

State vs Dinesh Mohaniya & Ors. on 30 June, 2023

State v. Dinesh Mohaniya & Ors.

IN THE COURT OF SH. VAIBHAV MEHTA,
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE-03,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI

State v/s Dinesh Mohaniya & Ors.

FIR No. 41/2020
PS: Sangam Vihar

U/s.323/341/354/354B/34 IPC

JUDGMENT

3	Date of commission	: 29.01.2020
4	Date of institution of the case	: 25.11.2021
5	Name of complainant	: Sh. Ram Bhawan Ojha

6 Name of accused person (s) : 1. Dinesh Mohaniya S/o Sh.B. S. Mohaniya,

2. Ravi Yadav S/o Sh. Ram Prakash Yadav,

3. Surjeet Singh @ Dr. Sidhu S/o Late Sh. Dara Singh

4. Rajvinder Singh @ Resham Baba S/o Late Sh.

FIR No. 41/2020; PS Sangam Vihar
State v. Dinesh Mohaniya & Ors.

1 of 31

Didar Singh

7	State represented by	: Sh. Lalit Pingolia, Ld. APP
8	Offence complained of	: U/s. 323/341/354/354B/34 IPC
9	Plea of accused	: Pleaded not guilty
10	Arguments heard on	: 27.06.2023

11 Final order : 1. Accused Rajvinder Singh is acquitted for offences u/s 323/341/354/354B/34 IPC.

2. Accused Dinesh Mohaniya, Ravi Yadav and Surjeet Singh @ Dr. Sidhu are acquitted for offence u/s 341/354/354B/34 IPC and are convicted for offence u/s 323/34 IPC.

12 Date of judgment : 30.06.2023 BRIEF FACTS AND REASONS FOR DECISION

1. The brief facts of the case of prosecution are that on 29.01.2020 at around 06:00 PM near 18A Gurudwara, accused persons namely Dinesh Mohaniya, Ravi Yadav, Surjit Singh @ Dr. Sidhu and Rajvinder Singh @ Resham Baba alongwith their party workers misbehaved with the National Secretary of Manavadhikar National Party and candidate of Sangam Vihar Vidhan Sabha and FIR No. 41/2020; PS Sangam Vihar 2 of 31 State v. Dinesh Mohaniya & Ors.

also attacked both Sh. Rambhawan Ojha and his brother Sh. Shivbhawan Ojha with sticks and bricks on their heads and also misbehaved with other lady party workers namely Neeru Sharma, Kiran Gupta, Neelam Gupta and Pooja. It is stated in the complaint that the accused persons were involved in indecent behavior with the lady party workers and Neeru Sharma's clothes were torn off by Ravi Yadav, Surjeet Singh @ Dr. Sidhu, Resham Baba and Dinesh Mohaniya and they also placed hand on her chest. Thereafter, the present FIR got registered against accused persons for offence U/s. 323/341/354/354B/356/379/34 IPC.

CHARGE

2. Prima facie case of commission of offences under Section 323/341/354/354B/34 IPC was made out against all accused persons and charge u/s 323/341/354/354-B/34 IPC was framed upon all the accused persons on 15.03.2022 wherein they pleaded not guilty and claimed trial.

ADMISSION U/S 294 Cr.PC

3. During the course of evidence, joint statement of all accused persons were recorded under section 294 Cr.PC wherein they did not dispute the identity of certain documents and admitted the same in terms of section 294 Cr.P.C. All accused persons had admitted FIR No. 41/2020; PS Sangam Vihar 3 of 31 State v. Dinesh Mohaniya & Ors.

the following documents:

- (i) Certain documents i.e. FIR as Ex.A1;
- (ii) Certificate u/s 65-B IEA as Ex.A2;
- (iii) MLC no. 500219982 dated 29.01.2020 as Ex.A3;
- (iv) MLC no. 500219977 dated 29.01.2020 as Ex.A4;
- (v) MLC no. 500219978 dated 29.01.2020 as Ex.A5;

(vi) MLC no. 500219979 dated 29.01.2020 as Ex.A6;

(vii) MLC no. 500219980 dated 29.01.2020 as Ex.A7;

(viii) Subsequent opinion dated 05.12.2020 as Ex.A8;

(ix) Statement u/s 164 Cr.PC of victims namely Pooja and Kiran recorded by Ms. Alka Singh, Ld. MM-02 dated 05.02.2020 as Ex.91 &

(x) Statement u/s 164 Cr.PC of victims namely Neeru Sharma and Neelam Devi recorded by Ms. Alka Singh, Ld. MM-02 dated 05.02.2020 as Ex.A10.

