

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

**RESERVED ON : 24<sup>th</sup> APRIL, 2014**

**DECIDED ON : 30<sup>th</sup> MAY, 2014**

**+ CRL.A.680/2012**

**PRABHU DAYAL SHARMA ..... Appellant**

**Through : Mr.Dayan Krishnan, Sr. Advocate  
with Mr.Sudarshan Rajan,  
Advocate.**

**VERSUS**

**THE STATE OF NCT OF DELHI ..... Respondent**

**Through : Mr.M.N.Dudeja, APP.**

**+ CRL.A.689/2012**

**JASVEER ..... Appellant**

**Through : Mr.Dayan Krishnan, Sr. Advocate  
with Mr.Sudarshan Rajan,  
Advocate.**

**VERSUS**

**THE STATE OF NCT OF DELHI ..... Respondent**

**Through : Mr.M.N.Dudeja, APP.**

**RESERVED ON : 26<sup>th</sup> MARCH, 2014**  
**DECIDED ON : 30<sup>th</sup> MAY, 2014**

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**CRL.A.857/2012**

JASBIR SINGH

..... Appellant

Through : Mohd.Saleem, Advocate with  
Mohd.Tabrej, Advocate.

VERSUS

THE STATE (DELHI ADMN.) DELHI & ANR. .... Respondents

Through : Mr.M.N.Dudeja, APP.

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**CRL.A.676/2012**

MAHABIR

..... Appellant

Through : Mr.Sudarshan Rajan, Advocate  
with Md.Qamar Ali, Advocate.

VERSUS

THE STATE OF NCT OF DELHI

..... Respondent

Through : Mr.M.N.Dudeja, APP.

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**CRL.A.675/2012**

RAJESH KUMAR @ RAJU

..... Appellant

Through : Mr.Sudarshan Rajan, Advocate  
with Md.Qamar Ali, Advocate.

VERSUS

THE STATE OF NCT OF DELHI

..... Respondent

Through : Mr.M.N.Dudeja, APP.

**AND**

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**CRL.A.1036/2012**

RAMESH KIRAR

..... Appellant

Through : Mr.Ashok Kr.Arya, Advocate.

VERSUS

THE STATE (GNCT OF DELHI) & ORS.

..... Respondents

Through : Mr.M.N.Dudeja, APP.

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. In Criminal Appeals No. 680/2012, 689/2012, 676/2012 and 675/2012, Prabhu Dayal Sharma (A-1), Jasveer (A-2), Mahabir (A-3) and Rajesh Kumar @ Raju (A-4) challenge the legality and correctness of a judgment dated 23.05.2012 of learned Addl. Sessions Judge in Sessions Case No. 8/11 arising out of FIR No. 70/06 PS Paharganj, by which they were convicted under Sections 325/34 IPC. By an order dated 24.05.2012, they were sentenced to undergo RI for one and half year with fine ₹ 15,000/-, each.

2. Jasbir Singh (A-2) has filed CrI.A.No.857/2012 under Section 372 Cr.P.C. to impugn a judgment dated 23.05.2012 in Sessions Case No. 9/11 arising out of FIR No. 69/06 PS Paharganj, by which Ramesh Kirar (respondent No.2) was acquitted of the charge. Complainant – Ramesh Kirar has preferred CrI.A.No.1036/2012 under Section 372 Cr.P.C. to challenge A-1 to A-4's acquittal under Sections 308/34 IPC and for enhancement of sentence awarded to them in FIR No.70/06 PS Paharganj.

Since all these appeals were intrinsically connected, with the consent of the parties, these were heard together to be disposed of by a common judgment.

