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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 16.03.2009

Judgment delivered on: 26.03.2009

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CRL.A. No.265/2001

YOGINDER SINGH

...Appellant

Through : Mr. R.P.Luthra, 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? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

: PRADEEP NANDRAJOG, J.

1. Criminal law was set into motion when pursuant to a telephonic call, an entry was made in the PCR Form, Ex.PW-16/A, by Const. Manju, PW-16, at 6.58 P.M. on 01.04.97 recording that a boy has been stabbed at Durga Park near Power House. PW-16 transmitted the said information to Police Station Dabri where HC Dharampal PW-24, recorded DD No.25A, Ex.PW-24/B, at 7.00 P.M. on 01.04.97.

2. SI Jagbir Singh PW-20, accompanied by Const. Rajinder Singh PW-19, reached the spot where he learnt that two persons have been

injured in the incident and that they had been removed to the hospital.

3. In the meantime, one of the injured person, named Sanjay, (hereinafter referred to as the "Deceased") was removed to DDU Hospital by his uncle Lallan Rai PW-4, and was declared brought dead as noted in MLC Ex.PW-23/A. Const. Bhagwan Singh PW-22, posted as Duty Constable at DDU Hospital, transmitted the said information to Police Station Dabri, where HC Dharampal PW-24, recorded DD No.27A, Ex.PW-24/C, at 7.30 P.M. on 01.04.97.

4. Thereafter SI Jagbir Singh PW-20 accompanied by Const. Girdhari Lal PW-12 proceeded to DDU Hospital where PW-20 collected the MLC Ex.PW-23/A of the deceased.

5. Jeetan, the other injured person was removed to Safdarjung Hospital in a PCR van where he was provided medical aid pertaining to 3 injuries, an incised stab wound on the right hand, a stab wound on the left buttock and a blunt blow on the chest, as noted in the MLC Ex.PW-21/A.

6. The Duty Constable at Safdarjung Hospital informed PS Dabri about Jeetan's admission in the hospital which information was passed on to SI Jagbir Singh PW-20, who proceeded to Safdarjung Hospital where he recorded the statement Ex.PW-1/A of Jeetan.

7. Making an endorsement Ex.PW-20/A on Jeetan's statement, SI Jagbir Singh forwarded the same at around 12:20 AM to the police station for registration of an FIR and at the police station HC Dharam

Pal PW-24 registered the FIR Ex.PW-24/A at 12:45 in the midnight i.e. at 00:45 hrs on 2.4.1997.

8. At the place of the occurrence, Inspector Omvir Singh Bhati PW-25, prepared the site plan Ex.PW-25/G recording therein the places at points 'B' and 'C' where the deceased and Jeetan respectively were stated to be stabbed. Blood control earth and sample earth were seized vide memo Ex.PW-20/B. The clothes which Jeetan was wearing at the time of the occurrence were seized vide memo Ex.PW-20/C.

9. In his statement Ex.PW-1/A, Jeetan stated that he is a permanent resident of village Sarola, Dildar Nagar, District Ghazipur, Uttar Pradesh. That at present he is residing in a rented accommodation in house bearing Municipal No.RZ-21, Gali No.11, Durga Park, New Delhi and earns his livelihood by working as an embroider. That on the eve of Holi he had gone to the residence of his relative Basant Rai situated at house No. RZ-265-A, Gali No.3, Durga Park, New Delhi. That while he was watching television at the residence of Basant Rai, a boy named Kallu who resides in the neighbourhood of Basant Rai and was in a drunk condition came there, and asked him to switch off the television and turn on the stereo (deck) as he wanted to dance. That he told him that he had to watch a movie therefore he would not turn on the stereo. That on hearing this, Kallu got angry and a quarrel ensued. Basant Rai intervened and brought peace between them, however while going Kallu threatened him saying that he would teach him a lesson some other day. Thinking that it was a minor quarrel he did not pay much

