

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

% *Judgment Reserved on: 11th November, 2009*
Judgment Delivered on: 19th November, 2009

+ **CRL.APPEAL NO.702/2001**

SURENDER KUMAR @DIMPY & ORS. Appellant
Through: Mr.D.C.Mathur, Senior Advocate with
Mr.Tarun Diwan, Advocate for
Appellant Surender.

Mr.Dilip Singh, Advocate for
Appellants Ramesh Chand and Ved Rani.

Versus

STATE Respondent
Through: Mr.M.N.Dudeja, A.P.P.
Ms.Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

1. Vide impugned judgment and order dated 07.08.2001 the appellants have been convicted for the offence of having murdered Kishan Lal. Vide order dated 22.08.2001 they have been sentenced to undergo imprisonment for life.

2. Discussing the evidence, the finding returned by the learned Trial Judge in para 29 of the impugned decision, which also summarises the case of the prosecution is as under:-

“29. The evidence on the record thus duly proves that accused Surinder used to tease and mis-behave with Usha and he again teased her on 13.1.99 and on the complaint of Usha, her mother, maternal uncle (Kishan Lal deceased) and her brothers had gone to the spot, where a quarrel had taken place and accused Ramesh Chand and Ved Rani caught hold of deceased Kishan Lal and accused Surinder @ Dimpy stabbed him with the knife on his chest and the injuries sustained by the deceased proved fatal and he expired in the hospital.”

3. The first recorded information pertaining to the death of Kishan Lal (hereinafter referred to as the deceased), is when DD No.7-A Ex. PW-18/A was recorded at the PS Patel Nagar by HC Pushpa PW-18 pertaining to information being received about a man being stabbed somewhere near H.No.T-313/8, Baljeet Nagar. The said DD entry shows that the information was logged at 12:15 noon.

4. Armed with a copy of aforementioned DD entry, SI Jagdish PW-20, accompanied by Ct.Sunil PW-11 left for the spot and on learning that the injured had been removed to Ram Manohar Lohiya Hospital proceeded straight to the hospital where SI Jagdish learnt that Kishan Lal had been

declared brought dead at 12:15 PM at the hospital, as recorded in the MLC Ex.PW-16/A.

5. SI Jagdish met Krishna PW-5, the sister of Kishan Lal whose statement Ex.PW-4/A was recorded by him. (We may note that there is a consistent mismatch in the marking of the exhibit numbers to the various proved documents, in that many numbers pertained to the previous witness. For example, the statement of Krishna PW-5 has been exhibited as Ex.PW-4/A). On the basis of said statement FIR Ex.PW-18/E was registered. As per DD No.11-A, Ex.PW-18/C, the FIR was registered at 2:05 PM. As deposed to by DW-1 Mahesh Chand, the Ahalmad attached to the court of Sh.Suraj Bhan, Metropolitan Magistrate, Delhi, the endorsement Ex.DW-1/A on the said FIR acknowledging receipt by Sh.V.K.Goyal functioning as the Metropolitan Magistrate of the area on 14.01.1999 was in the hand of Sh.V.K. Goyal and recorded the receipt of the FIR by the learned Magistrate at 7:00 AM on 14.01.1999.

6. Since the deceased was brought dead, his body was taken into possession by SI Jagdish. At that stage the investigation was taken over by Insp.Rajinder Prasad PW-21, who prepared the inquest papers Ex.PW-21/C on 14.01.1999

i.e. the next day of the incident and sent the body of the deceased for post-mortem.

7. Dr. Ashok Jaiswal PW-12 conducted the post-mortem on the body of the deceased on 14.01.1999 and noted only one external injury as under:-

“An incise stab wound obliquely placed on left side chest in front paraseternal region 3rd 4th space 9 cm. below medial angle of left clavical of size 2.7 cm. X 1 cm. with upper angle being acutely cut with margins clean, cut and everted.”

8. The injury aforementioned has been recorded in the post-mortem report Ex.PW-12/A which also records that exploring injury No.1, it was found cutting through the 3rd and 4th intercostal space; traversing inward and upward the weapon of offence pierced the right ventricular and came out from the posterior surface. The wound pierced 10 cms. deep. Needless to state, the death was instantaneous due to haemorrhagic shock since the ventricular of the heart was pierced. It is apparent that the weapon of offence was a knife.

9. In her statement Ex.PW-4/A Krishna stated that her daughter Usha used to be teased by appellant Surender Kumar @ Dimpy who resided in the neighbourhood and that at 12:00 Noon on 13.01.1999 her daughter Usha left for the

market but returned soon and informed that Surender @ Dimpy who was standing at the street corner had teased her at which her brother Kishan Lal who had come to her house to celebrate the festival of *Lohri* went out accompanied by her sons Rajesh and Naresh. Even she accompanied them. They saw Surender at the corner of the street. She and her brother Kishan Lal requested Surender not to tease Usha at which a verbal altercation ensued between Surender and Kishan Lal. Hearing the altercation Ramesh Chand father of Surender and Ved Rani, mother of Surender came out of their house and both of them jointly exhorted: "Let us teach them a lesson today." So exhorting, Ramesh Chand took her brother Kishan Lal in a bear hug from behind and even Ved Rani caught hold of the hands of her brother from behind. Thereafter Ved Rani and Ramesh Chand jointly exhorted: "Dimpy finish him off today." Before they could even realize the gravity of the situation, Surender @ Dimpy ran to his house and returned with a knife and struck a blow on the chest of her brother and while striking the blow said: "I will finish you off today." On receiving the blow her brother fell down and they remained stunned. Sunil resident of T-318/C, Baljeet Nagar

and one Virender resident of T-342 Baljeet Nagar were standing there. They all attempted to apprehend Surender, his father and his mother, but all fled.

