

R-18

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

% *Date of Decision : November 12, 2009*

+ **CRL.APPEAL NO.745/2001**

MOHD.RAZZAK & ORS. Appellants
Through: Ms.Charu Verma, Advocate.

versus

STATE Respondent
Through: 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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (ORAL)

1. Appellant Mohd.Razzak, his son Shamshad and co-accused Babloo have challenged the judgment and order dated 7.9.2001 convicting them for the offence of having murdered Chiranji Lal. The three have been sentenced to undergo imprisonment for life.

2. Noting the evidence against the appellants and in particular the testimony of Roshan Lal PW-7 the brother of Chiranji Lal, in para 50 of the impugned decision the learned Trial Judge has concluded as under:-

“50. Noticeably, the three accused persons have been shown by the evidence to have led themselves loose collectively against Chiranji Lal. They showered lathi blows on his person, some of which blows were aimed in the region of his head. As reflected in the evidence, the accused persons were attacking Chiranji Lal so as to take revenge for the liberty taken by the latter earlier at 1715 hours on the same date when he had applied colour on A2, under the cover of playing on the occasion of festival of Holi. This is shown to have outraged the sentiments of A2 and members of his community. This background, however, cannot result in intention shown commonly entertained by the three accused to be diluted in any manner. From the facts proved, the only reasonable inference that can be drawn is that the three accused shared common intention to teach Chiranji Lal a lesson and were ready to inflict even such lathi blows on his person as could result in his death. Their adventure in criminally cannot be watered down or nullified by contending that injuries caused by each of them have not been shown individually or independently to have resulted in death of Chiranji Lal.” (underline emphasized)

3. It may be noted at the outset that the learned Trial Judge has held that from the evidence, a reasonable inference could be drawn that the three accused shared a common intention to teach Chiranji Lal a lesson and were ready to inflict even such lathi blows on his person as could result in his death.

4. It is thus required by this Court to be seen whether the finding returned by the learned Trial Judge pertaining to the accused sharing a common intention to teach Chiranji Lal a lesson is correct and if it is found that the said finding is correct, to further consider as to what was the span of the common intention i.e. was it to cause death or only to injure Chiranji Lal. If the answer to the second question is that the

intention was to cause injury to Chiranji Lal, to further consider whether in spite of said finding, the finding of the offence being murder can be sustained or the sentence has to be suitably corrected.

5. The informant in the instant case is Roshan Lal PW-7, the brother of Chiranji Lal. The incident in question took place at around 6:30 PM and the statement Ex.PW-7/A of Roshan Lal was recorded somewhere around 9:30 PM. The tehrir was dispatched at 10:05 PM evidenced by the endorsement Ex.PW-11/A beneath the statement Ex.PW-7/A.

6. In the statement Ex.PW-7/A, Roshan Lal stated that 13.3.1998 being festive time, the day when festival of Holi is celebrated, Chiranji Lal i.e. the deceased, smeared colour on Mohd. Razzak who resented the said act of alleged bonhomie, resulting in a verbal altercation between the two which was pacified with the intervention of the residents of the slum cluster. That after some time at 6:30 PM, the three accused returned with *lathis* (sticks) in their hands and assaulted Chiranji Lal who fell down. As he lay on the ground, the assault continued with the use of sticks and kicks.

7. Chiranji Lal was removed to RML Hospital where he was declared 'brought dead' at 7:50 PM, as recorded in the MLC; a document which we find has remained unproved in the record of the learned Trial Judge.

8. The dead body of Chiranji Lal was seized and after

completing the inquest papers was sent for post-mortem. On 14.3.1998 Dr.Chandrakant PW-3 conducted the post-mortem and noted 10 injuries on the person of the deceased being:-

- “1. Lacerated wound in the middle and posterior aspect of right ear. Size is 2 cm x 1 cm, cartilage deep.
2. Abrasions on the interior and middle of right ear and area of 6 cm x 3 cm.
3. Abrasions on right side of face, two cm. away from right ear and size is 4 cm x 3 cm.
4. Abrasions on right side of the neck and area is 2 cm x 2 cm.
5. Abrasions on right shoulder region and size is 2 cm x 1 cm.
6. Contusions on the upper part of back right side and size is 7 cm x 5 cm.
7. Multiple abrasions in the middle of back and size is 10 cm x 9 cm.
8. Abrasions on lower part of back and size is 5 cm x 4 cm.
9. Abrasions on the outer aspect of right elbow and size is 5 cm x 2 cm.
10. Contusion on left parieto-temporal region and size is 4.2 cm x 2.4 cm.”

