

R-12,13,14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Order : March 04, 2009

+ **CRL.A. 195/2001**

PAL SINGH alias PALA Appellant
Through: Mr. M.L. Yadav, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CRL.A. 585/2001

AJIT SINGH @ PAPPU Appellant
Through: Mr. M.L. Yadav, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CRL.A. 203/2002

GURMEET SINGH Appellant
Through: Mr. M.L. Yadav, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed
to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (Oral)

1. 8.00 p.m. of 27th December 1996, was the pre-ordained time for late Shri Shital Singh to breath his last. He was sitting in a shop which was in his house, when he was accosted by Gurmeet Singh, who was accompanied by Pal Singh, his cousin, and Ajit Singh, his brother-in-law. As per the prosecution, Pal Singh and Ajit Singh, on the exhortation of Gurmeet Singh caught hold of Shital Singh and thus facilitated an assault by Gurmeet Singh. Gurmeet Singh was armed with an iron rod and gave a blow directed towards the fore-head of Shital Singh. The incident was witnessed by Sheela Kaur PW-4, the wife of Shital Singh. Her alarm call attracted her brother-in-law Bhag Singh PW-3, and her nephew Jagdish Singh PW-5, who managed to apprehend Gurmeet Singh at the spot since he slipped and fell down while fleeing. Pal Singh and Ajit Singh managed to flee and were apprehended later on.

2. As per the prosecution, the offending rod used by Gurmeet Singh to assault Shital Singh was recovered pursuant to a disclosure statement made by Gurmeet Singh and from his house.

3. The injured Shital Singh was taken to Deen Dayal

Upadhayay (DDU) Hospital where he was declared brought dead by the doctor on duty. The body was sent to the mortuary of the said hospital, where Dr.Komal Singh PW-9, conducted the post-mortem and as per post-mortem report Ex. PW-9/A, noted an injury, obliquely placed on the mid fore-head and an abrasion on the right side of the fore-head and an abrasion on the right leg.

4. The doctor opined that all injuries were ante-mortem and that cause of death was opined to be coma caused by the head injury. It was further opined that the head injury was possibly the result of being hit by an iron rod.

5. Reverting back in point of time; when the police received information of the assault, S.I. Bhim Singh PW-8, accompanied by Const.Umesh Kumar PW-10, left for the spot. Since the duty Constable at the hospital also gave information to the local Police Station, of Shital Singh being brought to the Hospital, Inspector Rai Singh PW-11, the SHO of the Police Station also reached the hospital.

6. Needless to state, S.I. Bhim Singh and Const.Umesh Kumar, on reaching the place of the incident proceeded to the hospital as they were told that the injured was removed to the hospital. In this manner, S.I. Bhim Singh, Inspector Rai Singh and Const.Umesh Kumar came to be present at the hospital.

7. The wife of Shital Singh, namely, Sheela Kaur PW-4, was present at the hospital. Her statement Ex.PW-4/A was recorded by Inspector Rai Singh, in which she disclosed that the accused Gurmeet Singh used to steal electricity by directly hooking the electric main lines, which was objected to by her husband, and that in the past Gurmeet Singh, his brother-in-law Ajit Singh and his cousin Pal Singh i.e. the accused had an altercation with her husband and that on 27.12.1996 at around 8.00 p.m. when her husband was in his house and she was in the shop, Gurmeet Singh, Pal Singh and Ajit Singh came. Gurmeet Singh was armed with an iron rod. Whereas Pal Singh and Ajit Singh caught her husband, Gurmeet Singh inflicted a blow on his head with the iron rod. Bhag Singh, her brother-in-law and Jagdish Singh, her nephew reached, hearing her cries. The accused attempted to flee, but Gurmeet Singh was apprehended by them and others while he was attempting to flee and the other two accused ran away. An endorsement, Ex.PW-11/A, was made on her statement by Inspector Rai Singh and was dispatched through Const.Umesh Kumar PW-10, at 11.15 p.m. for the FIR to be registered. HC Mahabir Singh PW-6, posted as duty officer at the police station registered the FIR Ex.PW-6/A.

