

State vs Samim Aktar Etc on 21 August, 2024

DLWT020013862012

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS-
06, DISTRICT- WEST, TIS HAZARI COURTS, DELHI

Presided by: Ms. SWATI BHARDWAJ, DJS

State Vs. Shamim Akhtar & Ors.

FIR No. 393/11

PS - Hari Nagar

Under section 143/147/149/323/324/342/452/34 IPC

JUDGMENT

1) Case ID	:	67511/16
2) The date of commission of offence :	:	06.09.2011
3) The name of the complainant :	:	Shabila D/o Kallu Master
4) The name & parentage of accused :	:	(i) Shamim Akhtar S/o Sh. Gulam Mohammad (ii) Jasmeen Khan D/o Sh. Shamim Akhtar (iii) Sammi W/o Shamim Akhtar All R/o WZ-270, Tihar Village, Delhi.
5) Ld. APP for the State	:	Sh. Pravesh Kumar Vyas
6) Offence involved	:	143/147/149/323/ 324/342/452/34 IPC
7) The plea of accused	:	Pleaded not guilty
8) Final order	:	Convicted u/s 147 IPC and 324/342/452 read with 149 IPC. Acquitted u/s 323/149 IPC
9) Judgment reserved on	:	22.07.2024
10) Judgment announced on	:	21.08.2024

State Vs. Shamim Akhtar & Ors. FIR No. 393/11
BRIEF STATEMENT OF REASONS FOR DECISION:

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1. Briefly, the allegations of the prosecution are that on 06.09.2011 at about 08:35 PM the accused persons i.e. Shamim, Jasmeen, Sammi alongwith with S, Y, R and Sa (juveniles) constituted an unlawful assembly with common objective to commit house trespass in H. No. WZ-270, Tihar Village, Delhi belonging to complainant Shabila and to give beatings to Shabila and her mother.

Thereby all the accused persons committed an offence punishable under Section 143 IPC.

2. Secondly, on aforesaid date, time and place all the accused persons, in furtherance of common objective of their unlawful assembly committed house trespass after preparation for causing hurt to complainant Shabila and her family members, thereby all the accused persons committed an offence under Section 452 read with section 149 IPC.

3. Thirdly, on aforesaid date, time and place all the accused persons in furtherance of common objective of their unlawful assembly gave beatings to complainant Shabila and her mother Kishwar Jahan by some sharp weapon and wrongfully confined them in the said house by bolting the said house, thereby all the accused persons committed an offence under Section 323/324/342 read with section 149 IPC.

4. Fourthly, on aforesaid date, time and place all the accused persons in furtherance of common objective of their unlawful assembly used force or violence against complainant Shabila and her mother Kishwar Jahan by giving beatings to them, thereby all the accused persons committed an offence under Section 147 read State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.2 of 23 with section 149 IPC.

5. Investigation was conducted into the allegations. Upon completion thereof, charge-sheet was filed. All four accused persons were summoned. Compliance of section 207 Cr.P.C. was done by providing copy of the charge-sheet and annexed documents to the accused persons.

6. Upon finding a prima facie case against all the accused persons, a formal charge was framed against all the accused persons for the offence punishable under section 143/147/323/324/342/452/149 IPC. The accused persons pleaded not guilty and claimed trial.

7. To substantiate the allegations, prosecution examined 08 witnesses.

8. PW-1 Ms. Shabila deposed that she knows all the three accused persons namely Shamim Akhtar, Shammi Bano (wife of Shamim) and Jasmine (daughter of Shamim) as they reside in her neighbourhood. Prior to 06.09.2011, the accused persons had constructed stairs in front of their house and they also lifted the flooring of street and of their house for which she made complaint against them in PS. The photocopy of the complaint is Mark X. On 06.09.2011, in the evening, some police officials visited the spot in connection with the complaint made by her. After inspecting the spot, they instructed both the parties to come to PS with their documents. On this, in the presence of police, the accused persons started quarrelling with complainant. However, police officials left the spot after giving instructions to both the parties. Thereafter, all the accused persons along with two other State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.3 of 23 sisters and brothers (Juveniles) of Jasmine entered in house of PW-1 and started throwing their household articles. At that time, the mother of PW-1 and her three nieces (less than age of about 10 years) were present in the house.

