

R-21

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

% *Date of Decision : 8th July, 2009*

+ **CRL. APPEAL NO.52/2001**

MANGAT Appellant
Through: Mr.M.L.Yadav, Advocate.

versus

THE STATE (NCT) OF DELHI Respondent
Through: Mr.Pawan Sharma, Advocate.

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

(1) Whether reporters of local paper 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. Vide impugned judgment and order dated 12.1.2001, the appellant has been convicted for the offence of having murdered Ramesh. The appellant has been acquitted of the charge of having committed an offence punishable under Section 25/27 of the Arms Act.

2. Briefly stated, the case of the prosecution is that on 15.10.1999, Ram Leela was being staged at D-Block, Panchal Vihar and the show commenced at 9:00 PM. At around 11:00

PM, the appellant Mangat, had an altercation with the deceased, Ramesh on an issue of sharing space. Abuses were exchanged between the two. Fist blows were exchanged. The fight ended when the appellant took out a knife and inflicted two blows, one on the chest and the other on the abdomen of Ramesh. The crowd got infuriated and gave a thrashing to the appellant who became unconscious. Const. Vimal PW-16, was present at the place where Ram Leela was being staged to maintain law and order. He had to rescue the appellant from the crowd and arranged to send the deceased to the hospital, who was then grievously injured. As per the prosecution, three public persons viz. Mahesh PW-11, Pramod PW-13 and Praveen PW-14 had witnessed the incident. Mahesh and Pramod had removed the deceased to the hospital.

3. The fact that they did so was evidenced by the fact that their clothes got stained with the blood of the deceased and report of the serologist opined that the blood on their clothes matched the group of the blood of the deceased.

4. It is apparent that the success of the case of the prosecution rests heavily on the testimony of PW-11, PW-13 as well as PW-14. Needless to state, the testimony of Const.Vimal PW-16 was also relevant.

5. We may note that the FIR has been registered on

the day of the occurrence itself pursuant to the statement Ex.PW-13/A made by Mahesh PW-11 and as recorded by the investigating officer soon after the stabbing incident took place. In the said statement, Mahesh has inculpated the appellant.

6. Unfortunately for the prosecution, Mahesh, Pramod and Praveen turned hostile when examined as PW-11, PW-13 and PW-14 respectively.

7. Pramod PW-13 deposed that he was preparing tea for the *pradhan* (village headman) at his house. HC Vimal PW-16 and another police officer or may be a home-guard constable were also taking tea at the said house. They heard some noises and proceeded to the square (*chowk*) where Ram Leela was being performed and saw Ramesh lying in an injured condition, having injury in the abdomen. On the instructions of HC Vimal, he and Mahesh Pal removed the injured to the hospital.

8. On being declared hostile and cross-examined by the learned Public Prosecutor, Pramod stated that he was illiterate and that his signatures were appended on Ex.PW-13/A but denied that the contents thereof were as stated by him. He denied that he had witnessed the quarrel between the appellant and the deceased. He denied having witnessed the

two abusing each other. He denied that he saw the appellant stab the deceased. He denied that any knife was recovered from the appellant or from the spot or that he saw that the appellant was being thrashed by the public which had gathered to witness the Ramlila celebrations.

9. Praveen PW-14, deposed that he was present in House No.D-31 and was offering tea to two constables and the *pradhan* when they heard noise of a quarrel from the *chowk* where Ramlila was being performed. He saw Ramesh lying in an injured condition, but did not know as to who injured him. He along with Mahesh removed the injured to the hospital on a two-wheeler. On being declared hostile and cross-examined by the learned APP, Praveen disclaimed having made any statement to the police as recorded in his alleged statement recorded under Section 161 Cr.P.C. He denied that any knife was recovered in his presence from the spot.

10. Mahesh PW-11, deposed that he knew nothing about the matter except that he and Praveen had removed the injured Ramesh to GTB Hospital in a two-wheeler.

11. We may note that Mahesh was not declared hostile and hence was not confronted with his statement recorded under Section 161 Cr.P.C. by the police during investigation.