attention to it. That today around 6.15 P.M. in the evening, he and his friend Sanjay who resides with him in his room were purchasing vegetables at Durga Park when Kallu accompanied with another boy came there, gave an indication towards him and said that "he is the one who had quarreled with him on the eve of Holi and that he would teach him a lesson today." That thereafter the boy who was accompanying Kallu caught hold of him and Kallu gave blows on his chest. That Kallu then took out a knife and inflicted a blow on his left buttock. That when Sanjay attempted to save him, the boy who was accompanying Kallu caught hold of Sanjay and Kallu inflicted a knife blow on Sanjay. That thereafter Kallu again started attacking him and while he was defending himself, the knife hurt his right hand. That on hearing noises lot of people gathered there and tied a cloth around the wound of Sanjay. That one Lallan who was the uncle of Sanjay removed him to the hospital. That the boy who was accompanying Kallu was aged 20-22 years and that he could identify him if he would come in front of him. That Kallu and his accomplice with an intention to kill him and Sanjay had attacked them with the knife.

10. Since the deceased was declared brought dead at the hospital, his body was sent to the mortuary where Dr.Komal Singh PW-2, conducted the post-mortem at 4.00 P.M. on 04.04.97 and gave his report Ex.PW-2/A wherein it was recorded that one incised wound 2.3 cm x 0.8 cm x 22 cm (depth) obliquely placed on back, was noted on the person of the deceased; that the said injury pierced the thoracic cage at sixth inter-coastal space on posterior side and further

penetrated the lower lobe of the lung of the deceased; that the cause of the death was respiratory arrest due to stab injury on the back; that the said injury was sufficient to cause death in the ordinary course of nature.

11. After conducting the post-mortem, Dr.Komal Singh PW-2, handed over the clothes and blood sample of the deceased on a gauze to Inspector Omvir Singh Bhati PW-25, who seized the same vide memo Ex.PW-20/D.

12. Since Jeetan PW-1, had named the appellant and his accomplice as the assailants, the police set out to apprehend them. Pursuant to a secret information received by the police, the appellant and one Ravinder @ Bittoo (hereinafter referred to as the “co-accused”) were arrested on 06.04.97. Inspector Omvir Singh Bhati PW-25, interrogated the accused persons in the presence of SI Jagbir Singh PW-20, Jeetan PW-1 and Chander Shekhar PW-3. The accused persons made disclosure statements Ex.PW-3/B and Ex.PW-3/C in the presence of the afore-noted persons. Pursuant to the disclosure statements, the police recovered and seized, vide seizure memo Ex.PW-3/D a knife at the pointing out of the accused persons. A sketch Ex.PW-20/G of the said knife was drawn by Inspector Omvir Singh Bhati PW-25.

13. On 04.06.97 the prosecution moved an application for conducting TIP proceedings for identification of the co-accused by Jeetan PW-1, before the court of Metropolitan Magistrate, Delhi. The

co-accused refused to join the TIP proceedings on the ground that the police had already shown him to the witness as noted in the record Ex.PW-15/A of the said proceedings.

14. The seized materials, namely, the clothes and blood sample of the deceased, the clothes of Jeetan PW-1, the sample earth control and blood sample earth seized at the spot were sent to the FSL for scientific examination. Vide FSL reports Ex.PW-25/X and Ex.PW-25/Y it was opined that blood group of the deceased was 'B'; that human blood was detected on sample earth control, blood sample earth and clothes of Jeetan, group whereof could not be determined; that human blood of 'B' group was detected on the clothes of the deceased.

15. Armed with the aforesaid material a challan was filed accusing the accused persons of having murdering the deceased Sanjay and attempting to murder Jeetan. Charges were framed against the accused persons for having committed offences punishable under Sections 302/307/34 IPC.

16. Apart from examining the police officers who were associated with the conduct of investigation of the case, the doctors who had recorded the MLCs of the deceased and Jeetan and the judicial officer who had conducted the TIP proceedings in respect of the co-accused, Jeetan, Dr.Komal Singh, Chander Shekhar, Lallan and Basant Rai were examined as PW-1, PW-2, PW-3, PW-4 and PW-14 respectively.

