

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

% Date of Judgment: 18th August, 2009.

+ **CRL.A.371/2001**

RAM KISHAN ...Appellant
Through: Dr. L.S.Chaudhary, Advocate/ Amicus
Curiae

Versus

STATE ...Respondent
Through: Ms. Richa Kapoor, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (ORAL)

1. Vide impugned judgment and order dated 20.4.2001, the appellant has been convicted for the offence punishable under Sections 302/325/34 IPC.

2. Vide order dated 28.4.2001, the appellant has been sentenced to undergo imprisonment for life for the offence of murder. Fine in sum of Rs.1000/- has also been imposed. In default of payment of fine, it has been directed that the appellant

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shall undergo R.I. for 15 days. The appellant has also been sentenced to undergo R.I. for one year and to pay a fine in sum of Rs.1000/-; in default of payment of fine to undergo R.I. for 15 days in respect of the conviction for the offence punishable under Section 325/34 IPC.

3. We may note that there were six accused sent to trial. Two of the six accused have been acquitted. Three accused namely Ramesh, Suresh and Kishan have been convicted for the offence punishable under Section 325/34 IPC. It appears that the said three accused had already been undergone the sentence imposed upon them and hence have not preferred any appeal challenging the order of conviction or the order of sentence.

4. Appellant Ram Kishan is the sole accused who has filed an appeal challenging the judgment and order of conviction and the order imposing sentence.

5. It may be noted at the outset that the appellant has been convicted for having murdered Jagdish. He has been convicted for the offence punishable under Section 325/34 IPC on account of a finding returned that the appellant and three other co-accused, namely, Ramesh, Suresh and Kishan inflicted lathi blows on Jagjit. Needless to state, the sentences imposed upon the appellant have been directed to run concurrently.

6. The post mortem report Ex.PW2/A evidences that the deceased Jagdish was inflicted only one blow with a lathi. The blow was directed towards the left temporal region. Unfortunately, the blow resulted in the fracture of the left parietal and the temporal bones. Consequent effect thereof was oedema of the brain.

7. The incident took place on 9.1.1991 in the evening at around 6.30 PM. The deceased died on 18.1.1991 at around 2.05 PM. Thus, an important fact may be noted at the outset, that the deceased died on the 9th day of having received the injury in question.

8. Jagjit Singh, the person who had also received lathi blows and in respect whereof the appellant and three co-accused, namely, Ramesh, Suresh and Kishan have been convicted for the offence punishable under Section 325/34 IPC, deposed as PW-6. As per his testimony, at 6 AM on 9.1.1991, a minor verbal dual had taken place between the appellant and deceased Jagdish. The verbal dual took place when the appellant pulled an iron pipe from the roof of the shop of Jagdish. Jagdish objected to the iron pipe being pulled out. Appellant stated that he was merely borrowing the iron pipe to break a twig from a tree to be used as a 'datun'. With the intervention of neighbours, the matter was sorted out in the morning. On the same day i.e. 9.1.1991 at about 6 PM or 6.30 PM, the appellant along with Ramesh, Suresh and Kishan armed

with lathis, came. Appellant inflicted a lathi blow on the head of Jagdish. The other three co-accused also started inflicting lathi blows on the deceased and himself i.e. Jagjit Singh. People gathered. He i.e. Jagjit and the deceased were taken to DDU hospital. His brother was shifted to Willington Hospital where he died.

9. It may be noted at the outset that when confronted with his statement Ex.PW-6/1 recorded by the police, Jagjit admitted that it did not find mention therein that an altercation had taken place in the morning, but clarified that he had told the Investigating Officer of the same.

10. Eschewing reference to the lengthy cross-examination of PW-6, suffice it would be to note that on one aspect of the matter PW-6 has given an exaggerated version. The same is evidenced by the post mortem report as also the MLC of the deceased, which records a solitary injury on the left parietal region. No other injury on any other part of the body stands recorded in the two documents. Thus, the testimony of Jagjit that after assaulting his brother on the head, all accused inflicted further lathi blows on the person of the deceased is incorrect.

11. The learned Trial Judge has convicted the appellant for the offence of murder by relying upon the decision of the Supreme Court in the decision reported as Virsa Singh vs. State of Punjab AIR

1958 SC 465. Discussing the contention urged on behalf of the appellant that the deceased died on the 9th day of the incident and that a solitary blow with a lathi being inflicted on the left parietal region of the skull cannot make out a case of commission of an offence punishable under Section 302 IPC; with reference to the decision in Virsa Singh's case (supra), learned Trial Judge has held that said decision shows that a single fatal blow can well attract the offence of murder. The learned Trial Judge has held that if a vital part of the body is the target of the attack, the same would show the intention to cause an injury on the vital part of the body. It has been held that if the injury is opined to be sufficient in the ordinary course of nature to cause death, the act committed would attract the penalty under Section 302 IPC.