12. HC Vimal Kumar PW-16, deposed that on

15.10.1999 he was posted at PS Gokulpuri and was on duty for Ram Leela at D-Block, Panchal Vihar and that the Ram Leela celebrations commenced at 9:00 PM. At around 11:00 PM a quarrel ensued between two boys in the crowd. He later on learnt that the names of the two boys were Ramesh i.e. the deceased and Mangat i.e. the appellant. That during course of quarrel, Mangat took out a knife from his pocket and struck a blow on the left side chest followed by another blow directed towards the back of Ramesh. He helped Ramesh to be removed to the hospital. The public gave a beating to Mangat i.e. the appellant who became unconscious and at that point of time the knife in his hand fell on the ground. He rescued him from the public and handed over the knife to the investigating officer C.L.Meena who took possession of the same as recorded in the memo Ex.PW-14/B. That after Mangat regained consciousness he took him to PS Gokulpuri and handed him over to the investigation officer.

13. On being cross-examined, he stated that the distance between the spot where he was standing and the place of incident was about 15 – 20 paces and that he had picked up the knife from the ground and at that point of time people had gathered around the place of the incident. He stated that the blade of the knife was stained with human

blood on both sides. On being cross-examined, with a view to extract further information as to the scene of the offence, HC Vimal Kumar stated that he was standing near the stage when he saw some hustling taking place in the last row where people were standing. There was a sudden commotion and people were running helter-skelter (*bhagdad*). He had to cross the space through a gallery from near the stage to reach the scene of occurrence.

14. We need not note the testimony of the formal witnesses of the prosecution, who are none else, other than the police officers who were associated with the safe keeping of the articles which were seized during investigation i.e. the knife, the blood-stained clothes of the deceased as also the blood sample of the deceased and the blood-stained clothes of the two public persons who had removed the deceased to the hospital.

15. We may note that as per the post-mortem report Ex.PW-4/A, it stands recorded that the deceased had two stab wounds. One at the left of midline 9 cm below the anterior axillary fold. The other being an incised stab wound on the left front side of abdomen placed 10.5 cm to the left of midline and 6 cm below the rib cage. It was opined that injury No.1 was sufficient in the ordinary course of nature to cause death.

16. It was urged before the learned Trial Judge that the recovery of the alleged weapon of offence as stated by the prosecution is doubtful. It was urged before the learned Trial Judge that not only the maker of the FIR but even two other public witnesses cited as witnesses to the prosecution having turned hostile, the appellant was entitled to be acquitted. With reference to the testimony of HC Vimal PW-16, it was urged that his presence at the spot was doubtful or his having witnessed the crime was doubtful for the reason he deposed that two injuries were inflicted on the person of the deceased; one on the abdomen and the other on the back. It was urged that the post-mortem report belied the same, evidenced by the fact that both injuries were inflicted on the front side of the body of the deceased and none towards the back. It was further urged before the learned Trial Judge that as per PW-16 he was standing near the stage and the quarrel had taken place in the last row wherefrom the public was witnessing Ram Leela celebrations and thus it was doubtful whether PW-16 could have actually seen the nitty gritties of the quarrel i.e. who stabbed whom and in what manner.

17. The said submissions of the accused i.e. the appellant have found favour with the learned Trial Judge.

18. With reference to the evidence pertaining to the

recovery of the alleged weapon of offence i.e. the knife Ex.P-2, the learned Trial Judge has disbelieved the testimony of HC Vimal Kumar. The learned Trial Judge has held that the evidence created ample and serious doubt about the recovery of the knife by the police as claimed by the police.

19. Needless to state, the inevitable consequence of the said finding, is the acquittal of the appellant for the charge of having committed an offence punishable under Section 25/27 of the Arms Act.

20. We may note that the State has not challenged the said finding resulting in acquittal of the appellant of the said charge.

21. Pertaining to the eye-witness account as deposed to in the Court by HC Vimal Kumar PW-16, the learned Trial Judge has returned a finding in the following words:-

“HC Vimal, however, asserted in Court that he had actually seen the accused stabbing Ramesh. His this statement, however, is somewhat doubtful. The reason is that he says that one stab was give at the back whereas the post mortem report is that both the injuries were on the front of the body only. In the totality of the circumstances, it appears assuring to believe that HC Vimal had also come to the spot after hearing the noise and not at actual stabbing and had not seen the accused actually stabbing the deceased Ramesh.”