EVIDENCE LED BY THE PROSECUTION

4. The prosecution has examined 08 witnesses.

PROSECUTION WITNESS

PW1	Sh. Ram Bhawan Ojha	Complainant
PW2	Sh. Shiv Bhawan Ojha	Brother of the
		complainant / injured
PW3	Ms. Pooja	

FIR No. 41/2020; PS Sangam Vihar
State v. Dinesh Mohaniya & Ors.

4 of 31

PW4	Ms. Kiran Gupta	Party workers/ victims
PW5	Smt. Neeru Sharma	
PW6	Smt. Neelam Devi	
PW7	HC Ravinder	1st IO of the case
PW8	SI Ajeet	2nd IO of the case

5. Prosecution has relied upon the following documents:-

Exhibited by	Contents	Exhibits
PW1	Complaint	PW1/A
PW3	Statement u/s 161 Cr.PC	PW3/A
PW4	Complaint	PW4/A
PW5	Statement u/s 164 Cr.PC	PW5/A
	Complaint given to the SHO by the witness	PW5/B
PW6	Statement u/s 164 Cr.PC	PW6/A
	Complaint given to the SHO by the witness	PW6/B

PW7
PW8

Endorsement on the complaint
Notice u/s 41A Cr.PC
Site plan

PW7/A
PW8/A to PW8/C
PW8/D

6. PW-1 Sh. Rambhawan Ojha deposed that in the month of January, 2020, in the evening between 5 to 7 p.m, he being the President of a local party (Manav Adhikar National Party) was FIR No. 41/2020; PS Sangam Vihar 5 of 31 State v. Dinesh Mohaniya & Ors.

contesting the Delhi Vidhan Sabha Election 2020. PW1 stated that he was campaigning with his party members and during campaigning he along with his party members got into an altercation with accused persons namely Dr. Sidhu, Ravi Yadav, Dinesh Mohaniya and others and stated that the altercation was initiated by accused Dr. Sidhu, who saw them campaigning and came with the danda and told them not to do campaigning there and thereafter, accused Dr. Sidhu struck on the head of Shivbhawan Ojha (brother of the complainant) with danda and also attacked some female party workers namely Neeru Sharma, Kiran, Neelam and Puja, after which someone called the police and the police took the brother of the complainant to the hospital. Accused persons namely Dinesh Mohaniya and Ravi Yadav were correctly identified by the witness. The witness stated that he can identify Dr. Sidhu but he was absent and his exemption application was moved by the counsel with the submissions that he would not dispute his identity during trial. PW1 also submitted that he gave one written complaint to the police which was proved as Ex.PW1/A.

7. PW-2 Sh. Shivbhawan Ojha deposed that the incident took place on 29th of January and stated that his brother is the President of local party, Manav Adhikar National Party and he was campaigning with his brother who was contesting the Delhi Vidhan Sabha Election 2020. PW2 deposed that he was campaigning with his brother and 6-7 party members which included females and FIR No. 41/2020; PS Sangam Vihar 6 of 31 State v. Dinesh Mohaniya & Ors.

further stated that during campaigning, accused persons namely Dr. Sidhu, Dinesh Mohaniya, Resham Baba and one more person having last name Yadav after seeing them campaigning got into a fight with them as they did not like them campaigning in the area. PW2 further stated that some of the accused persons were carrying a danda and he got injured in the incident and sustained injuries on the head due to the attack and stated that as a result of the injury on the head, he became unconscious and was taken to the hospital by the police and he regained his consciousness at the hospital. PW2 stated that he cannot tell exactly who hit him on the head but the accused persons together were attacking him and other party workers. PW2 correctly identified the accused Ravi Yadav in the court and stated that he can only identified accused Ravi Yadav and no other persons from the day of the incident who had attacked him and his brother.

8. PW-3 Ms Pooja deposed that the incident is of about 2 to 3 years old and she went for campaigning for the party in Sangam Vihar and during campaigning some people started attacking the party workers and further deposed that police recorded her statement u/s 161 Cr.P.C as Ex.PW3/A.

9. PW4 Ms Kiran Gupta deposed that she was working for a NGO and had gone for campaigning in election in K-Block area of Sangam Vihar and there were persons from other parties also FIR No. 41/2020; PS Sangam Vihar 7 of 31 State v. Dinesh Mohaniya & Ors.

campaigning and thereafter the persons from different parties got into a fight with each other. PW4 identified her signature on the complaint Ex.PW4/A.

10. PW-5 Smt. Neeru Sharma deposed that she was campaigning for one candidate at Sangam Vihar and there was a quarrel between her party workers and party workers of other party whose symbol was "Jharu" and the quarrel was already going on when they reached at the spot for campaigning and thereafter due to the rush/commotion she fell down on the road due to which her clothes got torn and her party members took her to a government hospital. PW5 stated that her statement was recorded before Ld Judicial Magistrate u/s 164 Cr.P.C proved as Ex.PW5/A and the witness also identified her signature on the complaint given to the SHO as Ex.PW5/B.

