

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No.475/2003**

% **Date of Order : January 21, 2009**

SANTOSH CHANDER RAJPUT Appellant
Through : Mr. V.K.Raina, Advocate

VERSUS

STATE Respondent
Through : Ms. Richa Kapoor, Advocate

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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. Vide judgment and order dated 23.4.2003, the appellant has been convicted for the offence under Section 302 IPC. He has been awarded a sentence of life imprisonment and fine of Rs.10,000/-, in default to undergo simple imprisonment for three months.

2. It has been held that in view of the testimony of Kailash Kumar PW-10, the testimony of Const. Vinod PW-4, and the testimony of Rishi Kumar PW-14, it stands established that the appellant had with an intention to cause death,

stabbed the deceased in the abdomen inflicting an injury which has resulted in the death of the deceased.

3. Since at the arguments advanced today a doubt was cast on the testimony of PW-10 and PW-4 by urging that both gave evidence that the deceased had told them that the appellant was the assailant, but testimony of PW-8 Dr.Sanjeev Lalwani establishes that the deceased had become unconscious within 5-10 minutes of the injury, we propose to re-character the steps walked contemporaneously by the prosecution witnesses at the time of the incident.

4. Admittedly, vide DD Entry No.21-A the duty officer at P.S. Badarpur noted at 11:15 P.M. on 19.4.2000 that a wireless message had been received informing that a person has been stabbed near Badarpur School, STD Booth. SI Anil Malik PW-16, accompanied by Const. Jitender reached the spot and learnt that the person who was stabbed was removed in a PCR Van to the hospital. HC Vinod Kumar PW-4, on duty on the PCR Van 'Egale-31' had also received an information on wireless at 11:15 P.M. that a person has been stabbed in front of Government School Badarpur near STD Booth. He took the van to the STD Booth and found a person clutching his stomach and in an injured condition. Kailash PW-10 was also at the STD Booth. He rushed the injured

accompanied by Kailash to All India Institute of Medical Sciences and on the way, on making enquiry from the injured, was told by the injured that his name was Kalu Ram and that the appellant, a labourer employed at the school had stabbed him.

5. The PCR Van reached All India Institute of Medical Sciences, as disclosed by Kailash Kumar in his testimony in Court, at around 11:45 P.M. Dr.Sri Kishan examined Kalu Ram and recorded his condition in the MLC Ex.PW-12/A to the effect that the patient was gasping and that the heart sound was not audible. The injured could not be revived and died in the hospital, as recorded in the death summary, at around 1:00 A.M. on 20.4.2000. Since SI Anil Malik had reached AIIMS soon after Kalu Ram was admitted there, he submitted an application, Ex.PW-16/B, to the doctor for recording the statement of Kalu Ram. The doctor declared Kalu Ram unfit for statement. Since SI Anil Malik informed Inspector Puran Singh PW-23, then working as an officiating SHO of P.S. Badarpur, by means of a telephonic call, that Kalu Ram was serious, PW-23 rushed to the hospital and on learning that the doctor had declared Kalu Ram unfit for statement, recorded the statement, Ex.PW-10/A, of Kailash Kumar. He prepared a tehrir, Ex.PW-23/A, and handed over the same to Const.

Satish with a direction to go to the police station for registration of a FIR. The statement of Kailash, Ex.PW-10/A, was received by HC Satya Pal Singh PW-1, at the police station who recorded the FIR, Ex.PW-1/A at 2:25 A.M.

6. Relevant would it be to note at this stage that PW-4 who had received the information of a person being stabbed at the PCO Booth Badarpur School at 11:15 P.M. had reached the spot; removed the injured and reached the hospital by 11:45 P.M. It may also be noted that the approximate distance between the site at Badarpur and AIIMS is about 17 kms.

7. Since Kailash had named the appellant as the assailant of Kalu Ram, the police got about to apprehend the appellant who was arrested on 3.5.2000.

8. Reverting back to the events which unfolded on the intervening night of 19-20/4/2000, the police lifted control earth containing blood from the site at Badarpur School where, as per Kailash, the deceased was injured. The site plan was prepared. The MLC of the deceased was obtained and body sent for post-mortem.

