

**IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, CENTRAL
DISTRICT, TIS HAZARI COURT, DELHI**

PRESIDING OFFICER: SH. GAJENDER SINGH NAGAR

**SUJATA KOHLI (STATE) VS. RAJIV KHOSLA & ORS.
FIR NO. 177/1994 and CC No. 457/1
(being clubbed vide order dt. 19.09.2005)
PS: SUBZI MANDI
U/S: 323/506(Part-1) of IPC
CNR No. DLCT020001582007**

J U D G M E N T

Case No. : 513290/2016

Date of commission of offence : 05.08.1994

Date of institution of the case : 07.07.1995

Name of the complainant : Ms. Sujata Kohli

Name of accused and address : (i) Rajiv Khosla
S/o Sh. I K Khosla
Office at Chamber No.
167, Civil Side, Tis Hazari
Courts, Delhi.
(ii) P S Rathi (since
deceased).
(iii) SI Karan Singh
**(discharged vide order dt.
19.09.2005)**

Offence complained of or proved : U/s 323/506(i) IPC

Plea of the accused : Pleaded not guilty

Final order : **Convicted**

Date on which reserved for judgment: 26.10.2021

Date of judgment : 29.10.2021

BRIEF STATEMENT OF THE FACTS FOR DECISION:

1. Brief facts of the case are that complainant a lady member of Delhi Bar Association was functioning since 1987 from a seat near DBAs library, Civil Wing, THC, Delhi. As per her version she was often pressurized by accused Rajiv Khosla to join procession and demonstration etc. on various issues including bifurcation of the courts, which she used to decline to join. On 29.07.1994, accused Rajiv Khosla asked her to join seminar on proposed "family courts" but complainant excused herself by claiming that she was busy due to which accused got annoyed and threatened if she did not participate, all facilities from DBA would be withdrawn and she would be dispossessed of her seat as well. Due to this complainant has to ultimately file a civil suit no. 390/94 seeking appropriate injunction. After filing of the suit seat i.e. table and chair of the complainant were removed from its spot. However, her name plate remain fixed at the spot. Notice of the civil suit was served on accused Rajiv Kholsa on 01.08.1994 on that he removed even the name plate and briefcase of the complainant from the spot. Thereafter, the matter was taken up on 05.08.1994, when complainant moved an application under order 6 Rule 17 CPC, for changing the nature of the suit from permanent injunction to suit for mandatory injunction. On that day parties were directed to maintain status qua and Ld. Civil Judge has also mentioned in her order that she would be visiting the site at 2:00 pm on the same day. Thereafter, at around 1:00 PM when complainant was sitting on a bench placed nearby her seat used to be situated and waiting for visit of Ld. Civil judge, the accused Rajiv Khosla alongwith co-accused P. S. Rathi (since deceased) came with a mob of 40-50 lawyers. They all surrounded the complainant, accused Rajiv Khosla step forward and pulled the complainant from her hair, twisted her arms and dragged her by hair, utter filthy abuses and threatened her. Qua this incident a complaint was made by the complainant to the police though the incident was dt. 05.08.1994, however, the FIR was lodged by the police on 10.08.1994 for commission of offence under section 323/341/34 IPC bearing FIR no. 177/94, PS Subzi Mandi, however,

complainant was utterly dissatisfied with the investigation due to which she filed complaint case dt. 10.03.1995. The complaint of the complainant dt. 10.03.1995 was assigned to the court of Sh. Bharat Parashar, the then Ld. MM. Ld. MM took note of the fact that an FIR had already been registered qua same incident, therefore, he sought report from the SHO, PS Subzi Mandi. Thereafter, on 02.06.1995, final report under section 173 Cr.PC was filed in the court. It was a challan for commission of offence punishable under section 323/341/34 IPC, however, on consideration of the facts and circumstances of the case, court summons issued to the accused Rajiv Khosla and co-accused P. S. Rathi (since deceased) for commission of offences under section 323/354/506(II)/509/34 IPC. It was also noted by the court that police report was only in respect of two accused persons but in the complaint there was reference of three more accused persons. Hence, it was observed that though both private complaint and police report were pertaining to the same occurrence, the same could not be clubbed together and complainant was directed to adduce evidence as far as her complaint case was concerned. After recording pre-summoning evidence, vide order dt. 10.11.1995, the then Id. MM came to the conclusion that there are sufficient evidence on record to summon accused Rajiv Khosla and P. S. Rathi (since deceased) for offence punishable under section 323/354/506(I)/509/34 IPC as well as to summon SI Karan Singh for commission of offence punishable under Section 166 IPC. Complaint qua two other alleged accused namely S. C Kaushik and S. K. Tiwari was dismissed. It was also observed by the court that both the matters be tried together as they both pertains to same occurrence. It was also observed that since accused Rajiv Khosla and P. S. Rathi (since deceased) had also been summoned on the basis of police report for the same offences, there was no requirement of summoning them afresh.

2. It is to be noted that accused SI Karan Singh was summoned for offence under section 166 IPC and that, too, in complaint case only. However, accused Rajiv Khosla and P.S Rathi were summoned for offence under section 323/354/506(I)/509/34 IPC in both the cases i.e. complaint

case and state case. Complete set of charge sheet, complaint and other documents were supplied to the accused persons.

3. After conclusion of pre-charge evidence in private complaint case, vide order dt. 19.09.2005, accused SI Karan Singh was discharged from the matter. Vide same order, it was held that there was sufficient material on record to make out a prima facie case against accused Rajiv Khosla for offence under section 323/506(I) IPC. It is also to be noted that by this time accused PS Rathi has expired. It was also observed by the then Ld. ACMM that after discharge of accused Karan Singh there was no embargo in consolidating both the cases and trying them together. It was observed that earlier permission was granted to the complainant to prosecute both the cases. It was also observed that since both the cases have been consolidated hence, Ld. Prosecutor would be allowed to conduct the state case. So that even in the absence of complainant who had by then become a member of Delhi Higher Judicial Services, matter would proceed as per law.

4. Vide same order dt. 19.09.2005, it was directed that consolidated notice under Section 251 Cr.PC be served on the accused. It was also made clear that since earlier procedure prescribed for trial of warrant cases instituted otherwise than on a police report was adopted, same procedure of trial would be continued and in case accused pleads not guilty and wishes to cross examine witnesses further then complainant would re-enter the witness box for further cross examination and state would be also permitted to bring witness, if any in order to further substantiate the allegations. Accused pleaded not guilty and claimed trial to the notice framed under section 251 Cr.PC.

MATERIAL EVIDENCE IN BRIEF:

5. At post notice state, the prosecution in support of its case has examined five witnesses in total.

6. PW-1 Ms. Sujata Kohli deposed that she was duly enrolled

advocate with Bar Council of Delhi having enrollment no. D-299/85. She was active in the practice since 1987. She was practicing from her seat located near the Bar Association Library in the Civil Wing of Tis Hazari Lawyer's Complex. She exhibited the site plan of her seat as Ex. CW-3/1. She exhibited her visiting card as Ex. CW-3/2 showing her office address of that seat. She also exhibited a letter addressed to her sent to the address of the seat as Ex. CW-3/3. It is stated that accused Rajiv Khosla was secretary of Delhi Bar Association in the year, 1994. On many occasions accused had pressurized various members of the bar including this witness to join frequent strikes and agitations. It is stated that on one such occasion in the year 1991 or 1992 accused removed her name board from her seat and was in the process of removing her seat on her refusal to join a procession in protest of bifurcation of Courts, however later on the board was restored as this witness was made to apologies. The present witness was in favour of establishment of family Courts. It is stated that accused was against the establishment of family Courts. It is stated by this witness that accused asked her to attend a seminar going to be held at Indian Law Institute on 29.07.1994 to oppose the establishment of family Courts. However this witness refused as she saw no reason to oppose that. On that accused in front of various advocates said to this witness that "kal ki aayi chokri jaban ladati hai teri to seat veat sab utha ke phenk doonga". On that present witness wrote a letter to the President of Delhi Bar Association apprising him of the situation. Carbon copy of the letter is Ex. CW-3/4. It is stated that on Saturday she sat on her seat till 5:00 pm and on Monday i.e. on 01.08.1994 she came to Court in the morning when she was informed by her colleagues that accused was going to remove her seat. On that she was very puzzled so she went to meet President of the Bar Association Sh. B.D. Kaushik. Sh. B.D. Kaushik told this witness to apologize to accused. On that she sought help from her colleagues and with them she went to P.S. Subzi Mandi where Inspector Mange Ram was present and on hearing her complaint said Mange Ram simply stated that this is a matter between lawyers and he does not want to involve. As a last resort, she filed a Civil Suit for permanent injunction