11. PW6 Smt. Neelam Devi deposed that on the day of the incident, she was campaigning for one candidate alongwith other workers of the party at Sangam Vihar and there was quarrel between her party workers and party workers of other party and the quarrel was already going on when they reached at the spot for campaigning and in the rush she fell down on the road and sustained injury and became unconscious and she regained her consciousness after one and half hours and found herself at home. PW6 proved her statement u/s 164 Cr.PC recorded before Ld Judicial Magistrate as FIR No. 41/2020; PS Sangam Vihar 8 of 31 State v. Dinesh Mohaniya & Ors.

Ex.PW6/A and also identified her signature on the complaint given by her to the SHO as Ex.PW6/B.

12. PW7 HC Ravinder deposed that on 29.01.2020, he was posted as HC at PS Sangam Vihar and was on emergency duty when he received a call from K-1st Block, Sangam Vihar regarding a quarrel after which he alongwith Ct. Jai Narayan reached at the spot where they found that three ladies namely Neelam, Pooja and Kiran and two persons namely Ram Bhavan Ojha and his brother were in injured condition, after which he sent all of the abovesaid injured persons to the hospital for medical treatment. PW7 stated that after two days, Ram Bhavan Ojha gave a written complaint to Duty Officer and same was marked to him for further investigation. PW7 stated that he endorsed the complaint and proved the same as Ex. PW7/A.

13. PW8 SI Ajeet deposed that on 30.01.2020, he was posted as SI at PS Sangam Vihar and further investigation of the present case was marked to him and during investigation, he recorded the statements of witnesses and got recorded the statement u/s 164 Cr.PC of the four female witnesses in the court. PW8 deposed that he gave notices u/s 41-A Cr.PC to the accused persons to join the investigation and accordingly, he interrogated accused persons at PS and also obtained the results of the MLCs of the injured victims and also prepared the site plan proved as Ex. PW8/D. PW8 further FIR No. 41/2020; PS Sangam Vihar 9 of 31 State v. Dinesh Mohaniya & Ors.

deposed that the names of four female witnesses were Pooja, Kiran, Neeru and Neelam who had sustained injuries and he got prepared the MLCs of Pooja, Kiran and Neelam.

14. Thereafter, PE was closed on 17.05.2023.

EXAMINATION OF ACCUSED U/S 313 Cr.P.C.

15. Statement of accused persons u/s 313 Cr. P.C were recorded separately on 17.05.2023 and 23.05.2023 respectively, wherein accused persons inter alia stated that this is a false and frivolous case against them due to political rivalry. The accused Dinesh Mohaniya opted not to lead defence evidence and other accused persons opted to lead defence evidence.

DEFENCE EVIDENCE

16. The accused persons examined only one witness in the defence as DW1 Sh. Ram Lakhan Prasad who deposed that on the day of incident, his wife got unwell and so he called Dr. Sidhu at 05.45 PM to his house and Dr. Sidhu came about 10 minutes later to his house and he did a check up of his wife and gave her some medicine.

17. Thereafter, DE was closed on 02.06.2023 as no other accused persons wanted to examine any defence witness and the matter was listed for final arguments.

FIR No. 41/2020; PS Sangam Vihar
State v. Dinesh Mohaniya & Ors.

10 of 31

FINAL ARGUMENTS

18. The Ld. APP for the State has argued that the testimonies of prosecution witnesses are consistent and corroborate each other and the prosecution has been able to prove the guilt of the accused persons beyond doubt.

The Ld. Defence counsel on the other hand has argued that there are serious inconsistencies in the deposition of prosecution witnesses and therefore, benefit of doubt should be given to the accused persons and they should be acquitted in the present case.

LEGAL PROVISIONS

19. Section 319 defines hurt as : ☐Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Section 323 IPC is stated as under: Punishment for voluntarily causing hurt-- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Section 339 defines wrongful restraint as under:- Whoever voluntarily obstructs any person so as to prevent that person from FIR No. 41/2020; PS Sangam Vihar 11 of 31 State v. Dinesh Mohaniya & Ors.

proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

To hold a person liable for wrongful restraint, the obstruction must be:

Ingredients of section 339 IPC:

(I) Voluntary obstruction of a person;

(II) The obstruction must be such as prevent that person from proceeding in any direction in which he has a right to proceed.