22. One would wonder, as to on what reasoning, the learned Trial Judge has convicted the appellant. The reasoning

is as under:-

“However, there are other circumstances which establish that it was only the accused who gave the knife blows and none else. HC Vimal deposed that after the incident the crowd at the Ramleela had beaten up the accused. In his statement under Section 313 of the Code also, accused stated that there was helter skelter in the Ramleela and got some kicks from the people and received some injuries. Therefore there is no denial that people beat accused. Accused is a young lad of good health aged about 20 yrs as per his own statement. It is impossible to believe that crowd comprising of males, females and children could overrun such a person under their feet. Accused also admitted that he became unconscious. The hostile witnesses had not denied that accused was removed to the hospital in an unconscious state. The PCR officials ASI Noor Mohd. established that he took the injured to the hospital and HC Vimal was also with him in the PCR van. MLC of the injured, who was not known to the doctor, PCR officials are HC Vimal is made in the name of ‘unknown’. It shows swelling over both eyebrows, swelling over the upper lip mouth, haemorrhage over mocusa with vertical abrasions two in number, swelling over nose and swelling between both eye brows. The injuries are self eloquent and established that accused was not run over by the Ramleela crowd but was consciously beaten by the crowd. This evidence is in the nature of Res gestae and is therefore sufficient to incriminate the accused as the offender. It may also be mentioned that no allegations of malice in law or malice in fact had been made against HC Vimal, who was admittedly present there to falsely implicate the accused and saved some alleged real culprit. In view of beatings given in his presence there remains no doubt that accused Mangat had given knife blows where after the people of Ramleela started beating him. HC Vimal though not wholly truthful, is not wholly liar as well.

Though we had not believed the recovery of knife by HC Vimal from the accused, but we have not disbelieved it firmly as well. The CFSL report

establishes that there was human blood on the knife Ex.P-2. It is beyond imagination that the IO CL Meena against whom there is no allegation of mala fide and HC Vimal would obtain and put human blood on the knife to falsely implicate the accused without any rhyme or reason.”

23. The sole question which arises for consideration in the appeal is, whether the sole evidence of anything said or done by by-standers at the time of commission of a crime, which needless to state, is admissible evidence under Section 6 of the Evidence Act 1872, can form the basis of conviction in the absence of any other incriminating evidence.

24. It need hardly be stated that as per illustration ‘a’ to Section 6 of the Evidence Act 1872, whatever was said or done by by-standers where A is accused of murdering B by beating him, so shortly before or after the beating was given, as to form part of the transaction is a relevant fact.

25. Thus, where the question is, whether A has caused the death of B by beating him, the conduct of by-standers would be a relevant fact.

26. But, as noted herein above, the question which arises is, whether in the absence of any other evidence, conviction of A can be sustained on said evidence alone.

27. Under Section 5 of the Evidence Act, evidence may be given of the existence or non-existence of every fact in issue and such other facts as hereinafter declared to be

relevant and no other.

28. It need hardly be emphasized that any evidence which relates directly to the proof of existence or non-existence of a fact in issue is direct evidence and therefore of a higher weightage. The incriminating worth of such evidence is weighty.

29. Facts which become admissible as evidence as *res gestae*, being admissible and relevant facts under Section 6 of the Evidence Act, obviously have to stand at a lesser footing vis-à-vis their incriminatory weightage.

30. The reason is obvious. The conduct of by-standers would be used by the Court to draw certain presumptions which logically may follow. Presumptive evidence, for example, motive, is always treated as a weak evidence, for the reason the logical conclusion drawn therefrom is based on an assumption. By its very nature, assumptive or presumptive logic is always treated as weak evidence.

31. Reverting to the facts of the instant case, it is not unheard of, that acting under a mob mentality, even an innocent person is targeted by the mob. It is settled law that where a doubt arises in the judicial mind, the benefit thereof must accrue to the account of the accused.

32. We hold that on the sole incriminating evidence as

noted herein above, viz., the fact that the appellant was beaten by the crowd at the spot where the crime took place, it would be unsafe to sustain the conviction of the appellant.

33. The appeal is allowed.

34. The impugned judgment and order dated 12.1.2001 is set aside. The appellant is acquitted of the charge of having murdered Ramesh.

35. The appellant is on bail. His bail bond and surety bonds are discharged.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JULY 08, 2009
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