which was marked to the Court of the then Ld. Civil Judge Ms. Kamini Lau. Copy of the plaint is Ex. CW-3/5. It is stated that she came to know that after filing of the suit her seat was removed, however her name board was present at the spot. She kept her briefcase on the floor and sat there using bench of a neighbouring counsel Mr. Umesh Suri. She also came to know from neighbouring advocates that her seat has been removed by the employees of DBA. It is stated by her that at 2:00 pm on 01.08.1994 when she appeared before the concerned Court, Ld. Sub Judge appointed a Local Commissioner in her case. She exhibited carbon copy of the report of Local Commissioner as Ex. CW-3/6, original of which is filed in suit no. 01/94. After the Local Commissioner submitted the report the Executive Member of DBA and accused produced one Mr. Baljeet Dheer as their counsel before the Court. However, at request of the counsel for the opposite party matter was kept pending till 04.08.1994. It is stated by her that her bag was removed from the spot by some unknown person. When she went to the Bar Office to inquire regarding the same, she was asked to withdraw her suit and only then she would get her bag. It is stated that on 04.08.1994 Court work was suspended and matter was adjourned to 05.08.1994. In the morning Court passed the status qua order and also stated that Ld. Presiding Officer would visit the spot at 2:00 pm. After Court hearing this witness came back to her sitting place. On 05.08.1994, accused Rajiv Khosla and accused no.2 (since deceased) alongwith 40-50 other Advocates approached the place where this witness was sitting and before she could know anything all these lawyers had surrounded her from three sides. At that time accused discussed something with accused no.2 (since deceased) and some other persons and within 2-3 seconds accused stepped ahead towards this witness and pulled her by her right arm and also hold her hairs and made her get up from the seat forcefully. Accused said to her that accused will not let her practice there on that accused no.2 (since deceased) said "practise to kya ise yaha rehne layak nahi choorenge aur iski shakal aise bigad denge kisi ko dikhane layak nahi rahe". While accused were holding her hair by hand accused Rajiv Khosla as well as accused no.2 uttered filthy abusive language at the

complainant. She was crying and shouting for help. Thereafter, accused no.2 (since deceased) suggested to accused Rajiv Khosla and other lawyers present there "aaj ise iss kamre mein band kar dete hai aur tum saare ek line mein aa jao". It is stated that at that moment 2-3 lady lawyers reached and also one male lawyer came and rescued her from the spot. Thereafter, she ran for her life and went towards the Court and went straight to the Court of Ld. Civil Judge to inform her about the incident as this witness had danger to her life. In the Court, this witness was advised that she should go to the police for help. Thereafter, she rushed to P.S. Subzi Mandi. This witness called at 100 number. The DD Entry to that effect is Ex. CW-3/8. She exhibited the order-sheets of the Court dated 05.08.1994 as Ex. CW-3/7. It is stated by her that after calling the police at 100 number she rushed to nearby Police Post Tis Hazari. She was under shock and was not carrying anything with her. It is stated by her that she had nothing with her as her files, purse, books etc. all had been thrown away by the accused. At advise of ASI Karan Singh, she wrote a complaint in hurry, carbon copy of the same is Ex. CW-3/9. After writing of the complaint, ASI Karan Singh came with her to the spot. When they reached the spot accused and accused no.2 threatened to ASI Karan Singh that "tu yaha se bhaag ja warna teri presence mein ise peetenge". On that ASI Karan Singh went away from the spot without arresting the accused persons and without taking any action. After ASI Karan Singh left the spot this witness was again abused and accused directed a fourth class employee of Bar to take this witness away from the spot. Accused confined this witness to the car parking area as employees of Bar Association hold her hand. When the employees of Delhi Bar Association restrained her in the car parking area someone pointed towards her and indicated that Civil Judge had arrived. On that this witness got the courage to free herself from the clutches of the Delhi Bar Association employees, reached to the spot and narrated everything to the Ld. Civil Judge. Ld. Civil Judge recorded everything in her report which is Ex. CW-3/10. It is stated that at the spot she found new table and chair in the place of her seat and there was a new name board of a new lawyer

displayed at the place of her name board. It is stated by this witness that in the post lunch she appeared before Ld. CMM requesting for police protection. When she went to the Court of Ld. CMM i.e. room no.38 she found a number of press reporters were present there. It is stated that she wrote an application and handed over to Ld. CMM Sh. G.D. Dhanuka who forwarded the same to Chowki Incharge. Copy of the application is Ex. CW-3/11. Thereafter she sent a phonogram to the Police Commissioner narrating in brief the incident that had happened. The confirmatory copy of the phonogram is Ex. CW-3/12. It is stated by her that the said incident was reported in various newspapers on 06.08.1994 and 07.08.1994 and thereafter the entire controversy was followed up by the newspapers. She exhibited newspapers i.e. The Indian Express, Hindustan Times, Jansatta etc. of various dates as Ex. CW-3/13 to Ex. CW-3/22. It is stated by her that thereafter six executive members issued a statement of stating their shock to this incident. The statement is marked as Mark-X. When this witness saw that no action has been taken against the accused or other accused persons, she filed a criminal writ petition bearing no. 583/94 in the Hon'ble High Court of Delhi wherein accused filed a counter affidavit. The same is Ex. CW-3/24. It is stated that accused ensured that this witness do not come to Tis Hazari Courts Complex by adapting various tactics like illegally sealing her locker, however an interim order was passed by the Court directing accused to allow this witness to open her locker no. 146 in the Ladies Bar Room. On opening the locker she found that her certain files were missing. She exhibited certified copy of the interim order as Ex. CW-3/25. She also lodged a report with the police regarding this incident on 27.07.1994, copy of which is Ex. CW-3/26. On 04.10.1994 she filed a supplementary statement in connection with the FIR lodged by her earlier, carbon copy of the said statement is Ex. CW-3/27. On 14.11.1994 she filed an additional affidavit in criminal writ petition, certified copy of the same is Ex. CW-3/28. On 15.11.1994 it was informed by Standing Counsel in the Court that an FIR has been registered in her case U/s 323/341 IPC. The said FIR is 177/94. Aggrieved with the inadequate sections under that FIR she protested and

filed a criminal complaint. It is stated that accused prevented this witness from using library, canteen and even toilets in the Court Complex. She lodged police report in this respect on 01.05.1995, copy of the same is Mark-X1. It is stated that on 17.11.1994 her writ petition was dismissed being infructuous. It is stated that from his counter affidavit filed before Hon'ble High Court she came to know that she was expelled from Delhi Bar Association on 30.07.1994 qua which she filed a declaratory suit challenging the alleged action which was decreed in her favour on 14.09.1999. Copy of the judgment is Ex. CW-1/12. Copy of decree is Ex. CW-1/13. It is stated that accused challenged the said order, however later on Secretary of the Bar withdraw the objections to the judgment and decree. Certified copy of the said statement and the pursuant order dated 16.03.2001 are Ex. CW-1/14 and Ex. CW-1/15. On 09.03.2001 in her suit no. 01/94 pending before Hon'ble District Judge, Sh. Jattan Singh, Honorary Secretary made a statement on Oath that by unanimous resolution her seat, membership etc. have been restored and the Bar does not want to contest the matter anymore. In view of the said statement and resolution passed by Bar her claim was satisfied and she withdraw that suit. The certified copy of statement of Mr. Jattan Singh is Ex. CW-1/16. Certified copy of statement of this witness is Ex. CW-1/17 and the pursuant order passed by Ld. District Judge is Ex. CW-1/18. It is stated that at the initial stage of the controversy satellite television interviews of accused as well as the present witness were taken by various TV Channels. Copies of the same are Mark-P containing the video cassettes as Mark-X4.

7. In her cross examination it is stated by the complaint that accused Rajiv Khosla was known to her since 1991, in fact she has heard his name even prior to 1991. It is stated by the complainant that Ms. Dhanwanti came into her contact when she was appointed as local commissioner by the Civil Court, it is stated that local commissioner visited the spot on 29.07.1994. It is stated that Ms. Dhanwanti had not charged any fees from the complainant on account of her appointment as local Commissioner. It is voluntarily stated by the witness that Ms.