Section 341 IPC defines as under-- Punishment for wrongful restraint-- Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Section 354 IPC defines as :- Assault of criminal force to woman with intent to outrage her modesty-- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, 1 [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

Section 354B IPC defines as:. Assault or use of criminal force to woman with intent to disrobe--Any man who assaults or FIR No. 41/2020; PS Sangam Vihar 12 of 31 State v. Dinesh Mohaniya & Ors.

uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Section 34 IPC defines Acts done by accused persons in furtherance of common intention:-- When a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.

The prosecution has relied upon judgment that is Mahender Chawla vs Union of India & Ors Writ Petition (Criminal) No. 156 of 2016 wherein, it was observed that:

"It hardly needs to be emphasized that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State. It is a harsh reality, particularly, in those cases where the accused persons/ criminals are tried for heinous offences, or where the accused persons are influential persons or in a

dominating the position that they make attempts to terrorize or intimidate the witnesses because of which these witnesses either avoid coming to courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective measure to ensure the safety of these witnesses, commonly known as 'witness protection'.

The abovesaid judgment also relied upon Krishna Mochi vs State of Bihar (2002) 6 SCC 81 wherein, the Hon'ble Supreme FIR No. 41/2020; PS Sangam Vihar 13 of 31 State v. Dinesh Mohaniya & Ors.

Court had observed as under:

"It is a matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats their life, more so when the offenders are habitual criminals or high ups in the Government or close to powers, which may be political, economic or other powers including muscle power."

The Hon'ble Supreme Court also cited the judgment in State of UP vs Ramesh Prasad Misra, (1996) 10 SCC 360 wherein it was held that:

"it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K. Anbazhagan vs Supt. Of Police (2004) 3 SCC 767, the Hon'ble Supreme Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be credit-worthy and act upon it.

The Ld. defence counsel has relied upon judgment in Ashok Kumar Nayyar vs The State CrI. Rev. P. No. 963 of 2002, wherein it was observed that:

"if there are two versions or two inferences that can reasonably be drawn, version favourable to the accused has to be accepted by the Court as long as it is a reasonable one.

FIR No. 41/2020; PS Sangam Vihar
State v. Dinesh Mohaniya & Ors.

COURT OBSERVATIONS :

20. After going through the material on record including the testimony of prosecution witnesses, this court makes the following observations:-

(a) PW1 Ram Bhawan Ojha is the complainant and the main witness of the prosecution who was present at the spot on the day of incident and was campaigning with his brother Shiv Bhawan Ojha and other party workers. PW1 in his deposition stated that on the day of incident during campaigning he alongwith his party workers got into an altercation with Dr. Sidhu, Dinesh Mohaniya, Ravi Yadav and others and altercation was initiated by Dr. Sidhu who came with a danda and struck on the head of his brother Shiv Bhawan Ojha with a danda and also attacked the other party workers.

PW1 also stated that Dr. Sidhu attacked some female party workers as well after which the police took his brother to hospital for medical treatment. PW1 correctly identified the accused Ravi Yadav and Dinesh Mohaniya and stated that he can identify the accused Surjeet Singh @ Dr. Sidhu if shown to him. Dr. Sidhu was not present in the court on the day when PW1 was examined, however, in his exemption application he has submitted that he will not dispute his identity during trial.

FIR No. 41/2020; PS Sangam Vihar
State v. Dinesh Mohaniya & Ors.

15 of 31

(b) PW1 Ram Bhawan Ojha did not identify the accused

Rajvinder Singh @ Resham Baba and stated that he cannot identify him even if shown to him.

(c) During cross-examination, PW1 turned hostile and completely resiled from his earlier testimony given by him in his examination in chief and even denied being present at the spot on the day of the incident.

(d) PW-2 Shiv Bhawan Ojha is the injured and is another important witness of prosecution who stated that on the day of incident, he was campaigning with his brother Ram Bhawan Ojha who was contesting the Delhi Vidhan Sabha elections 2020 and during campaigning, the accused persons namely Dr. Sidhu, Dinesh Mohaniya, Resham Baba and one more person with last name Yadav were sitting in their shop and on seeing the witness and his brother, they got into a fight with them. PW2 stated that some of the accused persons were carrying a danda and someone hit him with a danda as a result of which he sustained injuries on the head and got unconscious. PW2 stated that he did not see who exactly hit him on the head but the accused persons were together attacking him and his

brother and other party workers.

(e) PW2 Shiv Bhawan Ojha only identified the accused Ravi Yadav in the court and stated that he can only identify Ravi Yadav FIR No. 41/2020; PS Sangam Vihar 16 of 31 State v. Dinesh Mohaniya & Ors.

and none of the others who were attacking on the day of the incident.

