

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 2204 OF 2010**

ROOP CHAND @ LALA

.....APPELLANT

VERSUS

STATE (NCT) OF DELHI

.....RESPONDENT

**ORDER**

The appellant's conviction under Section 308 of Indian Penal Code (hereinafter, "IPC") and resultant sentence of three years with a fine of Rs.15,000/-, which has been further upheld by the High Court of Delhi vide impugned judgment dated 08.02.2010, is the subject matter of challenge in this appeal.

2. The prosecution case is that firstly the appellant slapped the injured (PW-2) on 28.01.2003 upon the latter's refusal to repay a debt of Rs.100/- and thereafter, when the injured proceeded to make a telephone call to his father, the appellant attacked him from behind with a sharp-edged weapon and inflicted injury on the left temple/head near his eye. A case under Section 324 of IPC was registered on the statement of the injured, but after obtaining the Medico Legal Report, the offence was converted to one under Section 308 of IPC. The appellant in his defence claimed that a brawl had

taken place between his father and the injured over payment of money and he was not present at the place of incident and had been falsely framed in the case. The appellant further took a plea that the injured had collided with a lamp post and cable strips, and had injured himself. The appellant's father entered the witness box in support of defence. The trial Court discarded the defence plea and accepted the prosecution version. The appellant was consequently convicted and sentenced.

3. The aggrieved appellant approached the High Court, which dismissed his challenge by emphasizing the severity of the injury caused which resulted in 15 stitches on the head of the injured and severe swelling, which lead to the victim being unable to speak for a few days. Thus, the High Court held that the appellant was rightly tried and convicted under Section 308 of IPC.

4. This Court on 19.07.2010 issued notice on the limited question of sentence and directed that the appellant be released on bail in the meanwhile. Thereafter, leave to appeal was granted. However, on hearing the submissions of the parties and perusing the materials on record, we are of the opinion that in the facts of the present case a reconsideration of the conviction of the appellant is merited.

5. The short question which arises for consideration is whether the offence committed by the appellant falls within the ambit of Section 308 or 324 of IPC?

6. Section 308 of IPC provides that “*whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder*”; and in case any hurt is caused to any person by such act, then “*the accused is liable to be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*”

7. Therefore, to secure conviction under Section 308 of IPC, the prosecution must prove that the accused had requisite ‘intention’ or ‘knowledge’ to cause culpable homicide, which in turn can be ascertained from the actual injury as well as from other surrounding circumstances.

8. Section 324 of IPC, on the other hand, criminalises willful infliction of injuries on another and states that whoever “*voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death*”, would be punished with “*imprisonment of either description for a term which may extend to three years, or with fine, or with both.*”

9. In contrast to Section 308 IPC, which necessarily requires proving ‘intention’ or ‘knowledge’, to attract Section 324 IPC it is sufficient if a person voluntarily causes hurt by means of an instrument for stabbing or cutting.

10. It is thus crucial to determine whether the appellant had ‘intention’ or ‘knowledge’ that the injury inflicted on the victim could cause the latter’s

death and as a result thereto the appellant could be guilty of committing culpable homicide not amounting to murder?

11. The distinction between attempt to commit culpable homicide not amounting to murder, and voluntarily causing hurt with a sharp-edged weapon, is subtle and nuanced. Under the former (Section 308), injuries must be such as are likely to cause death, but in the latter (Section 324) the injuries may or may not endanger one's life. Applying this fine distinction, we have minutely examined the statement of the injured Man Singh (PW-2), who has testified (relevant extracts) that:-

*“On 28.01.2003, ..... I had to pay Rs.100/- to him which I had taken on loan. On seeing me he gave me 2/3 slaps with force on my face. I went to make telephone call to my father when accused present in Court came from behind and hit me with some sharp edge weapon on my left temple near eye and in the head. I started bleeding..... I was given treatment and in the night I was discharged..... I made statement on 31.01.2003 as due to bleeding and injuries caused on my face, my face had swollen and I was not in a position to give statement.....”*

12. Accepting true what the injured has deposed, we find it difficult to hold that the appellant had any intention or knowledge to inflict such injury which could cause the victim's death within the meaning of culpable homicide not amounting to murder. The appellant had in a fit of rage inflicted singular injury on the left temple of the injured and made no attempt to repeat such attack or strike a second blow, which indicates that he did not intend to cause any fatal injury. Similarly, given the facts of this

case, it would be far-fetched to hold that the appellant knew that his actions were likely to cause the death of the injured.

13. We are, thus, of the opinion that the evidence on record falls short of establishing the requisite ingredients of Section 308 of IPC, though the appellant is undoubtedly guilty of voluntarily causing hurt with a sharp-edged weapon within the meaning of Section 324 of IPC.

14. Resultantly, it must also be considered whether the sentence awarded to the appellant is appropriate. It is not disputed by the learned State counsel that the appellant has undergone actual sentence of approximately one year and three months. The incident took place more than 17 years ago, and the appellant has admittedly not been involved in any other case. The incident also doesn't reflect any mental depravity or criminal instincts on part of the appellant. It is on record that the appellant, who appears to be a poor labourer, has not misused the concession of bail granted more than ten years back.

15. It would be trite to note that Courts must award punishment in a judicious manner, after taking into account various relevant circumstances including the gravity and nature of offence, motive of the crime and other attendant circumstances. Applying these parameters, we are of the considered view that ends of justice would be adequately met if the sentence of the appellant is reduced to the period which he has already undergone. We order accordingly.

16. For the reasons aforesaid, the appeal is allowed in part; conviction of the appellant is modified, from one under Section 308 IPC to Section 324 IPC and his sentence is consequently reduced from three years rigorous imprisonment to the period which he already has undergone. His bail bonds are consequently discharged.

..... J.  
(N.V. RAMANA)

..... J.  
(SURYA KANT)

..... J.  
(HRISHIKESH ROY)

NEW DELHI

**DATED : 22-09-2020**

ITEM NO.102

Court 2 (Video Conferencing)

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.2204/2010

ROOP CHAND @ LALA

Appellant(s)

VERSUS

STATE (NCT) OF DELHI

Respondent(s)

Date : 22-09-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA  
HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Appellant(s)

Ms. Ranjeeta Rohatgi, AOR  
Mr. Jitendra Mohapatra, Adv.  
Mr. Abhishek Thakral, Adv.

For Respondent(s)

Mr. Rupinder Singh Suri, ASG  
Ms. Kiran Suri, Sr. Adv.  
Mr. S.S. Ray, Adv.  
Ms. Rekha Pandey, Adv.  
Mr. B. V. Balaram Das, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The Court is convened through Video Conferencing.

The appeal is allowed in part, in terms of the signed order.

(VISHAL ANAND)  
ASTT. REGISTRAR-cum-PS

(RAJ RANI NEGI)  
DY. REGISTRAR

(Signed Order is placed on the file)