17. Jeetan PW-1, deposed that he had a quarrel with the appellant on the eve of Holi at the residence of his relative Basant Rai. That on 01.04.97 at about 6.25 P.M. he along with the deceased was purchasing vegetables at a market when the appellant accompanied with co-accused came there. That the accused persons called him at a corner and then the appellant gave a fist blow on his chest whereupon he fell on the ground. That the appellant then took out a knife and attempted to inflict a knife blow on his abdomen but he turned around due to which the blow landed on his left buttock. That thereafter the appellant inflicted a knife blow on his right hand. That when the deceased tried to save him, the appellant gave a knife blow to Sanjay at which Sanjay fell down and the accused ran away. That someone informed the police about the happening of the incident. That the deceased was removed to the hospital by his uncle Lallan before the arrival of the police. That he was removed to the hospital by the police. That the accused persons were not arrested by the police in his presence. That neither the accused persons had made any disclosure statement nor any knife was recovered at the instance of the accused persons in his presence.

18. Dr. Komal Singh PW-2, who had conducted the post-mortem of the deceased proved the post-mortem report Ex.PW-2/A. He deposed that the injuries found on the person of the deceased could not have been caused by the knife which was allegedly recovered at the instance of the accused persons.

19. Chander Shekhar PW-3, deposed that on 01.04.97, while he was purchasing vegetables at a market he saw that Jeetan and the deceased were talking to each other. That in the meantime the appellant along with another boy, called Jeetan to a corner and thereafter the appellant gave beating to Jeetan. That the appellant then took out a knife and inflicted injuries with the said knife on the person of Jeetan. That when the deceased tried to save Jeetan the appellant gave a knife blow to the deceased whereupon the deceased fell on the ground. That on seeing this, he rushed to call one Hira Lal who was the uncle of the deceased but he was not present at his house. That when he returned to the spot Jeetan was still present at the spot but the deceased had already been removed to the hospital. That the accused persons were not arrested in his presence. That the accused persons had made disclosure statements Ex.PW-3/B and Ex.PW-3/C in his presence. That no knife was recovered at the instance of the accused persons in his presence.

20. Lallan Rai PW-4, deposed that he had removed the deceased to DDU Hospital on the date of the incident.

21. Basant Rai PW-14, deposed that no quarrel had taken place between Jeetan and the appellant on the eve of Holi in his presence. However, he later deposed that he was watching television along with Jeetan at his residence on the eve of Holi. That when he had gone to fetch water some quarrel had taken place. That on coming back he asked Jeetan and the appellant to leave his house as they were quarreling. Yet again, the witness contradicted himself by deposing

that the accused person was not present at his house on the eve of Holi.

22. The accused persons in their respective statements under Section 313 Cr.P.C. denied everything. They stated that they have been falsely implicated in the present case; that they were present at their respective houses at the time of the occurrence.

23. The accused persons chose not to lead any evidence in their defence.

24. Holding that no witness of the prosecution had any knowledge about the identity of the co-accused Ravinder @ Bittoo till the time of the recording of the FIR Ex.PW-24/A evident from the fact that his name was not mentioned in the said FIR; that the evidence led by the prosecution to establish that Jeetan had identified the co-accused soon after the happening of the incident was that the accused persons were arrested at the pointing out of Jeetan was demolished for the reason the knife which allegedly was got recovered by the accused persons in the presence of Jeetan at the time of their arrest was not the weapon of offence; that the prosecution had sought to conduct TIP proceedings for identification of the co-accused at a belated stage and that the prosecution had ample opportunity to show the co-accused to the necessary witness before the conduct of TIP proceedings, vide judgment dated 15.02.01 the learned Trial Court acquitted the co-accused on the ground that the prosecution has not been able to establish beyond reasonable doubt that

Ravinder @ Bittoo was the person who had acted in concert with the appellant in committing the crimes. However, holding that the evidence of Jeetan PW-1, inspires confidence, the learned Trial Court had convicted the appellant. Vide order dated 26.02.01 the learned Trial Court had sentenced the appellant to undergo imprisonment for life for committing offence punishable under Section 302 IPC; imprisonment for 7 years for committing offence punishable under Section 307 IPC. Both the sentences have been directed to run concurrently.