9. Thereafter, the police recorded statements of various persons under Section 161 Cr.P.C. Rishi Kumar PW-14, an employee at the STD Booth Badarpur informed the

police that around 11:00 P.M. on 19.4.2000, in his presence at the STD Booth, a person came to the booth and rung up the PCR at No.100 and that he heard him inform the police that somebody was stabbed by someone and that the injured was sitting outside the booth and that soon thereafter a PCR Van came and took the injured to the hospital. Three persons, Ram Pal PW-6, Om Prakash PW-7, and Ram Prasad PW-22, informed the police that at around 7:00 P.M. on 19.4.2000, in their presence at the school, one Santosh a munshi of Brij Mohan Contractor had quarreled with one Ram Prashad, a labourer, in the presence of the deceased Kalu Ram and that Om Prakash and the deceased had intervened to separate the two.

10. As noted above, the appellant was apprehended on 3.5.2000 and was interrogated by Inspector Puran Singh PW-23, who recorded his disclosure statement Ex.P-20/B, as per which the appellant disclosed where he had hidden the weapon of offence used by him to inflict the injury on Kalu Ram and the appellant volunteered to get the same recovered.

11. In the presence of HC Om Prakash PW-20, and Jawahar Lal PW-11, a public witness, the appellant took SI Puran Singh to a Nala near the school and pointed out the

place in the Nala wherefrom a knife stained with oil; (there being oil in the Nala), was recovered and seized vide seizure memo Ex.PW-11/C and thereafter a sketch thereof Ex.PW-11/A was prepared.

12. The dead body of the deceased was sent to a mortuary where PW-8 Dr.Sanjeev Lalwani along with Dr.Arun Agnihotri conducted the post-mortem on 20.4.2000, and noted the following injuries:-

“1. Stab wound around 2 cm x 0.5 cm obliquely placed in the epigastric region 6.5. cm above umbilicus and 6 cm from xephisternum in the midline which piercing underlying muscles subcutaneous tissue, peritoneal cavity and finally into liver over anterior surface of Rt. lobe lower part near felciform ligament with going obliquely upward; towards Rt. and backward and finally coming out of upper surface.

2. Incised wound of 3 cm over anterior lower part of neck which is skin deep and 2.5 cm from suprasternal notch.”

13. At the trial, Const. Vinod PW-4 deposed of having received a call at his PCR Van at around 11:15 P.M. on 19.4.2000 to which he immediately responded and reached the Government School near STD Booth. He stated that he found a person pressing his stomach and in an injured condition, whom he rushed to AIIMS and that Kailash, PW-10 was present with the injured and that the injured disclosed his name as Kalu Ram and told him that the appellant had

stabbed him. PW-14 Rishi Kumar, deposed that at 11:00 P.M. on 19.4.2000, a person rung up the police from his booth and he heard him inform the police that the injured was sitting outside and that somebody had stabbed him. He deposed that soon thereafter a PCR Van came and took the injured to the hospital. Kailash Kumar PW-10, deposed that he was doing work of white washing in Delhi for about last 7 years and that at the time of the incident he was doing work of white washing in Government Boys Senior Secondary School Badarpur and that he was present in the school on 19.4.2000, when at 7:00 P.M. a quarrel took place between one Ram Prasad a labour, doing work of white washing and the accused, who was the munshi of the Thekedar Brij Mohan. He stated that the deceased Kalu Ram was also present when the fight took place and that a gujar Om Prakash and Kalu Ram separated Ram Prasad and the accused. He deposed that thereafter the accused left but came back to the school at around 11:00 P.M. Kalu Ram who was a chowkidar in the school asked the appellant as to where was he going to which the accused responded that he was going to drink water. He deposed that the accused had consumed liquor and went towards the rear of the school where the water tank was situated. The deceased told him i.e. Kailash Kumar to follow

the accused but before he i.e. Kailash Kumar could do so, the deceased followed the accused and returned after 2-3 minutes, holding his belly, and told him that the accused had stabbed him. He deposed that he went to the rear and saw the accused jumping over the wall and running away. He deposed that since he could not apprehend the accused he returned to Kalu Ram and went to a telephone booth to inform the police and that the police came to the spot and removed Kalu Ram to AIIMS and that the police recorded his statement Ex.PW-10/A and obtained his signatures thereon at the place mark 'A'. Thereafter the police took him to the site and prepared a sketch. In cross examination he stated that he informed the PCR at around 11:10 P.M. and that the PCR Van reached the spot after 15-20 minutes and that they reached AIIMS by around 11:45 P.M. On further cross examination he admitted that the undernoted 8 statements made by him in his examination in chief were not recorded in his statement Ex.PW-10/A:-

“1. I had told the police that Om Prakash had separated accused and Ram Prasad.

