

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

% *Judgment Reserved on: 24th August, 2009*
Judgment Delivered on: 27th August, 2009

+ **CRL.A.392/2001**

GORE LAL Appellant
Through: Mr.Sumeet Verma, Adv.

versus

STATE Respondent
Through: Mr. Pawan Sharma, 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? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Vide impugned judgment and order dated 3.8.1996, accused Gore Lal had been convicted for having committed murder of Lakhan. He had been sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-; in default of payment of fine to undergo R.I. for six months. The other co-accused had been acquitted for lack of sufficient evidence against them.

2. This incident is dated 26.4.1991. The version of the prosecution has been unfolded in the statement Ex.PW-2/A of the
Crl. A. No.392/2001

complainant Halki Bai which had subsequently formed the basis of the FIR. As per her version, at about 7.30 PM her husband Lakhan was lying on a cot in the lane outside their jhuggi and in front of Shiv Mandir. She was present in the gali out side. Co-accused Kamta Prasad accosted her husband as to why he had spread his cot in the public lane. Her husband, Lakhan got annoyed and told him he would spread his cot wherever he wanted to, pursuant to which abuses were exchanged between the two. Thereafter co-accused Kallu, Mattu and present appellant Gore Lal also reached the spot and asked Lakhan to remove his cot from the public lane upon which Lakhan refused. Kamta Prasad exhorted his companions by shouting 'Mar Sale Ko'; co-accused Kallu and Mattu pinned down Lakhan and Gore Lal gave him repeated knife blows; thereafter all the aforesaid persons fled away.

3. On this fateful day, Const.Joginder Singh, PW-8 was on patrolling duty as a beat constable, in the aforestated area i.e. Khanna Market, Lodhi Colony, New Delhi. He reached near the place of quarrel; matter was reported by him on telephone vide DD No.17-A Ex.PW-1/F to the local police station. This D.D. was marked to SI Ram Niwas PW-18 who along with Const.Duli Chand PW-16 and Const.Raj Kapoor PW-11 reached near the Shiv Mandir, Indira Gandhi Camp, Lodhi Colony behind Khanna Market. A dead body identified as that of Lakhan was found lying on the spot. His wife

Halki Bai PW-2 was found weeping. Her statement Ex.PW-2/A was recorded upon which the endorsement Ex.PW-18/A was made and thereafter the rukka was sent pursuant to which the formal FIR Ex.PW-5/D was registered by HC Mahinder Singh PW-5.

4. Another eye-witness Baldev PW-3, the brother of the deceased, had also been examined by the Investigating Officer and he has corroborated the version as given by PW-2.

5. Crime team and the dog squad were summoned. The scene of occurrence was photographed by Const. Sunder Singh PW-13 and seven photographs Ex.PW-13/P1 to Ex.PW-13/P7 were taken; the negatives of which are Ex.PW-13/P8 to Ex.PW-13/P14. Const. Rajender Singh PW-14 had also taken four photographs Ex.PW-14/A to Ex.PW-14/D and negatives have been proved as Ex.PW-14/E to Ex.PW-14/H. Rough site plan Ex.PW-18/C was prepared by the Investigating Officer and thereafter the site plan to scale Ex.PW-9/A was prepared by Insp.Devender Singh PW-9. The exhibits which included blood stains from the spot as also a pair of chappals were seized.

6. On 27.4.1991 at the pointing out of Baldev, the accused Gore Lal was arrested vide memo Ex.PW-4/A and his disclosure statement Ex.PW3/C was recorded. He thereafter got a knife Ex.P-9 recovered from the bushes which was seized vide memo Ex.PW3/D i.e. the alleged weapon of offence. Blood stained shirt of Gore Lal

was also taken into possession vide memo Ex.PW-4/E. The CFSL vide its report Ex.PW-18/E and Ex.PW-18/G opined that the shirt was stained with blood group B which was the blood group of the deceased. No reaction on the blood stained knife could, however, be obtained.

7. The post-mortem on the deceased was conducted on the following day i.e. 28.4.1991 by Dr.D.N.Bhardwaj PW-1 vide his report Ex.PW-1/A, who had noted the following injuries:

“1. Stab wound was present on left side of chest placed obliquely situated 8 c.m. below left nipple and 10 c.m. left the mid line. Size of wound was 2 c.m. x 0.5 c.m. x chest cavity D. Margines were clean cut gapping was present and the wound was going medially upwards and backwards and on dysection intercostel muscles were cut obliquely there was cut in the pericardium and puncturing at its apex. In the heart dimensions of the wound were 1.5 c.m.s into 0.25 c.m. x deep in the heart cavity. Hemo paricarian was present total depth of the wound were seven c.m. and the wound was situated in the fifth intercostel space.