25. At the hearing before us, learned counsel for the appellant advanced under-noted six submissions in support of the appeal:-

A The first submission advanced by the learned counsel for the appellant related to the time of identification of the appellant by Jeetan PW-1. The argument of the counsel on this aspect is two-fold. The first part of the argument was predicated upon an entry recorded in the PCR Form Ex.PW-16/A while the second part was based upon a suggestion given by Additional Public Prosecutor to Chander Shekhar PW-3.

(i) The translated version of the entry recorded in the PCR Form Ex.PW-16/A relied upon by the counsel reads as under:-

“Removing to the hospital.....Assailant is known by face.....Is resident of neighborhood.....Boy has been inflicted with two knife blows.....One blow has hurt hand and the other blow has hurt hip.....Handed over to Duty Constable at Safdarjung Hospital” (Emphasis Supplied)

The counsel argued that tenor of the afore-noted entry makes it clear that it must have been recorded upon the information given by Jeetan PW-1, and since it was recorded soon after the happening of the incident it has to be treated as the first account of the incident given by Jeetan PW-1. The recording contained in the entry that '*assailants were known by face*' establishes that the appellant was not known to Jeetan at the time of the happening of the incident. To further buttress his argument, the learned counsel for the appellant drew attention of this court to following deposition of Jeetan PW-1:-

“It is wrong to suggest that I became unconscious after receiving injuries.....I saw Kallu for the first time on the Holi prior to the date of incident and prior to that he was not known to me. On the day of Holi also I was not aware about his whereabouts. On that day of Holi Basant told me name of Holi.” (Emphasis Supplied)

The counsel emphasized that the fact that Jeetan PW-1 was in a state of consciousness at the time when he gave information to the police based whereon the afore-noted entry was recorded, the admission of Jeetan that he had no knowledge about the whereabouts of the appellant on the eve of Holi and failure of the prosecution to examine Basant Rai PW-14, to the effect that he had told the name of the appellant to Jeetan strengthens the reliability of the afore-noted entry recorded in the PCR Form Ex.PW-16/A.

(ii) Pertaining to the suggestion given by Additional Public Prosecutor, to Chander Shekhar PW-3,; reliance whereon has been placed by the counsel, reads as under:-

“It is wrong to suggest that I stated before police that I and Jeetan came to know that accused Kallu along with his friend gave knife blow on the person of Jeetan on 01.04.97 and committed murder of Sanjay or that on that day i.e. 6.4.97 they were present and seen in Janak Puri New Delhi.....” (Emphasis Supplied)

The counsel argued that the afore-noted suggestion where the prosecution had itself suggested to the witness that Jeetan came to know about the identity of the appellant only after the happening of the incident clinches the issue that the appellant was not known to Jeetan at the time of the incident and falsifies the version given by Jeetan PW-1, at subsequent stages, that the appellant was known to him prior to the incident. The counsel further argued that the conclusion which results from the conduct of Jeetan PW-1, of falsely deposing on a material aspect is, that he had falsely implicated the appellant.

B The second submission advanced by the learned counsel for the appellant related to the veracity of the statement Ex.PW-1/A of Jeetan. In this regard, the counsel drew attention of this court to following deposition of Jeetan PW-1:-

“I cannot read my statement Ex.PW-1/A. Police had recorded this statement on its own and my signatures were obtained on the same.....Ex.PW-1/A was got signed by the police from me at about 9 or 10 p.m. but I did not read the contents of the same.” (Emphasis Supplied)

Learned counsel for the appellant urged that the afore-noted deposition establish that the statement Ex.PW-1/A was not recorded at the instance of Jeetan PW-1, and therefore, the prosecution has

wrongly attributed statement Ex.PW-1/A to Jeetan. Going a step further, counsel argued that the fact that the statement Ex.PW-1/A which was the very basis of the investigation of the present case is proved to be false, strongly probablizes the defence of the appellant that the police had falsely implicated him in the present case.