Dhanwanti was appointed local commissioner by the Civil Court not on the application of this witness but on its own motion and perhaps Court has directed the local commissioner not to charge any fees. It is stated by the witness that she was purportedly expelled from the membership of Delhi Bar Association vide an alleged resolution dated 13.07.1994 it is stated that this Resolution was set aside by a decree of the civil judge. In reply to a question it is stated by the witness that the new executive body, secretary of which was Shri Jatan Singh, had admitted her claim in the civil suit for restoration of her seat space and it is pertinent to note that the same was restored to her. It is stated by her that from the date of incidence till the date she filed criminal complaint case before the court she must have gone to police officials 3-4 times to pursue her complaint. It is denied by her that IO of the case had been asking her to produce the witnesses but she did not produce the same, on the contrary it is stated by her that in fact IO Yash Pal asked her to produce the witnesses and witness Ms. Dhanvanti had met IO Yash Pal who recorded her statement. This witness could not tell the exact date or the month when she apprised IO Yashpal the name of witness Ms. Dhanvanti. It is admitted by her that she had given the name of Ms Dhanvanti in list of witnesses of her complaint case. This witness could not tell when SI Yash Pal had recorded the statement of Ms. Dhanvanti as the statement was not recorded in her presence. It is admitted by the witness that SI Karan Singh came at the spot after the incident, it is voluntarily stated by her that that SI Karan Singh had come to the spot immediately with her but upon being threatened by the accused and his associates he ran away from the spot. She could not remember whether SI Karan Singh had recorded the statement of witnesses at any stage of Investigation. It is denied by the complainant that she filed the present case against accused at the behest of some persons who are opposed to the accused in the bar election. In response to a specific question being put to her it is deposed by the complainant that when she came back to her seat after filing the civil suit, she found that her table and chair were not there. It is stated by her that the civil suit was probably filed by her on 30.07.1994 and the chair and

table were removed on the same day after filing of the suit. It is stated by her that no stay was granted on 01.08.1994. It is stated by this witness that she had filed an application for amendment in the civil suit however, she could not tell the date when she moved the amendment application. It is voluntarily stated by her that she moved an application for restoring status quo ante along with the amendment application. It is denied by her that the status quo was granted in favour of the bar association. It is voluntarily stated by her that only an order to maintain status quo was passed. It is admitted by her that Ld. Civil Judge had asked her to operate from any other place under the jurisdiction of deputy commissioner but not from the civil side seat of Bar Association. It is admitted by her that Ms. Kamini Lau, the then Ld. Civil Judge was to come at 2:00 p.m. for local inspection at the disputed place on 05.08.1994.

It is denied by her that she was available at the spot exactly at 2 p.m. when Ld. Civil Judge had arrived. It is voluntarily explained by her that she was made to stand in the car parking confined by the employees of Bar Association. It is further explained that Mr. Daljinder Singh told her that Ld. Civil Judge has arrived and at that point of time she somehow got herself freed from the employees of the bar and reached the spot of inspection from other direction. In response to a question being put to her it is stated by this witness that, it is not that the employees freed her but it was she who gathered the courage to free herself from their confinement. It is further stated that the employees were not confining her physically and she did not have to struggle physically but they had surrounded her from both sides and telling her that if she opens her mouth they will not allow her to stand there also. It is stated by her that she could not mention the names of those employees as she did not know their names. It is stated by her that she came to know about their names much later, however, even after coming to know their names she did not communicate the same to authorities. It is voluntarily stated by her that since they were nearly 4th class employees working under the directions of the accused. It is denied by this witness that she was only operating from the seat of Mr. Umesh Suri or that she continued to operate from the

said seat till filing of the civil suit. It is stated by her that she was dragged by holding her hair for a distance of about 4-5 feet on 05.08.1994. It is stated that she had resisted the said act. In response to a specific question, it is a replied by this witness that she was sitting on the seat when the accused came and pulled her she resisted the same and again occupied the seat the accused again pulled her hair and dragged her. She could not remember how many times it happen, though it is stated that it happened many times. It is stated by the witness that she had not gone to any doctor. It is stated that she had gone to the police post for protection. It is denied by her that she had not gone to any doctor as truth would have come out that no such incident happened as no tenderness or swelling or mark would have come in the examination. It is voluntarily stated by this witness that SI Karan Singh who was an accused in this case had came with her to the spot but after seeing all these persons collected there, he ran away from there leaving complainant on the spot and did not take her to any doctor. It is stated that she had not filed any application for medical examination before the court. It is stated that she filed an application before Ld. CMM for protection, it is voluntarily stated that she sought protection as she was surrounded in the premises and was not allowed to go out. It is stated that accused and his associates were searching for her. It is stated by her that the place of incident is a crowded area and many lawyers come and go and also sits there at any point of time. It is stated that an at any point of time around 100 to 150 lawyers are easily available there. It is denied by her that none of the lawyer had seen the incident, it is voluntarily stated by her that they had witness the incident as onlookers. It is admitted by her that SI Karan Singh came with her to the spot within 5 -10 minutes of her lodging the complaint at the police post. It is denied by her that SI Karan Singh did not find any incident to have happened after inquiring from the lawyers and went away. It is voluntarily stated by her that SI Karan Singh met all these lawyers on the spot and thereafter, the lawyers including accused and me Mr. Rathi said to him, " yahan se bhag le varna tere samne ise pitenge". It is denied by this witness that after the status quo order was granted in the morning on 05.08.1994, she cooked

up the whole story in order to get sympathy from the court for getting favourable order which she could not get in the morning. To a specific question being put to her, it is replied by this witness that she was not confined in the parking between 1 p.m. to 2 p.m. rather it was only after SI Karan Singh left the spot leaving her alone when she was confined till the coming of Ld. Civil Judge. This witness denied the suggestion that that the allegations made by her were after thought as the same were not mentioned in her first complaint made to the police dated 05.08.1994 which is Ex. PW3/9. It is voluntarily stated by her that the sum and substance of the facts are mentioned in the complaint Ex. PW 3/9. It is stated by the witness that she ascertained about the names of other lawyers who had indulged in or watched the incident and came to know about the names of 2-3 other advocates after about 3-4 months. It is stated that one was Mr. R. K. Vats and another was Mr. Madan. It is stated that she did not tell the IO these names as the IO never came to record her statement. It is stated by her that IO himself was an accused. It is said that she had not mentioned these names in her petition. She had also not mentioned these names in her complaint filed in the court which is Ex. PW3/9. In response to a specific question, it is replied by this witness that since she came to know about name of these two persons much later i.e. after filing of complaint case due to which she did not mention their names in the complaint case. It is stated by this witness that except knowing accused Rajiv Khosla and Mr. Rathi she did not know names of other office bearer of Delhi Bar Association. It is voluntarily stated that she knew name of Mr. P. S. Rathi as G.S. Rathi earlier and came to know about the correct name later on. It is denied by her that she has mentioned about Mr Rathi only on the identification of Mr. Daljinder singh. It is voluntarily stated by her that she can identify face of Mr. Rathi herself. In response to a specific question that this witness was having grudges against the accused, it is replied by the witness that accused forced her to join the seminar against family courts, which she refused to participate and this was the cause for the incident. It is further stated that prior to this incident she had been refusing to join the strikes, but was compelled to join the