2. Stab wound was present on left side of chest placed obliquely situated 15 c.m. below interior axillary fold and 17 c.m. left from mid line. Size of wound was 2.2 c.m. into 0.5 c.m.x chest cavity deep. The wound was in the 10th intercostel space. Margins were clean cut gapping was present. The wound was going medially backward and upward cutting intercostel mussels obliquely and piercing spleen on its lateral aspect. Size of cut in the spleen was 1.5 c.m. x 0.2 c.m. x 1 c.m. and total depth of this wound was 7.5 c.m. Both these injuries were ante mortem in nature and fresh before death. In the chest about two

litres of blood was present which was semi coagulated in the peritorial cavity about one litre of semi coagulated blood was present. The cause of death in my opinion was haemohrragic shock following above mentioned ante mortem injuries.”

8. He had opined that both the injuries individually as well as collectively are sufficient to cause death; vide his subsequent opinion dated 29.7.1991 Ex.PW-1/B he, after examination of the knife had opined that this could be the weapon of offence. In the opinion Ex.PW-1/B, the sketch of the knife with reference whereto the opinion was given has been drawn. The sketch shows that the knife has a blade of 9.3 cms i.e. is less than 4 inches long. It is apparent that the knife is an ordinary pocket/pen knife.

9. The learned Trial Judge had convicted the accused by placing reliance upon the versions of the eye-witnesses PW-2 and PW-3. The recovery of the blood stained knife by the appellant pursuant to his disclosure statement was the additional incriminating circumstance. There being no sufficient evidence against any other co-accused, they stood acquitted.

10. On behalf of the appellant it has been argued that the testimony of the eye-witnesses is clearly suspect. There are inherent contradictions in the version of Halki Bai, PW-2, qua her first version before the Investigating Officer; she has specifically been confronted with her statement made to the police Ex.PW-2/A and she had denied that she was present in the gali outside her

house at the time of the incident. She had also denied that co-accused Kamta Prasad had a verbal duel with her deceased husband Gore Lal or that any argument had ensued thereafter on the placement of the cot; no role had also been attributed by PW-2 to the other co-accused which had found mention in her statement before the Investigating Officer. It is stated that these are material omissions which have been made by PW-2 in her version on oath in court which discredit and shake her testimony. Attention has also been drawn to the version of Pw-3 Baldev, the other eye-witness. It is argued that this witness had also been declared hostile by learned Additional Public Prosecutor and permission had been granted by the court to cross examine him. He had also not attributed any role to the co-accused; it is argued that this appears to be a clear case where both PW-2 and PW-3 who are the wife and the brother of the deceased are hell-bent to secure a conviction against Gore Lal for some enmity or ulterior motive and they have given a clean chit to the other companions of Gore Lal. These versions of PW-2 and PW-3 are irreconcilable and no reliance can be placed upon their testimonies. The recovery of the weapon of offence is also demolished in view of the fact that this had been recovered from an open place near the bushes which is a area accessible to the public at large; it is not the case of the prosecution that the weapon of offence has any special mark of identification

which could be associated with accused alone. For all the aforesaid reasons benefit of doubt has to be given in favour of the accused.

11. We have perused the record and we have noted the submissions.

12. This is an eye-witness account. The court has to carefully scrutinize the versions of PW-2 and PW-3 to draw a conclusion as to whether their testimonies are trustworthy and reliable enough to sustain the conviction of the accused.

13. Halki Bai has come into the witness box as PW-2. She had deposed that on the fateful day i.e. 26th of the month, her husband Lakhan was sitting on a cot; Shiv Mandir is at a short distance from their house and in between there is another jhuggi; she heard noise and came out; it was about 7 O'clock; she saw police outside her house; accused Gore Lal had stabbed her husband and blood was coming out of his stab wounds; on seeing the injuries she fainted. She was permitted to be cross-examined by the learned APP. Learned Trial Judge had noted that the witness is illiterate. In her cross-examination she had admitted that her husband was lying on a cot near the Shiv Mandir. She had reiterated that Gore Lal had attacked her husband with knife many times and she saw Gore Lal running away after stabbing her husband; her husband had bled profusely after he received injury

and he collapsed there. She stated that she does not remember if her brother-in-law Baldev saw the incident or not. She has further denied that she had told the police that she was sitting in the gali outside at the time when the incident had occurred; she had also denied that Kamta Prasad had asked her husband as to why he had spread his cot on the public lane, pursuant to which a verbal argument had taken place between the two. She had also denied that she had in her earlier version to the Investigating Officer stated that Kallu and Mattu had pinned down her husband and thereupon the accused Gore Lal had attacked him with a knife; she also denied that Kamta Prasad had exhorted his companions by shouting 'Mar Sale Ko'.

