

CNR No. DL CT-02-000474-2010
CIS No. 291577/16
FIR No. 59/10
PS. Parshad Nagar
State Vs Darshan Singh

10.07.2020

(Through VC)

Present: Ld APP for the State.

Accused is present with counsel Sh Vinod Khera in the court.

Accused is connected through the computer system of the Ahlmad.

The matter was fixed for judgment, when the same got adjourned due to Pandemic Covid-19 Lockdown.

Vide separate judgment of even date, accused Darshan Singh is convicted for the offence under Section 353/332/323 IPC. Copy of the judgment supplied to the convict free of cost.

Ld Counsel presses for advancing arguments on point of sentence today only. Request considered. Ld APP for the State has no objection to the same.

Arguments on the point of sentence heard. Ld. APP for the state submits that a substantive punishment be awarded to convict so that a deterrent message be sent to the society.

Ld Counsel for convict prays for a lenient view by submitting that the convict is around 80 years of age and is suffering from various diseases.

Records perused.

The penology is largely based on two cardinal principle i.e. Deterrent and reformative theories. Convict has shown a genuine desire to repent, therefore, must be granted a fair opportunity for reformation so that he can be a useful citizen of the country. Simultaneously, the convict must be awarded such a sentence, which discourages the other like minded people of the society from entering the world of crime. However, a balance is required to be maintained between the theories, while sentencing the convict. No single theory whether deterrent, preventive, retributive or re-formative can help in eliminating crimes and criminals from society. It is only through an effective combination of two or more of these theories that an ideal penal programme can be drawn to combat crimes. It is also essential to understand crime as a social and individual phenomenon and the need to prevent its commission or repetition by adapting an



attitude conducive to the re-socialization and reformation of the criminal. The criminal reformation serves a great social purpose and society itself becomes the greatest beneficiaries of this reformation by being freed from his depredations. If the society cannot reform an offenders, it is punishment for the society.

In the facts of the present case this court is inclined to take a lenient view against the convict for following reasons:-

- . The convict is around 80 years of age;
- . The convict face trial for around 10 years;
- . The convict is suffering from various medical ailments for which the document are available on file and
- . The offence was committed as there was acute water shortage.

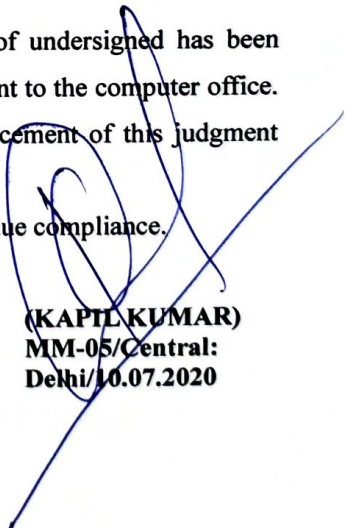
Accordingly, no purpose would be served in sending the convict behind the bars. The convict is sentenced to pay a fine of Rs 5000/- qua the offence U/s 353 IPC, in default of payment of fine simple imprisonment for 7 days; further sentenced to pay a fine of Rs 4000/- qua the offence U/s 332 IPC, in default of payment of fine simple imprisonment for 7 days and sentenced to pay a fine of Rs 1000/- qua the offence U/s 323 IPC, in default of payment of fine simple imprisonment for 7 days.. Fine paid by convict. Receipt issued.

Section 437A Cr.PC complied with.

The soft copy of the judgment has been provided to the computer branch for necessary uploading the same on CIS.

It is to be noted that digital signature of undersigned has been expired for which the necessary intimation has been sent to the computer office. Necessary entries be made on CIS as to the pronouncement of this judgment today.

File be consigned to Record Room after due compliance.