same. In response to a specific question that she manipulated the whole incident due to her expulsion from Bar Association, it is replied by her that there is a decree from the court of law declaring that the resolution of expulsion of the bar association was an ante dated document and was also a forged and fabricated one. It is admitted by this witness that she contested elections of the Delhi Bar Association twice. It is voluntarily stated that she contested that election after the incident/ criminal case as after the same she had come to know many members. It is admitted by the complainant that she made a complaint to Bar Council of Delhi dated 09.08.1994 submitted on 17.08.1994 which is Ex. PW1/D1. Copy of her writ petition dated 10.08.1994 is Ex PW1/D2. The copy of order dated 10.08.1994 is Ex. PW1/D3. The copy of criminal writ petition filed in High Court is Ex. PW1/D4. The application under Order 6 Rule 17 CPC dated 05.08.1994 which is Ex. PW1/D6. The copy of suit for damages Ex PW1/D7. The said suit was filed twice. The copy of affidavit of the evidence of the complainant led in bar council which is Ex. PW1/D9. The copy of evidences recorded before bar council of the complainant on four dates is Ex. PW1/D10. To a specific question, it is replied by the witness that she prayed to the court for restoration of her seat and to restore status quo ante. However, at that stage, it was not restored but she was offered an alternative place in the Dy. Commissioner area as an interim measure. It is stated that the said interim measure was not accepted by her. It is denied by her that the status quo was granted in favour of Bar Association. It is voluntarily stated by her that ultimately her seat was restored to her by the court. It is stated by her that on 05.08.1994, the accused had gone to the civil library and brought 40 to 50 members to the place of occurrence. It is stated that at the time when accused had passed near her seat and was going towards library there was no gathering of members around her seat. It is stated that 3-4 persons were present with the accused when he was going towards library. It is stated by the witness that she had not given any press interview, though it is stated that near CMM court some press reporters were present and inquired from her about the incident. It is admitted by her that Mr. Jatan Singh and other

signatories of the memorandum had not seen the incident in question. It is stated by her that nobody noticed that she was sitting on the bench of Mr. Umesh Suri advocate from 01.08.1994 to 05.08.1994. To a specific question being put to her, it is voluntarily replied by the witness that Ms. Dhanwanti gave statement to the police thereafter, she died. Then Mr. Rajendra Arya, Ms. Veena Kalra and one Raj Bahadur, who was her client had appeared and deposed in the civil suit. It is stated that Daljinder saved her on the spot. It is stated that remaining people did not come to depose but had seen the incident. It is said that they did not come because of the fear of the accused. It is stated that Mr. Umesh Suri advocate supported her by extending his bench but after a few days his own seat was removed from there by the accused. It is stated by her that Sh. Daljinder was initially ready to depose but later on got scared. It is stated by her that she requested Mr. Daljinder and various other persons who had seen the incident to depose the truth but they all backed out as they were scared except Ms. Dhanwanti. To a specific question being asked to her, it is voluntarily stated by the witness that she had given the names of persons who were willing to depose to the IO. It is deposed that she had given the names when she came out of the trauma and after ascertaining the willingness of the people to depose. To a specific question being put to her, it is stated by the witness that she was dragged on the floor by the accused. It is denied by her that she did not go for MLC as there was no injury. It is voluntarily deposed by her that she did not know at that time that there was any necessity for the same. It is stated that she had received injuries. It is voluntarily stated by her that even the police official who had come at the spot did not tell her regarding MLC. It is stated that she was wearing salwar suit and black coat at the time of incident. It is stated that her clothes did not get spoiled. It is again stated that she did not notice the same as the events were happening very fast. It is stated by her that at the time she made her first complaint i.e Ex. CW5/7. She was under trauma. It is stated that she was not in fit state of mind to give complaint in writing. She had orally conveyed her complaint to the police official but he compelled her to give complaint in writing. To a

specific question being put to her, it is replied by this witness that it is incorrect to say that when she approached the Ld. Civil Judge Ms Kamini Lau, at the spot she was not having any bruises on her person. It is stated that as far as her clothes are concerned she do not remember the same. However, it is stated that she was having bruises on her wrist though she did not show the same to the Ld. Judge but had told her the entire incident verbally. It is stated that later on she had seen the proceedings conducted by Ld. Civil Judge on the spot on 05.08.1994. It is admitted by her that in the said report, it is not mentioned that accused Rajiv Khosla had dragged her by hairs and arms. It is stated by her that it was mentioned in the report that the members of the bar association had beaten her and she was made to stand outside the complex. It is voluntarily stated by her that by the words "members" she meant "Rajiv Khosla". It is stated by her that she had filed a revision petition against the order dated 19.09.2005 for not framing charges under section 354 IPC. It is stated that the said revision petition is still pending. It is denied by the witness that she compelled Ms. Dhanwanti to become a witness, though it is accepted by her that she had written the application dated 14.03.1995 on behalf of Ms. Dhanwanti in her own handwriting. It is voluntarily stated by her that Dhanwanti requested her to write the application and the said application is marked as PW1/D11. It is admitted by this witness that in her complaint dated 04.10.1994 that she had mentioned the FIR number of the case on top of the said complaint. Though it is voluntarily stated by her that it was only unofficially that people had been telling her that perhaps an FIR had been registered. In reply to an specific question, it is stated by her that it is incorrect to say that she tried to register a false case against the accused for committing theft of 16 case files. It is stated by her that she filed the said complaint but the same was not false. It is admitted by her that she has not filed on record any document qua re-construction of the so called 16 files which were stolen from her bathroom locker. It is admitted by this witness that after the alleged incident she went to Central Hall, police post, give a telephone call at 100 number, went to the court of Ms. Kamini Lau, came back to the disputed spot, met the judge on the spot, went to the

court of Ms. Kamini Lau again in the hearing of the civil matter, thereafter went to the court of CMM and gave interview to the press, thereafter went to a restaurant and then went to her residence. It is explained by this witness that she had gone to the above mentioned places because she was running from pillar to post for seeking protection. As regards the restaurant, it is stated by her that she was near the lock up hiding herself and was almost going to fall sick only there itself as she had not consumed any food since morning and she was in trauma. She was found by Mr. Daljinder Singh there who offered to drop her home. Sensing that witness was fainting he took her to the restaurant even there she could not eat due to trauma. It is admitted by her that she sent phonogram to the Commissioner of Police, the same day after reaching home. It is stated by her that she has been asked by Mr. D. N. Suri, father of Mr. Umesh Suri to start coming regularly and sit on a vacant seat just near to his seat as he wanted to encourage the young lawyers and thus, she started sitting on the said vacant seat. It is admitted by her that there was no vacant space at the time of visit of the Ld. Civil Judge at 2 p.m. on 05.08.1994. It is voluntarily stated by her that accused had already removed the bench on which she had been sitting and had arranged for a new table and chair and also new boards on the spot before arrival of the Ld. Judge. It is admitted by the witness that she had distributed Pamphlets against the accused in General Body Meeting held on 10.08.1994 also in the upcoming election of the bar. It is denied by her that father of Mr. Umesh Suri had not suggested her to occupy any seat or any space at the disputed place. It is denied by her that she is deposing falsely.

8. PW-2 retired SI Sh. Yashpal Sharma deposed that in the year, 1985 he was posted as SI at P.S. Subzi Mandi. Further investigation of this case was handed over to him by SI Satdev. On receiving the case file, he recorded statement of Smt. Dhanwanti Devi, Advocate U/s 161 Cr.P.C. Thereafter, he also inquired about the incident from a number of other Advocates, but no one came forward for giving statement. Accordingly, he prepared the charge-sheet on 16.04.1994 and the same was put in the Court by the SHO. In his cross examination, this witness

admitted that advocates from whom inquiry about the incident was made did not apprise him about the occurrence of any such incident. It is stated by him that complainant visited the police post 2-3 times during the period of investigation but she did not give any specific name and whereabouts of any witness. It is stated by the witness that he came to know from the complainant that she has filed a complaint case in the court. It is stated by him that he recorded the statement of Ms. Dhanwanti Devi who had accompanied the complainant on 15.04.1995 in the police post , THC, Delhi. It is stated by him that he requested the complainant several time to give details of the witnesses in support of her complaint, but she told him that she would produce the witness in the concerned court. It is stated by him that he did not receive any written / verbal complaint either from complainant or PW Dhanwanti regarding threats being received at any point of time. It is stated by him that so far as he investigated the matter, the incident related to seat. It is stated by him that no other witness came forward with respect to incident of assault and abuse. It is admitted by him that the previous IO had recorded the statement of so many advocate in which they have stated that no such incident had occurred.