3. Shorn of details, the prosecution case as reflected in the charge-sheet in FIR No. 70/06 PS Paharganj was that on 17.02.2006 at about 08.00 a.m. at shop No.5, near Uday Singh Ashram Chowk, Aram Bagh, Paharganj, A-1 to A-4 sharing common intention caused injuries to Ramesh Kirar with iron rods and dandas in an attempt to commit culpable homicide. The police machinery swung into action after receiving information about the incident and Daily Diary (DD) No.8A (Ex.PW-8/A) came to be recorded at 08.32 a.m. at PS Paharganj to the effect that an individual had sustained injuries on head in a quarrel at Uday Singh

Ashram, Aram Bagh. The investigation was entrusted to ASI Dharambir Singh who with Const. Manoj Kumar went to the spot. They came to know that the victim had already been shifted to Dr. Ram Manohar Lohia Hospital. ASI Dharambir Singh collected MLC of Ramesh Kirar. Since he was unfit to make statement, the Investigating Officer lodged First Information Report, after making endorsement (Ex.PW-8/B) on DD No.8A (Ex.PW-8/A). During investigation, statements of the witnesses conversant with the facts were recorded. The investigation was taken over by SI S.P. Singh. On 22.02.2006, statement of the victim Ramesh Kirar was recorded. A-1 to A-4 were arrested. After completion of the investigation, a charge-sheet was submitted against them for committing offence under Sections 308/34 IPC; they were duly charged and brought to trial. The prosecution examined fourteen witnesses to establish their guilt. In 313 statements, the accused persons pleaded false implication and denied their involvement in the crime; A-3 and A-4 raised plea of 'alibi'. DW-1 to DW-6 were examined in defence. The trial resulted in conviction of A-1 to A-4 under Sections 325/34 IPC as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeals.

4. In case FIR No.69/06 PS Paharganj, the prosecution case as disclosed in the charge-sheet was that on 17.02.2006 at about 08.00 A.M.

at shop No.5, near Uday Singh Ashram Chowk, Aram Bagh, Paharganj, Ramesh Kirar voluntarily caused simple hurt with sharp object to Jasveer (A-2). When PW-8 (ASI Dharambir Singh) went to Dr.Ram Manohar Lohia Hospital, after assignment of investigation pursuant to DD No.8A (Ex.PW-8/A), he found Jasveer (A-2) admitted there for treatment. He collected his MLC and lodged First Information Report after recording his statement (Ex.PW-2/A) by sending rukka (Ex.PW-6/A). After the investigation was over, a charge-sheet against Ramesh Kirar was furnished; he was duly charged and brought to trial. The prosecution examined six witnesses. In 313 statement, Ramesh Kirar claimed himself to be innocent and examined DW-1 (HC Arvind) and DW-2 (Dr.Ajay Gandotra) in defence. The trial resulted in his acquittal. Being aggrieved and dissatisfied, the victim has challenged the acquittal. It is relevant to note that State did not prefer to file any appeal against the impugned judgment dated 23.05.2012.

5. In Crl.A.No.1036/2012, challenging A-1 to A-4's acquittal under Sections 308/34 IPC, the victim - Ramesh Kirar claimed enhanced sentence.

6. I have heard the learned counsel for the parties and have examined the Trial Court records. The occurrence took place on Crl.A.No.680/2012 & connected appeals.

17.02.2006 at around 08.00 a.m., near Uday Singh Ashram Chowk, Aram Bagh, Paharganj. DD No.8A (Ex.PW-8/A) was recorded in promptitude about the incident at 08.32 a.m. at PS Paharganj. PCR form (Ex.PW-11/A) was filled up at 08.28 a.m. on getting information about a quarrel in which an individual had sustained injuries on his head. It further records that the assailants had fled the spot after giving beatings to Ramesh Kirar and he had been taken to hospital. PW-1 (Om Parkash), after getting information from his cousin about the occurrence went to the spot and found Ramesh Kirar lying injured opposite shop No.5, Aram Bagh. He shifted Ramesh Kirar to Dr.Ram Manohar Lohia Hospital. MLC (Ex.PW-13/A) records the arrival time of the patient (Ramesh Kirar) at 08.40 a.m. in the hospital. Om Parkash's name finds in the MLC in the column 'brought by'. As per endorsement on the MLC, Ramesh Kirar was 'unfit' to make statement on 17.02.2006. PW-6 (Dr.Kalyani) medically examined the victim who was brought in the hospital with the alleged history of 'assault' by MLC (Ex.PW-6/A). On local examination, he was found having abrasion on left leg, right ankle joint, right knee joint, right leg with profuse bleed side; right knee joint, ankle joint, left radius ulna with restrictions and right dorsum of hands with swelling. PW-7 (Dr.Anil Taneja) after examining seven x-ray plates (Ex.PX1 to Ex.PX7) found three fractures of right