10. It is apparent that the witnesses of the prosecution were Usha PW-1, the young girl who was allegedly teased by Surender Krishna PW-5, the mother of Usha who claimed to be an eye-witness Naresh PW-2 and Rajesh PW-3, the sons of Krishna as also Sunil Kumar PW-7 and Virender who was not examined by the prosecution. If what was stated by Krishna to the police was correct, her sons Naresh and Rajesh as also Sunil Kumar, besides herself, had witnessed the incident.

11. Usha PW-1 deposed that she was residing with her mother Krishna Devi and brothers Rajesh, Naresh and Vikas at house bearing Municipal No.T-313/18, Baljeet Nagar, Delhi. The appellants Surender, Ved Rani and Ramesh Chand were residing at house bearing Municipal No.T-313/17, Baljeet Nagar, Delhi. Accused Surender often used to tease and misbehave with her. At about 11/11:30 AM on 13.1.1999 when her maternal uncle Kishan Lal had come over to their house for the festival of '*Lohri*', her mother asked her to bring some snacks from the market.

When she went outside her house accused Surender was standing at the corner of the street and on seeing her he passed some filthy remarks. She immediately, returned home and told her uncle Kishan Lal, her mother and her brothers about the act of accused Surender. On this, Kishan Lal, her mother and her brothers went outside to talk to Surender about said incident; she was asked to stay at home. Later on she learnt that Surender had stabbed her uncle Kishan Lal.

12. Smt.Krishna PW-5 deposed that she was working as a *safai karamchari* in a Government School at S-Block, West Patel Nagar. She has three sons and one daughter; namely, Rajesh, Naresh, Vikas and Usha. The accused persons resided in the house next to their house. On the day of 'Lohri' when her brother visited them, Usha went to the market to get some eatables, however, Usha returned within some time and informed them that accused Surender @Dimpy had misbehaved with her. On hearing this, accompanied by Kishan Lal @Bholey, her sons Rajesh and Naresh, she i.e. Smt.Krishna went outside the house where accused Surender was standing and asked him why he misbehaved with Usha. Kishan Lal told Surender that he should be ashamed of his acts. As a result a

verbal duel ensued between Surender and Kishan Lal; and both started abusing each other. Due to the noise, parents of Surender i.e. accused Ramesh Chand and Ved Rani, reached the spot; Ramesh Chand caught hold of Kishan Lal from behind and Ved Rani caught hold of the hands of Kishan Lal. Ramesh @Kukku exhorted Surender by stating '*aaj inko sabak sikhatey hain*' and both Ved Rani and Ramesh then stated '*aaj iska kaam tamaam karte hain*'. Resultantly, Surender @Dimpy inflicted knife blows on the left chest of her brother Kishan Lal whereupon Kishan Lal fell on the ground. With the help of her son Rajesh she took her brother to Wellington Hospital in a three-wheeler scooter where her brother was declared dead. After some time police arrived at the hospital and recorded her statement.

13. On being cross-examined by the counsel for the accused she stated that her brother was held by accused Ramesh Chand @Kukku from his side and not from behind and Ved Rani had held the hands of the deceased from back. That in between when Surender went to his house to fetch a *chhuri* she and her sons had tried to free her brother from the clutches of Ramesh Chand. That Surender did not attempt to give a second blow on the person of Kishan Lal.

14. Rajesh PW-3 deposed that the accused were his neighbours. His sister Usha had told his mother that the accused Surender used to often tease and abuse her. At around 11.15/11.30 AM on 13.01.1999, when his uncle Kishan Lal @ Bhola visited them for delivering customary articles for the festival of 'Lohri', Usha went to the market to bring some eatables for Kishan Lal. Accused Surender who was standing at the corner of the street abused Usha and as a result Usha returned home within a few seconds. She informed them i.e. Kishan Lal, Krishna, Naresh and Rajesh about the incident. His uncle Kishan Lal asked them to stay at home while he would go and persuade Surender not to misbehave with Usha. But his mother, his brother Naresh and he followed Kishan Lal and saw accused Surender standing at the corner of the street. Kishan Lal asked Surender as to why he used to misbehave with Usha who was like his sister. In the meantime accused Ramesh Chand and Ved Rani, the parents of Surender, reached said place and both caught hold of Kishan Lal from behind. They exhorted Surender by stating "*Dimpy Aaj Inka Kam Tamam Kar De*". Dimpy then stabbed Kishan Lal on his chest, whereupon Kishan Lal fell on the ground and as his mother, his brother and he attended to Kishan Lal, the three

accused managed to escape. Sunil and Vijender, who were also present at the spot, immediately brought a TSR and suggested that Kishan Lal be taken to the hospital. His mother and he took Kishan Lal to Ram Manohar Lohiya Hospital where the doctor declared Kishan Lal dead.