C The third submission advanced by the learned counsel was predicated upon the time of the recording of the FIR Ex.PW-24/A. The counsel drew attention of this court to an endorsement Mark X contained in the FIR which records that the said FIR was received by the Metropolitan Magistrate at 4.05 P.M. on 02.04.97. The counsel argued that a perusal of the FIR reveals that the time of recording of the FIR is shown as 12.45 P.M. on 02.04.97; the fact that FIR was received by the Magistrate after about 15 hours of its recording strongly suggests that the FIR was ante-timed. According to the counsel, the FIR must have been actually registered around 4.00 P.M. on 02.04.97 therefore the considerable delay in recording the FIR probablizes the defence of the appellant that he has been falsely implicated in the present case.

D The fourth submission advanced by the learned counsel for the appellant was that on the same set of evidence the co-accused has been acquitted by the learned Trial Court therefore, the appellant is also entitled to get acquittal on the principle of parity.

E The fifth submission advanced by the learned counsel for the appellant was that a single blow was inflicted on the deceased and at

best knowledge which can be attributed to the appellant is to cause an injury and not death.

F The last submission advanced by the learned counsel for the appellant was that the appellant was less than 18 years of age on the date of the commission of the offence inasmuch as the appellant had stated in his examination under Section 313 CrPC that he was born on 13.08.1979, therefore, he had to be considered as a 'juvenile' for the purposes of sentencing in view of the provisions contained in Juvenile Justice (Care and Protection of Children) Act, 2000 read with Juvenile Justice (Care and Protection of Children) Amendment Act, 2006.

26. Before proceeding to deal with the submissions advanced by the learned counsel for the appellant, it would be apposite to note the legal parameters within which the present case would be decided by us.

27. The case of the prosecution hinged upon the evidence of Jeetan PW-1, who claimed to have got 'injured' in the incident in question and Chander Shekhar PW-3, who claimed to have witnessed the incident in question. However, the learned Trial Court has erroneously proceeded on the basis that Jeetan PW-1, was the solitary eye-witness. The learned Trial Court has completely eschewed the deposition of Chander Shekhar PW-3.

28. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the courts are required to be kept in mind.

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of an injured witness is always of great value to the prosecution and it cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(d) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(e) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

29. Dealing with the first part of the submission urged by learned counsel for the appellant which was predicated upon an entry recorded in the PCR Form Ex.PW-16/A, contents whereof have been noted in foregoing paragraphs, suffice would it be to note that no evidence was led by the defence to establish that the said entry was recorded on the basis of the information given by Jeetan PW-1. No suggestion was given to Jeetan PW-1 that he gave a telephonic call to the police at number 100. It is an admitted fact that a crowd had

gathered at the spot by the time police had arrived. It is quite possible that the said entry was recorded on the basis of the information given by someone from the crowd.

30. Jeetan PW-1, in his deposition stated that the whereabouts of the appellant were not known to him. But from that statement the inference which is sought to be drawn and as urged by learned counsel for the appellant cannot be drawn. There is a world of a difference in saying that one cannot identify a person and that one does not know the whereabouts of a person. The deposition of Jeetan PW-1, that he does not know the whereabouts of the appellant means that Jeetan had no knowledge about the residential address, parentage, occupation etc of the appellant and not that he could not identify the appellant.

31. Dealing with the second part of the first submission of the learned counsel relating to the suggestion given to Chander Shekhar PW-3, on behalf of the prosecution, it would be apposite to note that it is a rule of prudence that courts should read testimonies of witnesses in a conjunctive manner and not disjunctively. It is impermissible to pick up stray statements made by a witness, delinking them from the testimony as a whole. Therefore, the context in which the afore-noted suggestion was given to the witness needs to be noted.

32. The case set up by the prosecution was that the accused persons were arrested; had disclosed about the commission of the offence and got recovered a knife in the presence of Chander Shekhar

PW-3. As per the prosecution, the statement Ex.PW-3/A of Chander Shekhar, noting the afore-noted facts was recorded during the investigation. One of the recording contained in the statement Ex.PW-3/A was that Chander Shekhar and Jeetan had come to know that Kallu (appellant) and his friend who had caused hurt to Jeetan with a knife and had caused death of the deceased with a knife on 01.04.97 have been sighted at a park in Janak Puri. However, Chander Shekhar PW-3, turned hostile at the trial and denied that the accused persons were arrested or had got recovered a knife in his presence. In such circumstances, the prosecutor had confronted PW-3 with the statement Ex.PW-3/A for the purposes of contradicting him.