9. PW-1 further deposed that when PW-1 resisted to the conduct of accused persons, they started beating her and her mother. They were beating them with their hands. One of the accused persons who is juvenile, was carrying a danda and accused Jasmine was carrying an object like cutter. Accused Jasmine caused injury with that cutter on hand of PW-1. When they started beating her mother, she intervened to save her. Then juvenile R tore the shirt of PW-1 from back and started giving filthy abuses to her. Her mother fell due to the beatings given by accused persons thereafter they all left their house and bolted the door of their house from outside. Though, all the neighbours collected but none opened the door due to the fear of accused persons. PW-1 made telephone call to Madhu (Kinner) who resided in their neighbourhood and requested her to open the door. They were knocking the door from inside and asking to open the door but accused persons were giving abuses to them by stating "tumhari kabir aaj yahin khodegein". Madhu came to open the door then accused persons started pelting the stones from the first floor of their house. They were giving abuses to Madhu also and started quarrelling with her. PW-1 made call to police.

10. PW1 also stated that Madhu opened the door from outside. PW-1 went to hospital as she sustained injuries in the quarrel.

State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.4 of 23 After getting herself medically examined, she went to PS. There she made a complaint Ex.PW1/A. Her suit which was worn by her at the time of incident was seized by police vide seizure memo Ex.PW1/B. PW-1 correctly identified the case property i.e. the clothes which were worn up by her at the time of incident. The pajami is Ex. P1 and Kurta is Ex. P2. There are blood stains on both the clothes. PW1 correctly identified all three accused persons.

11. During her cross examination, PW1 stated that she knew the accused persons since her birth. That the property in question originally belonged one person namely Mr. Nanu. That at the time of incident, her father was in Masjid. That the time of the incident is about 7:30 to 8 pm. That she came back from the gas agency i.e. her work at about 6:45 pm. That she did not recall exact time of making calls to Madhu or the police. That some of the neighbours who gathered at time of the incident were Akbar, Imam, wife of Imam, Sher Mohamad etc. Other names she did not remember. She did not recall her mobile number in use at the time of the incident. That she did make call the police on 100 number on the date of incident from her number. That she went to PS from hospital but did not remember what time. Her statement was not recorded at the PS. She denied that her mother was not the owner of the property in question or that she was living as a tenant at the property in question. She admitted that one Gulam Mohamad, father of accused had given a notice to her mother to vacate the property in question and filed a civil suit thereafter but denied that she had falsely implicated the accused due to the notice. She stated that one Nanu Khan was the State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.5 of 23 grandfather of the accused. She denied that she was deposing falsely.

12. PW-2 Kishwar Jahan deposed that she has been residing at the said address with her family. It was about three years ago, the accused persons Shammi Akhtar, Jasmine Khan and Shammi were residing in a house adjoining her house and they used to quarrel with PW-2 as she had purchased her house from the grand-mother of accused persons. The accused persons tried to grab house of

PW-2 and to achieve this, they used to quarrel with them on one pretext or the other. The accused persons were constructing stairs in front of her house and she objected the same and got it stopped. She does not remember the exact date but on that night, all the accused persons entered her house and started abusing her and her daughter. They started throwing household articles of PW-2 outside their house and started threatening them to leave their house. The accused persons had also beaten them and when her daughter Shabila tried to save her by covering her, they tore the suit of her daughter. Accused persons had beaten them very badly.