15. On being cross-examined by counsel for accused, he stated that the incident took place outside house bearing Municipal No.T-325 which is at the corner of the street. Accused Ramesh Chand caught hold of Kishan Lal from the left of his backside, by stretching his arms around Kishan Lal in such a manner that the arms of Kishan Lal remained free. The arms of Kishan Lal were towards the back and Ved Rani caught hold of them from behind. Surender did not open the knife in his presence, but was carrying an already opened knife. It was like a vegetable cutting knife. The house of Rajesh i.e. house bearing No.T-313/18 was about 100 feet away from the house bearing No.T-325 i.e. outside where the incident took place.

16. Naresh PW-2 deposed that he resided with his mother Krishna, brothers Rajesh and Vikas and sister Usha at house bearing Municipal No.T-313/18. The accused were their neighbours. Usha often complained to his mother about accused Surender teasing her. At about 11.30 AM on

13.01.1999, when his maternal uncle Kishan Lal visited them for 'Lohri', his sister went to the market to bring some eatables. She returned within five minutes and informed that accused Surender @ Dimpy was standing at the corner of their lane and was teasing her. On this, his uncle Kishan Lal went outside the house and his mother, his two brothers and he followed Kishan Lal. There was an exchange of hot words between Kishan Lal and accused Surender and as a result of the noise, parents of accused Surender i.e. accused Ramesh Chand and Ved Rani also reached said spot. Ved Rani exhorted Surender by stating "*Aaj Inhe Sabak Sikha Hi Do*"; Ramesh Chand also stated "*Aaj Inka Kam Tamam Kar Do*". As a result accused Surender inflicted a blow with a sharp object on the left side of the chest of Kishan Lal. The three accused; namely, Surender, Ramesh Chand and Ved Rani fled from the spot. Vijender and Sunil were standing at the corner of the street. His maternal uncle was removed to the hospital in a three-wheeler scooter by his mother and brother Rajesh; he stayed at home. Later on he was informed on telephone that his uncle had expired.

17. On being cross-examined by the counsel for State, he clarified that while accused Ramesh Chand caught hold of

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Kishan Lal by putting his hands around the waist of Kishan Lal from behind; accused Ved Rani caught hold of the hands of Kishan Lal from front. On being cross-examined by the counsel for the accused, he stated that Kishan Lal was a little taller than him and was of medium built. Since Ramesh Chand had caught Kishan Lal only from the waist, the hands of Kishan Lal remained free, which were then, caught hold off by Ved Rani. At that time, Kishan Lal did not push Ved Rani. He was not sure whether Ved Rani was about the height of the shoulder of Kishan Lal. The three-wheeler scooter was brought by Sunil and Vijender.

18. Sunil Kumar PW-7 deposed that at about 11.45/12.00 Noon on 13.01.1999, he was standing in the street with Virender. He saw a quarrel taking place between Kukku and Ved Rani on one side and the deceased and Krishan on the other. Accused Surender @ Dimpy was also engaged in said quarrel. Kukku stated "Aaj Inka Kaam Tamam Kar Do", on which accused Dimpy rushed back to his house and brought a knife with which he inflicted blows on the left side of the deceased. Accused Kukku and Ved Rani both had caught the deceased.

19. Some further evidence needs to be noted for the reason Shri Dinesh Mathur, learned senior counsel for the appellants, very strenuously urged that the FIR was ante timed and the result was that Krishna PW-5 got enough time to spin a fabricated version; though not expressly conceding, the underlying submission of learned counsel was that since Surender had been teasing Usha and single handedly was responsible for the injury inflicted upon the deceased, Krishna got a golden opportunity to ensnare even the parents of Surender. Learned counsel urged that the investigating officer had connived in a belated FIR being ante timed.

20. HC Pushpa PW-18 working as a duty officer at PS Patel Nagar on 13.1.1999 from 9:00 AM to 5:00 PM deposed that DD No.7A Ex.PW-18/A was registered by her at 12:15 PM and that DD No.10A Ex.PW-18/B was registered by her at 12:47 PM when SI Jagdish Rai gave telephonic information from RML Hospital that Krishan Lal had died at the hospital. She further deposed that after registering DD No.10A she informed Inspector Veer Singh the SHO of the police station and that at 2:05 PM she received Krishna's statement Ex.PW-4/A as also the endorsement Ex.PW-11/A sent by SI Jagdish Rai to the police station through Const.Sunil and registered the FIR

in question in respect whereof she made DD entry No.11A Ex.PW-18/C at 2:05 PM recording the commencement of the registration of the FIR. She deposed that thereafter she had also recorded DD No.12A Ex.PW-18/D at 2:50 PM recording that the investigation had been assigned to Inspector Rajender Prasad. She joined the investigation of the present case at 5:30 PM on 13.1.1999 and went to Peeragarhi crossing in connection with the investigation.