33. Taking a holistic view of the matter, it is clear that the learned public prosecutor had sought to contradict the witness by suggesting to him that he and Jeetan had come to know that Kallu (appellant) and his friend who had caused hurt to Jeetan with a knife and had caused death of the deceased with a knife on 01.04.97 have been sighted at a park in Janak Puri; but unfortunately the learned public prosecutor could not correctly phrase the suggestion. Therefore, the knowledge contemplated in the afore-noted suggestion does not relate to identification of the accused persons but to the whereabouts of the accused persons after the incident.

34. Even pertaining to the second submission, the learned counsel for the appellant has yet again picked up one stray statement from the testimony of Jeetan PW-1, and has come to the conclusion that the statement Ex.PW-1/A was not recorded at the instance of Jeetan

and thus, is a false statement. The complete deposition, portion whereof has been picked by the counsel is being noted herein under:-

"My statement which was recorded in the hospital is Ex.PW-1/A. My statement was recorded only once. I cannot read my statement Ex.PW-1/A. Police had recorded this statement on its own and my signatures were obtained on the same." (Emphasis Supplied)

35. From the afore-noted deposition it is clear that Ex.PW-1/A is the statement of Jeetan PW-1, and was recorded by the police (SI Jagbir Singh PW-20) at the hospital. It is further clear that Jeetan PW-1, by deposing that '*Police had recorded this statement on its own and my signatures were obtained on the same*' has meant that Ex.PW-1/A was recorded by the police officer in his own handwriting.

36. The fact of the matter remains that the testimony of Jeetan stands corroborated by the testimony of Chander Shekhar PW-3.

37. Pertaining to the FIR Ex.PW-24/A, whether it was ante-timed; the most material witness in this regard is HC Dharampal PW-24. He was not subjected to any cross-examination by the accused persons. In such circumstances, when the deposition of Dharampal PW-24, has not been controverted; no grievance can be raised that the FIR Ex.PW-24/A was ante-timed.

38. The next submission can be simple answered by noting that there is no rule of law that if some accused are acquitted, evidence regarding others should automatically be discarded. What is required of the Court is to subject such evidence to very close scrutiny. In the

decision reported as Sat Kumar v. State of Haryana AIR 1974 SC 294

the Supreme Court held as under:-

“There is no rule of law that if the court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. It will, however, call for a closer scrutiny of the evidence and the court must feel assured that it is safe to rely upon the witness for the conviction of the remaining accused.”

39. So long as the evidence before the Court is not inextricably intertwined and the court can come to its own conclusion on the basis of the evidence against certain accused, it cannot be held that merely because some of the accused were acquitted, remaining cannot be convicted. In the decision reported as Amir Hussain v. State of U.P. AIR 1975 SC 2211 the Supreme Court held that acquittal of co-accused would not vitiate the conviction of another in case the evidence adduced against him is found to be satisfactory and convincing.

40. In the instant case, the evidence pertaining to the appellant and the co-accused stand on a different footing. While there was no positive evidence establishing the identity of co-accused as the person who had acted in concert with the appellant in commission with the crime, Jeetan PW-1 had categorically identified the appellant as the person who had quarreled with him prior to the incident and had committed the crime in question. Jeetan PW-1, was cross-examined at length but nothing tangible could be extracted

therefrom which could discredit his testimony. The deposition of Jeetan about the injuries sustained by him in the incident is fully corroborated by his MLC Ex.PW-21/A.