13. PW2 further deposed that thereafter, accused persons went outside of their house and bolted their main door from outside. They threatened them by saying "bahar nabhi nikalane dengai, yahi tumari kabar khodh dengar". Nobody opened their main door from outside and thereafter, they made call to kinner namely Madhu who was residing in their neighbourhood and their door was opened by Madhu. The accused persons also threw bricks on Madhu, but he managed to save himself. After opening the door, her daughter Shabila immediately went to DDU Hospital. All the State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.6 of 23 accused persons were correctly identified by the witness. The accused persons were shouting very filthy abuses to them at the time of beating them. PW-2 could not tell the abuses specifically in open. PW2 correctly identified all three accused persons.

14. During her cross examination, PW2 stated that she has been residing at the property in question since 1935. She does not remember the date when she purchased the house. She admitted that Ghulam Mohammed had filed any eviction suit against her, but voluntarily stated that she had won that case. That time of incident was about 7 to 7:30 PM. That Madhu reached their house immediately after the incident at about 7 or 7:30 PM. Madhu was residing at distance of 4-5 houses from her house. She denied that the accused persons used to demand rent from her, that is why the quarrel took place. That 20 to 25 rooms were constructed by accused Shamim adjacent to her house for rent. Nobody came for their help as occupants of those rooms are relatives of the accused. She denied that no, such incident took place, that accused Shamim was not present at their house at the time of the incident, that she and her daughter have falsely implicated the accused persons to grab their property.

15. PW-3 ASI Satish Kumar deposed that on 06.09.2011, at around 8:35 PM, he received DD No. 38A regarding the quarrel. Accordingly, he along with Ct. Anil Kumar went to the spot i.e. WZ-270, Tihar Village where he came to know from the neighbours that (he injured/complainant went to the DDU hospital, PW-3 along with Ct. Anil went to DDU hospital and received the MLC of the injured namely Shabila and accordingly the injured was discharged. Complainant gave a written State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.7 of 23 complaint Ex. PW1/A. PW3 made endorsement on the written complaint at point B and same was handed over to Ct. Anil for registration of FIR. PW3 went to the spot along with the complainant. Ct. Anil returned to the spot along with SI Gyan Prakash with original rukka and copy of FIR and same was handed over to PW3 and he made endorsement on rukka which is Ex.PW3/A. Thereafter, the investigation of the present case was handed over to SI Gyan Prakash.

16. During his cross examination, PW3 stated that he did not know the 8 to 10 neighbours who met him on the spot, he did not ask name of any of them. He got the statement of Shabila at DDU Hospital. When he reached the spot again at about 11:30 PM no one except family members of complainant were present there. That complainant did not show any document of ownership of the property in question in the hospital. When he reached the spot of offence, construction work was not going on, but construction material was lying at the spot. That no photograph of the construction material was taken. He did not see any CCTV camera at that time. PW3 denied that he had not visited the spot, hence not taken any photograph or that he had prepared a false case against the accused in connivance with the complainant.

17. PW-4 Madhu Hazi (Kinner) deposed that she does not recollect the date, month and year, it was around 8:00-9:00 PM. PW-4 was at her home. She got a call of her neighbour Shabila on her mobile phone. She told her to come at her house that her neighbours were beating her namely Shamim and his wife and two boys and two girls. Thereafter, PW-4 rushed towards house State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.8 of 23 of PW-1. When PW-4 reached there, the neighbours of Sabila started shouting on PW-4 and started abusing. They started throwing bricks on him, but it did not hit him. She opened the house of Shabila which was locked from outside. When PW-4 entered the house, she found Sabila was injured and her clothes were torn down. PW-4 told Sabila to call at 100 number to call the police. Thereafter, PW-4 went to her house. On the next day, police came at the house of PW-4, enquired her and recorded her statement. PW-4 correctly identified all the three accused.