8. We eschew reference to the disclosure statement of the appellant Gurmeet Singh and recovery of an iron rod from his

house at his instance. We do so for the reason, Gurmeet Singh was apprehended at the spot and as held by the learned trial Judge the possibility of the co-accused running away with the iron rod cannot be ruled out. But, in said circumstance, how would Gurmeet Singh know that they had kept the iron rod in his house; much less the place wherefrom he could have got the same recovered.

9. It is settled law, that where an eye witness account is consistent and trustworthy, until and unless there are serious doubts in the manner in which the investigation is conducted, over zealous acts of the police officers should be ignored and on account thereof the testimony of the eye witnesses should not be discarded.

10. Reverting back, the co-accused were apprehended. Needless to state, nothing of consequence was recovered at their instance.

11. At the trial, Sheela Kaur PW-4, deposed the facts which were told by her to Inspector Rai Singh which find a mention in Ex.PW-4/A.

12. She was cross-examined at length. Nothing was brought out to discredit her, except the fact that in her statement recorded by the police she had not informed that on an earlier occasion even Pal Singh and Ajit Singh had attempted to hook a

wire on the electricity mains and that in her statement recorded by Inspector Rai Singh she had not stated that her husband was present at the spot. We note that she only told the police that she was present at the shop.

13. Bhag Singh PW-3, deposed that he was standing outside his house when he heard alarm calls of Bachao-Bachao. He ran towards the place from where the sound was coming and saw Pal Singh and Ajit Singh holding Shital Singh and that Gurmeet Singh gave a blow with an iron rod on Shital Singh. He rescued Shital Singh. The accused started running. Accused Gurmeet Singh slipped and fell down and he over-powered him; other accused ran away. Police came to the spot. That even Jagdish Singh was present and he saw him at the site of the occurrence.

14. The witness was cross-examined and nothing of substance was brought out to discredit Bhag Singh.

15. Jagdish Singh PW-5, deposed that he was present in his house at 8.00 p.m. on 27.11.1996 and on hearing alarm sound he came out and saw Gurmeet Singh assaulting Shital Singh. Then Bhag Singh came. Accused started running. Bhag Singh chased them. Accused Gurmeet Singh slipped and was apprehended by Bhag Singh and other two co-accused managed to escape.

16. The witness was cross-examined. Nothing of substance

was brought out to discredit the testimony of said witness.

17. We note that the deceased used to reside in House No. D-7/217, Sultanpuri, Delhi. Bhag Singh PW-3, resides at D-7/251, Sultanpuri, Delhi and Jagdish Singh PW-5, resides at D-7/213 Sultanpuri, Delhi; meaning thereby, Jagdish Singh and Bhag Singh would be natural witnesses to the occurrence.

18. Vide impugned judgment and order dated 12th February 2001, the three accused i.e. Gurmeet Singh, Ajit Singh and Pal Singh have been convicted for the offence of having murdered Shital Singh. They have been convicted under Section 302 read with Section 34 IPC.

19. Vide order dated 19th February 2001, they have been sentenced to undergo imprisonment for life and to pay a fine in the sum of Rs. 1,000/-; in default of payment of fine to undergo simple imprisonment for 15 days.

20. The learned trial judge has held that the testimony of the wife of the deceased showed that there was an enmity between the deceased and the accused. The defence taken by the accused persons that the deceased sustained the injury when he fell from the pole while attempting to steal electricity has not been accepted in view of the testimony of Dr.Komal Singh PW-9, who categorically deposed that the injuries mentioned in the post-mortem report Ex.PW-9/A could not have been possible if

the deceased fell from a height of 20 feet.

21. With respect to the recovery of the iron rod at the instance of the appellant Gurmeet Singh, the learned trial judge held that the possibility of the other two co-accused running away with the iron rod cannot be ruled out. In this manner, the learned trial judge has held that the recovery of the iron rod, pursuant to the disclosure statement of Gurmeet Singh and at his instance, was an incriminating piece of evidence.

22. As noted by us hereinabove, Gurmeet Singh was apprehended at the spot. By the time, the iron rod was not in his hand. Obviously, one out of the two co-accused could have removed it. But, Gurmeet Singh could never had knowledge as to what did they do with the iron rod; much less could have knowledge that they have kept the iron rod in his house. It is obvious that the over zealous police officers have shown the recovery of the rod at the instance of Gurmeet Singh.

