

(2013) 07 DEL CK 0346

Delhi High Court

Case No: Criminal Appeal 834 of 2001

Mohanlal Bhal and Others

APPELLANT

Vs

State (N.C.T. of Delhi)

RESPONDENT

Date of Decision: July 15, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 360
- Penal Code, 1860 (IPC) - Section 308, 323, 34

Hon'ble Judges: Veena Birbal, J**Bench:** Single Bench**Advocate:** Kuldip Singh, for the Appellant; Jasbir Kaur, APP for State, for the Respondent**Final Decision:** Disposed Off

Judgement

Veena Birbal, J.

By way of present appeal, a challenge has been made to the judgment dated 29th October, 2001 and order of sentence dated 2nd November, 2001 passed by the learned Additional Sessions Judge in S.C. No. 16/98 arising out of FIR no. 221/94 u/s. 308/323/34 IPC Police station Lajpat Nagar whereby the appellants have been convicted for the offence punishable u/s. 308/34 IPC and vide aforesaid order of sentence, have been sentenced to undergo RI for three years with fine of Rs. 500/- each and in default of payment of fine, to further undergo RI for three months each. The case of the prosecution is based on statement Ex. PW 4/A wherein complainant Kewal Krishan, (PW-4) had alleged that two shops at E-II/4, Lajpat Nagar, New Delhi in the name and style of Behl Electronics and Bhagat Emporium were occupied by the appellants. The appellants, namely, Mohan Lal Bahl and Jeewan Parkash Behl were his tenants in respect of aforesaid shops and had been harassing him along with appellant Virender Kumar Behl. The complainant had alleged that on 8th July, 1994 at 11.30 am, he was in the process of parking his vehicle on roadside in front of his shop which is also at E-II/4, Lajpat Nagar, New Delhi, he had asked the appellant Mohan Lal Behl to remove the goods of their shops in the place of intended parking.

However, they started abusing him in the presence of his servant Manoj. When he had asked them not to abuse, appellant Jeewan Prakash Behl caught hold of him and appellant Mohan Lal Behl attacked him with an iron rod. He had avoided the attack by holding on to the iron rod. Thereupon, appellant Virender Kumar Behl assaulted him with an iron rod which hit him on his head resulting in bleeding injury.

2. The aforesaid statement Ex. PW 4/A was recorded by SI Satpal (PW-8) when he had reached the spot i.e., E-II/4, Lajpat Nagar, New Delhi on receiving DD no. 6A Ex. PW 1/B. SI Satpal (PW-8) made endorsement Ex. PW 2/A on the said statement and prepared rukka Ex. PW 4/B and sent the same through Constable Anil and got registered FIR Ex. PW 1/A. Thereafter, injured Kewal Krishan, (PW-4) was sent to hospital. After registration of FIR, copy of the same was given to SI Satpal (PW-8). After some time, injured had also returned to the spot along with Constable. Thereafter on the pointing out of injured PW-4, site plan Ex. PW 8/A was prepared. During investigation, MLC Ex. PW 6/A of injured was obtained from the hospital. The appellants had already obtained anticipatory bail. Appellants Mohan Lal Behl and Jeewan Prakash Behl were formally arrested on 16th July, 1994 and accused Virender Kumar Behl was arrested on 26th September, 1994. After completion of investigation, a challan was filed before the concerned Ld. M.M. Delhi. After supplying documents to the appellants, the case was committed to the Sessions court. A charge u/s. 308/34 IPC was framed against the appellants to which they pleaded not guilty.

3. To prove its case, prosecution in all had examined eight witnesses i.e., Inspector Parwati (PW-1), Constable Anil Kumar (PW-2), Dr. Arjun Dev Sehgal (PW-3), Injured Kewal Kishan (PW-4), Constable Lokender Singh (PW-5), Dr. Umachandra Mauli (PW-6), Satish Kumar (PW-7) and SI Satpal Singh (PW-8). After conclusion of prosecution case, the entire incriminating evidence was put to the appellants in their statement u/s. 313 Cr. P.C. They had denied the same and stated that they were innocent persons and were falsely implicated. After hearing arguments of both the sides, the learned Addl. Sessions Judge convicted the appellants u/s. 308/34 IPC and imposed sentence which has already been stated above.