(KAPIL KUMAR)
MM-05/Central:
Delhi/10.07.2020

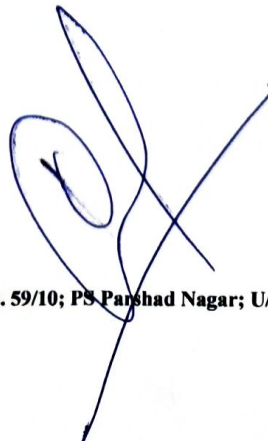
**THE COURT OF SH. KAPIL KUMAR
METROPOLITAN MAGISTRATE-05, CENTRAL,
TIS HAZARI COURTS, DELHI**

**CNR No. DL CT-02-000474-2010
CIS No. 291577/16
FIR No. 59/10
PS. Parshad Nagar
State Vs Darshan Singh
U/s. 186/353/332/323 IPC**

**JUDGMENT
(Through VC)**

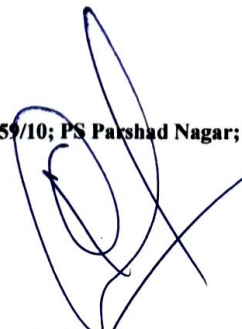
- 1) The date of commission of offence : 19.04.2010
- 2) The name of the complainant : Saeed Anwar
S/o Ali Mohd
- 3) The name & parentage of accused : Darshan Singh
S/o Sunder Singh
- 4) Offence complained of : 186/353/332/323 IPC
- 5) The plea of accused : Pleaded not guilty
- 6) Final order : Convicted
- 7) The date of such order : 10.07.2020

Date of Institution : 18.10.2010
Judgment announced on : 10.07.2020



THE BRIEF REASONS FOR THE JUDGMENT:

- 1) The case of prosecution against the accused is that on 19.04.2010 at about 6 PM at Ravidass Marg, in front of Gali no.6, Krishna Nagar, Delhi accused obstructed the complainant Sayed Anwar who was discharging his public functions in the capacity of public servant being assistant engineer, MCD, Karol Bagh Zone . It is the further case of the prosecution that the accused assaulted the complainant and also used criminal force upon him while he was discharging his public functions. It is also the case of the prosecution against the accused is that he caused simple hurt to one Nitin Kumar who was with the complainant at the time of the incident in question.
- 2) After completion of investigation, charge sheet was filed against the accused. In compliance of Sec. 207 Cr.PC, documents supplied to the accused. Arguments on point of charge were heard. Vide order dated 19.05.2012, a charge for the offences u/s. 186/353/332/323 IPC was framed upon the accused, to which he pleaded not guilty and claimed trial.
- 3) In support of its case, prosecution has examined six witnesses. After conclusion of prosecution evidence statement of accused was recorded U/s 313 Cr.PC(as per section 281(1) Cr.PC) in which accused denied all the allegations and opted not to lead DE.
- 4) I have heard the arguments of Ld. APP for State and Ld Counsel for accused. I have also perused the record carefully. I have gone through the written arguments filed by the Ld Defence Counsel.
- 5) It is the cardinal principle of criminal justice delivery system that the prosecution has to prove the guilt of the accused beyond reasonable doubts. No matter how weak the defence of accused is but the golden rule of the criminal jurisprudence is that the case of prosecution has to stand on its own legs.



) The testimony of the complainant is required to be appreciated minutely to see as to whether the case of the prosecution stands proved or not. Further by virtue of testimony of complainant only the basic facts of the present case will also get unfolded. The complainant Sayed Anwar was examined as PW1 by the prosecution.

7) PW1 deposed that on 19.04.2010 he was working as Assistant Engineer (AE) in the Project Division of MCD Karol Bagh Zone. He deposed that on that day at about 6 PM he along with contractor Nitin and site engineer Amit Saroha were present opposite to Gali no.6 Krishna Nagar, Delhi. He deposed that at that time the upgradation work of Guru Ravidass Marg was going on in view of Common Wealth Games 2010 and there he came to know that water pipe line got damaged in front of Gali no.6 Krishna Nagar. He deposed that while present at the spot he was giving instructions to the contractor to restore water supply line, but in the meantime accused Darshan Singh (correctly identified) came from the left side and started mishandling contractor Nitin. He deposed that thereafter accused started mishandling him and slapped him several times. He deposed that accused torn his kurta and caught hold of his collar and did not release him despite several requests. He deposed that somehow he managed to save himself and PCR officials reached at the spot. He deposed that police officials recorded his statement which is Ex.PW1/A and he was medically examined vide MLC Ex.PW1/B at Lady Harding Hospital. He deposed that his torned kurta was seized vide Ex.PW1/C. In the testimony of PW1 MHC(M) produced the case property which was a pullanda sealed with the seal of BS and when the same was opened it found containing a torned kurta of complainant which was identified by the complainant in the court and the same was given Ex.P1.