21. During cross-examination HC Pushpa PW-18 deposed:-

“It is correct that till the time I had left for Pira Garhi chowk, no case of any offence was registered in the police station and the DD entries at that time pertain to formalities of departure, arrival and a call from the PCR”

22. Const.Sunil Kumar PW-11 inter alia deposed that he took the rukka from the hospital at 12:30 noon and got the case registered at PS Patel Nagar at 1:45 PM. Const. Satish Kumar PW-14 deposed that he recorded his departure vide DD No.12-A (Ex.PW-18/D) at 2:50 PM on 13.1.1999 when he went to deliver a copy of the FIR to the Area Magistrate. Const.Satish Kumar has not been subjected to any cross-examination. Insp.Rajender Prasad PW-21 deposed that he took over the investigation on 13.1.1999 immediately after the

FIR was registered and conducted the spot proceedings i.e. got the scene of the offence photographed, lifted blood samples, earth control, blood stained earth and prepared the rough site plan.

23. DW-1 Mahesh Chand deposed that he was the Ahlmad in the Court of Shri Suraj Bhan, MM, Delhi who was the Successor Judge in the Court of Shri V.K.Goyal, MM, Delhi and that he could identify the signatures and writing of Shri V.K.Goyal and that the endorsement Ex.DW-1/A on the FIR in question was in the handwriting of Shri V.K.Goyal. It may be noted that the endorsement Ex.DW-1/A records that Shri V.K.Goyal had received the FIR at 7:00 AM on 14.1.1999.

24. Stage to note the submission urged by learned senior counsel for the appellants.

25. With reference to the cross-examination of HC Pushpa PW-18, contents whereof have been noted in para 21 above, Shri Dinesh Mathur, learned senior counsel for the appellants urged that the said admission completely demolished the version of the prosecution that the FIR was registered as claimed by HC Pushpa PW-18 at 2:05 PM on 13.1.1999. With reference to the inquest papers Ex.PW-21/C admittedly prepared on 14.1.1999 by Inspector Rajender

Prasad PW-21 and drawing attention of the Court to Section 174 Cr.P.C. counsel urged that the requirement of law being to commence the inquest proceedings immediately and in the instant case it not having been so done, it was apparent that the FIR was registered belatedly but ante timed. With reference to DD Entry No.11A, Ex.PW-18/C purporting to bear the time 2:05 PM counsel submitted that the said entry pertained to the registration of the FIR, but contained no contents, not even a brief summary of the FIR. Learned senior counsel urged that it was apparent that the DD entry was a mere ruse as the investigating officer had sent no rukka but had impressed upon a junior officer to record the DD entry and assigned the number in the register pertaining to the registration of FIRs and keep available blank space in the said register, to be filled in later on as per the convenience of the investigating officer. Learned senior counsel relied upon the decision reported as 1976 Chandigarh Law Reporter (Delhi) 41 Balwant Singh vs. State of Punjab to make good the point that where the substance of the FIR registered under Section 154 Cr.P.C. is not entered in the daily diary and where the inquest papers are not promptly sent containing the brief facts an adverse inference of the contemporaneous record being ante

timed can be reasonably inferred. Counsel urged that in said decision the twin taint of the DD entry pertaining to the registration of the FIR being found to be sans a brief summarization of the FIR and the inquest proceedings being belated, an adverse finding of the FIR being ante timed was drawn.

26. The second submission urged by learned senior counsel was that the reason why everything has been ante timed is that nobody knew what had happened and the investigation officer gave time for the complaint to be made; the reason for giving the time was to enable the family members of the deceased to spin out a plausible version. Elaborating the submission further, with reference to the language of Krishna's statement Ex.PW-4/A, learned senior counsel pointed out that the reading of the statement shows the well thought of statement made by Krishna to falsely implicate, if not all, at least the parents of Surender. Learned senior counsel wondered as to how, at the spur of the moment, two persons at two different points of time utter identical words. Learned counsel highlighted that in the said statement Krishna imputed two exhortations to Ramesh Chand and Ved Rani, the parents of Surender, being: *'let us teach*

them a lesson today' and *'Dimpy finish him off today'*. Counsel urged that this evidence Krishna's statement being a thought over statement and not a contemporaneous statement.

27. An extended limb of the second submission urged was that Krishna and her sons Naresh and Rajesh had a grouse against Surender as they thought that Surender used to tease Usha, the sister of Naresh and Rajesh and daughter of Krishna. For said reason all three have deposed falsely to seek vengeance against the entire family of Surender i.e. Surender himself and his parents. Having a motive to falsely implicate the appellants, learned senior counsel urged that the testimony of the three witnesses is suspect, more so for the reason the FIR has been ante timed.

28. The third submission urged was that there are serious discrepancies with respect to the commission of the offence and the role played by the accused in the testimony of the witnesses of the prosecution. Learned senior counsel pointed out that whereas Krishna, in her cross-examination, stated that after Ramesh Chand and Ved Rani caught hold of her brother Kishan Lal and exhorted their son, Surender went home and returned with a knife and thereafter struck a blow in

the chest of Kishan Lal; to the same effect is the deposition of Sunil Kumar PW-7. The other witnesses i.e. Naresh PW-2 and Rajesh PW-3 have not deposed about Surender going to his house and bringing a knife; as per them Surender when Ramesh Chand and Ved Rani exhorted Surender: '*Dimpy aaj inka kaam tamam kar de*' Surender stabbed Kishan Lal in the chest and thereafter all of them fled. It was urged that it was apparent that there was an attempt to bring on record a false version by the witnesses of the prosecution, who were not the eye-witnesses, but came out of their house, on hearing the noise when somebody had already stabbed Kishan Lal.