18. During her cross examination by the Ld. APP, PW4 deposed that may be the date of incident was 06.09.2011. During her cross examination by Ld. Defence Counsel, PW4 stated that the incident did not take place in her presence. Her mobile number was 9899478076. That there were about 50 persons at the spot during the incident. When she reached there, she cannot tell names of those persons. No investigation or statements were recorded in her presence when she reached inside the house of Shabila, her mother and three children of her brother were present. She denied that she was deposing at the behest of the complainant or that she did not receive any phone call or that she did not open the door or that no such incident took place.

19. PW-5 HC Anil on 06.09.2011, at about 8:45 PM, HC Satish received DD no. 38A regarding quarrel at Tihar Village. PW-5 alongwith HC Satish reached at the spot and it was informed that injured was already taken to DDU hospital. PW-5 reiterated the testimony of PW-3 and stated that IO prepared the site plan at the instance of the injured which is Ex.PW5/A. The injured Sabila had produced her suit and salwar which was kept in a pullanda State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.9 of 23 and sealed it with the seal of GP. Seal was handed-over to PW-3 after use. Statement of PW-5 was recorded by the IO.

20. PW-6 ASI Satya Prakash deposed that on 06.09.2011, he recorded the FIR No.393/11 at about 11:35 PM based on Tehrir sent by HC Satish Kumar through Ct. Anil Kumar. The original roznamcha pertaining to DD No.42A dated 06.09.2011 PS Hari Nagar is Ex-PW6/A(OSR). The copy of the FIR is Ex-PW6/B and endorsement on rukka is Ex-PW6/C. The 65B, Indian Evidence Act certificate is Ex-PW6/C.

21. PW-7 Dr. Ritu Aggarwal deposed that on 06.09.2011, she was posted at DDU Hospital as EMO. On that day, she was on duty at casualty. She has seen MLC NO.18322 of Shabila. As per the MLC, the patient was brought at casualty at about 10:00 pm with the alleged history of hit by some sharp instrument. PW-7 examined the patient and prepared the MLC Ex.PW7/A. PW-7 opined the injury as simple sharp encircle B of the MLC.

22. PW-8 SI Gyan Prakash deposed that on 06.09.2011, at about 11:30 pm, he was handed-over copy of rukka and FIR of the present case through Ct. Anil for further investigation of the case. Thereafter, he along with Ct. Anil reached at the spot at the house of the complainant at H. No. 273, Tihar Village, Delhi. The complainant namely Shabila met there. PW-8 further reiterated the testimony of PW-3 and PW-5. He added that he recorded the supplementary statement of complainant Shabila and statements of other witnesses. On that day, he searched the accused persons, but they were not found as premises was found locked. Thereafter, they returned to the Police Station and case State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.10 of 23 property was deposited in the Malkhana. On 08.09.2011, PW-8 was informed by the complainant that accused Shamim and Smt. Sammi are present in their house. Thereafter, PW-8 alongwith police official went to the house of accused at Tihar Village beside the house of the complainant. PW-8 correctly identified the accused persons. The accused persons were arrested vide arrest memo of accused Shamim Akhtar Ex.PW8/A, of accused Sammi Ex.PW8/B. Personal searched both the accused persons vide personal search memo of accused Shamim Akhtar Ex.PW8/C and Sammi Ex.PW8/D. On 22.09.2011, PW-8 came to Tis Hazari Court where the accused Jasmin surrendered. PW-8 correctly identified the accused Jasmin. She was arrested vide arrest memo Ex.PW8/E. Her personal search was taken vide memo Ex.PW8/F. She was interrogated and made disclosure statement which is Ex.PW8/G. The case property is already exhibited as Ex. P1 and P2.

23. Statement of accused persons was recorded as per section 313 Cr.P.C. wherein they refuted all the incriminating circumstances put to them and stated that they were falsely implicated in the present case.

24. The accused persons examined one Sh. Asif as DW1 in their defense. After their application under section 315 Cr.P.C. was allowed by the court, all 3 accused persons also deposed as defense witnesses.