8) The complainant supported the case of the prosecution in all aspects. He deposed specifically as to the identification of the accused and the acts committed by the accused at the time of the incident. There is no doubt in the identification of the accused. The rukka mentions the presence of the accused at the spot and same has not been disputed by Ld Defence Counsel by giving any contrary suggestion to the complainant. When the accused was examined U/s 313 Cr.PC accused admitted his presence at the spot. Accused admitted that he approached the complainant Sayed Anwar as to his water problem. The presence of the accused at the spot is very much proved on record.

9) It is also not disputed that the complainant/PW1 was working as Assistant Engineer at the time of the incident. He was a public servant and there is no denial on the part of the accused on that aspect. It is very much came on record by virtue of testimony of the complainant, the cross-examination of the complainant and the examination of the accused U/s 313 Cr.PC that when the complainant was present at the spot he was discharging his official duties as to supervise the upgradation work and to solve water problem which occurred due to digging of earth. It cannot be said that the complainant at the spot for any other work which was not connected to his official duties.

10) The complainant specifically deposed that the accused first assaulted contractor Nitin and thereafter assaulted him. I found no reason to disbelieve the testimony of the complainant. There is nothing on record as to any previous enmity between the complainant and the accused which could be the reason for alleged false implication of accused. If the water crunch was suffered by all the persons in the locality than why the complaint is against the accused only. There is no mention of any aggression on the part of any other public person.

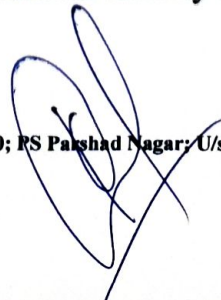
11) The testimony of complainant is duly corroborated by the testimony of contractor Nitin Kumar who was one of the victim of the present case and

examined as PW2 by the prosecution. PW2 deposed on the lines of PW1 to the effect that the upgradation work was going on and there was damage to water pipe line. He deposed that the complainant assured the accused that pipe line will be repaired but the accused became aggressive. He deposed that accused pushed him and assaulted the complainant. He deposed that accused torned the kurta of the complainant. He deposed that in the scuffle complainant sustained injuries due to the beatings given to him by the accused.

12) PW2 was cross-examined at length by the Ld Defence Counsel but nothing came on record as to the motive for PW1 and PW2 for alleged false implication of the accused. In the testimony of PW2 the aggression on the part of the accused squarely came on record. Though there are contradictions as to the person who was assaulted by the accused first but the assault by the accused on PW1 and PW2 came on record unambiguously. The fact that there was water crunch in the area due to the damage of water pipe line is also coming on record in the testimony of PW2 as that was also coming in the testimony of PW1. PW2 also identified the accused in the court.

13) The testimony of PW1 and PW2 makes it clear that the accused used criminal force upon the complainant and assaulted him while he was discharging his public functions. It is also came on record by virtue of these two witnesses that PW2 was also beaten up by the accused. The testimony of PW1 and PW2 as to the simple injuries sustained by them also got corroborated by virtue of testimony of PW5 Roop Singh, a witness from LHMC Hospital, who proved the MLC of complainant and that of PW2 as Ex.PW5/A and Ex.PW5/C respectively. This documentary evidence gives more weight to the ocular evidence of PW1 and PW2.

14) The third witness examined by the prosecution who was also allegedly present at the spot along with the complainant namely Amit Saroha examined



as PW3 not supported the case of the prosecution. He denied material suggestions of the Ld APP for the State. However he admitted that due to Common Wealth Games digging work was going on at the place of the incident and the water pipe line was got damaged. Thus PW3 deposed as to the occasion as to the incident in question which is digging work at the site and the damaged water pipe line for which there was water crunch in the area. Further in the cross-examination the witness PW3 identified the accused by stating that he is the same person with whom quarrel took place. Though PW3 turned hostile on some aspects but supported the case of the prosecution as to the occasion of the incident in question and as to the factum of quarrel between the complainant and the accused.