29. The second limb of the third submission urged by learned senior counsel was pertaining to the manner in which Kishan Lal was allegedly caught hold of by Ved Rani and Ramesh Chand. Learned senior counsel pointed out that whereas in her statement Ex.PW-4/A made to the police, Krishna PW-5 stated that Ramesh Chand took Kishan Lal in a bear hug from behind (*Peechhe Se Kohli Bharli*) and Ved Rani caught hold of the hands of Kishan Lal from behind; in her testimony PW-5 deposed that Ramesh Chand caught Kishan Lal from his side and not from behind. Learned senior counsel further pointed out that each of the alleged witnesses to the

incident gave a slightly varied version of the manner in which the accused Ramesh Chand and Ved Rani held the deceased. While Naresh PW-2 stated that Ramesh Chand had caught the deceased from behind by holding on to his waist and Ved Rani had caught the hands of the deceased from the front; Rajesh PW-3 deposed that Ramesh Chand caught deceased at his waist from the left of his back side in a manner that the arms of Kishan Lal remained free and were towards the back of Kishan Lal and that Ved Rani caught hold of the arms of the deceased from behind; Krishna PW-5 deposed that Ramesh Chand held Kishan Lal from the side and Ved Rani caught the hands of Kishan Lal from behind; but Sunil Kumar PW-7 deposed that Ved Rani had held the deceased from his back and Ramesh Chand had simply caught hold of the deceased. With reference to the above, learned counsel urged that it was apparent that all the said witnesses were contriving and straining themselves to attribute roles to Ramesh Chand and Ved Rani and in so attempting had fumbled at places. Pertaining to the discrepancy between the statement Ex.PW-4/A of Krishna PW-5 and her deposition in court regarding the manner, in which Ramesh Chand held Kishan Lal, learned senior counsel urged that the same was deliberately induced

by Krishna PW-5 in order to make it appear more conceivable. The reason being, if her first version, given in statement Ex.PW-4/A, that Ramesh Chand had caught the deceased in a bear hug from the back of Kishan Lal was true, there was no room for Ved Rani to stand further behind and catch the hands of the deceased; as a result it is just not possible that Ramesh Chand and Ved Rani could have jointly held the deceased from behind. For similar reasons, urged learned counsel, Rajesh PW-3 also stated before the court that Ramesh Chand held Kishan Lal from his left back side. That apart, it was further urged that had the deceased been caught by Ramesh Chand and Ved Rani as deposed by said witnesses, it was just not possible for Surrender to strike a blow in the chest of the deceased.

30. The fourth submission urged by learned senior counsel was, and which gets connected to the first and second submission, is that the accused were three in number, if at all they were present, from the side of the deceased the family members present were four being the deceased himself, his nephews Naresh and Rajesh, the sister of the deceased Krishna. Besides, said four family members, two well wishers being Sunil Kumar and Virender were also present. Learned

counsel urged that if this be so, it is just not possible that the incident took place as claimed by the witnesses of the prosecution.

31. The fifth submission urged by learned senior counsel was with respect to the role of Ramesh Chand and Ved Rani and their liability with the aid of Section 34 of the Penal Code. With reference to the testimony of Usha PW-1 learned counsel submitted that it was apparent that what led the deceased, his nephews and his sister to go to the corner of the street was the provocation of Surender teasing Usha. As deposed to by all witnesses of the prosecution only Surender was standing alone at the corner of the street and when the deceased questioned him as to why he had teased Usha, a verbal altercation ensued and the resultant noise which was generated attracted the attention of Ramesh Chand and Ved Rani to come out of their house and on seeing an ongoing verbal quarrel between their son and the deceased the two also joined in the verbal quarrel. The heat of the words turned physical and when Surender's parents caught the deceased with the intention of either pushing him or slapping him at the most, in a flash Surender inflicted the knife blow. Counsel urged that the theory propounded by Krishna PW-5 and Sunil

PW-7 that when Ramesh Chand and Ved Rani caught the deceased and exhorted their son to attack him, Surender went home and returned with a knife and then inflicted the blow is simply not believable for the reason the other family members of the deceased, in the mean time, who were present at the spot as claimed by them, would have freed the deceased from the clutches of Ramesh Chand and Ved Rani. Had they seen Surender approach with a knife in his hand, enough time was available to all of them to hurry up the act of freeing the deceased and taking defensive action. With reference to the version deposed to by the other three witnesses, counsel urged that the question of imputing vicarious liability to Ved Rani and Ramesh Chand does not arise. Thus, learned senior counsel urged that Ved Rani and Ramesh Chand are entitled to be acquitted.

32. Pertaining to Surender, learned counsel urged that evidence established that a verbal altercation took place before the act of stabbing; the verbal altercation was between Surender and the deceased and in the heat of the moment Surender gave a stab blow at the side of the chest but unfortunately at a wrong angle. With reference to the post-mortem report Ex.PW-12/A which noted the trajectory of the

wound, learned senior counsel pointed out that the knife traversed inward and upward towards the right side, entry wound being on the left side of the chest and unfortunately pierced the ventricle of the heart. Counsel urged that the intention to cause the death of the deceased could not be attributed to Surrender with reference to his act. Learned counsel urged that at best a knowledge of a lesser degree referable to the third limb of Section 299 IPC i.e. that the injury caused was likely to cause death could be attributed to Surrender and thus his conviction could be sustained only for the offence punishable under Section 304 Part-II IPC, for which submission learned senior counsel cited the decisions reported as 1983 SCC (Cri.) 459 Jagtar Singh vs. State of Punjab and 1983 SCC (Cri.) 805 Jawaharlal & Anr. vs. State of Punjab.