25. DW-1 Asif deposed that on 06.09.2011, he was present at WZ-270, Tihar Village. No quarrel or fight had taken place at the said spot at the said premises. That Kishwar Jahan is the tenant of State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.11 of 23 Gulam Mohammad and she wants to usurp the tenanted premises.

26. During his cross examination by the Ld. APP, DW1 stated that he does not know the time of incident alleged by the complainant, however, it was afternoon. He has a house situated at WZ-28, Tihar Village, Delhi. The distance between his house and the alleged place of incident is about 04 houses. On 06.09.2011, whole day, he had remained in the said house. He had not visited the alleged place of incident on 06.09.2011. He denied that he was deposing falsely to save the accused.

27. DW-2 Jasmine Khan deposed that she was one of the accused in the present case. On 06.09.2011, no fight took place at the alleged spot i.e. WZ-270, Tihar Village, Delhi. During her cross examination by the Ld. APP, DW2 stated that she had not lodged any complaint against the complainant of the present case before police or court regarding the fact that the complainant had lodged a false case against DW2. She denied that she was deposing falsely to save herself.

28. DW-3 Sh. Shamim Akhtar deposed that she was one of the accused in the present case. On 06.09.2011, no fight took place at the alleged spot i.e. WZ-270, Tihar Village, Delhi. The complainant is the tenant of his father. They did not want to pay the rent which was due and when the accused persons asked for the same, the complainant levelled a false allegation against the accused persons.

29. During his cross examination by the Ld. APP, DW3 stated that no agreement regarding tenancy was ever executed between State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.12 of 23 his father and the complainant of the present case. Complainant used to pay Rs. 30/- per month as rent. No receipt had ever been issued by his father against the said payments. DW3 had not lodged any complaint against the complainant of the present case before police or court regarding the fact that the complainant had lodged a false case against DW3. He denied that he was deposing falsely to save himself.

30. DW4 Sammi deposed that she was one of the accused persons in the present case. On 06.09.2011, no fight took place at the alleged spot i.e. WZ-270, Tihar Village, Delhi. The complainant is the tenant of the accused persons. They did not want to pay the rent which was due and when they were asked for the same, the complainant levelled a false allegation against the accused persons.

31. During his cross examination by the Ld. APP, DW4 stated that she cannot say if any agreement regarding tenancy ever executed between her father-in-law and the complainant of the present case. Complainant used to pay Rs. 30/- per month as rent. I cannot say, if any receipt had ever been issued by her father-in- law against the said payments. That the complainant did not pay the rent for the last 16 years. Her father-in-law had filed a case for arrears of rent payment against the complainant. She was not aware whether the said case is sub-judice or had been decided. She denied that she was deposing falsely to save herself.

32. No other evidence was led by the accused persons; thus, DE was closed.

33. Final arguments were heard for both the parties. Written State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.13 of 23 submissions were filed by the accused persons.

34. Ld. APP for the state has argued that the victims PW1 and PW2 have cogently deposed about the alleged offences. That their version is corroborated by PW4 Madhu and the MLC of the injured PW1. Thus, there is no iota of doubt regarding commission of the alleged offences by the accused persons in furtherance of the common object of their unlawful assembly. That even the defense sought to be put up by the accused that the complainant has falsely implicated them due to property dispute is

not substantiated.

35. Per contra, Ld. Defence counsel submits that this a fit case to acquit the accused persons as the complainant and her mother have admitted that father of the accused Shamim, namely Gulam Mohammad had filed a civil suit for eviction against them. That this shows that the complainant and her family members had a compelling motive to falsely implicate the accused persons. That one of the offences alleged is under section 324 IPC, however, no sharp weapon has been recovered from the accused persons or otherwise produced before the court. That these factors cast a shadow of doubt on the case of prosecution and benefit of doubt must be extended to the accused persons for the same.