9. PW-3 retired ACP Sh. S.D. Dahiya deposed that on 05.08.1994 he was posted as Incharge, Police Post Tis Hazari. On that day an information on behalf of Ms. Sujata Kohli was received in Police Post vide DD Entry No. 22 which was marked to ASI Karan Singh. Preliminary inquiry on the complaint was done by ASI Karan Singh. The matter was concerning the Bar Association and the complainant had alleged in her complaint that accused Rajiv Khosla had misbehaved with her and manhandled her. Accused had thrown her belongings from her seat near Gol Canteen in Tis Hazari. It is stated that on 10.08.1994 the case under the present FIR was registered and investigation was initiated. He visited the spot of alleged incident at the instance of complainant, prepared site plan, photocopy of which is Ex. PW-3/A. Statement of lawyers namely Sh. P.S. Rathi, Sh. Ramesh, Sh. J.S. Jakhar, Sh. Yogender Gautam and others were recorded by him. He also interrogated the accused. It is stated that one Advocate Sh. Yogender Gautam had

given his statement that on 28.07.1994 an enquiry was conducted by him on the instructions of the Bar Association in respect of complaint of Sh. S.K. Tiwari against the complainant Ms. Sujata Kohli for her misbehaving with him in connection with the seat. After enquiry conducted by Sh. Yogender Gautam Bar Association had expelled her (complainant in present case) from the membership of Delhi Bar Association. It is stated that he asked the complainant a number of times to produce any witness of the incident, but she never produced any witness of the incident, nor she herself came to give her statement. Thereafter, this witness was transferred and the investigation was handed over to SI Yashpal. This witness correctly identified the accused. In his cross examination, it is admitted by him that a civil case in respect of the expulsion of the complainant from the membership of Delhi Bar Association and her claim for the seat was filed by the complainant against Delhi Bar Association, which was pending before the court of Ms. Kamini Lau, the then Civil Judge. It is stated by him that he did not find any witness who might have seen the incident in question.

10. PW-4 ASI Kali Charan, PIS No. 28824583, PTC Jharoda Kala, Delhi brought the order of Deputy Commissioner of Police dated 08.05.2017 for the destruction of register no.2 (Rojnamcha A and B) for the period upto 31.12.2006, copy of the order is Ex. PW-4/A.

11. PW-5 retired SI Karan Singh deposed that on 05.08.1994 he received DD No. 16 regarding scuffle/ fight at Gol Canteen. He alongwith Ct. Venugopal reached the spot and met the complainant Ms. Sujata Kohli. It is stated that complainant told her about the quarrel between her, Prem Singh Rathi and accused Rajeev Khosla. This witness enquired from the spot and came to know from various other Advocates that no fight or quarrel had taken place at the spot between complainant and accused. It is stated that he asked the complainant to give her statement, but complainant refused to make any statement at the spot and insisted upon making statement in the Police Post Tis Hazari. On that he alongwith complainant and Ct. Venugopal returned to Police Post Tis Hazari. He

produced the complainant to Police Post Incharge Sh. S.D. Dahiya to whom complainant gave her statement in her own handwriting. Thereafter, the case was marked to Police Post Incharge as per directions of senior officer. Accordingly, he handed over DD No. 16 to Police Post Incharge.

12. During trial accused under Section 294 Cr.PC admitted the FIR in question which is Ex. D-1 and the original complaint which is Ex.Y-1.

13. Thereafter, statement under Section 313 of Cr. PC of accused Rajiv Khosla was recorded wherein accused denied the case of the complainant. It is stated by him that, it is false case as he has been falsely implicated. Nothing as stated by the complainant had happened. It is stated that complainant was expelled from the membership of Bar Association while he was secretary of the bar association. It is stated complaint was expelled due to some disputes with Sh. S. K. Tiwari due to this he has been falsely implicated.

14. Ld. APP for State submitted that there is no need to examine other witnesses as all the relevant facts have either been proved by the complainant or have been admitted by the accused. Accused opted not to lead defence evidence.

ARGUMENTS:

15. Final arguments heard on behalf of Ld. APP for State as well as Ld. Defence counsel. It is argued by Ld. APP that complainant stood the test of rigorous cross examination despite that her testimony remained firm. She is a reliable witness, her statement has to be accepted as truthful account of the incident in question. Thus prosecution has proved their case beyond reasonable doubt. Hence, the accused is liable to be convicted for commission of offences alleged against him.

16. The accused filed elaborate written arguments in the matter. The main arguments led on behalf of accused are as follows:-

i) The complainant did not give any supplementary statement and

also did not produce a single witness to substantiate the claim of being assaulted before IOs that is PW 2 and PW 3. PW 5 SI Karan Singh who visited the spot immediately on receiving DD entry regarding scuffle/fight at Gol canteen and met the complainant at the place of alleged incident stated that on enquiry from various advocates present on spot it was revealed that no such fight or quarrel had taken place between the complainant and the accused. It is also pointed out that complainant did not give her statement at the spot rather gave her statement in her own handwriting after returning to police post Tis Hazari. PW3 also referred the statement of one Yogendra Gautam advocate who disclosed that some enquiry was being conducted by him on instructions of Bar Association in respect of complaint of one S.K. Tiwari against the present complainant for misbehaving with him in connection with seat due to which the bar association expelled the complainant from membership.

ii) It is contended that PW 2 IO Yashpal Sharma also stated that no one had apprised him about the occurrence of the incident upon enquiry and no one came forward for giving the statement in regard to the incident. It is also pointed out that PW2 stated that the complainant visited police post 2-3 times during the period of Investigation but she did not give any specific name or whereabouts of any witness regarding the incident. It is pointed out that he came to know about name of the eye witness dhanwanti only when a written complaint was filed by the complainant in the court on 10.03.1995, where in an application dated 14.03.1995 was filed for recording statement of the witness without delay as there was threat to the witness Dhanwanti.

iii) It is stated that statement of Dhanwanti was recorded by the IO only after coming to know about her name as a witness through the complaint case. It is argued that the sole witness produced by complainant namely Dhanwanti was an interested witness as she chose to become local Commissioner in the Civil case filed by the complainant on 01. 08.1994 without any fees or charges, it is also pointed out that Dhanwanti chose to become witness for the alleged assault on the complainant after 7 - 8

months of the incident. It is pointed out that witness Dhanvanti could not be cross examined due to her death as such no weightage can be given to her testimony.

iv) It is also pointed out that the complainant had stated in her statement that she did not know Ms. Dhanwanti prior to her appointment as local commission in her civil case on 01.08.1994, whereas said witness Dhanwanti in her statement recorded in the court as CW stated that she knew the complainant since 1987- 88 and used to visit her on and often, from this fact it is pointed out that complainant is depositing falsely in the matter.

v) It is stated that in the spot report of PW 5 and the learned Civil Judge there is no allegation of any assault on the complainant. It is contended that the complainant cooked up the story as she could not get stay in her favour for sitting on the seat which belongs to Mr S.K Tiwari. Considering the fact that the Ld. Civil Judge was to visit the sitting arrangements in the bar Complex cooked up the whole story of assault during lunch time between 1:30 to 2:00 p.m. and during this period she went to several places including police post and was able to reach exactly at 2 p.m. when the Ld. Civil judge was to visit the complex.

vi) It is pointed out that the complainant after the visit of Ld. Civil Judge went to the court of Ld. CMM for protection, gave press conference, sent a Telegram allegedly to the Commissioner of Police during such time. It is contended that these fact are sufficient to show that the complaint was free and moving freely without any fear hurdle or restrained by anyone and she did not go to dispensary or took any medicine in case she was assaulted or dragged by hair as such the allegations of any threat being given by accused is falsified from the aforesaid facts.

vii) It is alleged that complainant only wanted to come into limelight during the opposition of bar against establishment of family courts due to which she cooked up a false story of her expulsion on the ground of supporting the family courts so that her expulsion on the ground of misbehavior with colleague advocate Shri S.K. Tiwari for occupying his

seat should be side tracked and she may get her name popular amongst several women organizations.

viii) It is contended that the complainant even contested the elections of Bar Association which shows that she was not a lone lady for whose help no one was ready to come forward.

ix) It is contended that the complainant after registration of FIR did not initiate any steps in the said case to get a supplementary statement recorded she even failed to mention as to what was left to be recorded in her complaint filed on 05.08.1994 instead she chose to give another complaint leveling serious allegations against the accused the said statement was in her own handwriting and the same was hit by the provisions of section 162 Cr.P.C and the same was rightly not taken cognizance of by the predecessor of this court. The fact that the complainant did not file revision against the framing of charge only under section 323 and 506 IPC by the predecessor of this court will also go on to show that the subsequent complaint dated 6.10.1994 was based on concocted and fabricated facts.

x) It is contended that the Ld. Predecessor of this court in view of the false case being filed against Mr. S.K. Tiwari and Sh. S.C. Kaushik rightly discharged them in the complaint case. It is contended that all these facts would show that the core issue in the present case was only for sitting space and the allegations made against accused were all fabricated.