41. The question, whether a single blow was inflicted upon the deceased and whether therefrom it can be gathered that the appellant did not intend to cause his death, has to be considered with reference to the totality of the evidence on record. Section 301 of the Indian Penal Code has to be kept in mind and the doctrine of transferred malice and transmigration of motive has also to be kept in mind. It is settled law that where an act is committed intending to cause the death of a person but someone else is killed, the act would constitute culpable homicide amounting to murder. The testimony of PW-1 and PW-3 shows that PW-1 was the intending victim and the appellant first directed a blow towards the stomach of PW-1 who avoided the blow by turning and as a result the injury resulting on his buttock; PW-1 receiving another injury on the hand when he tried to save the second blow and thereupon the deceased, who was a friend of PW-1 intervening to save PW-1 and the appellant inflicting a knife blow on the chest of the victim. Intention to cause the death of PW-1 is clear. It was the good fortune of PW-1 that his friend intervened, but received the unfortunate stab wound. Under these circumstances it makes no difference that only a single stab blow was inflicted on the deceased.

42. To appreciate the last submission urged by the learned counsel, we have considered it relevant to briefly trace the legislative history

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of juvenile justice in India. Prior to the year 1986, there was no uniform legislation with regard to juvenile justice in the country since the subject-matter of the said legislation fell in the State List of the Constitution. The United Nations Standard Minimum Rules for Administration of Juvenile Justice, popularly known as Beijing Rules, enabled Parliament to exercise its powers under Article 253 of the Constitution read with Entry 14 of the Union List to make a law for administration of juvenile justice for the whole of India.

43. Pursuant to Beijing Rules, Juvenile Justice Act, 1986 (herein after referred to as the “1986 Act”) was enacted by the Parliament.

44. Sub-section (e) of Section 2 of 1986 Act defines 'delinquent juvenile' as under:-

“(e) "delinquent juvenile" means a juvenile who has been found to have committed an offence.”

45. Sub-section (h) of Section 2 of the 1986 Act defined "juvenile" as:

“(h) "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.”

46. On 1st April, 2001, the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the “2000 Act”) came on the Statute Book repealing the 1986 Act.

47. Sub-section (k) of Section 2 of the 2000 Act defines "juvenile" or "child" as under:

(k) "juvenile" or "child" means a person who has not completed eighteenth year of age.

48. Sub-section (l) of Section 2 of 2000 Act defines "juvenile in conflict with law" as under:

(l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence.

49. Section 20 of the 2000 Act reads as under:-

“Special provision in respect of pending cases:- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.”

50. Thus, the striking distinction between the 1986 Act and the 2000 Act is that under the 1986 Act, a juvenile meant a male juvenile who had not attained the age of 16 years and a female juvenile who had not attained the age of 18 years. In the 2000 Act, a juvenile, whether male or female, was one who had not attained the age of 18 years and thus, by 2000 Act, the distinction between a male and female juvenile which was found in the 1986 Act was obliterated.

51. Both the 1986 Act and the 2000 Act however remained silent on the date of reckoning juvenility and the question which engaged the attention of the Courts was: Whether the date of commission of the offence is to be considered the reckoning date for determining the age of the alleged offender as juvenile or the date when he is produced before the Court or the competent authority? The Supreme Court on this issue, expressed differing views in the decisions reported as Umesh Chandra v. State of Rajasthan AIR 1982 SC 1057 and Arnit Das v. State of Bihar AIR 2000 SC 2264. In Arnit Das's case (supra), a two-Judge Bench after noticing that, neither the definition of juvenile nor any other provision in the Act specifically provided for the date by reference to which the age of a boy or a girl has to be determined so as to find out whether he or she is a juvenile or not, opined that the date of the commission of the offence is irrelevant for finding out whether the person is a juvenile within the meaning of Clause (h) of Section 2 of the Act and went on to add that if that would have been the intendment of Parliament, nothing prevented it from saying so specifically. In Umesh Chandra's case (supra) a three-judge Bench with reference to Rajasthan Children Act, 1970 held that the relevant date for the applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the commission of the offence and not the date of the trial.

52. Having noticed the conflicting views in Arnit Das and Umesh Chandra's cases (supra), the matter was referred to the Constitution Bench which resolved the issue vide decision reported as Pratap

Singh v. State of Jharkhand AIR 2005 SC 2731. The Constitution Bench identified the following two questions which required an authoritative ruling:

“(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced before the court/competent authority.

