

**(2014) 07 DEL CK 0026**

**Delhi High Court**

**Case No:** Criminal Appeal No. 208 of 2011

Raju @ Rajpal

APPELLANT

Vs

The State of Delhi

RESPONDENT

---

**Date of Decision:** July 17, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 308, 323, 34, 452

**Citation:** (2014) 3 JCC 1894

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

**Bench:** Single Bench

**Advocate:** R.S. Juneja, Advocate for the Appellant; M.N. Dudeja, APR, Advocate for the Respondent

---

### **Judgement**

S.P. Garg, J.

Raju @ Rajpal (A-1), Sanjay (A-2) and Arun Kumar (A-3) were convicted under Sections 452/ 308/ 34 IPC by a judgment dated 15.01.2011 of learned Addl. Sessions Judge in Sessions Case No. 70/2008 arising out of FIR No. 478/2006 PS Anand vihar on the allegations that on 13.09.2006 at about 01.00 P.M. at house No. 381, Karkardooma, they in furtherance of common intention along with co-associate Arjun (facing trial before Juvenile Court) inflicted injuries to somwati in an attempt to commit culpable homicide after committing house trespass. The police machinery swung into action when information about the quarrel was conveyed and Daily Diary (DD) No. 13A (Ex. PW-5/A) came into existence at 13.37 hours at PS Anand Vihar. The Investigating Officer lodged First Information Report after recording complainant - Santo's statement (Ex. PW-1/A) by sending rukka (Ex. PW-10/A) at 06.30 P.M. The statements of the witnesses including the victim -somwati and Poonam were recorded. After completion of investigation, a charge-sheet was submitted against the appellants; they were duly charged and brought to trial. The prosecution examined ten witnesses to prove their guilt. In 313 statements, the appellants denied their complicity in the crime and pleaded false implication. They

examined DW-1 (Anand) and DW-2 (Har Kishan) in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeal. Information about incident that occurred around 01.00 P.M. was conveyed to the police without any delay resulting in recording of Daily Diary (DD) No. 13A (Ex. PW-5/A) at 13.37 hours. The investigation was entrusted to HC Rakesh Kumar who went to the hospital. Since the victim was unfit to make statement, the First Information Report was lodged in promptitude after recording complainant - Santo's statement, claiming her presence at the spot, Santo disclosed that injuries were inflicted to Somwati by the appellants and their associate Arjun by iron rod and dandas.

2. In Court statement as PW-1 (Santo) proved the version given to the police in its entirety without any variations and implicated the appellants and Arjun for causing injuries. She attributed specific role to Arjun whereby he assaulted Somwati on her head with a "saria" whereas the appellants who had dandas in their hands gave beatings to her. When Poonam, her granddaughter, intervened to save somwati, A-2 hit her with a danda on her head. Someone made a telephone call at 100. The PCR arrived and took Poonam and Somwati to Hedgewar Hospital. Somwati was referred to GTB Hospital and her statement (Ex. PW-1/A) was recorded. PW-2 (Somwati), the victim, also implicated the appellants and Arjun for inflicting injuries to her and Poonam with iron rod and dandas. She also assigned definite and exact role to each of the accused in causing injuries to her. She disclosed that she remained admitted in Jain Hospital for about six days. PW-4 (Poonam) corroborated the statement of her mother - Somwati on major aspects and testified about the presence of the appellants and Arjun with weapons in their hands causing injuries to her and her mother. She, however, introduced a contradictory statement alleging that injuries were also inflicted to PW-1 (Santo). Apparently, she exaggerated the version. From the testimonies of PW-1 (santo), PW-2 (Somwati) and PW-4 (Poonam) stands establish that the appellants were author of the injuries inflicted to the victim. The motive assigned for implicating injuries was a quarrel which took place with Sundar (A-1's brother) and sachin a few days prior to the occurrence. Despite in-depth cross-examination, no material inconsistencies emerged in their statements. They were not assigned any extraneous consideration to falsely implicate the appellants and to spare the real offenders. Their statements are in consonance with medical evidence. PW-8 (Dr. Ram Million) medically examined Somwati by MLC (Ex. PW-8/A) and was of the opinion that injuries suffered by her were "simple" in nature. PW-9 (Dr. Sachin) who medically examined Somwati at the first instance, found clear Lacerated Wound of 5 cm x 0.3 cm on right parietal region of skull The injuries were not self-inflicted or accidental. In 313 statements, the accused persons did not give plausible explanation to the incriminating circumstances appearing against them. DW-1 (Anand) gave an unbelievable version that the injuries suffered by Somwati were due to the beatings given by her husband Hukam Singh as she wanted to marry her daughter out of caste against his wishes. No such defence was put to the

witnesses in the cross-examination.

3. Minor discrepancies, exaggerations, improvements and contradictions highlighted by the appellants' counsel are inconsequential to affect the core of the prosecution case and to discard the testimonies of the witnesses including that of the injured in its entirety. The findings of the Trial Court that the appellants were the author of the injuries after committing house trespass cannot be faulted.

4. Regarding Section 308 IPC for which the appellants have been convicted, I am of the view that the injuries were not caused by the appellants with the intention to commit an offence of culpable homicide. The quarrel had taken place over a trivial issue. All the parties lived in neighborhood and were known to each other since long. The appellants have clean antecedents and are not involved in other criminal activities. No multiple repeated wounds were inflicted on the body of the victim. The injured was discharged from the hospital on the next day of the incident. The nature of injuries suffered by her was "simple" caused by blunt object. Only one wound was found on her body. Apparently, the injuries were not caused with the avowed object or knowledge to cause her death. PW-1 (Santo) and PW-4 (Poonam) were not put to any serious harm though they were also present at the spot. It was a case where the injuries were caused in a quarrel which took place over a trivial issue and the appellants in furtherance of common intention voluntarily caused "simple" hurt with blunt object to the victim Somwati. The offence proved is under Sections 323/ 34 IPC. It is relevant to note that allegations were primarily against Arjun who was armed with an iron rod and inflicted the blow on the victim's head. It is revealed from the Trial Court record that Arjun was discharged by an order dated 25.08.2008 as the prosecution could not file the charge-sheet within limitation. Appellants' conviction is accordingly altered from Section 308 IPC to Section 323 IPC.

5. Since the conviction is altered from Section 308 IPC to Section 323 IPC, the sentence order requires modification. The sentence order records that A-1 was a married man having three married daughters and an unmarried son; A-2 was having three daughters and two sons; A-3 had a daughter and two sons and all of them were minor children. It further records that there was no previous involvement of convicts in any criminal case and they were the sole bread earners of their families. Taking into consideration the facts and circumstances of the case, antecedents of the convicts, their age and the circumstances in which the occurrence took place, it is a fit case to release the appellants on probation for a period of two years on their entering into a bond in the sum of Rs. 10,000/-, each with one surety each in the like amount to the satisfaction of the Trial court to appear and receive sentence when called upon during two years and in the meantime, to maintain good conduct and not to indulge into such crime. The necessary bonds would be furnished within fifteen days before the Trial Court.

6. The sentence order reveals that fine of Rs. 90,000/- was imposed out of which Rs. 75,000/- was paid to Somwati in the Court. Needless to say that the victim - Somwati

has been duly compensated. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent jail for information.