4. Aggrieved with the same, present appeal is filed.

5. Learned counsel appearing for the appellants has submitted that the alleged occurrence is of the year 1994. It is stated that it was a landlord-tenant dispute and the motive of the injured Kewal Krishan (PW-4) was to get the tenanted property vacated. It is submitted that during the pendency of trial, one shop has already been vacated by the appellant Mohan Lal Behl. It is contended that no weapon of offence was recovered in this case. It is contended that injured returned back from the hospital within half an hour of taking there. It is contended that treatment from a private nursing home by the injured was got done to falsely implicate the appellants.

It is further contended that the alleged incident took place 19 years back. All the three appellants are brothers. Appellants Mohan Lal Behl and Jeewan Parkash Behl were tenants of the complainant/injured (PW-4) and presently Mohan Lal is of 72 years of age suffering from heart ailment. It is submitted that one of the tenanted shops was also surrendered during the trial. Appellant Jeewan Parkash Behl is stated to be 70 years of age and suffering from prostrate cancer. Appellant Virender Kumar Behl is stated to be 66 years of age and is suffering from heart ailments and hypertension. The medical documents pertaining to treatment of appellants have been filed. It is submitted that considering the totality of facts and circumstances, the appellants ought to be given benefit u/s 360 Cr. P.C. It is further contended that they are not involved in any other occurrence except the present one.

6. On the other hand, learned APP for the State has submitted that the role played by the appellants at the time of occurrence has been clearly deposed by injured Kewan Krishan (PW-4). The same stands corroborated by the eye witness Satish Kumar, (PW-7). The same also finds support from the medical evidence on record. Learned APP has further contended that evidence of injured is in consonance with his statement Ex. PW 4/A made to the police on the basis of which FIR Ex. PW 1/A was registered. There are no material variations in his evidence as compared to his statement Ex. PW 4/A made to the police. It is submitted that Ld. Additional sessions Judge has rightly held them guilty u/s. 308/34 IPC. It is stated that the crime committed is a serious one and they do not deserve any leniency.

7. I have heard the submissions made and perused the entire material on record.

8. The material witness of the prosecution is injured Kewal Krishan himself i.e. (PW-4) who has categorically deposed that on 8th June, 1994, he had gone to his shop at 11.30 am and was parking car on the road in front of his shop. There goods of the appellants were lying on the road. He had asked the appellant Mohan Lal Behl to remove the goods so that he can park his car but all the appellants started abusing him. When he asked them not to do so, the appellant Jeewan Prakash came and caught him by his neck while appellant Mohan Lal tried to hit him with an iron rod which he caught hold of with his hand and raised alarm for help. Thereupon appellant Virender Kumar Behl hit him with an iron rod on his head as a result of which he received injury and started bleeding from head. Police came to the spot and recorded his statement Ex. PW 4/A. Thereafter he was taken to AIIMS where his wound was stitched and he again came back to the shop and the police prepared site plan ex. PW 8/A in his presence. His material evidence was not demolished in cross-examination. He had further stated in cross-examination that appellant Mohan Lal Behl had vacated his shop in March, 1998 during the pendency of the trial. He had deposed that he remained in AIIMS for about half an hour and in the evening he had gone to Sehgal Neurological Research Institute where he remained admitted for about one week. He had denied that he had sustained injuries on account of fall while trying to throw the goods of the appellants. He has denied that

a false criminal case has been filed to create pressure on the appellants to vacate the shops.

9. Satish Kumar, (PW-7) is an eye witness to the alleged occurrence. He has deposed that all the appellants were present at the spot. He has deposed about the role played by each of the appellants at the time of incident. His evidence on material points is the same as deposed by the injured Kewal Krishan (PW-4). His evidence was also not demolished in cross examination.