(b) Whether the Act of 2000 will be applicable to the case where the proceeding is initiated under the 1986 Act and pending when the 2000 Act was enforced with effect from 1-4-2001.”

53. On the first question, overruling Arnit Das's case (supra) and upholding its earlier decision in Umesh Chandra's case (supra), the majority judgment in Pratap Singh's case (supra) resolved the aspect of relevant date of juvenility as follows:

“Therefore, Section 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.”

54. On the second question, viz., whether the Act of 2000 will be applicable to the case where the proceeding is initiated under the 1986 Act and pending when the 2000 Act was enforced, with effect from 01.04.2001, the Court held:

“The provisions of the 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1-4-2001.”

55. Thus, Pratap Singh's case (supra) underscores two essential conditions for invoking the provisions of the 2000 Act namely:-

- (i) On the date of the coming into force of the Act the proceedings against the juvenile must be pending before any Court, and
- (ii) On 1-4-2001, the juvenile must be below 18 years of age.

56. Post Pratap Singh's case (supra), another significant development took place, viz. the coming into force of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (hereinafter referred to as the "2006 Act") which made significant changes in the 2000 Act.

57. Sub-section (l) of Section 2 of 2006 Act defines "juvenile in conflict with law" as under:

"(l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence."

58. Section 7A of 2006 Act reads as under:-

"Procedure to be followed when claim of juvenility is raised before any court:- (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there under, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

59. Section 14 of 2006 Act reads as under:-

“Amendment of section 20.- In section 20 of the principal Act, the following proviso and Explanation shall be inserted, namely: Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation. In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (I) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

60. Therefore, from the afore-noted provisions of the 2006 Act, it is clear that the legislature affixed the seal of approval on the judgment in Pratap Singh's case (supra) insofar it held that the relevant date for reckoning juvenility of an accused person would be the date of the commission of the offence. However, it differed with the other view taken by the court that an accused person must be below 18 years of age on 01.04.01; evidenced by the stipulation that the accused must

be below 18 years for age as on the date of the commencement of the 2000 Act.

61. The situation post enactment of 2006 Act was noticed by a Division Bench of this court in the decision reported as Ravinder Kumar @ Ravi v State 143 (2007) DLT 775 (DB) wherein it was held that the law laid down in Pratap Singh's case (supra) that the 2000 Act would be applicable to a pending proceeding only when the accused who claims to be a juvenile is below 18 years of age as on the commencement of the 2000 Act no longer holds the field in view of the enactment of 2006 Act. Similar view was taken by Bombay High Court in the decision reported as Imtiyaz Hussain Mumtiyaz Sheikh v State of Maharashtra (2008) 110 Bom LR 1645.

62. As already noted herein above, the other condition prescribed in Pratap Singh's case (supra) for the applicability of 2000 Act in respect of an accused who claims himself to be a juvenile is that the proceeding in respect of said accused must have been pending before any court or authority on the date of the commencement of 2000 Act. The question which arises is whether the said condition is also nullified with the enactment of 2006 Act.

63. The answer to the afore-noted question lies in Section 14 of the 2006 Act. After the enactment of 2006 Act, Section 20 of the 2000 Act reads as under:-

“Special provision in respect of pending cases:-
Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had

not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

Explanation- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (I) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”(Emphasis Supplied)

64. The answer to the afore-noted question is that the said condition has not been nullified but on the contrary affirmed by the enactment of 2006 Act. The afore-noted Explanation clause of Section 14 of the 2006 Act makes it crystal clear that a criminal proceeding against an accused person who claims to be a juvenile must have been pending on the date of the commencement of 2000 Act i.e.01.04.2001 in order to avail benefit of the 2000 Act.

65. In the instant case, the judgment was delivered by the learned Trial Court on 15.02.2001. No other criminal proceeding emanating out of the trial of the appellant was pending on 01.04.2001.

66. Therefore, in view of above noted discussion and the fact that no criminal proceeding was pending against the appellant on the date of the commencement of 2000 Act, it is hereby held that the appellant cannot avail the benefit of the 2000 Act.

67. We find no merit in the appeal.

68. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 26, 2009
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