2. I had also told the police that Om Prakash gave one or two slap to both Santosh and Ram Prasad.

3. Kalu Ram chowkidar had also separated accused Santosh and Ram Prasad.

4. I had told the police that Santosh had taken liquor.

5. I had told the police that Kalu Ram asked me to follow accused Santosh while he was going to take water.

6. I had also told the police that Kalu Ram again asked me not to go and he himself will follow as Santosh was drunken.

7. I had informed the police that after 2-3 minutes Kalu Ram returned back holding his belly.

8. I had told the police that when I asked about Santosh from Kalu Ram then Kalu Ram told me that accused Santosh was in the rear portion of School."

14. PW-11 Jawahar Lal, proved the pointing out memo, Ex.PW-11/A, prepared when the accused pointed out the spot wherefrom the weapon of offence was recovered; deposing that he was present when the event happened. He deposed that the knife Ex.P-1 was recovered in his presence from the spot pointed out by the accused and that the knife was seized in his presence vide seizure memo Ex.PW-11/C. He stated that the sketch of the knife Ex.P-11/B was prepared thereafter. PW-6 Ram Pal deposed that on 19.4.2000, at around 6:00 P.M. in presence of the deceased Kalu Ram the appellant had an altercation with Ram Prasad in the school and that PW-7 Om Prakash intervened and separated the two. Om Prakash PW-7, corroborated PW-6 about the fight between

the appellant and Ram Prasad. He stated that the appellant was drunk at that time. PW-22 also corroborated PW-6 about the fight which took place in the evening and stated that the appellant was drunk. It is relevant to note that the three witnesses were not cross examined pertaining to their testimony where they stated that the appellant had a fight with Ram Prasad in the school at around 7:00 P.M. on 19.4.2000. No suggestion has been put to the witnesses that the appellant was not present in the school at around 7:00 P.M.

15. Dr.Sanjeev Lalwani PW-8 proved the post-mortem report Ex.PW-8/A and on being shown the knife Ex.P-1, in Court, stated that the same could cause the injuries mentioned in the post-mortem report. On cross examination he stated that the injury on the deceased was of a kind where blood loss was excessive and the person so injured would become unconscious within 5 to 10 minutes.

16. We are eschewing reference to the other witnesses as they are police officers associated with the investigation and no submissions have been urged today with reference to their testimony and facts proved by them.

17. The appellant took a plea of alibi and examined his father as DW-1 who deposed that there was a marriage in the

family on 19.4.2000 at village Ohndera and that the appellant had attended the wedding in his presence. The marriage card Ex.DW-1/A was proved which records that Kumari Angita daughter of Chattar Pal Rajput was to get married on 19.4.2000. It may be noted that on being cross examined, DW-1 stated that no photographs were taken at the time of the marriage.

18. Learned Trial Judge has held that the evidence on record establishes the presence of the appellant in the school building in the evening of 19.4.2000 and his altercation with Ram Prasad. That the evidence establishes that the appellant inflicted the injuries on the deceased who made a dying declaration immediately before his death to PW-10 followed thereafter by a dying declaration to PW-4 and there was no reason to disbelieve said witnesses who deposed that before he died, Kalu Ram named the appellant as the assassin.

19. At the hearing held today, four submissions have been urged by learned counsel for the appellant. The first submission made is with reference to the testimony of PW-8 Dr.Sanjeev Lalwani, who deposed that a person with the injuries as were found on the person of Kalu Ram would become unconscious within 5-10 minutes. It is urged that PW-10 Kailash Kumar, on being cross examined, stated that the

police PCR reached at the spot after about 15-20 minutes. Thus, counsel urges, PW-4 could not have been told by Kalu Ram of being injured by the appellant, because by that time he was already unconscious. Counsel urges that the MLC of Kalu Ram, Ex.PW-12/A, records that heart sound was not audible; meaning thereby, that Kalu Ram was nearly dead by the time he reached the hospital; wherefrom it is urged, that an inference can be drawn that Kalu Ram was not in a state of consciousness when the PCR Van reached the PCO Booth.