36. Rival submissions have been considered and record of the case has been carefully perused.

37. In a criminal trial, the onus remains on the prosecution to prove the guilt of accused beyond all reasonable doubts and to travel the entire distance from 'may' have to 'must' have. If the prosecution successfully establishes its case, then the court must State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.14 of 23 look towards the defense of the accused and weigh its evidence. If the defense succeeds in punching holes in story of the prosecution, to create room for doubt, benefit thereof must be extended to the accused. If the defense fails to do so, prosecution case stands proved beyond reasonable doubt and accused persons ought to be convicted.

38. The offences that the accused persons have been charged with are punishable under sections 143, 147, 323, 324, 342, 452 IPC read with section 149 IPC.

39. In the present case, the victim PW1 has consistently deposed that on the date of the occurrence, the three accused persons along with two sisters of accused Jasmine and two of her brothers, who were juveniles, i.e. a total of 7 persons came to her house. The said fact has remained unchallenged during her cross examination by the Ld. Defence Counsel. She has also consistently deposed that there was a history of quarrel between the families due to the property where the complainant is residing. Even the questions put to PW1 during her cross examination regarding a civil suit being filed for eviction against them by the father of accused Shamim, bolsters the fact of rivalry between the two families.

40. Now the fact that the said house is in possession of PW1 and PW2 has also been consistently deposed by PW1, PW2 and even PW4. The said fact has not been controverted during cross examination of either PW1, PW2 and even PW4. The defence of the accused persons is also that the complainant and her family members are tenants in possession and without payment of rent. Thus, it stands established beyond reasonable doubt that the State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.15 of 23 house at WZ-270, Tihar Village, Delhi is in possession of PW1.

41. It is further the consistent testimony of PW1 and PW2 that on 06.09.2011, the three accused persons along with 4 others entered their house at WZ-270, Tihar Village, Delhi. This has not been challenged or rebutted by the accused persons in cross examination of PW1 and PW2. A mere suggestion was put to PW2 that accused Shamim was not present at his house at the day of

occurrence, but it has not been disputed that he entered the house of the complainant. It is further noteworthy that the accused persons never claimed they were not present at the spot of the offence i.e. the house of the complainant on the day of occurrence during their own testimonies as DW2, DW3 and DW4. Thus, the fact that on 06.09.2011, the accused persons entered the house in possession of the complainant has been proved beyond reasonable doubt.

42. It is also the testimony of PW1 and PW2 that having entered the house, the accused persons started beating them. PW1 has further deposed that accused Jasmine was carrying an object like cutter and caused her injuries with cutter on her hand. During cross-examination of the victim PW1 on behalf of the accused persons, the fact of the injuries being inflicted on her and nature of injuries sustained by her were not challenged. The fact that accused Jasmine was armed with a cutter like object has also not been challenged. A mere suggestion was put to PW1 that no such incident had taken place and that she was deposing falsely due to property dispute, which was denied by the witness. Similarly, during cross-examination of PW2, the factum of fight or beating of PW1 and PW2 by the accused persons was never State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.16 of 23 disputed. A mere suggestion was put to PW2 that since the accused persons demanded rent from her, the fight took place and that no such incident of beating had taken place and that she was deposing falsely to grab the property, which was denied by the witness.

43. Moreover, the case property i.e. the clothes worn by PW1 i.e. Ex. P1 and Ex. P2 had blood stains on them. PW4 Madhu deposed that when soon after the incident she reached the house of the victim and saw her injured. MLC of the complainant i.e. Ex. PW7/A also reflects simple sharp injuries sustained by her including incised wound of 3x0.2x0.1cm on right forearm and 2 incised wounds of 2x0.1x0.1cm and 3x0.1x0.1cm on left upper arm. The said MLC has been proved by PW7 Dr. Ritu. All these facts sufficiently corroborate the testimony of PW1 and PW2 and the accused persons have never challenged these facts.

44. Ld. Defence counsel has argued that no cutter like object has ever been recovered from accused Jasmine or otherwise produced before the court, casting a doubt on the prosecution version.