9. Report of internal examination recorded was that there was extravasation of blood in the left temporal and occipital front region of the scalp. Sub-dural haemorrhage on left hemisphere was noted.

10. Cause of death opined was due to shock and head injuries. It was opined that all injuries were collectively

sufficient to cause death in ordinary course of nature.

11. With respect to the injuries received by the deceased, it is important to note that only injury No.1 and 10 were the result of being hit with blunt force on the posterior right ear and parieto-temporal region i.e. vital parts of the body. The other injuries being abrasions, save and except injury No.6 which is a contusion wound, are all directed towards the non-vital part of the body or are injuries with feeble force.

12. The weapon of offence was stated to be lathis. The thickness of the lathis is not on record but the length is. The lathi recovered from Babloo measure 2'10". The one recovered from Mohd.Razzak measured 3'10" and the one recovered from Shamshad measured 4'8".

13. Roshan Lal PW-7 narrated the incident, when he deposed in Court, in the following words:-

"On 13.3.98 at about 5.15 PM, my younger brother Chiranji Lal had tried to given the colour to Md.Razzak accused and Samsad both present in court (witness correctly identified the accused) and on this account, some altercations took place between them and the matter pacified by the neighbourers. Thereafter at about 6:30 PM, accused Md.Razzak Samsad and Babloo all present in court (witness correctly identified the accused persons) I knew the accused persons earlier to the incident. Accused persons were armed with the lathies and had started beating with the lathies my brother Chiranji Lal who was standing near a Naali (small canal which was situated near the toilets) and my brother had fell down on the ground and even after accused persons continued to beat him. I raised alarm and my neighbour Hira Lal reached on the spot to rescue my brother and some

police officials had also reached there. Accused Babloo was apprehended by me with the help of Hira Lal and accused Razzak and Samsad were apprehended by the police officials. I with the help of my younger sister shifted Chiranji Lal in RML Hospital where doctor declared my brother Chiranji Lal (brought dead)."

14. We note that Roshan Lal has been subjected to cross-examination and has successfully withstood the test of cross-examination.

15. Hiralal PW-8, cited as an independent witness being a resident of the area, did not support the case of the prosecution as he deposed that being under the influence of liquor he did not remember as to who the accused persons were. He only deposed that a quarrel had taken place on 13.3.1998 in which Chiranji Lal lost his life.

16. From the testimony of Roshan Lal, it is apparent that 13.3.1998 was a festive day as the festival of colours i.e. Holi was being celebrated. Chiranji Lal was in a festive mood and at 5:15 PM applied colour on accused Mohd.Razzak who did not like what had happened and as a result thereof Chiranji Lal and Mohd.Razzak had an altercation which was pacified. This happened at 5:15 PM. The accused returned at 6:30 PM and, to use the words of Roshan Lal, started beating Chiranji Lal.

17. The first finding returned by the learned Trial Judge that the evidence establishes that the three accused shared a common intention to teach Chiranji Lal a lesson is thus correct.

18. But the question arises, what was the lesson they wanted to teach to Chiranji Lal.

19. It is not a case where the accused had past enmity of a kind wherefrom a motive to kill Chiranji Lal can be inferred. With reference to the trivial incident which had taken place 45 minutes earlier, it can safely be said with certainty that the three accused certainly desired to injure Chiranji Lal and thus it can safely be said that the intention to cause injuries to Chiranji Lal can be inferred.

20. What we want to convey is that the offence committed by the accused was not in furtherance of an intention to murder the deceased. The intention was to injure Chiranji Lal.

21. The intention of the accused to cause injuries on the deceased and no more can also be inferred with reference to the post-mortem report Ex.PW-3/A as per which 10 injuries were noted as per para 8 above. Two injuries show use of hard force. The remaining eight show mild force being used. Indeed, the internal resultant injury shows that it is injuries No.1 and 10 which proved to be fatal.