20. The second submission made is that Kailash PW-10, the star witness of the prosecution, has made improvements upon his previous statement Ex.PW-10/A. Learned counsel drew our attention to the 8 statements (noted in para 13 above) made by PW-10 in his examination in chief which were not a part of his previous statement Ex.PW-10/A. Thus, counsel urges that PW-10 is not a trustworthy witness.

21. The third submission made is that there was no reason to disbelieve DW-1 who proved through the medium of the wedding card Ex.DW-1/A that indeed there was a wedding in the family in the village on 19.4.2000 and that the appellant was in the village to attend the wedding. Counsel urges that taking photographs on marriages is not a custom in villages and merely because no photograph of the

marriage were produced does not mean that no marriage took place. With reference to the testimony of PW-2 Deen Dayal Sharma, who on cross examination stated that on 17.4.2000 he had given Rs.6,000/- in cash to the appellant as he had wanted to go to his native village to attend a marriage, learned counsel urges that the plea of alibi has to be accepted.

22. Lastly, it is urged that a single injury was caused and hence at best conviction can be under Section 304 IPC and not Section 302 IPC.

23. Neither submission has impressed us. Pertaining to the first submission made, as noted hereinabove, we have meticulously noted the exact sequence of events and the time as to what transpired in the night of 19.4.2000.

24. As per the testimony of PW-10, the appellant had assaulted the deceased sometime after 11:00 P.M. but before 11:10 P.M. PW-10 has stated that the appellant had come to the school at 11:00 P.M. and Kalu Ram asked him as to where was he going to which appellant responded that he was going to drink water and went towards the rear of the school where the water tank was situated; the deceased followed the appellant and returned after 2-3 minutes holding his belly with a stab wound in the belly. At 11:15 P.M. DD Entry No.21-A

stands recorded. By the same time i.e. 11:15 P.M. PW-4, received a message in the PCR Van to rush to the spot. As per PW-10, then in an injured condition the deceased was removed to the hospital and reached the hospital at 11:45 P.M. That PW-10 stated that the PCR Van reached the spot after 10-15 minutes of the telephone call is neither here nor there because PW-10 is not a very literate person evidenced by the fact that he is a person working as a labourer doing work of whitewashing and would be expected to refer to time span in a loose and laconic manner. In any case, his subsequent statement that the injured was admitted at AIIMS at 11:45 P.M. shows that by 11:45 P.M. a distance of about 17 kms was covered after the injured was put inside the PCR Van; meaning thereby that the PCR Van had reached the spot immediately. It has to be noted that the message was received by PW-4 at 11:15 P.M. and within half an hour thereof he reached the spot; put the injured inside the PCR Van and brought him to the hospital. The journey time itself would take between 20-25 minutes. Thus within less than 5 minutes the PCR Van must have reached the spot. Further, PW-8 has given an opinion only and not a categoric finding. 5-10 minutes referred to by him could well be 5-12 minutes. Be that as it may, in the absence of any suggestion given to PW-4

that he had an enmity with the appellant and was thus deposing falsely, and independent thereof, finding no reason for PW-4 to depose falsely, we are of the opinion that the testimony of PW-4 has to be believed. The testimony of PW-4 as also PW-14 establishes that PW-10 was present with Kalu Ram. His presence at the site cannot be doubted.

25. Pertaining to the second plea i.e. the alleged improvements by PW-10 while deposing in Court vis-à-vis his statement Ex.PW-10/A, we note that 8 statements made by him in the examination in chief are alleged to be improvements, in that, the same are not recorded in Ex.PW-10/A.

26. We have noted the said 8 statements in para 13 above. Pertaining to the 4th statement we note that in Ex.PW-10/A it stands recorded that Santosh was intoxicated. Whether a witness says that the accused had taken liquor or whether the witness says that the accused was intoxicated, convey the same meaning. Thus, statement No.4 is not an improvement.