23. But, since three eye witnesses to the incident have withstood the test of cross-examination coupled with the fact that Sheela Kaur PW-4, the wife of the deceased met the police officers at the hospital and her statement was recorded somewhere before 11.15 p.m. in which she named all the assailants and gave a detailed account of what happened, we find that there is hardly any time for Sheela Kaur to cook-up a

false version. We note that the incident took place at 8.00 p.m. She rushed her husband to the hospital. Where was the time for her to fabricate a story? Even at the hospital she would be concerned about the well being of her husband. When the doctors examined him after a few minutes of his arrival, he was declared brought dead. The lady would be traumatized in grief. That apart, PW-4, PW-3 and PW-5 have corroborated each other on all other material aspects of the controversy. That the appellants sought to project a version that the deceased sustained the injury when he fell from the electricity pole, means the accused admit their presence at the site. Indeed, if they were not present at the spot, how could they even say that the deceased was attempting to climb up an electricity pole and slipped down, and as a result of the fall sustained the injury.

24. We are satisfied that the evidence on record establishes that Pal Singh and Ajit Singh demobilized the deceased by catching hold the deceased and facilitated an assault by Gurmeet Singh.

25. But, a question arises, whether the accused persons came with an intention to kill the deceased or did they have only an intention to harm the deceased? This question is not free from controversy.

26. But guidance can be taken from past precedents, where

even directed towards the head, a single assault has been held indicative of lack of intention to cause death or intention to cause a bodily injury which has been opined by the doctor to be sufficient in the ordinary course of nature to cause death or even the doing of an imminently dangerous act which must in probability cause death.

27. In the decision reported as (2005) 9 SCC 650 Thangaiya vs. State of Tamil Nadu, an injury on the right parietal scalp, 4" linear obliquely placed; opined by the doctor to be sufficient in the ordinary course of nature to cause death, was held to be making out a case attracting 304 Part-I IPC and not Section 302 IPC. Similarly, in the decision reported as JT 2008 (5) SC 407, Kesar Singh & Anr. vs. State of Haryana a single blow on the head causing death was held to be an offence punishable under Section 304 Part-I IPC. Needless to state, in both cases the victim had died as a result of the head injuries. In the decision reported as AIR 1974 SC 1351, Thakarda Lalaji Gamaji vs. The State of Gujarat, two blows with a Danti (scythe), one directed on the left temporal region of the scalp and the other on the left forearm; resulting in the death of the victim as a consequence of the first injury, was held to be an act attracting Section 304 Part-I and not Section 302 IPC.

28. We need not note a plethora of authorities on the point.

Needless to state, a single assault which proves fatal, may also be sometimes indicative of an intention to cause death. But, the circumstances of each case have to be seen. Whether the offending object is a weapon; the ferocity of the blow; the attendant circumstances wherefrom an intention to cause death can be inferred or whether only an intention to cause an injury can be inferred, all have to be kept in mind.

29. In the instant case, the accused persons inflicted a single blow on the head of the deceased. The other two abrasion wounds can possibly be the result of a fall; we note that only one injury is a lacerated wound. The other two are abrasions, which can be the result of forceful catching hold of the person of the deceased or possibly even a fall. It is important to note that the deceased was demobilized, being caught hold of by Ajit Singh and Pal Singh and nothing prevented Gurmeet Singh to inflict more than one fatal blows. That only one blow was inflicted suggests that the intention of the accused was to injure the deceased.

30. Under the circumstances, we are of the opinion that the instant case does not warrant a conviction under Section 302 IPC. Taking cue from the decisions of the Supreme Court as noted above, we hold that the acts of the appellants show the commission of an offence punishable under Section 304 Part-

I/34 IPC.

31. A custodial sentence of 10 years would meet the ends of justice.

32. The appeals are partially allowed. The conviction of the appellants under Sections 302/34 IPC is altered to a conviction under Section 304 Part-I/34 IPC. The appellants are sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/- each; in default of payment of fine to undergo simple imprisonment for a month. If the fine is realized, it shall be paid to the widow of the deceased.

33. The appellants are on bail. Their bail bonds and surety bonds are cancelled. The appellants shall surrender to undergo the rest of the sentence. The appellants shall be entitled to the benefit of Section 428 Cr.PC.

34. We clarify, if the appellants or any one of them have/has undergone the sentence (including period of remission, if any), such appellant need not surrender and need not be arrested.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

MARCH 04, 2009
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