22. If the intention of the accused was to cause death of the deceased, being three in number and each one being armed, the three accused would have directed the blows on the head of the deceased and would have reduced the same to a pulp. They had the opportunity to do so. They did not do so.

23. The injuries spread all over the body of the deceased also show that the assault was random and not intended or directed at any particular part of the body.

24. We look to some past precedents. In the decision reported as 2007(6) SCALE 649 Sunderlal vs. State of Rajasthan, the number of injuries caused were two. The weapons of offence were *gandasi* and a *lathi*. One blow was directed towards the head with the *gandasi* and there were several other injuries on the hand and legs with the use of the *gandasi* and the *lathi*. Conviction sustained for the offence of murder by the High Court was altered to an offence punishable under Section 304 Part-I IPC by the Supreme Court.

25. Two facts weighed in altering the conviction. The first was that the occurrence took place when the light was visible and second that the injuries showed that the attack was indiscriminate on the body and thus it became difficult to ascertain that a particular part of the body was directed.

26. In the decision reported as AIR 1955 SC 439 Bagga vs. State of Pepsu the weapon of offence was a lathi, 5'6" in length having diameter of 1½". The accused administered six blows on the person of the deceased. Two out of the six blows were directed towards the head. One struck on the right parietal region and the other on the neck. Conviction sustained by the High Court for the offence punishable under Section 302 IPC was altered to one under Section 304 Part-I

IPC.

27. In the decision reported as AIR 1974 SC 1351 Thakarda Lalaji Gamaji vs. State of Gujarat the assailant was one. The weapon of offence was a dhariya (scythe). The blows were directed towards the left temporal region of the scalp. The second was directed on the arm. Conviction sustained by the High Court for the offence punishable under Section 302 was converted to one under Section 304 Part-I IPC.

28. In the decision reported as JT 2007 (3) SC 247 Sellappan vs. State of Tamil Nadu, the weapon of offence was a lathi. 2 blows were directed on the head. The occipital and the scapular region of the head was affected. Death was on account of cranio cerebral injuries. Conviction sustained by the High Court for the offence punishable under Section 302 IPC was reduced to a conviction for the offence punishable under Section 304 Part-I IPC.

29. Accordingly we hold that the acts of the accused make out the commission of an offence punishable under Section 304 Part-I IPC.

30. What should be the appropriate sentence?

31. The nominal roll of the appellants show that this the solitary offence committed by them. None of them has any past history of being involved in a crime.

32. The origin of the anger of the appellants was the indiscretion of the deceased that being the festival of colours

he was free to smear colour on anyone he liked. The appellants did not share the same fervor as the deceased did.

33. Shamshad was released on bail pursuant to the order dated 25.10.2005 and his nominal roll shows that by said date he had undergone an actual sentence of 7 years 7 months and 11 days. He had earned a remission for exactly 1 year. Babloo was released on bail pursuant to the order dated 15.4.2005 and as per his nominal roll he had undergone an actual sentence of 7 years 1 month and 2 days. He had earned remission of 10 months and 16 days. Mohd.Razzak was released on bail pursuant to the order dated 13.4.2004 and by said date he had undergone an actual sentence of 6 years and 29 days. He had earned remission for 6 months and 19 days.

34. If we impose the sentence of imprisonment for 10 years on all the appellants, Shamshad would be required to serve a sentence of about 1 year and 5 months less further remissions which he may earn. Babloo would have to serve a sentence of a little less than 2 years minus further remissions which he may earn. Mohd.Razzak would have to serve a sentence of about 3 years and 4 months less further remissions which he may earn.

35. Mohd.Razzak was aged 60 years as of 13.3.1998 when the offence took place. As of today he would be aged about 72 years.

36. Under the circumstances, we sentence the

appellants to undergo imprisonment for the period they have already undergone.

37. The appeal is partially allowed. The conviction of the appellants for the offence punishable under Section 302/34 IPC is altered, in that, they are convicted for the offence punishable under Section 304 Part-I/34 IPC. The appellants are sentenced to undergo imprisonment for the periods they have already undergone.

38. Since the appellants are on bail, in view of the sentence imposed, the bail bonds and surety bonds submitted/furnished by the appellants are discharged.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

NOVEMBER 12, 2009

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