xi) It is contended that the allegations of assault and being dragged on the floor are falsified from the fact that the complainant though gave an application to Ld. CMM for protection and not for getting herself medically examined. It is stated that the complainant was unable to prove any bruises on her body or redness on any part and did not even show that her clothes got spoiled when she was thrown on the floor.

xii) It is contended that the complainant has drastically changed as well as improved her version which is evident from the various legal proceedings filed by the complainant. It is contended that the complainant alleged in her deposition that she was saved from the clutches of the

accused by Daljinder, Advocate. who was allegedly instrumental in in apprising the complainant about the visit of the judge at the place of the alleged place of sitting. Whereas in the petitions filed before the supreme court and high court she stated that 2-3 lady advocates intervened and saved her. Thus, there is clear contradictions in the testimony of the complainant.

xiii). It is contended that even as per the version of the complainant the spot of incident was highly crowded place which at any given point of time had 100 to 150 lawyers available in the vicinity despite that not a single advocate came forward to give statement in favour of the complainant and instead more than 10 advocates having seats around the seat of complainant gave statement that no such incident has happened.

xiv) It is contended that the complainant has failed to explain as to why there was any reason to remove the complainant physically from the bench of advocate Umesh Suri at the time of visit of the civil judge when it is admitted fact that she had no seat at the place of incident for which she has already filed a case on 30.07.1994.

xv) It is contended that the falsity of the statement of complainant is proved from the fact that she stated in the writ petition that she came to know about registration of FIR only on 15.11.1994 while in her subsequent complaint dated 4th October 1994 she mentioned the number of FIR and sections where in the same was registered.

xvi) It is contended that the story of the complainant is further falsified from the fact that 50 – 60 members who were inside the library and busy in their studies were brought to the spot by the accused to allegedly assault the complainant however this fact only shows that nothing was pre-planned and the accused did not bring anyone on the spot to take any action against the complainant. It is stated that the accused was holding the position of honorary Secretary of the bar association therefore there was no need for him to bring 50-60 members of the bar from the library as he could have brought the employees of the bar with him if he wanted to do anything.

xvii) It is pointed out that the complainant changed her statements on various occasions as earlier it is stated by her that that advocate daljinder had saved her from the clutches of the accused at the time of incident and thereafter even pointed out to her about the arrival of civil judge at 2 p.m. and then took the complaint to restaurant after the complainant had already file application for protection before the CMM and gave statement to the press reporters regarding the incident and also dropped her to her house. All these statements are contrary to her statement where the complainant categorically admits that she did not meet daljinder Singh between 1.30 to 2.00 pm.

xviii) It is contended that the version of the complaint that she was made to stand in a corner of the parking lot by staff of bar however as soon as the civil judge came to the spot she freed herself from the employees of the bar to reach the spot. it is also surprising that she forget to tell the Id. Civil judge about throwing of her files, purse and books from the spot.

xix) It is contended that the complaint has filed several photocopies on the record and never brought their originals to prove the same on record. it is also stated that the complainant did not brought the press reporter or any other witness in support of the documents placed on record to prove the same.

xx) It is contended that the complainant has failed to prove that some sort of injuries even of the minor nature has ever been caused to her which is mandatory condition of section 323 IPC. It is contended that as per the provisions of section 506 IPC any threat extended to other persons must cause an alarm in the mind of that person, however as per the statement of the complainant, she kept on moving everywhere and came back to the same place at exact time of the inspection of civil judge is sufficient to show that the complement was never stopped from doing anything and was moving and carrying on with her work as usual without any obstruction, hindrances or interference.

xxi) It is pointed out that even the person namely Umesh Suri who had given his bench to the complainant to set or even the person named

Daljinder, who was allegedly present at the spot and had represented the complainant in the case have not been examined as witnesses in the matter which clearly shows that no such incident had taken place.

xxii) It is contended that there are glaring contradictions, contradictory statements, substantial improvements and, a lot of inconsistencies in the story of the complainant. There is no material on record which can remotely suggest the happening of such incident as being emphasized by the complainant. The complaint was unable to get any corroboration from any independent witness in fact the police witness have deposed categorically against the version of the complainant. It is contended that the present case is based on a false complaint hence the same deserves to be dismissed and accused is entitled to be acquitted in the matter.

FINDINGS:

17. Arguments adduced by Ld. APP for the State and Ld. Defence Counsel for the accused have been heard. Evidences and documents on record perused carefully.

18. In order to bring home guilt of the accused for the offences under Section 323/506(I)/34 IPC, the prosecution was required to prove that accused in furtherance of his common intention being shared with his co-accused (since deceased) had inflicted simple injuries to victim Ms. Sujata Kohli and also threatened her.

19. Section 323 IPC provides punishment for voluntarily causing hurt. Hurt has been defined under section 319 IPC, and as per section 319 IPC, whoever causes bodily pain disease or infirmity to any person is said to cause hurt. It is also to be noted that word "infirmity" has also been used while defining hurt under section 319 IPC and "infirmity" also denotes a state of temporary impairment of hysteria or terror.

20. **Section 506 IPC** deals with criminal intimidation, which is defined under section 503 of IPC as under.

Section 503 IPC :- Criminal Intimidation – *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of*

any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

21. The most important ingredient of offence defined u/s 503 IPC is that there should be intention to cause alarm or to cause person threatened to do any act which is not legally bound to do. The mere abuses and empty threats would not fall under the offence punishable u/s 506 IPC. To constitute the offence u/s 503 IPC, the words used should be a clear indication as to what the accused was going to do and the complainant must feel as a reasonable man that the accused was going to convert his words into action. Mere threat causing no alarm would not be sufficient to constitute offence u/s 506 IPC. (as observed by Hon'ble Delhi High Court in case cited as **[2000 Cri. LJ 4772]**).

22. In the case in hand, the complainant has repeatedly and categorically stated that accused Rajiv Khosla, pulled her by hair and hand, and thereby made her forcefully stand from the bench she was occupying at the spot of incident, Pulling someone from hair and arm would naturally result in bodily pain. Thus, in the present matter, if testimony of the complainant is relied upon, the offence under section 323 IPC has been made out as bodily pain was inflicted on the complainant.

23. Similarly the complainant has categorically stated that accused Rajiv Khosla said to her that he (Rajiv Khosla) will not let her practice there (in Tis Hazari). In the case in hand, if version of the complainant is to be believed, it has to be held that the threat extended by the accused was not an imaginary threat, he had already removed the table and chair of the complainant in consequence of his earlier threat, despite the fact that the complainant had informed about that threat to the president of the Delhi Bar Association vide letter dated 29.07.1994 exhibited as CW3/4. The accused was elected Honorary secretary of Delhi Bar Association at the relevant time. The incident had taken place at a busy place, complainant was manhandled and threatened at the spot in

public glare The incident and the threat extended to her caused alarm to her due to which she ran from pillar to post, she went to the court of Civil judge, she also sought shelter from the court of the then Ld. CMM, she went to the police post, she made call at 100 number, all these facts clearly suggest that the complainant was in a state of shock and the incident had caused alarm to her mind and she tried every possible corner from where she could get protection or justice. Thus, the threat allegedly extended in the present case did cause an alarm in the mind of complainant. The threat that complainant will not be allowed to practice in TIs Hazari Court would certainly fall within the first part of section 506 IPC. As the same would amount to a threat of injury to the reputation and property (right to livelihood of a person). Thus, if the testimony of the complainant is accepted as truthful, it can be safely held that the accused has committed the offence punishable under section 506(part I) of IPC.

24. The veracity and truthfulness of the testimony of the complainant Ms. Sujata Kohli, has to be tested on the touchstone of the defences raised by the accused. The defences raised by the accused can be broadly classified as follows:-

- i) No independent witness to corroborate the case of the complainant. Police witnesses not supporting the case of the complainant.
- ii) No Medico Legal Certificate to prove the hurt caused to the complainant.
- iii) No alarm being caused to the complainant.
- iv) Inconsistencies and improvements in the testimony of the complainant.
- v) Cooked up story.

The testimony of the complainant will be tested on the touchstone of above stated defences one after the other to test her veracity and truthfulness.

