

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

% *Date of Decision: 18<sup>th</sup> September, 2009*

+ **CRL.A. 386/2001**

RATAN @ RATANIA ..... Appellant  
Through: Mr.S.D.S.Rathore, Advocate for  
Mr.M.P.Singh, Advocate.

versus

STATE ..... Respondent  
Through: Mr.Pawan Sharma, A.P.P.

**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? Yes
3. Whether the judgment should be reported in the Digest? Yes

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

1. The appeal has reached for hearing on 20.8.2009. Neither appellant nor his counsel appeared on said date and thus, Court notice was issued to the appellant as also his counsel.
2. The Court notice issued to the appellant has been returned unserved with the report that the appellant is no longer residing at the given address. Mr.M.P.Singh, Advocate for the appellant was served.
3. Mr.S.D.S.Rathore appears for the appellant.

4. We note that Mr.S.D.S.Rathore and Mr.M.P.Singh, Advocate have jointly signed the petition seeking suspension of sentence filed by the appellant and Mr.S.D.S.Rathore, Advocate is a signatory to the application seeking suspension of sentence. Mr.S.D.S.Rathore states that even he was engaged as counsel for the appellant along with Mr.M.P.Singh.

5. Learned counsel prays for an adjournment stating that he needs time to prepare the brief.

6. We note that Mr.M.P.Singh, Advocate was served on 28.8.2009. Thus, Mr.M.P.Singh, Advocate and his associate Mr.S.D.S.Rathore had sufficient notice that the appeal would be taken up for hearing today.

7. We decline the request for adjournment. Our reason is that in nine out of ten appeals counsel for the appellants are not appearing. We are being compelled to issue notices to the appellants and their counsel. The movement of the Board gets choked due to the non-cooperative attitude of learned counsel.

8. As in the instant case, we are ensuring that learned counsel for the appellant are served well in time giving them at least two weeks to prepare the matter. In the instant case, learned counsel was served on 28.8.2009. More than two weeks prior notice was given to the counsel that the appeal would be taken up for hearing today.

9. Thus, we proceed to consider the record with the assistance of learned counsel for the State.

10. When we proceeded, Mr.S.D.S.Rathore, Advocate stated that even he would render assistance to the Court.

11. We have heard learned counsel for the parties and have gone through the record of the learned Trial Judge.

12. The appellant has been convicted for the offence of murdering Chagan Lal who was seriously/grievously injured on the intervening night of 4<sup>th</sup> and 5<sup>th</sup> May 1997 at DDU Hospital. The post-mortem report Ex.PW-14/A shows three stab wounds on the infrascapular region, posterior axillary region and over back mid chest. Internal damaged caused was to the left lung which was cut into multiple pieces. Cause of death was the injury to the left lung. We note that the MLC has been proved through testimony of Dr.Komal Singh PW-14.

13. Chagan Lal was admitted in an injured condition at DDU Hospital on 4.5.1997 at 11:30 in the night by his brother Narain PW-1. He was given medical aid at the hospital by Dr.Mukesh Aggarwal PW-9 who proved the MLC Ex.PW-7/A of Chagan Lal. The MLC also records three stab injuries. Dr.Mukesh Aggarwal deposed that the patient was bleeding heavily and approximately 2.5 litres of blood was removed through a chest tube and equivalent quantity of blood was transfused into the patient but the patient could not be saved.

He deposed that he conducted the surgery on the injured and on exploration of the wound found glass pieces inside.

14. It is thus not in dispute that Chagan Lal died when his body was pierced with glass and the glass broke inside causing multiple cuts to the left lung.

15. There are four eye-witnesses, namely, PW-1 to PW-4.

16. The FIR has been registered pursuant to the statement Ex.PW-1/A of Narain PW-1. The endorsement Ex.PW-23/A shows that the rukka was dispatched from the hospital at 1:15 AM.

17. The crime was committed at 10:30 PM. Chagan Lal was admitted at the hospital at 11:30 PM as recorded in Chagan Lal's MLC.

18. So soon after the crime has Narain PW-1 made his statement Ex.PW-1/A that there is hardly any scope for false implication.

19. Be that as it may, Narain PW-1, Prahlad PW-2, Laxmi PW-3 who is the wife of the deceased and Man Singh PW-4 have deposed against the appellant.

20. Through their testimony motive for the crime which has emerged is that the deceased was instrumental in a panchayati decision resulting in the daughter of the accused being separated from her husband.

21. From the testimony of PW-1 to PW-4 it is apparent that the witnesses and the accused are tribal nomads and had moved from Rajasthan to Delhi. They had set up their camp at Barar Square. About 10 – 12 tents were pitched by the members of the community. At 10:30 PM on 4.5.1997 the accused stabbed the deceased.