45. It is the settled law that evidence of an injured witness stands on different pedestal as compared to any other witness cited by the prosecution as eyewitness, who claims to have seen the incident. Where an injured witness clearly names the person and the assault made on him by those persons, which is broadly corroborated with what has been found in the medical report, the evidence of an injured eyewitness cannot be lightly thrown aside only on certain minor contradictions and omissions. It can be a State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.17 of 23 case of some exaggeration, or it could even be some discrepancy in recollecting the whole incident with exactitude and certainty but on certain minor discrepancy disbelieving altogether the testimony of injured eyewitness, would be against settled principle of appreciation of evidence. Support is drawn from the decision of Hon'ble Supreme Court of India cited as State of U.P. v. Naresh & Ors.; (2011) 4 SCC 324.

46. This court is of the considered view that since the fact that accused Jasmine was carrying a cutter like object and used it to cause sharp injuries to PW1 has remained unrebutted during her

cross examination, further since her MLC also reflects three incised and sharp wounds, non-recovery of the weapon per se is not material in the present case. Thus, the fact that accused persons used criminal force upon PW1 and PW2, gave them beatings and that accused Jasmine caused simple injuries to PW1 with sharp object stands proved beyond reasonable doubt. However, no injuries or hurt have been proved by the prosecution to be sustained by PW2 as neither any witness has deposed in this regard nor any MLC of PW2 has been proved.

47. It is further the testimony of PW1 and PW2 that after beating them, the accused persons left their house and bolted the door of their house from outside. Since no one opened the door, they called a neighbour Madhu, who came and opened the door from outside. These facts have not been contradicted by the accused persons during cross examination of PW1 and PW2.

48. Further PW4 Madhu has also deposed that on receiving call from PW1 she rushed to her house and opened the door State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.18 of 23 which was locked from outside. The suggestions put to PW4 during her cross examination that she did not receive any phone call, never opened the door or that no such incident took place or that she was deposing falsely at the behest of the complainant were all denied by the witness. It is pertinent to mention that the defence has not attributed and established any motive, whether corrupt or due to any ill-will to PW4, who is a common neighbour of the complainant and the accused persons, to be interested in success of the prosecution or in incarceration of the accused persons to cast a doubt on her credibility.

49. Thus, in view of the unrebuted testimony of PW1 and PW2 regarding the accused persons bolting the door of their house from outside and the corroboration by PW4 of the material fact of the house of the complainant being locked from outside, the fact that the accused persons wrongfully confined PW1 and PW2 in their house stands proved beyond reasonable doubt.

50. Ld. Defence counsel has argued that during her cross examination, PW1 stated that many neighbours including Imam, his wife, Akbar and Sher Mohammad had gathered at the spot, however, if the complainant i.e. PW1 was locked inside how could she have known who gathered outside. Further, that PW1 has admitted she never disclosed names of these persons to the IO. Ld. Counsel contends that, thus, the version of PW1 seems doubtful.

51. This court is of the considered view that PW1 has merely stated that Imam, Imam's wife, Akbar and Sher Mohammad had gathered at the spot without specifying whether they gathered State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.19 of 23 prior to or after locking of her door by the accused persons, so as to assume that she could not have seen anyone being locked inside. Moreover, since the testimony of the witness PW1 is cogent, consistent and unrebuted in material particulars; non-disclosure of names of persons who gathered at the spot by her to the IO, is not at all fatal to her case.