10. The evidence of the finds support from the MLC Ex. PW 6/A which is proved on record by Dr. Uma Chander Mauli, (PW-6) from AIIMS. As per MLC Ex. PW 6/A, injured had sustained a wound on the parietal region 5 x 2 cm in size. The injured was discharged from the hospital on the same day. The injury was opined as simple. Thereafter, as per evidence of Dr. Arjun Dev Sehgal, (PW-3) from Sehgal Neurological Research Institute, the injured got himself treated in a private nursing home. Those medical papers of private hospital have been proved on record Ex. PW 3/1-3. No suggestion was given by the appellants to Dr. Arjun Dev Sehgal, (PW-3) or Dr. Uma Chander Mauli, (PW-6) as to whether injuries were possible by fall which was their defence.

11. The evidence of injured (PW-4) and the eye witness (PW-7) have not been shaken in cross-examination. Reading the evidence of material witness i.e., (PW-4) and (PW-7) along with medical evidence, it stand proved that the appellants are responsible for the alleged occurrence. The defence of the appellants that they were falsely implicated as there was a tenancy dispute and to create pressure on them so that they should vacate the tenanted premises, is not established. No evidence by them was led in defence to substantiate the same. Further the stand of the appellants had been that the injuries were sustained by Kewal Krishan (PW-4) on account of fall. However, no suggestion was put to Dr. Umachandra Mauli, (PW-6) and Dr. Arjun Dev Sehgal, (PW-3) who have proved the medical evidence on record. The nature of injury is simple. However, the same is on the vital part of the body. The weapon of offence used is "saria". Considering the evidence on record, the appellants are rightly convicted u/s. 308/34 IPC.

12. The learned trial court has correctly analysed the evidence and rightly convicted the appellants u/s. 308/34 IPC. Accordingly, the judgment of the learned trial court dated 29th October, 2001 holding all the appellants guilty u/s. 308/34 UPC is upheld.

13. On the point of sentence, learned counsel for the appellants have submitted that a lenient view be taken. It is submitted that alleged occurrence took place 19 years back. The appellants are brothers. It is stated that appellant Mohan Lal is 72 years of age and is suffering from heart ailment. It is further submitted that he had surrendered the shop during the pendency of the trial. The medical documents relating to his regular treatment have been shown in the court. Appellant Jeevan Prakash is stated to be 70 years of age and is suffering from prostrate cancer.

Appellant Virender Kumar Behl is stated to be 66 years of age and is suffering from heart ailments and hypertension. It is stated that injuries sustained were simple in nature. There were no repeated blows of "saria". It is further stated that occurrence had taken place in a heat of passion out of a sudden fight without any pre meditation. It is stated that appellants are not involved in any other criminal case except the present one, as such, benefit u/s. 360 Cr. P.C. be given to the appellants. In support of his contention, learned counsel for the appellants has placed reliance upon a judgment of this court in [Shankar Vs. State Govt of Nct of Delhi and Others](#), wherein appellant was convicted for the offence u/s. 308 IPC and considering his age and other factors, benefit u/s. 360 Cr. P.C. was granted to him.

14. The submissions made are considered. Considering the age, character, antecedents of the appellants and the circumstances in which offence was committed, it would be expedient to release them on probation of good conduct. Accordingly, it is directed that sentence imposed upon them be not given effect to immediately and they both be released on entering into a bond of Rs. 10000/- each with one surety of the like amount each for a period of two years. They shall appear and receive the sentence if called upon within two years from the execution of the said bond. The bond in question shall be furnished before the concerned trial court within four weeks. In case of non-compliance, sentence of imprisonment imposed by learned ASJ shall remain in force. The appellant shall also pay a compensation of Rs. 10,000/- each to the complainant/injured i.e. PW-4. The same be also deposited with the concerned trial court within four weeks. The Ld. trial court shall inform the complainant and shall release the same in his favour. The fine deposited by the appellant shall also be treated as compensation and shall be released in favour of complainant, in case not already released.

Appeal stands disposed of accordingly. No costs.