femur, right Tibia and metacarpal bones. The report submitted by him is Ex.PW-7/A. In the opinion of PW-13 (Dr.Pankaj Bansal) the injuries were 'grievous' in nature. Apparently, Ramesh Kirar sustained three fractures on various parts of the body in the occurrence which were 'grievous' in nature. Nothing has come on record to show that these injuries were self inflicted or accidental. A-2, who lodged cross-case vide FIR No.69/06, in 313 statement, did not deny the injuries sustained by Ramesh Kirar. He, however, pleaded that Ramesh Kirar was assaulted by his associates to whom he had sold the property in question and had taken advance payment but not in a position to hand over its possession. In the complaint (Ex.PW-2/A) lodged in case FIR No.69/06, A-2 took up the plea that injuries to Ramesh Kirar were inflicted by him by a lathi in the exercise of his right of private defence when he was stabbed by a knife by him.

7. The crucial aspect to be determined is as to who was the perpetrator of crime to cause injuries to Ramesh Kirar. Star witness is Ramesh Kirar who on oath deposed that when on 17.02.2006, he had gone to a barber (PW-2 Yamin) for shave and also to collect monthly rent, A-2 called him out on the pretext to meet A-1 standing outside the shop. He recalled that after coming out, he saw A-1 standing in the company of A-3 and A-4. On the exhortation of A-1 "maro sale ko aaj bachke na jane



paye”, A-2 caught hold of him by shoulders, and A-2 and A-3 started beating him with rod and dandas, causing injuries on his head, hands, legs and other parts of the body. He was taken to the hospital by someone where his statement was taken on 22.02.2007. Ramesh Kirar was cross-examined indepth on various dates on facts not relevant to the fact-in-issue. He was mainly questioned regarding dispute over ownership / possession of the property in question which belonged to the Akhara. Since the matter was subjudice and civil proceedings were already pending regarding the property in question, these questions were not very material and relevant to the incident in question. The complainant disclosed that he remained unconscious from 17.02.2006 to 22.02.2006. After discharge from Dr.Ram Manohar Lohia Hospital on 02.03.2006, he got regular treatment from Khetarpal Hospital. He denied the suggestion that he was beaten by the ‘party’ from whom he had received earnest money and was unable to deliver the possession of Akhara to them. He also denied that A-3 and A-4 had gone to Jaipur on the date of incident for purchase of the clothes for the statue of ‘Gurumuni’. Apparently, no material contradictions or discrepancies could be brought out in the cross-examination to discredit the version narrated by the injured witness.

Names of the alleged assailants from whom the complainant had obtained

any advance to hand over the possession of Akhara were not suggested. The victim who sustained multiple fractures on the body was not expected to let the real offenders go scot free and to falsely implicate innocent ones. Explaining the delay in recording statement on 22.02.2006, PW-14 (SI S.P.Singh, Investigating Officer) disclosed that from 17.02.2006 to 20.02.2006, he remained unconscious to make any statement. On 21.02.2006, though he was physically fit to make statement, being 'unwell', he recorded it on 22.02.2006. On 22.02.2006, the complainant was specific and certain as to who were the assailants and what role was played by each of them. The delay in recording the statement has been explained and can be accepted. The testimony of a stamped witness has its own relevance and efficacy. The testimony of the injured witness is accorded a special status in law. This is a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of crime and because the witness will not want to let the actual assailant to go unpunished merely to falsely involve a third party for the commission of the offence. In the case of '*State of Uttar Pradesh vs. Naresh and Ors.*', (2011) 4 SCC 324, the Supreme Court held:

*"The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence*

*cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”*

8. In the case of ‘Abdul Sayed Vs.State of Madhya Pradesh’, (2010) 10 SCC 259, the Supreme Court held :

*“The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".*

As discussed above, A-2 in complaint (Ex.PW-2/A) (FIR No. 69/06) admitted his presence at shop No.5 where Ramesh Kirar, the victim had met him. He further admitted that on his asking, Ramesh Kirar declined to settle the accounts and started abusing him. On that, an

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altercation took place. Ramesh Kirar took out a knife from the back pocket and stabbed him on his back. He claimed that in private defence, he picked up a 'lathi' lying at the spot and dealt a blow on his leg. Apparently, the theory propounded by A-2 that Ramesh Kirar's associates caused beating to him on his inability to hand over the possession despite receiving advance payment fell flat. PW-2 (Yamin) also spoke of a quarrel between Ramesh Kirar and Jasveer (A-2). He supported both of them and disclosed that Ramesh Kirar and Jasveer sustained injuries in the said scuffle. He was, however, conspicuously silent as to who gave injuries to whom. It appears that Yamin did not present true facts to avoid annoyance to any party, being a tenant in the shop as, ownership / possession of it was being claimed by both of them. As per his statement, he was paying rent to Akhara authorities through Ramesh Kirar and Jasveer (A-2).

9. Complainant – Ramesh Kirar assigned a specific and positive role to each of the assailants in the crime. He was fair enough to disclose that only A-3 and A-4 were armed with iron rod and dandas. A-1 had exhorted to them “maro sale ko aaj bachke na jane paye”. The role assigned to A-2 was that he caught hold of him at that time. The victim had no extraneous consideration to falsely rope in A-3 and A-4 with whom he had no prior animosity. In fact, it were A-3 and A-4 who played

active role in causing multiple fractures to the victim. The findings of the Trial Court that A-1 to A-4 sharing common intention voluntarily caused injuries to the victim cannot be faulted.

10. A-3 and A-4 took the plea of 'alibi' and claimed that on the day of incident they had gone to Jaipur for purchase of clothes for the statue. They examined DW-5 (Rajeev Sabikhi) to prove that on 16.02.2006, they had stayed in his Hotel Residency Inn in room No.109 as reflected in Ex.DW-5/A. They further examined DW-2 (Ghanshyam Sharma) from Jaipur to prove purchase of certain articles from his shop vide documents (Mark-A and Mark-B) on 16.02.2006. DW-6 (Mr.Vivek Gupta) proved the photocopy of the bill No.53 dated 16.02.2006 (Mark DW-6/A) to prove purchase of certain articles. The Trial Court elaborately dealt with the defence evidence and for valid reasons rejected the plea outrightly. A-3 and A-4 did not examine any witness from Akhara in question to prove if they were deputed to go to Jaipur to purchase jewellery / clothes for the statue or were entrusted with any specific amount for that purpose. They also did not examine relevant witness to show if any such articles were purchased and brought back by them. No documentary evidence from the Akhara showing the purchase of any such article and its payment to A-3 and A-4 was brought on record. Nothing