14. These are the omissions which have been highlighted by the learned defence counsel which did not find mention while she was deposing in court but had been stated by Halki Bai in her statement to the Investigating Officer.

15. Baldev PW-3 is the brother of the deceased Lakhan. He deposed that on 26.4.1991 at about 7.30 PM he was present near the place of occurrence and his deceased brother was sitting on a cot near the temple; Gore Lal stabbed him repeatedly 5-7 times with a knife; the wife of his brother Lakhan was busy in looking after her child who had just defecated; no one else was present there; after stabbing Gore Lal fled away from the scene. Next day he was

arrested; the other co-accused were also arrested. He has further deposed that Gore Lal had also produced the weapon of offence and had got it recovered from the bushes near the railway station which is close to Karbala. He was also permitted to be cross-examined by the learned prosecutor as he was resiling from his earlier version given to the Investigating Officer. In his cross-examination by the prosecutor he has stated that his brother was sitting on a cot; Kamta Prasad came in a drunken stage and asked him to remove the cot pursuant to which abuses were exchanged between them. He had admitted that Kallu, Gore Lal and Mattu also came there. Gore Lal stabbed his brother; he fled away from the scene; he did not see the other accused persons. He stated that he does not remember if the shirt of Gore Lal was blood stained or not. In his cross-examination by the defense counsel, he stated that Gore Lal had given the knife to the police in the police station. This witness had also ascribed no role to the other co-accused.

16. The court has to examine the aforestated versions i.e. the versions of PW-2 and PW-3 to decide the submission of the learned defence counsel as to whether they are so irreconcilable that they cannot pass the test of credibility and hence these versions have to be discarded.

17. While scrutinizing these versions, we have to keep in mind that both the aforesaid witnesses are rural witnesses who are

illiterate village rustics and this has also been so observed by the presiding officer while recording the version of PW-2. We have also to bear in mind that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of their testimony, provided there is the impress of truth and conformity to probability in the substantial fabric of the testimony delivered. In its decision dated 29.5.2009 disposing of 3 criminal appeals, lead matter being Crl.A.No.327/2007 Akbar & Anr. Vs. State, with reference to the decisions of the Supreme Court reported as Tahsildar Singh Vs. State of UP AIR 1959 SC 1012, Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat AIR 1983 SC 753 & Leela Ram Vs. State of Haryana AIR 1997 SC 3717, 13 principles to be followed while evaluating evidence of eye witnesses were culled out being:-

I While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the

evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence.

IV Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two

witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

18. PW-2 has categorically ascribed a specific role to Gore Lal i.e. act of stabbing Lakhan repeatedly with a knife. As per her version, when she came out of the jhuggi, she saw Gore Lal stabbing her husband and he gave him repeated knife blows, pursuant to which he started bleeding profusely and he collapsed

there and then. She fainted. It is for this reason that she could not make a categorical assertion as to whether her brother-in-law Baldev had witnessed the incident or not. In our view, she is not a tutored witness who has made a parrot-like recitation toeing the line of the prosecution to secure a conviction qua the accused. She has with clarity stated that because she fainted she cannot say as to whether Baldev had witnessed the incident or not and this is reiterated in her cross-examination wherein she has admitted that she saw Baldev when she regained her consciousness. She had not witnessed the earlier altercation i.e. verbal abuse between Kamta Prasad and her deceased husband about the shifting of the cot from the lane and this finds corroboration from the testimony of PW-3 who has stated that at that time his bhabhi i.e. PW-2 was busy with her child who had just defecated.

19. PW-2 appears to be a trustworthy witness and the omission with regard to this first part of the incident i.e. the argument between Kamta Prasad and Lakhan not going to the core of the incident; the fact in issue being as to who had stabbed Lakhan; which fact has been reiterated by PW-2 in her lengthy cross-examination that it was Gore Lal who had given knife blows to her husband. Even otherwise, there could seldom be a case in which some inaccuracies which are not of a serious nature do not appear but they would not affect the genesis of the prosecution

case. PW-2 had also not ascribed any specific role to the co-accused; so also is the version of PW-3 which had led to the acquittal of the other co-accused.