15) The testimony of PW1 and PW2 also got corroborated while testimony of PW4 HC Hari Singh and PW6 Retired SI Balbir Singh. The accused was arrested during the investigation when the FIR was lodged on the basis of rukka Ex.PW6/A prepared on the basis of statement of PW1 vide Ex.PW1/A. Both these witnesses were put to the test of cross-examination by Ld Defence Counsel but nothing came on record as to false implication of the accused.

16) In view of above-discussion it is proved on record that on 19.04.2010, the accused Darshan Singh, used criminal force and assaulted the public servant/complainant Sayed Anwar and contractor Nitin Kumar. Now it is to be seen as to what offence(s) has been committed by the accused.

17) The accused has been charged for the offences U/s 186/353/332/323 IPC. There is a complaint U/s 195 Cr.PC on record but the same has not been proved. The investigating officer only deposed that he collected the complaint. The complainant was summoned but he could not be examined. Summons were issued to him through worthy DCP but of no consequence and as such the complaint U/s 195 Cr.PC remained not proved.

18) Since the complaint U/s 195 Cr.PC not proved the charge for the offence U/s 186 IPC fails as for proving the offence u/s 186 IPC the complaint U/s 195 Cr.PC is required to be proved. Thus the accused is acquitted for the offence U/s 186 IPC.

19) Ld Defence Counsel argued that the since the offence U/s 186 IPC is not proved the offences U/s 353 IPC and 332 IPC are also not proved. Ld Defence Counsel placed reliance upon the judgment titled as **Sachin Vs State of NCT of Delhi 2019 (3) JCC 3031**. Ld Defence Counsel submits that in the para no.25 it was held that since the offence U/s 186 IPC fails for want of compliance of Section 195 Cr.PC and as such the section 353 IPC which is offshoot of section 186 IPC also fails. In the considered opinion of this court this submission is not correct. It was observed in the judgment of Sachin (Supra) that (in that case) the allegations as to section 353 IPC as contained in the FIR really fall in the nature of offence U/s 186 IPC. In that judgment it was not held that if the offence U/s 186 IPC fails, the charge U/s 353 IPC automatically fails. In that case the fact was that the offence U/s 353 IPC was not made out as per the allegations of the complaint but only offence U/s 186 IPC was made out and thus in that case the offence U/s 353 IPC was not made out which is not so in the present case.

20) It was held that in the judgment titled as **Durgacharan Nayak Vs State of Orrisa AIR 1966 SC 1775** that the offence U/s 186 IPC is different to the offence U/s 353 IPC. It was held that the ingredients of to offences are distinct; the quality of offence are distinct and the two offences falls under two different chapters of Indian Penal Code. It was held that it is well settled law that section 195 Cr.PC does not bar the trial of the offence which does not fall in the ambit of that section. Reliance on that aspect can be also placed on the judgment titled as **Pankaj Aggarwal & Ors Vs State of Delhi** decided by Hon'ble Apex Court

On 12.03.2011. Thus the offences U/s 353/332 IPC are distinct from Section 186 IPC and if charge U/s 186 IPC fails it does not mean that the charges U/s 353/332 IPC will automatically fail.

21) In the case in hand by virtue of testimony of PW1 and PW2 read with Ex.PW5/A and Ex.PW5/C it is proved on record that the accused beaten PW1 and PW2 for which they suffered simple injuries. It is also proved that PW1 was assaulted and criminal force was used upon him while he was discharging his functions in the capacity of public servant with the view to deter him from discharging his public functions.

22) Accordingly, in view of above-discussion ingredients of the offences U/s 353/332/323 IPC proved on record against the accused and he is convicted accordingly. Copy of judgment be supplied to the convict free of cost. Be heard on point of sentence.

**Announced through VC
on 10.07.2020**


**(Kapil Kumar)
MM-5/Central District
Tis Hazari Courts/Delhi,**