(f) PW3 Ms. Pooja, PW4 Ms. Kiran Gupta, PW5 Smt. Neeru Sharma and PW6 Smt. Neelam Devi turned hostile and resiled from their statements given to the police u/s 161 Cr.PC and their statements given to Ld. Magistrate u/s 164 Cr.PC. All of the above witnesses denied being misbehaved with by any of the accused persons and did not identify any of the accused persons and denied the factum of sustaining injuries due to the attack carried out by the accused persons.

(g) PW3 Ms. Pooja, PW4 Ms. Kiran Gupta, PW5 Smt. Neeru Sharma and PW6 Smt. Neelam Devi, however, admitted the factum of an ongoing fight between party members of the complainant and party workers of Aam Aadmi Party. They also corroborated complainant Ram Bhawan Ojha and PW2 Shiv Bhawan Ojha on the point they had gone to Sangam Vihar on the day of the incident for campaigning and during campaigning some people of the opposing party (having election symbol jharu) attacked the party workers (having election symbol pen).

The above-said witnesses did not mention anything regarding misconduct of the accused persons or that they had tried to disrobe the female party workers. PW5 Smt. Neeru in her examination in chief stated that due to the commotion and rush, she FIR No. 41/2020; PS Sangam Vihar 17 of 31 State v. Dinesh Mohaniya & Ors.

fell down on the road as a result of which her clothes got torn. PW6 Smt. Neelam Devi in her examination in chief stated that due to the commotion and rush, she fell down on the road and sustained injuries and became unconscious.

(h) PW7 HC Ravinder during deposition stated that on 29.01.2020 he received a call from K-Ist Block, Sangam Vihar regarding a quarrel and he reached at the spot where he found the complainant Ram Bhawan Ojha, his brother Shiv Bhawan Ojha and three ladies namely Neelam, Pooja and Kiran in injured condition after which he sent all the injured persons to the hospital for medical treatment.

(i) PW7 HC Ravinder has corroborated the version of the complainant Ram Bhawan Ojha and Shiv Bhawan Ojha on the fact that there ensued a quarrel between the party workers of the complainant and the party workers of Aam Aadmi Party (AAP) and the complainant alongwith his brother and other party workers got injured in the quarrel. Therefore, the testimony of PW7 HC Ravinder corroborates and confirms the presence of the complainant and his brother and other female party workers on the spot on the day of the incident.

(j) DD No. 15A dated 30.01.2020 and GD No. 039A dated 29.01.2020 (General diary) has been placed on record by the FIR No. 41/2020; PS Sangam Vihar 18 of 31 State v. Dinesh Mohaniya & Ors.

prosecution which further corroborates the version of the complainant Ram Bhawan Ojha. GD No. 039A dated 29.01.2020 is a general diary entry of PCR call made on the day of the incident at 06.27 PM which proves the factum of a quarrel between opposing political factions on the day of incident. DD No. 15A dated 30.01.2020 is the first complaint given to the SHO by the complainant.

(k) MLCs of five persons namely Ram Bhawan Ojha (MLC No. 500219982 dated 29.01.2020), Shiv Bhawan Ojha (MLC No. 500219978 dated 29.01.2020), Pooja (MLC No. 500219977 dated 29.01.2020), Neelam Gupta (MLC No. 500219979 dated 29.01.2020) and Kiran Devi (MLC No. 500219980 dated 29.01.2020). The above-mentioned MLCs not only proves the presence of the abovesaid five persons at the spot but also corroborates the version of the complainant as the injury mentioned in the MLCs are consistent with the deposition of PW-1 Rambhawan Ojha and PW-2 Shivbhawan Ojha.

(l) As per the MLC, PW Rambhawan Ojha sustained injuries over left elbow while PW Shivbhawan Ojha sustained injuries on the lower lip and a laceration wound over the frontal head region. The injuries are simple in nature and are consistent with the deposition given by the abovesaid witnesses in their examination- in-chief.

FIR No. 41/2020; PS Sangam Vihar 19 of 31 State v. Dinesh Mohaniya & Ors.

(m) The injuries sustained by PW Shivbhawan Ojha on the head corroborates his testimony and the testimony of his brother/complainant PW Rambhawan Ojha that the accused persons hit danda on the head of PW Shivbhawan Ojha and attacked him.

(n) From the testimony of prosecution witnesses especially PW-1 Rambhawan Ojha, PW-2 Shivbhawan Ojha, PW-7 HC Ravinder, general diary entry of the PCR call and the MLCs placed on record by the prosecution, it is clear that PW Rambhawan Ojha and Shivbhawan Ojha were present at the spot on the day of the incident and had sustained injuries as a result of the fight among opposite political party members. The factum of the fight is further corroborated by the testimonies of PW-3 Pooja, PW-4 Ms Kiran Gupta, PW-5 Smt Neeru Sharma and PW-6 Smt Neelam Devi, who even though turned hostile did support the prosecution version in part as all of them mentioned the factum of fight between the political party members on the day of the incident.