27. If one peruses statements 1 to 4, it would be evident that the said statements are not material statements and hence cannot cast any doubt on the testimony of PW-10. Statements 5 to 8 do appear to be improvements at the first

blush. But if read carefully, with reference to PW-10/A, one notices that in his first statement made to the police, Ex.PW-10/A, PW-10 has stated that when Santosh came to the school at 11:00 P.M. and deceased asked him as to where was he going he responded that he was going to drink water from the tap at the rear of the school and that Kalu Ram followed him with a torch in the hand and after 5 minutes, clutching his stomach Kalu Ram came back and said '*bete mujhe bachao ke santosh ne mujhe chaku mar diya hai*'. It is apparent that in his first statement to the police, PW-10, disclosed about Santosh going towards the rear of the school to drink water and Kalu Ram following him and returning back holding his belly and saying that Santosh had stabbed him. Thus, statement No.7 and 8 do form part of the statement made by PW-10 to the police, and hence cannot be called improvements. The only statement not forming part of Ex.PW-10/A, is Kalu Ram asking the witness to follow Santosh while he was going to take water and not informing the police that Santosh was in a drunken condition even at 11:00 P.M.

28. But, do these statements amount to material improvements? We wonder how? Even otherwise, law does not require to throw out, lock stock and barrel, the testimony of a witness who improves upon his previous statements.

Encountering such a situation, the Court has to separate the grain from the chaff. There is no suggestion given to PW-10 of his having any animosity with the accused i.e. the appellant and thus we see no reason for PW-10 to falsely implicate the appellant. Even otherwise the testimony of PW-4 is enough to hold that the deceased made a dying declaration to him about the cause of his death and who caused the injury.

29. Pertaining to the plea of alibi, as noted hereinabove, PW-6, PW-7 and PW-22 as also PW-10 have categorically deposed of the appellant being present in the school at around 7:00 P.M. on 19.4.2000 and having an altercation with Ram Prasad. This testimony of the four witnesses has not been challenged, evidenced by the fact that no question has been put to the witnesses pertaining to the fight which took place at 7:00 P.M. in the evening. No suggestion has been made to the said witnesses that the appellant was not even present in the school at 7:00 P.M. Thus, it stands established that the appellant was in Delhi on the date of occurrence. He was present in the school in the evening of 19.4.2000 and hence could not be in the village Ondhera in the evening of 19.4.2000. The testimony of DW-1 who is the father of the appellant has rightly been rejected by the learned Trial Judge.

30. Pertaining to the testimony of PW-2 we note that he was examined and cross examined on 5.1.2001. He never deposed that on 17.4.2000 he gave Rs.6,000/- in cash to the appellant who left for the village on 17.4.2000. On an application filed to recall PW-2 for further cross examination and on the same being allowed, PW-2 was further cross examined on 17.3.2003, when he made a statement in Court to the effect that on 17.4.2000 he had given Rs.6,000/- in cash to the accused who left for his village to attend some marriage. It is obviously a case where PW-2 was won over after more than 2 years.

31. Pertaining to the last submission made that the evidence on record does not establish an intention to cause death and hence the appellant cannot be convicted for the offence of murder; suffice would it be to state that there is no rule of law which states that when a single injury is caused the offence of murder can never be made out. Intention of a person has to be gathered from his conduct and the acts committed by the person. A person is presumed to intend the natural consequences of his acts flowing. The weapon of offence, the circumstances under which it was used, the part of the body i.e. vital or non-vital on which the injury is inflicted, the force used to inflict the injury; all have to be

considered. In the instant case the injury which has caused the death has been directed towards a vital part of the body i.e. the abdomen. The exact place of the injury is midway between the umbilicus (belly button) and xiphisternum (the lower end of the sternum). The knife has cut through the muscle tissue and has entered the peritoneal cavity i.e. the stomach region and has entered the liver at the anterior surface of the right lobe near falciform ligament and travelling obliquely upwards has cut through the liver and emerged outside the liver at the upper surface. Human anatomy guides us that the internal wound is spanning a length of at least 9 to 10 inches. This evidences the ferocity with which the blow was inflicted. It is not a case of a single injury. There is another injury at the anterior lower part of the neck. The two injuries show that the appellant had the intention to attack the vital organs of the deceased. There is a motive emerging. It is anger against the deceased who had intervened when the appellant and Ram Prasad had a quarrel at 7:00 P.M. May be, something was said at that time which was not to the liking of the appellant. There is no evidence that the appellant was provoked. The appellant has not stated when examined under Section 313 Cr.P.C. as to what led him to do what he did. Thus, it is a clear case of the act

being done with an intention to cause death. In any case Section 300 thirdly of the Indian Penal Code is fully attracted.

32. We are satisfied that the evidence on record has established the guilt of the appellant.

33. There is no merit in the appeal.

34. The same is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

January 21, 2009
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