No Independent witness

25. It is contended that complainant could not bring any independent witness to corroborate her version. It is stated that she did not examine Mr. Daljinder, Advocate Umesh Suri, advocate or any other

person present at the alleged spot or had seen the incident, from this appears that no such incident had taken place. Admittedly the place of occurrence was not any secluded or isolated spot. However, it also cannot be lost sight of the fact that accused was at that time secretary of Delhi Bar Association. It rarely happens that people would come forward and speak against their chosen leader. It is common knowledge that now a days people are becoming self-centered and they find it safe to keep mum even if they see an injustice being done to any person. This is becoming harsh reality these days. These days nobody comes forward to save some one or to stand witness for someone unless and until one has personal interest in the matter. The Hon'ble Supreme Court in the case of **"Appabhai and Anr. v. State of Gujarat"** reported in [AIR 1988 SC 696] has also discussed this issue as under:-

"It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensible when a crime is committed even in their presence. They withdraw both from the victim and the vigilant. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate but it is there, everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigation agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witnesses must consider the broad spectrum or the prosecution version and search for the nugget of truth with due regard to probability if any, suggested by the accused."

Similarly, the Hon'ble Supreme court in **Raghubir Singh V. State Of U.P, AIR 1971 SC 2156**, held that:

"10. ... In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions

when spirits on both sides are running high has to be borne in mind."

26. The undersigned is not impressed by the attempt of defence to assail the prosecution version on the ground of lack of independent witnesses, in the light of the observations made by the Hon'ble Supreme Court in "**Darya Singh Vs. State of Punjab**", [AIR 1965 SC 328 1964(7) SCR 397], wherein it was observed:

"It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits."

27. The close knit community of advocates in Tis Hazari Court or in any other court can be equated with a village where people know each other, they are connected with each other, they are helpful to each other, at the same time, there are factions of lawyers mainly due to Bar elections rivalries and there are strong groups of advocates against whom no one dare to speak unless he is himself affected. The case in hand has similar situation as discussed in the Darya Singh's case(supra), even in the present case there were a number of witnesses like Umesh Suri, Advocate and Daljinder, Advocate were present at the spot, however none except on lady Ms. Dhanwanti came forward to stand witnesses against the accused, who was a prominent Bar leader and Honorary Secretary of Delhi Bar Association at that time.

28. In view of the aforesaid discussion it can be safely held that non examination of the independent witnesses is not detrimental to the

case of the complainant. As per the settled proposition of law, there can be a conviction on the sole testimony of the victim. Reliance is placed upon the decision of the Hon'ble Supreme Court in the case of "**Vijay alias Chinee v. state of Madhya Pradesh**" [(2010) 8 SCC 191].

Police witnesses not supporting the case of the complainant.

29. Delhi Bar Association is undisputedly a very strong and formidable body of lawyers and more often, police is very slow in taking any action when it comes to lawyers. In the case in hand the accused was a prominent leader of Bar, at the relevant time he was Honorary Secretary of the DBA. The reluctance of the police in taking action against him or his accomplices is evident from the beginning as evident from the following facts:-

i) Pursuant to the DD entry exhibited as CW3/8, SI Karan Singh had come to the spot along with complainant, immediately after the incident for the purpose of enquiry and investigation. He had taken written complaint from the complainant, there were clear allegations of beating, manhandling and pulling by hair despite that he did not take the complainant for medical treatment and preparation of MLC.

ii) Even prior to recording statement of the complainant and registering FIR this police official was more interested in enquiring from other lawyers present there and recording signed statement of the alleged accused and others who were stating that no such incident had taken place.

iii) The reluctance of the police in taking action against the accused can also be gathered from the fact that qua incident in question dated 05.08.1994, in respect of which DD entry was recorded on 05.08.1994 itself, written complaint was also received on the same day but FIR could be registered only on 10.08.1994.

iv) It is to be noted that qua this conduct of police officer Karan Singh, he was also summoned as an accused in the present case for commission

of offence punishable under section 166 IPC. Though vide order dated 19.09.2005 accused SI Karan Singh was discharged from the allegation under sections 166 IPC, however the Ld. Predecessor of this court observed that SI Karan Singh was feeling himself a little bit insecure, timid and apprehensive at the spot of incident amongst the lawyers and left the scene. Thus, it has been observed by Ld. Predecessor of this court that conduct of ASI Karan Singh was not proper.

30. In view of the aforesaid facts the conduct of police in not supporting the case of the complainant can be understood. In these circumstances, the non-corroboration of the testimony of the complainant by the police witnesses is not detrimental to her case.

Absence of MLC

31. It is argued by the defence that complainant was not medically examined. She did not receive any bruises or other injury, thus offence under Section 323 IPC not made out. The contention of the defence that in absence of any MLC offence under section 323 IPC cannot be proved is not a universal rule which would apply in every case, for example, if in a case the complainant claims that he was badly beaten due to which he was bleeding and was taken to a hospital where he was medically examined and MLC was also prepared. In such case proving the MLC is essential to prove the allegations. However, in the case in hand where admittedly no MLC was prepared, the complainant has only claimed that she was manhandled and pulled by hair, thus only bodily pain was caused to her, in such a case non proving of MLC is not fatal to the case of the complainant. Reliance being placed on a judgment of Hon'ble Supreme Court passed in the matter of "**Lakshman Singh vs State Of Bihar**" (Now Jharkhand) on 23 July, 2021, wherein Apex court observed as under:-

...production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under section 319 IPC. As per section 319 IPC, whoever causes

bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily pain can be said to be causing "hurt". Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the accused under section 323 IPC.

No alarm being caused to the complainant.

32. It is contended by defence that complainant was roaming freely even after the alleged incident. Thus, she was not alarmed by the alleged threat, hence, offence under section 506 IPC not made out. The contention of defence is not tenable, the promptness of the complainant to move here and there within a short span of 30 minutes from the time of incident till arrival of Ld. Civil Judge for inspection of the spot does not make the case susceptible from any angle whatsoever. Police post of Tis Hazari Court is not situated at a distance it is within the court complex, virtually at a stone throw distance from the place of occurrence. In fact, the struggle of the complainant from going to Civil Court from there to police post, calling 100 number returning to the spot when Ld. Civil Judge came to inspect the spot narrating the incident to her thereafter rushing to the court of Ld. CMM filing application there for protection, give credence to her version that she was attacked and threatened that she will not be allowed to conduct practice from Tis Hazari Courts. The conduct of a person an offence against whom is the subject of any proceedings, is relevant under Section 8 of Indian Evidence Act, if such conduct is influenced by any fact in issue. The conduct of the victim immediately after the incident shows that she was in a shock or terror, due to which she immediately went to a number of authorities for redressal of her grievance. It is natural for any person to seek redressal and protection after being attacked and threatened in a manner wherein the complainant was attacked by the prominent leaders of the bar association. Such natural and spontaneous actions categorically points toward truthfulness of the complainant and establish that the incident in question had taken place. The struggle of the complainant going from pillar to post for redressal of her grievousness does not mean that she was not alarmed as contended

by the defence, rather it shows that she was severely alarmed and running to each and every forum for her safety and seeking justice. The observation of the then Id. Civil Judge who visited the spot after the incident as mentioned in the spot inspection proceedings exhibited as CW3/10 , categorically proves that complainant was very much alarmed due to the attack and threats, as it is observed by the Ld. Civil Judge, “the plaintiff (complainant herein) was crying and howling very badly saying that she has been beaten”. Thus, it is established beyond reasonable doubt that complainant was under shock and alarmed by the threat being extended by the accused.

Inconsistencies and improvements in the testimony of the complainant.

33. The defence has pointed out various inconsistencies and improvement in the testimony of the complainant for example, whether Ms. Dhanwanti and complainant known to each other prior to incident in question or not, whether she was saved by three lady advocates or by advocate Daljinder as at different forum, different version were stated, false submission of complainant that she came to know about the filing of FIR on 15.11.1994 before the Hon’ble High Court while infact she knew about registration of FIR atleast since 04.10.1994.

34. The inconsistencies and improvement pointed out by the defence are inconsequential and do not dent the categorical and repeated statement of the complainant that she was pulled by accused Rajiv Khosla by hair and arm and be also threatened that she will not be allowed to work there i.e. Tis Hazari Court. The following point shows that the alleged inconsistencies / improvements mentioned by the defence do not go to the root of the matter, in view of the categorical and consistent testimony of the complainant:

i) In the present matter, complainant was cross examined on 07 different dates at pre charge stage and she was cross examined on 08 different dates at post charge stage. Her pre charge cross examination is running into 33 pages and post charge cross examination is running into 68 pages.