(o) As far as accused Rajvinder Singh @ Resham Baba is concerned not even a single witness identified him during trial. PW-1 Rambhawan Ojha was specifically asked by the Ld A.P.P for the State on the point of presence of accused Rajvinder Singh on the spot on the day of the incident to which the witness stated that he cannot identify anyone other than Dinesh Mohaniya, Ravi Yadav and Surjit Singh @ Dr Sidhu. Also PW-2 Shivbhawan Ojha in his examination-

FIR No. 41/2020; PS Sangam Vihar 20 of 31 State v. Dinesh Mohaniya & Ors.

in-chief stated that he can identify only Ravi Yadav and no other accused persons. PW-3 Pooja, PW-4 Ms Kiran Gupta, PW-5 Smt Neeru Sharma and PW-6 Smt Neelam Devi turned hostile during their deposition and did not identify any of the accused persons during their deposition.

(p) As far as the offences u/s 341/354/354B/34 IPC is concerned, this court is of the view that the prosecution witnesses have not supported the version of the prosecution qua the above said offences. None of the prosecution witnesses mentioned anything regarding the accused persons restraining the complainant Rambhawan Ojha or his brother Shivbhawan Ojha or any other party workers. PW-3 Pooja, PW-4 Ms Kiran Gupta, PW-5 Smt Neeru Sharma and PW-6 Smt Neelam Devi have turned hostile and have not even identified any of the accused person and have not mentioned anything regarding the accused persons restraining/obstructing anyone.

With respect to offence u/s 354/354B/34 IPC, this court has observed that PW-3 Pooja, PW-4 Ms Kiran Gupta, PW-5 Smt Neeru Sharma and PW-6 Smt Neelam Devi have turned hostile and have resiled from their statements given to the police u/s 161 Cr.P.C and their statements given to the Ld Magistrate u/s 164 Cr.P.C. During their deposition before the court the abovesaid witnesses have stated that no one misbehaved with them and due to ongoing fight and commotion, they fell down and sustained injury and their clothes got FIR No. 41/2020; PS Sangam Vihar 21 of 31 State v. Dinesh Mohaniya & Ors.

torn. Specific question was put to PW-5 Smt Neeru Sharma by the Ld A.P.P for the State on the point of accused persons disrobing her and tearing off her clothes and misbehaving with her, to which the witness stated that the accused persons did not misbehave with her and did not tear off her clothes. Specific question was also put to PW- 6 Neelam Devi by the Ld A.P.P on the point of accused persons attacking her with the danda and injuring her and also misbehaving and abusing her and also placing hand on her chest during the incident, to which the witness stated that the accused persons did not commit any such act and no wrong was done to her by the accused persons.

PW-1 Rambhawan Ojha in his deposition stated that some accused persons attacked on the female party workers but he did not see who had attacked the female party workers. PW-2 Shivbhawan Ojha in his deposition stated that he cannot tell whether the accused persons had misbehaved with the female workers as he had become unconscious after being hit with a danda.

(q) This court after going through the testimony of prosecution witnesses and other material on record is of the view that the prosecution has not been able to prove that the accused persons criminally restrained the complainant and his party workers or that they had misbehaved with the female party workers and had tried to disrobe them and placed hand on their chest and so this court giving the accused persons benefit of doubt acquits them for FIR No. 41/2020; PS Sangam Vihar 22 of 31 State v. Dinesh Mohaniya & Ors.

the offences u/s 341/354/354B/34 IPC.

(r) This court after going through the testimony of prosecution witnesses and other material on record is of the view that the prosecution has not been able to prove the guilt of accused Rajvinder

Singh @ Resham Baba as none of the prosecution witnesses identified him during trial and so his presence at the spot on the day of the incident has not been established by the prosecution thereby compelling this court to give the accused Rajvinder the benefit of doubt and thereby acquit him for the offences u/s 323/341/354/354B/34 IPC.

(s) As far as offence u/s 323/34 IPC is concerned, this court makes the following observations:

(i) PW 1 Rambhawan Ojha in his deposition categorically stated that during campaigning he along with his party members got into an altercation with Dinesh Mohaniya, Ravi Yadav, Surjit @ Dr Sidhu and others after which Dr Sidhu struck the head of his brother Shivbhawan Ojha and attacked some other party members. PW1 identified accused Ravi Yadav and Dinesh Mohaniya in the court and stated that he can identify Surjit Singh if shown to him. Accused Surjit Singh was absent on the day of examination and in his exemption application he stated that he would not dispute his identity during trial.

