecution had also examined Dr. S.K Kaakran, Medical Officer as PW-5, who opined the nature of injuries as received by PW-2/Sushila Devi were simple in nature vide opinion Ex.PW-5/A. PW-5 also deposed that as per the local examination of PW-2/Sushila Devi on 08.04.2016 there was a CLW over scalp 2 x 1cm and a CLW over left forearm 5 x 7cm and after giving the treatment and requisite medicines PW-2/Sushila Devi was discharged from the hospital.

8. The perusal of the impugned judgment dated 25.03.2019 reflects that the Trial Court was swayed by the cross-examination of the PW-2/Sushila Devi. PW-2/Sushila Devi in cross-examination as per the impugned judgment could not tell the distance between her jhuggi and that of the Anita her neighbour. PW-2/Sushila Devi could not say as to who had put the garbage outside her jhuggi, she also did not remember the date when the



danda which was used in the commission of crime was recovered and she did not remember whether she had signed her statement or not.

9. The Trial Court, while acquitting the respondent for the offence punishable under section 308 IPC, has totally ignored the testimony of PW-2/Sushila Devi, which was supported by the medical evidence. The Trial Court has wrongly observed that the prosecution could not prove the guilt of the respondent beyond reasonable doubt for the offence for which he was charged. The Trial Court should have analyzed and examined the quality and quantity of the evidence led by the prosecution. In the final conclusion of the impugned judgment, there is no reference of the testimony of the PW-2/Sushila Devi and other medical evidences. The Trial Court was not justified in acquitting the respondent for the offences punishable under section 308 IPC vide the impugned judgment dated 25.03.2019. It is proved that the PW-2/Sushila Devi on 08.04.2016 had received injuries which were opined to be simple at the hands of the respondent.

10. The issue which needs judicial consideration is that whether on the basis of the evidence led by the prosecution, the offence punishable under section 308 IPC is actually made out or not.

11. In **Ramesh V State** 2010 (I) JCC 796, this Court altered the



conviction from 308/34 to 323/34 by holding that assault was not premeditated and merely because an injury was found on the head, it cannot be said that such an injury was caused with the intention to commit culpable homicide. In **Sunder V State** 2010 (1) JCC 700, this Court altered the conviction of the appellant from Section 308 to 323 IPC by holding that in order to prove offence under Section 308 IPC, prosecution was required to prove that the injury was caused with such intention or knowledge and under such circumstances that if it had caused death, the act of appellant would have amounted to culpable homicide not amounting to murder. In **Raju @ Rajpal and others V State of Delhi** 2014 (3) JCC 1894, this Court altered the conviction from Section 308 to 323/34 by holding that the nature of injuries were simple and injuries were not caused with the avowed object or knowledge to cause death. In **Ashok Kumar and another V State of Delhi** CrI. Appeal No. 17/2011 decided on 20.02.2015, this Court altered the conviction of Section 308 IPC to Section 323/34 IPC and held that injuries were opined by the doctor as simple caused by a blunt object. Nature of injuries is not such which will be sufficient to indicate that the appellants had any intention or knowledge that by this act they would have caused death of complainant. In **Pawan Chaddha V State** Criminal Appeal



640/2011 decided on 27.01.2016 by this Court, the appellant was convicted for offence under Section 308 and Section 323/34 IPC while the co-accused were held guilty and convicted under Section 323/34 IPC. As per the MLC following injuries were observed on person of the complainant:-

- (i) CLW 8x2x.5 cms over central parieto occipital region.**
- (ii) Swelling and tenderness right forearm and wrist.**
- (iii) Abrasion 1x1 cm over right wrist.**

One of issues which arises for consideration is whether the act of appellant in causing injuries on the person of the victim, attracts ingredients of offence under Section 308 IPC. It was observed as under:-

In order to constitute an offence under Section 308 IPC it is to be proved that the said act was committed by the accused 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. The intention or knowledge on the part of the accused, is to be deduced from the circumstances in which the injuries had been caused as also the nature of injuries and the portion of the body where such injuries were suffered. In this case, no previous enmity or dispute between the appellants and the complainant could be proved. There was no premeditation. The quarrel had taken place on a trivial issue. The nature of injuries suffered by the complainant was opined to be simple caused by blunt object. Apparently, the injuries were not caused with the avowed object or knowledge to cause his death.

It was further observed that the Trial Court has convicted the appellant under section 308 IPC on the ground that the appellant initially hit



the complainant with a *saria* and again given a blow with a wooden leg of the cot on vital part of the body i.e. head. There was no premeditation. The entire incident took place on the spur of the moment. Injuries were opined to be simple. The ingredients of section 308 IPC are not attracted and the case falls within the ambit and scope of section 323 IPC.

12. It is appearing from the medical evidence that the PW-2/Sushila Devi received simple injuries. The testimony of PW-5 reflects that PW-2/Sushila Devi received a CLW over scalp 2x1cm and a CLW over left forearm 5x7cm. PW-2/Sushila Devi at the time of admission, was found to be conscious and oriented with almost normal vitals and after giving the treatment and requisite medicines PW-2/Sushila Devi was discharged.

13. After considering all facts as mentioned hereinabove, the prosecution/petitioner/State is able to prove the case against the respondent for the offence punishable under section 323 IPC. Accordingly, the respondent is convicted for the offences punishable under section 323 IPC.

14. It is stated that the respondent remained in judicial custody for a period of approximately 20 days which in the opinion of the Court is sufficient punishment for the offences punishable under sections 323 IPC. Accordingly, the respondent is sentenced to imprisonment for the period



already undergone. The bail bond is cancelled and surety is discharged. Case property, if any, to be disposed as per law.

15. Accordingly, the present criminal appeal is disposed of.

16. A copy of this judgment be sent to the Trial Court for information and compliance.

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 12, 2023

rk/sd