12. The learned Trial Judge is partly correct and partly wrong. The partly correct part of the decision of the learned Trial Judge is where it has been held that the body part which is targeted by the act would be a relevant fact to be taken note of. The partly wrong part of the decision of the learned Trial Judge is in not proceeding further to consider another very important facet; namely, whether the blow was struck with sufficient force to cause the kind of the injury actually found to have been inflicted. In para 13 of the decision in Virsa Singh's case (supra) the twin element of

the strike being directed at a vital or a dangerous spot and the ferocity of the strike was so stated:

“13.In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquiry into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.”

13. It may be noted that in Virsa Singh's case (supra), weapon of offence was a spear. The blow was directed at the abdomen. The ferocity of the blow was such that the spear pierced the whole thickness of the abdominal wall. The small intestines were pierced and three coils of intestines were coming out of the wound. The assault took place at 8 PM on 13.7.1955. The deceased died the next day at about 5 PM.

14. It is apparent that the nature of the weapon of offence i.e. a spear, the vital part of the body which was the target of the attack and the sufficiency of the force with which the blow was directed were taken note of by the court. The deceased having died

in less than 24 hours of the assault was an additional circumstance taken note of.

15. In the instant case, the weapon used is a lathi. It is a common object found in houses in India, unlike a spear which by its very nature is a weapon of offence. A lathi is not inherently a weapon of offence. No doubt, the blow has been directed towards the skull of the deceased but the ferocity of the blow is not of an extreme violent nature wherefrom the intention to cause the specific injury to the brain can be ascertained with near certainty.

16. We take guidance from a few decisions of the Supreme Court where the weapon of offence was a stick or an object akin to a stick, for example, a gandasi, spade or a dhariya (scythe). In the decision reported as Thangaiya vs. State of Tamil Nadu 2005 (9) SCC 650, the weapon of offence was a stick. The injury was a four inch wound over the right parietal skull. The opinion of the doctor was that the injury was sufficient in the ordinary course of nature to cause death. Sentence imposed by the High Court for the offence punishable under Section 302 IPC was altered to an offence punishable under Section 304 Part I IPC. Sentence imposed was 10 years rigorous imprisonment.

17. In the decision reported as Sunder Lal vs. State of Rajasthan 2007 (6) scale 649, the weapon of offence was a gandasi and a lathi. Number of accused were two. One blow was directed

on the head with the gandasi. There were several other injuries on the hands and legs caused by the gandasi and the lathi. Conviction sustained by the High Court for the offence punishable under Section 302 IPC was altered to a conviction under Section 304 Part I IPC. Sentence imposed was rigorous imprisonment for 10 years.

18. In the decision reported as Kesar Singh and Another vs. State of Haryana JT 2008 (5) SC 407, the weapon of offence was a spade. A single blow was directed on the head from the blunt side of the spade. Sentence imposed by the High Court for the offence punishable under Section 304 Part II IPC was altered, for an offence punishable under Section 304 Part I IPC. We may note that in Kesar Singh's case (supra) the blow was inflicted upon a sudden fight.

19. In the decision reported as Thakard A. Lalaji Gamaji vs. State of Gujrat AIR 1974 SC 1351, the weapon of offence was a dhariya (scythe) two blows, one on the head directed towards the left temporal region of the skull and the other on the arm was held attracting an offence punishable under Section 304 Part I IPC and not Section 302 IPC.

20. Reverting to the fact of the instant case, it is important to note that the appellant inflicted only one blow with a lathi on the deceased. The blow fell on the head of the deceased. Two bones of the skull got fractured. The intensity of the blow is not of the kind where blow can be classified as a ferocious blow. We say so for the

reason that the deceased died after nine days. It was not a case where the brain matter came oozing out of the skull as a result of the blow. Under the circumstances, it cannot be said that the appellant has committed an offence punishable under Section 302 IPC.

21. We dispose of the appeal partially allowing the same. Conviction of the appellant for the offence punishable under Section 302 IPC is modified. In that, pertaining to the death of Jagdish, the appellant is convicted for the offence punishable under Section 304 Part I IPC. We maintain the conviction of the appellant for the offence punishable under Section 325/34 IPC.

22. For the offence punishable under Section 304 Part I IPC, we direct the appellant to undergo rigorous imprisonment for ten years. Needless to state, both sentences imposed upon the appellant shall run concurrently.

23. The appellant shall be entitled to the benefit of Section 428 Cr.PC.

24. The appellant has been admitted to bail vide order dated 19.12.2006. The nominal roll of the appellant shows that as of 11.12.2006 the appellant had undergone an actual sentence of five years, six months and twelve days. The appellant had earned remissions for a period of one year, seven months and three days. It is apparent that the appellant has to undergo further sentence.

Thus, we cancel the bail bond and the surety bond furnished by the appellant who shall surrender to undergo the remaining sentence.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

August 18, 2009
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