33. The basis of the first plea pertaining to the time when the FIR was registered is obviously the result of HC Pushpa PW-18 responding to a question during cross examination, contents whereof have been noted in para 21 above. As recorded, Pushpa has apparently admitted that till the time she left for Peera Garhi Chowk, no case of the offence was registered at the police station. As deposed to by her she went to Peera Garhi Chowk at 5:30 PM. DD No.11-A records

that the FIR was registered at 2:05 PM. Now, the manner in which testimony of Pushpa has been recorded, makes it apparent that everything has been ante-timed. But, the question which needs to be further examined is whether there is a possibility of a typographic error while recording the testimony of HC Pushpa. Is it possible that the word '*incorrect*' got wrongly typed as '*correct*'.

34. A perusal of the testimony of Pushpa shows that she has positively stated that the 4 DD entries Ex.PW-18/A to Ex.PW-18/D were recorded by her at 12:15 PM, 12:47 PM, 2:05 PM and 2:50 PM respectively. She has not stated that she ante-timed the said DD entries.

35. A presumption has to be raised pertaining to the correctness of official record and only upon cogent evidence led can the presumption be rebutted.

36. Const.Sunil Kumar PW-11 has categorically deposed that he left the hospital with the rukka at 12:30 noon and got the FIR registered at 1:45 PM. Const.Satish has deposed that he left the police station at 12:50 PM to deliver the FIR to the Area Magistrate. Const.Satish has not been cross examined. PW-21 has deposed that the investigation of the case was handed over to him on 13.1.1999 immediately after the FIR

was registered. It is no doubt true that the endorsement Ex.DW-1/A on the FIR shows that the Area Magistrate received the same on 14.1.1999 at 7:00 AM, but we note that while cross examining Satish PW-14, no question has been put to him as to how come, having left the police station at 2:50 PM on 13.1.1999 he delivered the FIR to the Area Magistrate on 14.1.1999. It is settled law that unless a witness is given an opportunity to explain his conduct, no inference adverse can be drawn on the basis of the conduct. The decision reported as (2005) 9 SCC 298 Sunil Kumar vs. State of Rajasthan may be conveniently referred.

37. It has to be kept in mind that 13.1.1999 was an auspicious day as the festival of Lohri was to be celebrated on said day. In Northern India, the festival of Lohri is celebrated with gusto and friends and relatives visit each other and give sweets. There may be a possibility that the learned Area Magistrate was not in his house. Be that as it may, since Const.Satish Kumar has not been questioned on the issue, we hold that no adverse inference can be drawn qua the timing of the FIR with reference to it be delivered the Area Magistrate the next day. It is apparent that there is a typographic error while recording the cross examination of HC Pushpa. We

conclude by holding that the FIR has been recorded at the time as per DD No.11-A at 2:05 PM and there is no delay in registration of the FIR. We hold that the registration of the FIR has not been ante-timed.

38. We would wish to pen a paragraph as to how suggestions and answers thereto have to be recorded when a witness is under cross examination. This is the 9th case where we have noted a typographic error where the word '*incorrect*' has been recorded as '*correct*'. Due to the said error the very meaning of the answer gets reversed. The problem can be conveniently avoided by not recording the answer, if it is a denial to the suggestion, by typing '*it is incorrect to suggest...*'. By resorting to this method of recording evidence there is every chance of the word '*incorrect*' getting wrongly typed as '*correct*'. A better method could be to record the answer '*it is wrong to suggest...*'. If recorded with the use of the word '*wrong*' vis-à-vis the word '*incorrect*', there would be no occasion for an error to creep in. We hope that henceforth, the learned Trial Judges would be more careful.

39. It is true that there has been a delay in conducting the inquest proceedings. It is also true that DD No.11A only records the time of commencement of registration of the FIR.

It does not record the substance of the FIR or the brief facts pertaining thereto. But, in view of the decision reported as AIR 1998 SC 663 Babu Ram v. State (Delhi Administration), it is apparent that the view taken in the decision reported as 1976 Chandigarh Law Reporter (Delhi) 41 Balwant Singh vs. State of Punjab, stands over-ruled. The lapses relating to directory procedural provision cannot vitiate the case of the prosecution as other independent evidence established the veracity of the case of the prosecution.

40. The second submission, including the extended limb thereof; the third submission including the second limb of the third submission and the forth submission pertain to the conduct of Naresh, Rajesh, Krishna, Sunil Kumar and Virender in not rescuing the deceased as also their testimony pertaining to the exhortation given by Ved Rani and Ramesh Chand as also the role played by the two in catching hold of the deceased relate to an appreciation of the testimony of the eye-witnesses i.e. PW-2, PW-3, PW-5 and PW-7.