FIR No. 41/2020; PS Sangam Vihar 23 of 31 State v. Dinesh Mohaniya & Ors.

(ii) During cross-examination PW1 Rambhawan Ojha turned hostile and resiled from his statement given in the examination in chief.

(iii) PW2 Shivbhawan Ojha in his deposition stated that on the day of the incident he was campaigning along with his brother Rambhawan Ojha and other party workers and during campaigning the accused persons namely Dr Sidhu, Dinesh Mohaniya, Resham Baba and one more person with the last name Yadav who were sitting in their shop saw the complainant campaigning and thereafter they all got into fight with the complainant, his brother and other party workers. PW-2 further stated in his deposition that some of the accused persons were carrying a danda and the accused persons did not like them campaigning in the area as a result of which they attacked the complainant and his party workers. PW-2 further stated that he got injured in the incident and sustained injuries on the head and also stated that he did not see who had hit him on the head but the accused persons together were attacking him and his brother Rambhawan Ojha and other party workers. PW-2 only identified accused Ravi Yadav in the court and stated that he lost his consciousness after being hit on the head.

(iii) The factum of the fight is further corroborated by the testimonies of PW-3 Pooja, PW-4 Ms Kiran Gupta, PW-5 Smt Neeru Sharma and PW-6 Smt Neelam Devi, who even though turned hostile did support the prosecution version as all of them mentioned the FIR No. 41/2020; PS Sangam Vihar 24 of 31 State v. Dinesh Mohaniya & Ors.

factum of fight between the political party members on the day of the incident. PW-5 Neeru Sharma specifically stated in her deposition that there was quarrel between her party workers (election

symbol pen) and party workers of other party (election symbol Jhadu).

(iv) The MLCs placed on record by the prosecution further corroborates the version of the complainant PW-1 Rambhawan Ojha and PW-2 Shivbhawan Ojha and the injuries mentioned in the MLC are consistent with the deposition of the prosecution witnesses.

(v) The general diary entry regarding the PCR call and DD No. 15A placed on record by the prosecution further supports the version of the complainant PW1 Rambhawan Ojha and PW2 Shivbhawan Ojha.

(vi) The law as regard the testimony of hostile witnesses is clear and has been enumerated by numerous judgments of the Hon'ble Supreme Court and the Hon'ble High Courts that the testimony of hostile witnesses is not to be dis-regarded altogether and portions of their testimonies can be read into and can be the basis of conviction if they find corroboration from other material on record.

The aforesaid legal position leaves no manner of doubt that the evidence of hostile witness remains the admissible evidence and it is open to the Court to rely upon the dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on record. [Himanshu @ chima vs State of NCT of Delhi, 2011 (1) Crimes 157 (SC).

In Bhagwan Singh vs State of Haryana, 1976 (2) FIR No. 41/2020; PS Sangam Vihar 25 of 31 State v. Dinesh Mohaniya & Ors.

SCR 921; Rabinder Kumar Dey vs State of Orissa, 1976 (4) SCC 233; Syed Akbar vs State of Karnataka, 1980 (1) SCR 95, it was held that:

"the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examined him. The evidence of such witnesses cannot be treated as effected or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

In Sunil Mondel vs State, 1986 (3) Crimes 316 it was observed that a conviction may be upon the testimony of a hostile witness if it is corroborated by other reliable witnesses.

It is a settled law that where a prosecution witness turns hostile that fact does not completely efface his evidence. His evidence still remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. Evidence of eyewitnesses cannot be distrusted merely on the basis of some stray statements made by the hostile witness.[State of U. P. Sahai, AIR 1981 SC 1442: 1982 SCC (Cri.) 223].

FIR No. 41/2020; PS Sangam Vihar 26 of 31 State v. Dinesh Mohaniya & Ors.

So it is a well settled law that the evidence of a hostile witness may not be totally rejected, and subject to closure scrutiny, a portion thereof which is consistent with the case of prosecution or defence, may be accepted.

(t) This court after going through the testimony of the prosecution witnesses and other material on record is of the view that the prosecution has been able to show the presence of the accused persons namely Dinesh Mohaniya, Ravi Yadav and Surjit Singh on the spot on the day of incident and has also been able to show that accused persons were involved in a quarrel with the complainant Rambhawan Ojha, his brother Shivbhawan Ojha and other party workers.

The complainant Rambhawan Ojha who was campaigning for Delhi Vidhan Sabha Elections was contesting against accused Dinesh Mohaniya of the opposing political party and when the accused persons saw the complainant campaigning in Sangam Vihar area an altercation ensued and a fight broke out as a result of which injuries were sustained by the complainant Rambhawan Ojha, his brother Shivbhawan Ojha and other party workers. The prosecution has been able to show that the accused persons with the common intention wanted to oppose the complainant and his party workers from campaigning in the Sangam Vihar area and in order to stop from them campaigning, they with a common intention attacked the complainant and his FIR No. 41/2020; PS Sangam Vihar 27 of 31 State v. Dinesh Mohaniya & Ors.

party workers as a result of which, many of them sustained injuries.