was revealed as to by which mode of transport, A-3 and A-4 had performed their to and fro journey to Jaipur. It was also not disclosed as to on which date and at what time, they had departed for Jaipur and reached Delhi after performing their journey. No tickets / reservation tickets for the journey undertaken have been placed on record. The testimonies of DWs-2, 5 and 6 are not cogent and reliable. A-3 and A-4 had no sound reasons to get two different bills in two different names from DW-3 for purchase of articles when these were meant for the statue and not for individual requirement. It is unbelievable that DW-2 (Ghanshyam Sharma) would be able to identify the routine / casual customers visiting his shop for the purchase of routine articles only on one occasion during his examination after about five years of the incident in the Court. Document (Mark DW-5/A) is a loose sheet and does not contain the parentage or the address of the visitors to the hotel. It does not bear the signatures of A-3 or A-4. Admittedly, DW-5 (Rajeev Sabikhi) was known to A-3 and A-4 since long. The possibility of manipulated / fabricated document to create the plea of alibi cannot be ruled out. The authenticity of the document is highly suspect and cannot be believed. Once the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through the reliable evidence of the

complainant, it was incumbent upon them to prove the plea of 'alibi' with absolute certainty. Plea of alibi must be proved by cogent and satisfactory evidence completely excluding the possibility of accused persons at the scene of occurrence at the relevant time. The plea of 'alibi' set up by A-3 and A-4 seems to be an afterthought and un-believable.

11. A-2 lodged complaint (Ex.PW-2/A) which formed the basis of registration of FIR No.69/06. In the complaint, A-2 disclosed that when he visited PW-2 (Yamin)'s shop, A-2 stabbed him by a knife on his asking to settle the account. The Trial Court for sound reasons did not believe the theory propounded by the complainant and exonerated Ramesh Kirar of the charge. A-2 admitted that in private defence, he inflicted lathi blow on Ramesh Kirar's leg but he did not explain as to how and under what circumstances, he got multiple fractures on his various body parts. He did not report the incident to the police soon from the spot. Daily Diary (DD) No.8A (Ex.PW-8/A) was recorded at 08.32 a.m. at PS Paharganj which pertained to the injuries sustained by an individual lying at the spot. In PCR form (Ex.PW-11/A), the name of the injured was ascertained as Ramesh Kirar. Neither PCR form (Ex.PW-11/A) nor Daily Diary (DD) No.8A (Ex.PW-8/A) records if anyone else suffered injuries in the occurrence. A-2 did not inform any of his relative about the occurrence

and conveniently went alone to Dr.Ram Manohar Lohia Hospital in a TSR and admitted himself there. MLC (Ex.PW-5/A) records the arrival time of the patient A-2 (Jasveer) at 09.05 a.m.; he was declared fit for statement at 10.15 a.m. Contrary to that, MLC of Ramesh Kirar, who was taken by Om Parkash (PW-1), records the arrival time of the patient at 08.40 a.m. A-2 did not explain the delay in reaching Dr.Ram Manohar Lohia Hospital. PW-8 (ASI Dharambir Singh) to whom the investigation was assigned after recording A-2's statement, lodged the First Information Report. In the cross-examination, he admitted that he reached shop No.5, near Uday Singh Ashram Chowk, Aram Bagh, Paharganj, at about 08.30 a.m. Dr.Ram Manohar Lohia Hospital was at a distance of two or three kilometres from the spot. No eye witness came forward to disclose that injuries were caused to A-2 by Ramesh Kirar. In his Court statement (in case FIR No. 69/06 PS Paharganj), A-2 gave inconsistent version that after sustaining stab blow on back and neck, he fell down and was taken to the hospital by 'someone'. This assertion is in contradiction to the statement (Ex.PW-2/A) in which he claimed that he went to the hospital on his own in a TSR. No knife was recovered at the spot. Victim – Ramesh Kirar lying in injured condition at the spot was not found in possession of any such knife. It belies A-2's statement that he was caused



injuries by a knife by the victim Ramesh Kirar. The prosecution failed to establish beyond reasonable doubt that the victim Ramesh Kirar was the author of the injuries to A-2. Acquittal of Ramesh Kirar for sound reasons in the impugned judgment dated 23.05.2012 in Sessions Case No. 9/11 arising out of FIR No. 69/06 PS Paharganj is based upon fair appraisal of the evidence and needs no intervention.