41. On a reading of the testimonies of PW-2, PW-3, PW-5 and PW-7, it is clear that when the deceased met appellant Surender at the corner of the street, appellants Ramesh Chand and Ved Rani were not present with him at that time. As

deposed to by PW-2, PW-3 and PW-5 who were accompanying the deceased, a verbal altercation ensued between the deceased and appellant Surender and the resultant noise attracted the other two co-accused who were till then in their house and upon hearing the quarrel came out. PW-7 who was standing on the street also got attracted to the place where the verbal altercation was taking place. Ramesh Chand and Ved Rani took the side of their son and said something. What they said would be dealt by us a little later. But what happened then has two versions emanating from the testimony of the witnesses of the prosecution. Whereas Krishna PW-5 stated during cross-examination, which fact was deposed to by Sunil PW-7 in his examination-in-chief, Ved Rani and Ramesh Chand caught hold of the deceased and Surender went to his house and returned with a knife in his hand. The other witnesses did not say so. We may note at this stage that as deposed to by Rajesh PW-3, the house of Surender was at a distance of about 100 yards from the place where the altercation took place. If Krishna and Sunil have deposed truthfully, it is just not possible that Ved Rani and Ramesh Chand continued to hold on to the deceased and PW-2, PW-3 and PW-5 who were his immediate relatives stood as mute

spectators and even Sunil and Virender continued to do so. At least when Surender returned with a knife they would have certainly reacted to save the deceased. It is apparent that Krishna and Sunil have deposed an incorrect version of what actually happened. The probability of what actually happened, evidenced by a single blow on the person of the deceased, is that the blow was sudden and swift.

42. Since the focus of all submissions centered on the fact that PW-2, PW-3 and PW-5 got a golden opportunity to rope in the family members of Surender, we look into the testimony of the witnesses of the prosecution pertaining to what was said and done by Ramesh Chand and Ved Rani.

43. Pertaining to what was said, as per Ved Rani's statement Ex.PW-4/A, both of them jointly made two exhortations: *"let us teach them a lesson today"* and *"Dimpy finish him off today"*. Ex-facie, it is difficult to believe that two persons and that too twice over would use identical words while making an exhortation. While deposing in Court Krishna PW-5 deposed somewhat at a variance stating that first exhortation was by Ramesh who said *"Aaj inko sabak sikhatey hain"* and the second exhortation was joint: *"Aaj iska kaam"*

tamam kartey hain". As per Naresh PW-2, Ved Rani exhorted *"Aaj inhe sabak sikha hi do"*. Ramesh Chand exhorted: *"Aaj inka kaam tamam kar do"*. Rajesh PW-3 deposed that Ramesh Chand and Ved Rani gave only one exhortation: *"Dimpy aaj inka kaam tamam kar de"*. As per PW-7 the exhortation given was only by Ramesh Chand who allegedly stated: *"Aaj inka kaam tamam kar dey"*.

44. It is apparent that the witnesses of the prosecution are straining themselves to try and inculcate Ved Rani and Ramesh Chand vis-à-vis what they said. The possibility of the witnesses so doing to rope in Ved Rani and Ramesh Chand cannot be ruled out. It is difficult to accept that two persons would use identical phrases during a verbal duel. Ignoring the different versions coming from the mouth of the witnesses of the prosecution with respect to the language of the exhortation and the number of sentences spoken for the reason when many witnesses depose qua same facts it is quite possible that each would express himself in different words, but looking at the issue as a whole, keeping in view the fact that even in the past Surrender used to tease Usha, due to enmity, there is a possibility that the prosecution witnesses

seized upon the opportunity to ensnare Ved Rani and Ramesh Chand.

45. Dealing with the physical acts attributable to Ramesh Chand and Ved Rani, it is obvious that as stated by Krishna in her statement Ex.PW-4/A, it is not possible that the deceased could be stabbed as claimed by her for the reason she states that Ramesh Chand caught the deceased from behind in a bear-hug and Ved Rani caught his hands from behind. It is just not possible for Ved Rani to be standing behind Ramesh Chand to be able to catch hold of the hands of the deceased. Probably realizing the improbability of her initial statement, Krishna deposed in Court at a slight variance. To give space to Ved Rani, she deposed that Ramesh Chand caught the deceased from the side and Ved Rani caught his hands from the back. Likewise, Rajesh PW-3 also deposed on the same lines. Sunil PW-7 simply stated that Ved Rani and Ramesh Chand caught the deceased. Naresh PW-2 stated that Ramesh Chand caught the deceased from the back and Ved Rani caught the deceased from the front when he was stabbed.

46. As regards the version of Naresh, it is apparent that if Ved Rani had caught the deceased from the front, there was no possibility of the stab blow being inflicted on his chest. His version is obviously incorrect. Pertaining to the version of the three other witnesses we certainly find traces of the three contriving and straining their language to assign a role in the assault to the parents of Surrender.