(u) The testimony of the complainant Rambhawan Ojha given by him in his examination-in-chief is clear and unequivocal and clearly points to the attack on his party workers by the accused persons. The complainant has identified the accused Ravi Yadav and Dinesh Mohaniya and stated that he could identify Surjit Singh, if shown to him and the accused Surjit Singh in his exemption application has not disputed his identity during trial and so the presence of the accused persons at the spot has been established beyond doubt by the prosecution. The fact that PW1 Rambhawan Ojha turned hostile during cross-examination does not wash off the testimony given by him in his examination-in-chief and that can be read into if corroborated by other material on record. The injuries sustained by Rambhawan Ojha is corroborated by the MLCs placed on record by the prosecution and the testimony of PW2 Shivbhawan Ojha who in his deposition has stated that while he was campaigning with his brother the accused persons namely Dinesh Mohaniya, Dr Sidhu, Resham Baba and one more person with last name Yadav saw them campaigning and attacked them with dandas in order to stop them from campaigning. PW-2 Shivbhawan Ojha did not see who hit him on the head but said that the accused persons were attacking together. The aspect of common intention laid down in Section 34 IPC has been established by the prosecution from the testimonies of PW1 Rambhawan Ojha and FIR No. 41/2020; PS Sangam Vihar 28 of 31 State v. Dinesh Mohaniya & Ors.

PW2 Shivbhawan Ojha as they had stated that the accused persons did not like the complainant campaigning in the area and so due to political rivalry and to stop the complainant from campaigning who was contesting the same seat as accused Dinesh Mohaniya in Delhi Vidhan Sabha Election, the accused persons got into a fight with the complainant and his party workers and

attacked them with dandas.

(v) This court has also gone through the testimony of DW1 Sh Ram Lakhan Prasad who stated that Dr Sidhu came to his house to do check-up of his wife at 5.55 p.m on the day of incident. This testimony in the court's view is not sufficient to discredit the testimony of PW1 and PW-2 whose presence at the spot has been established beyond doubt and who have in clear and unequivocal words stated that Dr Sidhu was the most active member of all the accused who was attacking and beating the complainant and other party members with a danda.

21. After going through the material on record including the testimonies of prosecution witnesses and other material placed on record by the prosecution, this court is of the view that there are material contradictions in the testimonies of the prosecution witnesses as far as the offences u/s 341/354/354B/34 IPC is concerned and the prosecution has not been able to prove the guilt of the accused persons qua the abovesaid offences. Moreover the prosecution has not been able to prove that the accused Rajvinder FIR No. 41/2020; PS Sangam Vihar 29 of 31 State v. Dinesh Mohaniya & Ors.

Singh @ Resham Baba was present at the spot on the day of the incident as he has not been identified by any of the prosecution witnesses during trial.

22. Also this court has after going through the material on record including the testimonies of prosecution witnesses and MLCs placed on record by the prosecution, is of the view that the prosecution has been able to show beyond doubt that accused persons namely Dinesh Mohaniya, Ravi Yadav and Surjit Singh @ Dr Sidhu were present at the spot on the day of incident and with common intention they attacked the complainant Rambhawan Ojha and his brother Shivbhawan Ojha in order to stop them from campaigning as a result of which they sustained injuries.

23. For the reasons mentioned above, this court acquits the accused Rajvinder Singh @ Resham Baba for offences u/s 323/341/354/354B/34 IPC and accused persons namely accused Dinesh Mohaniya, Ravi Yadav and Surjeet Singh @ Dr. Sidhu are acquitted for offence u/s 341/354/354-B/34 IPC and are convicted for offence u/s 323/34 IPC. Accused Rajvinder Singh @ Resham Baba is directed to furnish bail bonds and surety bonds in compliance of u/s 437-A Cr.PC.

24. Let the accused persons namely Dinesh Mohaniya, Ravi FIR No. 41/2020; PS Sangam Vihar 30 of 31 State v. Dinesh Mohaniya & Ors.

Yadav and Surjeet Singh @ Dr. Sidhu be heard on quantum of sentence. Digitally signed by VAIBHAV VAIBHAV MEHTA MEHTA Date:

2023.07.01 16:28:37 +0530 Announced in the open (VAIBHAV MEHTA) court on
30.06.2023 ACMM-03, RADCLIFFE New Delhi FIR No. 41/2020; PS Sangam Vihar 31 of
31