12. Appellant's counsel in CrI.A.No.1036/2012 emphasized that on A-1's exhortation "maro sale ko aaj bachke na jane paye", multiple injuries were inflicted to the victim and it attracted ingredients of Section 308 IPC. The submissions are devoid of merits. No injuries were inflicted on the vital organs of the victim. As per medical evidence, the victim sustained three fractures on right femur, right Tibia and metacarpal bones. The injuries were 'grievous' in nature and were not sufficient in the ordinary course of nature to cause death. The prosecution could not established / produced any evidence on record to infer that the injuries were caused with the avowed object and knowledge to cause victim's death. The incident of altercation had taken place at the shop being run by PW-2 (Yamin) where the victim had gone for shave in routine without any inkling of his arrival to the assailants to pre-plan the attack. A-1 and A-2 were not armed with any weapon. Dispute arose when A-1 asked Ramesh

Kirar to settle the accounts for the rent received by him. In the said scuffle, injuries were voluntarily caused to the victim. Both the parties were acquainted with each other and had visiting terms before the incident. There was no past history of animosity or long standing enmity. The relations became strained when both of them claimed ownership over the Akhara property and instituted civil proceedings. From these circumstances, it cannot be inferred that the convicts had requisite intention or knowledge to attract Section 308 IPC.

13. The convicts were awarded RI for one and half year with fine ₹ 15,000/-, each under Sections 325/34 IPC which cannot be termed inadequate. A-1 was aged around 72 years. None of them was a habitual offender or involved in any criminal activities. The occurrence had taken place at the spur of the moment over settlement of accounts pertaining to the property of the Akhara. Considering the facts and circumstances in which the altercation arose, I find no merit in the appeal for enhancement of the sentence awarded by the Trial Court.

14. In the light of above discussion, the findings of the Trial Court convicting A-1 to A-4 under Sections 325/34 IPC are affirmed. Turning to the plea to modify the sentence order, A-2 to A-4 deserve no leniency as the unarmed complainant suffered three fractures on various

body parts and remained admitted for number of days in the hospital. So far as A-1 is concerned, he is aged about 75 years; is not a previous convict; has clean antecedents; and has suffered agony of trial / appeal for eight years. The only role attributed to him that of exhortation; he was not armed with any weapon and did not facilitate co-convicts in causing injuries to the victim. The initial confrontation had taken place with A-2. Keeping in view the genesis and origin of the incident and looking to his age, conduct, antecedents, and attendant circumstances, interest of justice would be met if instead of sentencing him at once to any punishment, he is directed to be released on probation of good conduct. Accordingly, A-1 shall be released on his entering into a bond in the sum of ₹ 30,000/- with one surety 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 seven days. A-1 shall deposit ₹ 1 lac to be paid as compensation to the victim in the Trial Court within fifteen days. The compensation will be released to the victim – Ramesh Kirar after due notice.

15. While maintaining conviction qua A-1 to A-4 under Sections

325/34 IPC, sentence order is modified to the extent that A-1 would be

released on probation and shall pay a sum of ₹ 1 lac as compensation to the victim. Crl.A.No.680/2012 stands disposed of in the said terms. Crl.A.No.689/2012, Crl.A.No.676/2012 and Crl.A.No.675/2012 stand dismissed.

16. Crl.A.No.857/2012 filed by A-2 against acquittal is dismissed.

17. Crl.A.No. 1036/2012 filed by the complainant for enhancement of sentence stands dismissed.

18. Trial Court records be sent back forthwith with the copy of the order. A-2, A-3 and A-4 shall surrender before the Trial Court on 6<sup>th</sup> June, 2014 to serve the remaining period of their sentence.

**(S.P.GARG)**  
**JUDGE**

**MAY 30, 2014 / tr**