Her cross examination from pre charge to post charge stage took almost 09 years to complete as she was cross examined for the first time on 07.09.2002 and for the last time on 29.01.2011. This is an exceptional case where in respect of an incident which happened within half an hour, a person was cross examined for almost 10 years. Due to this marathon cross examination running over 10 years, certain inconsistencies, improvements and minor discrepancies are bound to happen, in this regard Hon'ble Supreme Court of India in a case titled as" **Appabhai and another v. State of Gujarat**", AIR 1988 SC 696, ruled thus: -

"The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy."

ii) Whether CW Ms. Dhanwanti (whose testimony has not been considered as she died prior to post charge evidence) knew the complainant prior to incident or not whether the complainant was saved by three lady lawyers and Daljinder or only by three lady lawyers, whether she came to know about registration of FIR in the month of October or November are not material facts.

iii) The complainant in her pre-summoning evidence had stated that she was saved by three lady lawyer and some other lawyers. In her post summoning evidence, it is stated by her that she saved by three lady lawyers

and one male lawyer. This is not a material contradiction in view of the fact that, at the time of alleged incident, the complainant was in great shock and in such circumstances, it is not expected from any person to clearly state the exact incident without missing few minor details.

iv) It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. Reliance in this regard may be placed on, **Rammi @ Rameshwar Vs. State of M.P., [(1999) 8 SCC 649]**; **Leela Ram (dead) through Duli Chand Vs. State of Haryana and Another, [(1999) 9 SCC 525]**; **Bihari Nath Goswami Vs. Shiv Kumar Singh & Ors., [(2004) 9 SCC 186]**; **Vijay @ Chinee Vs. State of Madhya Pradesh, [(2010) 8 SCC 191]**; **Sampath Kumar Vs. Inspector of Police, Krishnagiri, [(2012) 4 SCC 124]**; **Shyamal Ghosh Vs. State of West Bengal, [(2012) 7 SCC 646]** and **Mritunjy Biswas Vs. Pranab @ Kuti Biswas and Anr., [(2013) 12 SCC 796]**. In the case in hand from the first complaint being made by complainant which is Ex. CW3/9 till her last cross examination, she always maintained that accused Rajiv Khosla mishandled her, pulled her hair and threatened her. She never specifically stated about beating being given by anyone else, this fact clearly suggest that she is consistent and her testimony in respect to the present accused Rajiv Khosla has never changed.

Complainant has cooked up the entire story to come into lime light and also due to previous enmity with the accused.

34. It is contended by defence that the complainant has cooked up the story of attack on her due to previous enmity and desire of the complainant to come in lime light among women organization. It is also contended that there was no reason for the accused to physically remove the complainant from the bench of Advocate Umesh Suri as, as per the version of the complainant her seat had already been removed. It is also pointed out that as per the version of the complainant accused came with 2-3 person to the spot and called 40-50 persons from the nearby library which shows that nothing was pre-planned by the accused and there was no occasion for the advocates studying in library to come there to beat the complainant. It is also contended that surprisingly despite the incident the complainant allegedly cornered by the staff of the bar in parking came to the spot as soon as the then Ld. Civil Judge came to inspect the spot. On these facts, it is contended that entire story of complainant is cooked up.

35. On perusal of the entire case file, evidences and material available before this court, the undersigned found the testimony of the complainant credit worthy and truthful due to following reasons:

i) The complainant has exhibited on record letter dt. 29.07.1994 bearing receiving of the bar office dt. 30.07.1994, wherein she had apprised the president qua threats of removing the seat of complainant extended by accused Rajiv Khosla. After sending this letter the complainant promptly filed a civil suit on 01.08.1994. These facts clearly suggest that the complainant had received threats from the accused qua removal of her seat. She had initiated the legal remedy to save her seat. After filing of the suit, she came to know that accused had removed her seat in her absence due to which she filed an amendment application in the court for changing the suit from permanent injunction to mandatory injunction. All these facts clearly suggest that against the threats being extended by the accused and his arbitrary act of removing her seat complainant was pursuing legal remedies.

ii) On 05.08.1994, when it was stated by the Ld. Civil Judge in the morning that she would come to visit the spot at 2:00 PM, the complainant went to the spot and was sitting on the bench of advocate Umesh Suri to meet the judge at the time of inspection may be accused did not want the complainant to be present at the spot at the time of spot inspection by the Ld. Civil Judge. Due to that the accused reached there and committed the offence in question. Even after commission of offence, the complainant went to the civil court, from there she went to the police post, though staff of bar tried to corner her in parking, thus not allowing her to meet the Ld. Civil Judge visiting the spot. She gathered the courage and went to meet Ld. Civil Judge who was inspecting the spot, even the Ld. Civil Judge in her spot inspection report noted that the complainant was crying and howling very badly saying that she has been beaten by the member of bar association and was made to stand outside the complex. The steps taken by the complainant immediately after the incident by approaching the concerned authorities i.e. police and court for redressal of her grievances and seeking her protection clearly suggest that her reaction was natural and spontaneous. This natural and spontaneous reaction on the part of the complainant proves beyond doubt that the incident in question as narrated by her had taken place.

iii) The fact that on the same day complainant went to the court of Id. CMM seeking protection for herself is the natural consequences of the incident in question and the threats being extended to her, this also shows that she was alarmed by the threat being extended by the accused Rajiv Khosla.

iv) The complainant was an advocate, she was aware about all the legal provisions, if she had to cook up a story she could have easily made up a story that in the late hours after dark she was attacked or molested by the accused which is not the case here. In the present case complainant has alleged the attacked in the broadly day light in presence of a number of lawyers, soon before the visiting of Ld Civil Judge. It is impossible for a person to so minutely cook up a story as allegedly done by the complainant. It is impossible to orchestrate such events in a perfect

symphony to look like a series of absolutely natural events. The timing and the consequence of events led to filing of the present case are so perfect that it has to be believed that such events had been orchestrated by destiny. It is impossible to concoct the events i.e. order of Civil Judge to inspect the spot, anxiety of complainant to be present at the spot at the time of visit of the Ld. Civil Judge, attack on the complainant prior to the inspection by the Ld. Civil Judge to deter her from meeting civil judge at the spot her reaching the court of civil judge with her grievance, from there reaching the police post, coming to the spot with police officer, giving a written complaint to the police officer and telling the Ld. Civil Judge inspecting the spot qua incident in question. The sequence of these events cannot be created artificially. These are natural events and testimony of the complainant qua same is truthful and creditworthy in respect of core allegations.

v) Hon'ble Supreme Court in case titled as "**Leela Ram Vs. State of Haryana**" [(1999) 9 SCC 525], observed that:

"It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment – sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

Similarly in the present matter, the complainant at some places exaggerated the fact or the incident, however, the main incident and the act committed by accused Rajiv Khosla remain consistent throughout.

36. It is contended by defence that benefit of doubt in the present case must be given to the accused. It is to be noted that the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by the Hon'ble Supreme Court, in the case of "**State of Punjab Vs. Jagir**

Singh” [(1974) 3 SCC 277].

Further, in the case titled as “Shivaji Sahebrao Bobade & Anr. Vs. State of Maharashtra” [(1973) 2 SCC 793,] V.R. Krishna Iyer, J., stated thus:

“The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community.”

37. In view of the above stated discussion the undersigned is of the considered opinion that the testimony of the complainant qua allegation of the complainant of being pulled by hair and arm by accused Rajiv Khosla and threat that she will not be allowed to practice from Tis Hazari extended by the accused, are absolutely truthful and creditworthy. Her sole testimony inspire confidence in the mind of the court, thus she has successfully proved all the ingredients of offences punishable under Section 323/506(i)IPC in the present matter. Thus, accused namely Rajiv Khosla is hereby convicted for commission of offences punishable under section 323/506(i)IPC.

35. Copy of the judgment be supplied to the accused persons free of cost.

**ANNOUNCED IN THE OPEN
COURT ON 29.10.2021**

**(GAJENDER SINGH NAGAR)
CMM (CENTRAL)/DELHI**

Containing 40 pages all signed by the presiding officer.

**(GAJENDER SINGH NAGAR)
CMM(CENTRAL)/DELHI**