22. The witnesses have spoken in unison that without any provocation the appellant stabbed the deceased with a broken glass.

23. The only variation is; whereas Narain PW-1 stated that the deceased was stabbed in the 'daira' (tent) of the accused, the other witnesses have clearly deposed that the accused stabbed the deceased on the open space outside his daira. Clutching on to the said discrepancy, learned counsel for the appellant states that the scene of crime is unascertainable as one prosecution witness claims the same to be inside the tent and the others claim the scene of the crime to be the open space outside the tent.

24. Learned counsel for the appellant is clutching to straws evidenced by the fact that all witnesses of the prosecution are illiterate; evidenced by the fact that PW-1, PW-3 and PW-4 cannot even sign. PW-4 can barely manage to write. His signatures on his testimony are evidence of the said fact. Even a child of Class-I can write better.

25. The place of incident described by PW-1 may be noted in the language of PW-1. He stated:-

“From the spot of the incident the daira of Chagan Lal was at a distance of 40 steps. The daira of accused Ratan was at a distance of about 20 yards from the spot of incident. It is incorrect to suggest that the incident did not take place at the daira of accused Ratan. Rather it took place at the daira of Ratan Singh.”

26. These are his words when he was cross-examined. In his examination-in-chief he deposed that the deceased was killed in the daira of the accused.

27. It is apparent that PW-1 was a little confused whether to describe the place of incident as near the daira of Chagan Lal or near the daira of Ratan. He thought it prudent to say that the incident took place in the daira of Ratan. The poor fellow did not understand the different between ‘near’ and ‘in’.

28. The rough site plan Ex.PW-23/B prepared by the investigating officer shows that the crime was committed not inside the tent (daira) but in the open space in the front of the daira of the accused. The recovery memo Ex.PW-1/B shows that the chappal of the deceased was lifted from the spot mark ‘C’ in the site plan Ex.PW-23/B. The site plan shows that spot ‘B’ where the deceased was attacked is also in the open area in front of the tents which were pitched by the nomads.

29. No other point has been urged by learned counsel for the appellant.

30. Notwithstanding that learned counsel for the appellant had urged no other point, we have still, on our own, with the assistance of learned counsel for the appellant and the State gone through the record.

31. The record shows that the deceased was admitted at DDU Hospital by PW-1. In the MLC of the deceased it has been written that the deceased has been brought to the hospital by his brother Narain. The MLC has been prepared at 11:30 PM. Simultaneously, a corresponding DD Entry No.29A Ex.PW-18/A stands recorded at the police station since the duty constable at the DDU Hospital gave information at the police station that a person seriously injured was admitted at the hospital.

32. The statement Ex.PW-1/A of Narain has been dispatched from the hospital at 1:30 PM for FIR to be registered.

33. Notwithstanding that PW-1, PW-2, PW-3 and PW-4 are related to the deceased, we see no reason to disbelieve their testimony as they are natural witnesses. Their presence in the camp where the nomads had pitched their tents is natural at 11:30 PM in the night.

34. Motive for the crime has also been established through their testimony.

35. There are no blemishes, improvements or contradictions in the testimony of the four witnesses.

36. The only point which needs further consideration is, whether the act of the accused is an offence punishable under Section 302 IPC or Section 304 Part-I IPC.

37. Unfortunately, the thickness of the glass piece used by the appellant for the assault cannot be ascertained by us for the reason most of it broke inside the body of the deceased and pieces which were recovered during operation could not throw light on the thickness of the glass. But, one fact can be inferred; being that, the glass was fairly thick. We say so for the reason the glass has pierced through the muscle tissue and has penetrated the left lung. After entering the lung the glass broke resulting in the lung receiving multiple cuts.

38. The ferocity and intensity of the blow can be ascertained from the fact that the glass piece, which is not as sharp as a knife, could cut so deep.

39. The testimony of Narain PW-1 shows that the accused wrapped cloth on the piece of glass. This shows that the appellant had taken a conscious and intentional decision to cause a grievous injury. Why had he wrapped cloth on the piece of glass? Obviously, he was aware that if he caught the

glass piece with his bare hand, he ran the risk of cutting his hand. The appellant was aware that to strike a ferocious blow he needed to wrap cloth around the glass piece. It evidences his intention to cause a grievous injury.

40. Noting the injuries caused on the deceased and the testimony of the doctor who operated upon the deceased but could not manage to save him as also the post-mortem report, we hold that the learned Trial Judge has rightly convicted the appellant for the offence of murder.

41. The appeal is dismissed.

42. Since the appellant is on bail, we cancel the bail bond and the surety bonds furnished by the appellant and direct the appellant to surrender and suffer the remaining sentence.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(INDERMEET KAUR)**  
**JUDGE**

**September 18, 2009**  
Dharmender