47. Concluding on this issue we note that Surrender used to tease Usha in the past and did so on the date of the incident. The resultant verbal duel attracted the attention of his parents who came out of the house. A single stab blow being inflicted by Surrender shows that everything happened in a flash before anyone could react. Just as PW-2, PW-3, PW-5, PW-7 and Virender got no time to react to save the deceased, likewise would have happened vis-à-vis Ved Rani and Ramesh Chand i.e. when they were standing and participating in the verbal duel, Surrender did the offending act. Had the deceased been caught hold of by Ved Rani and Ramesh it is not probable that it took place in a flash of the moment. It had to be preceded by the two coming into physical contact with the deceased who certainly would have resisted the physical

contact resulting in some pushing around. This would have certainly invited the intervention of PW-2, PW-3, PW-7 and Virender, if not PW-5 who was a lady.

48. The evidence on record does not rule out the possibility of the physical roles played by Ved Rani and Ramesh Chand being over stated by the witnesses of the prosecution.

49. What appears to have happened is that during the verbal duel Surender stabbed the deceased and since his parents were standing nearby, in all probability yelling and shouting, the witnesses of the prosecution, three of whom were close relatives of the deceased, attributed roles to them; twisted the words spoken by the two and assigned a physical role in the drama, not actually played by the two, i.e. made embellishments to falsely implicate the parents of Surender.

50. That apart, on the issue of common intention shared by the accused, it has to be noted that the starting point of the episode was Surender being the antagonist on the street who teased Usha who went home and complained leading to the deceased, her two brothers and her mother going to the street to settle scores with Surender, who still

remained the sole antagonist on the street. His parents joined the scene at stage two when at stage one a verbal duel was going on between Surrender on the one hand and the deceased, Rajesh, Naresh and Krishna on the other hand. What did they know about the deceased carrying a knife with him? There is no evidence that they knew. Even if they caught hold of the deceased it cannot be said that they did so sharing any common intention to murder the deceased or the common intention to inflict a knife injury on the chest of the deceased by Surrender.

51. It is difficult, if not impossible, to procure direct evidence of common intention and in most cases intention has to be inferred from the act and the conduct of the accused and the surrounding circumstances. In the decision reported as Suresh Vs. State of U.P. 2001 (3) SCC 673 it was observed:-

“23. Thus to attract Section 34 IPC two postulates are indispensable: (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons.

24. Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act

which has nexus with the offence. Such an act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the purport of Section 32 IPC. So the act mentioned in Section 34 IPC need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act, e.g. a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34 IPC cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34 IPC.

25. There may be other provisions in the IPC like Section 120-B or Section 109 which could then be invoked to catch such non-participating accused. Thus participation in the crime in furtherance of the common intention is a sine qua non for Section 34 IPC. Exhortation to other accused, even guarding the scene etc. would amount to participation. Of course, when the allegation against an accused is that he participated in the crime by oral exhortation or by guarding the scene the court has to evaluate the evidence very carefully for deciding whether that person had really done any such act." (Emphasis Supplied)

52. We accordingly hold, agreeing with the fifth contention urged that the evidence on record does not bring out the sharing of any common intention by Ramesh Chand and Ved Rani and hence we hold that their conviction with the aid of Section 34 is not warranted.

53. That leaves us with the last submission pertaining to the act of Surrender and the offence relatable thereto.

54. No doubt, from the mere fact that only one stab wound has been inflicted no inference of the offence not being murder can be drawn. There is enough case law on the point that even a single stab injury can attract the offence of murder. The problem arises not in the domain of law or legal principles but in the domain of evidence.

55. When everything happens all of a sudden it becomes difficult to ascertain as to whether the single injury was intended to be inflicted on the part of the body where the injury has actually been inflicted as a matter of fact. The problem gets aggravated when the accused and the victim had a chance meeting. In the instant case, there is no evidence that Surrender knew that the deceased would be coming to meet his sister i.e. Krishna PW-5. He never

expected to be confronted by the relatives of Usha whom he had teased a few minutes prior to the incident. Thus, the meeting of the deceased with Surender was a chance meeting and therefore it cannot be said that Surender was standing with any premeditation in his mind qua the deceased.

56. But the fact that Surender used the knife obviously shows that he intended to cause an injury on the person of the deceased. He knew that the weapon which he was yielding was a knife. He struck the blow on the left side of the chest; he struck it in a manner that the knife pierced inward and upward. The place where he struck the knife is a vital part of the body and the manner in which he struck the knife i.e. making the knife travel inward and upward shows that the path of the knife was towards the heart. The offence committed by Surender attracts the offence punishable under Section 304 Part-I IPC. We take sustenance from the decision reported as AIR 1975 SC 179 Hardev Singh & Anr. vs. State of Punjab.

57. The appeal accordingly stands disposed of acquitting appellants Ramesh Chand and Ved Rani of the offence punishable under Section 302/34 IPC. Both of them

are on bail. Their bail bond and surety bonds are discharged. Insofar the appeal relates to appellant Surender, the same is partially allowed. Surender is acquitted of the charge punishable under Section 302 IPC but is convicted for having committed an offence punishable under Section 304 Part-I IPC, for which offence we sentence him to undergo rigorous imprisonment for a period of ten years. Appellant Surender is on bail. His nominal roll shows that as on 12.3.2004 he had undergone a sentence of five years two months and twenty five days. He was admitted to bail vide order dated 26.3.2004. It is apparent that Surender has to undergo further sentence. He shall do so. Needless to state, Surender would be entitled to the benefit of Section 428 Cr.P.C.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

NOVEMBER 19, 2009

Dharmender/mm