



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

% Reserved on : 25.11.2024
Pronounced on : 05.12.2024

+ **CRL.A. 1088/2024 & CRL.M.B. 1954/2024**

LALLAN PRASAD SONKARPetitioner
Through: Mr. Amit Kala, Advocate with
petitioner in person through VC from
Central Jail 13, Mandoli Jail, Delhi
along with warden Anil Kumar

Versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Laksh Khanna, APP for State

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

JUDGMENT

1. By way of present petition, the petitioner seeks to assail the judgement of conviction dated 27.08.2024 and the order on sentence dated 28.09.2024 passed by the Ld. ASJ, Shahdara District, Karkardooma Courts, Delhi.
2. Vide judgement dated 27.08.2024, the applicant was convicted under Section 308 IPC and order on sentence dated 28.09.2024, he was directed to undergo rigorous imprisonment for a period of 4 years and to pay fine of Rs.10,000/- in default whereof, to undergo further simple imprisonment for a period of 4 months. The benefit of 428 Cr.P.C was granted to the appellant and the sentences were directed to run concurrently.



3. Pithily put the facts, as noted by the Trial Court, are:-

“ On receipt of DD No. 26A, SI Pramod along with Ct. Arvind went to the GTB Hospital where they collected the MLC of injured in which alleged history of physical assault, chest pain, swelling on right face, lacerated wound on forehead and chin of size 10x2 cm and 5x2 cm respectively, lacerated wounds on both ears and occipital region and that patient was unfit for statement was mentioned. The patient was identified as Suresh Maurya. Considering the MLC of the injured Suresh Maurya and after seeing the bodily injuries, on the said DD entry 26A, Ex.PW4/A (Ex.P3), the present FIR was registered vide FIR No.0172/2021, dt. 07.07.2021 in PS Shahdara u/s 308 IPC. After investigation, charge-sheet was filed against the accused Lallan Prasad Sonkar u/s 308/201 IPC and after filing of the chargesheet, cognizance of offences was taken against the accused.”

4. On 12.01.2023, the trial court framed charges under Sections 308/201 IPC against the appellant to which he pleaded not guilty and claimed trial.

5. In trial, the prosecution cited a total of eight witnesses. The injured victim Suresh Maurya was examined as PW3 and his wife as PW1. The rest of the witnesses examined were formal in nature.

On the other hand, the appellant, in his statement recorded under Section 313 Cr.P.C., claimed innocence and false implication.

6. It has been noted by the Trial Court that the injured victim PW3 had clearly identified the accused as the person who had inflicted the injury on his head, face and body with the *danda*. While in his examination in chief, he deposed that the incident was during the summer season, however in his cross-examination, the injured clearly recalled the date of the incident and also stated that the offence was committed at 12 midnight. No suggestion was put to the victim in his cross-examination that he had wrongly identified the accused or that the accused was not arrested at his instance from the DTC Bus Terminal. The injured had also proved the arrest memo (Ex.PW3/A) and personal search memo (Ex. PW3/B) that bore his signature



at point A. As contended by Id. APP, no suggestion was given to the injured that the injury in question was self-inflicted or was not caused with a *danda*. Pertinently, the version of the injured is further corroborated by his wife, Munni Devi examined as PW1. Munni Devi deposed that the appellant used to ply a three wheeler rickshaw and was known both to her and the injured. She duly identified the appellant and also deposed about him giving beatings to the injured with a *danda*.

7. The deposition of the injured also draws support from his MLC, exhibited as Ex.PW2/A. The MLC was duly proved on record by the testimonies of Dr. Karim Ullah Khan (PW2) and Dr. Jahangir (PW8). The MLC records two lacerated wounds of size 10x2 cm and 5x2 cm on forehead and chin respectively. Besides the above, the same also records a lacerated wound in the occipital region and ears and an abrasion on the left hand along with a wound on the leg and broken teeth. The injury was described as “symphysis fracture of mandible” and opined to be grievous in nature. Notably, no suggestion was put in the cross-examination of the above-mentioned witnesses to doubt the veracity of their opinion. The appellant’s arrest was proved by HC *Rajesh* (PW5). He deposed and corroborated the version of injured that the appellant was arrested after being pointed out to them by the injured.

8. 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.

9. A perusal of the record reflects that the injuries sustained by the injured were on vital parts of his body i.e., face and the head. The injuries sustained were opined to be grievous and were serious to such an extent that the victim was initially even unfit to give his statement, as also noted in the MLC. In addition, the accused in the present case has clearly been identified by the injured and his wife. As to the non-recovery of the weapon of offence i.e. the *danda*, gainful reference is made to the decision in Aas Mohd. @Ashu v. State, reported as **2021:DHC:4339**, wherein this Court has held that mere non recovery of the weapon of offence cannot be fatal to the case of the prosecution. No substantive material has been brought on record to support the contention that the appellant was falsely implicated in the present case, nor is there any evidence to show existence of any previous enmity between the appellant and the injured which could have substantiated allegation of false implication.

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 appellant, on instructions from the appellant who has joined through VC alongwith warden, Anil Kumar from Central Jail 13, Mandoli Jail, Delhi, states that he does not challenge the conviction on merits, however, prays that the sentence awarded to him



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be modified to the period already undergone by him. It is submitted that the appellant was working as a rickshaw puller and belongs to poor strata of society. He is also stated to be the sole bread earner in the family with an old father who is dependent on him, wife and three young children aged 4,6 and 8 to look after.

12. As per the report dated 16.09.2024 received from the Superintendent of Prison, Central Jail No.13, Mandoli Jail, Delhi, the appellant has already undergone 2 years, 3 months and 27 days in incarceration and his jail conduct has also been noted as satisfactory.

13. Consequently, while maintaining appellant's conviction, in the mitigating facts and circumstances, his sentence is modified to the period already undergone.

14. Accordingly, the appeal is disposed of in the above terms. Bail bonds are cancelled and the surety stands discharged.

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

**MANOJ KUMAR OHRI
(JUDGE)**

DECEMBER 05, 2024/js