20. Version of PW-3 is categorical that a verbal altercation had taken place between his brother and Kamta Prasad about the spreading of the cot in the service lane near the temple; Gore Lal had stabbed his brother 5-7 times. Gore Lal is known to him.

21. No suggestion has been given to either of the two eye-witnesses i.e. either PW-2 and PW-3 that they have deposed falsely for any ulterior reason or purpose or that they have any specific enmity qua Gore Lal for which they have falsely implicated him.

22. We have to bear in mind that eye-witnesses to a incident may not react uniformly and reaction of each individual may be different. PW-2 had fainted when she saw the stab injury on her husband. She regained her consciousness in intermittent stages; that was the reason why she could not state whether her brother-in-law Baldev had witnessed the incident or not. PW-3 was more composed. PW-2 has further stated that there were many stab injuries which were given by the accused; PW-3 has given the number as 5-7. Both these eye-witnesses i.e. PW-2 and PW-3 had been examined and cross-examined at length and there are bound to be some discrepancies; these discrepancies, in our view, which have been pointed out are however not so incompatible which can

lead the court to draw a conclusion that their versions must be discarded; they are minor discrepancies on trivial matters which have not touched the core of the case. Both PW-2 and PW-3 have categorized the role of the accused Gore Lal as the offender who had inflicted the stab injuries on the victim. We also have to keep in mind that these witnesses are rustic villagers and while scrutinizing their testimonies, the intelligence power, observation as also the retentive memory of the witness has to be kept in mind. Testimony has to be read in its entirety to decide whether it has a ring of truth nor not.

23. In our view, both the witnesses have pass the test of reliability and their versions are natural, probable, coherent and cogent.

24. We have chosen to ignore the recovery of the blood stained knife from the bushes as the said recovery was from an open place which is an area accessible to the public at large; recovery had been effected one day after the incident; PW-3 has admitted that the knife was given by the accused in the Police Station. There was also no reaction on the grouping of the blood which had been detected on the knife.

25. The post-mortem report had evidenced two vital injuries on the deceased i.e. on the chest of the deceased.

26. An unfortunate life has been lost but the question which

arises for decision is whether the present is a case of murder simplicitor or culpable homicide not amounting to murder. The line of distinction between the two offences is there but nevertheless distinct.

27. The weapon of offence is a pocket knife. As per the seizure memo Ex.PW-1/B, the length of the blade is 9.3 cms., length of the handle is 11.7 cms., total length of the knife 21 cms.; it cannot strictly qualify as a weapon of offence; it was a pocket knife which was presumably in the pocket of the accused and not as if he had brought that weapon for the act which was committed by him.

28. It cannot be laid down as a rule of universal law that whenever death occurs, Section 302 IPC is attracted. Each case would depend upon its own facts, the weapon used the size of it, the force with which the blow was given as also the part of the body where it was given. In this case what has been elicited in the testimony of the witnesses is that the initial dispute had arisen over the placement of the cot, which was also not between the accused and the deceased; arguments had first started between Kamta Prasad and Lakhan; accused Gore Lal had also reached the spot; without premeditation, with his pocket knife, he attacked Lakhan twice on his chest which had resulted in his death. It was a sudden quarrel without premeditation.

29. In Krishna Tiwary and Anr. vs. State of Bihar AIR 2001

SC 2410 where the accused inflicted knife blows in the heat of passion without any premeditation and without any intention that he would cause that injury, his case was covered within Exception 4 to Section 300 IPC and he was convicted by the Supreme Court under Section 304 Part I IPC.

30. In our view, the offence committed by the accused would fall under Section 304 Part I of the IPC and not the offence punishable under Section 302 IPC.

31. Accused is convicted for the offence punishable under Section 304 Part I IPC. He is sentenced to under rigorous imprisonment for ten years and to pay a fine of Rs.2000/-; in default of payment of fine, rigorous imprisonment for one year. Benefit of Section 428 Cr.P.C. shall be extended to the appellant. Appeal is allowed with this partial modification and is disposed of accordingly. Accused is reported to be on bail. His bail bond and surety bonds are cancelled. He shall surrender forthwith to suffer the remaining sentence.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

August 27, 2009
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