52. In light of the above analysis, this court is of the considered view that the prosecution has successfully proved that:

- i. The three accused persons alongwith 4 others had formed an unlawful assembly with common object to commit criminal house trespass at WZ-270, Tihar Village, Delhi and other offences of use of criminal force, voluntarily causing hurt and wrongful confinement.
 - ii. In pursuance of their common object, the accused persons being the members of the unlawful assembly, entered the house in possession of the complainant and her family members at WZ-270, Tihar Village, Delhi. Since one of the accused persons i.e. Jasmine went armed with a sharp object, the members of the unlawful assembly had trespassed the said house with preparation to cause hurt to the complainant and her family members.
 - iii. Criminal force and violence were used upon PW1 and PW2 by all the accused persons.
 - iv. The accused Jasmine, being the member of the said unlawful assembly and in furtherance of its objects, voluntarily caused simple injuries with sharp object to State Vs. Shamim Akhtar & Ors. FIR No. 393/11 Page No.20 of 23 PW1.
 - v. The accused persons had further wrongfully confined the complainant and her family members in their own house.
53. The only defense of the accused persons is that no such fight had taken place on 06.09.2011. The three accused persons, as DW2, DW3 and DW4 and one Asif as DW1 have stated the same. DW3 and DW4 have added that the complainant has falsely implicated them as her mother is tenant of father of accused Shamim and she did not want to pay the rent and when asked for the same, she levelled a false accusation.
54. This court finds that the only independent defense witness, DW1, who stated himself to be the neighbor of the parties living 4 houses away from the spot of the offence, conceded during his cross examination by the Ld. APP that he did not leave his house the entire day on 06.09.2011 and that he was not even present at the spot of the offence on the date of the incident, as such, his testimony has no credibility.
55. The accused persons as defense witnesses also simply denied the occurrence of any fight on 06.09.2011 but did not bring any concrete proof in support of their assertion. DW3 and DW4 conceded that there was no written rent agreement, no rent receipts or other proof in support of their assertion that PW2 was a tenant, avoided payment of rent and upon being asked for the same, she falsely implicated them. Thus, the accused persons have not been able to punch any holes in the story proved by the prosecution.

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56. Ld. Defense Counsel contends that the complainant has admitted that the house in question originally belonged to Mr. Nanu, Mr. Nanu was grandfather of the accused Shamim and a civil suit for eviction was filed by father of accused Shamim against PW2, thus, PW1 and PW2 had a compelling motive to implicate the accused persons.

57. This court finds that during the cross examination of PW2 by the Ld. Defense Counsel regarding the said civil suit for eviction, PW2 voluntarily deposed that she had won that case. Thereafter, no suggestion was put to PW2 to dispute the said fact. In view of the same and the other relevant facts already successfully proved by the prosecution and failure of defense to cast any doubt on the case of the prosecution, the argument of Ld. Defense Counsel that the complainant had a compelling reason to implicate the accused persons does not come to the rescue of the accused persons.

58. In view of above discussion and findings, this court is of the considered opinion that the prosecution has successfully and beyond reasonable doubt proved the guilt of the accused persons for the offences of being member of an unlawful assembly punishable under section 143 IPC, rioting punishable under section 147 IPC, house trespass after preparation of causing hurt punishable under section 452 IPC read with section 149 IPC, voluntarily causing grievous hurt punishable under section 324 read with section 149 IPC, wrongful confinement punishable under section 342 IPC read with section 149 IPC. However, it has not been able to prove the commission of offence punishable under section 323 read with 149 IPC qua victim PW2 Kishwar.

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59. Since offence punishable under section 147 IPC is a graver form of offence punishable under section 143 IPC and it subsumes the latter, the accused persons shall not separately be convicted for the offence punishable under section 143 IPC.

60. Consequently, accused (i) Samim Akhtar S/o Gulam Mohammad (ii) Jasmeen Khan D/o Samim Akhtar (iii) Sammi W/o Samim Akhtar (iv) Asif S/o Akhtar Ali are acquitted for offence punishable under section 323 read with 149 IPC. However, they are convicted of the offence punishable under section 147 IPC and offences punishable under section 324/342/452 read with 149 IPC.

Pronounced in the open
Court on 21.08.2024

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SWATI GUPTA
Date:
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(SWATI BHARDWAJ)
JMFC-06 (West), Tis Hazari Courts
Delhi

This judgment contains 23 signed pages.

