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IN THE HIGH COURT OF DELHI

Judgment reserved on : March 12, 2009

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Judgment delivered on : March 23, 2009

CRL.A. 403/2004

DHARAM SINGH

..... Appellant

Through: Mr.Aman Lekhi, Sr.Advocate with
Mr.Shishir Singh, Advocate,
Mr.Jaspreet Singh, Advocate and
Mr.Vaibhav Vats, Advocate.

versus

STATE

..... Respondent

Through: Mr. Pawan Sharma, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. On 16.6.2003 at 8:25 AM vide DD No.3A, Ex.PW-1/B, the duty officer PS Srinivasपुरi recorded information about a stabbing incident that had taken place at R-4, Private Colony, Banghal Mandir, Srinivasपुरi. SI Mukesh Kumar PW-10 accompanied by Const. Madan Pal and Const. Hodal Singh reached the spot.

2. At the spot, SI Mukesh Kumar met Sher Singh PW-5, a neighbour of the injured named Jaggu. SI Mukesh Kumar recorded the statement, Ex.PW-5/A, of Sher Singh and made an endorsement, Ex.PW-10/A, thereon. He forwarded the same through Const. Madan Pal to the police station where ASI Kiran Sood PW-1, the duty officer, recorded the FIR, Ex.PW-1/A, under Section 302 & 34 IPC at 9:55 AM.

3. The statement Ex.PW-5/A, made by Sher Singh to SI Mukesh Kumar reads as under:-

“Statement of Shri Sher Singh S/o Shri Amar Chand R/o Q-26 Pvt. Colony, Sri Niwasपुरi, New Delhi, Age 50 years. I reside at the abovementioned address with family and work at Delhi Jal Board G.K I as an assistant meter reader. Today i.e 16.6.2003 at about 8-8:15 am Dharam Singh s/o Bhupan came to house no. R-4 and a quarrel took place between accused Dharam Singh and Jaggu over the digging of a drain. The people of the area had to intervene to get the matter settled. Thereafter, Dharam Singh left the spot. Immediately after that Bhupan, the father of Dharam Singh, came to the spot along with his wife Devki. Bhupan was armed with a *danda*, both Bhupan and Devki caught hold of Jaggu, Devki was hitting Jaggu with her slipper while Bhupan hit him with the danda on his head. In the meanwhile Dharam Singh came back to the spot armed with a *churri* (knife) and stabbed Jaggu on his chest straight away without saying a word, blood started oozing out from Jaggu’s chest as well as his mouth. That I tried to stop the loss of blood with a cloth. That the three assailants immediately ran away from the spot after causing the injuries. That someone called the police in the meanwhile and a PCR Van arrived at the spot. Dharam Singh, Bhupan and Devki who reside at T-71, Pvt. Colony Sri Niwasपुरi killed Jaggu@ Jagdev Singh in front of my eyes. There was a litigation pending between Jaggu and Bhupan for the past 15-20 years. My statement has been read over to me and is correct”

4. From the spot, SI Mukesh Kumar seized a churi (knife), vide seizure memo, Ex.PW-5/E. A pair of hawai chappals were seized vide seizure memo Ex.PW-5/D. Another pair of chappals were seized vide seizure memo Ex.PW-5/J. SI Mukesh Kumar sent the dead body to the mortuary of AIIMS.

5. Since Sher Singh had named, apart from the appellant, Devki and Bhupan as the accused, the police started searching the three. Devki and Bhupan were arrested by SI Mukesh Kumar the same day in the evening from their house at T-71, Private Colony Srinivaspuri, New Delhi. Accused Bhupan made a disclosure statement Ex.PW-10/D, in which he told the police of having hit the deceased with a danda and said that he can get the same recovered. Thereafter, from within his house he got recovered a danda which was seized vide seizure memo Ex.PW-10/D.

6. Appellant Dharam Singh was arrested the next day i.e on 17.6.2003 and he made a disclosure statement, Ex.PW-10/F, the same day. In his disclosure statement, Dharam Singh said that when he inflicted the stab wound on the deceased, his i.e. Dharam Singh's clothes got stained with blood and that he can get the same recovered. Thereafter, from his house, Dharam Singh got recovered a pant stained with blood as also a shirt stained with blood which were seized vide seizure memo Ex.PW-10/G.

7. At the mortuary Dr.Jayan PW-4 conducted the post-mortem of the deceased Jaggu on 17.6.2003 and noted his observations on the post-mortem report Ex.PW-4/A. He handed over the same along with a blood sample of the deceased, taken on a piece of gauze, to the police officer who had submitted the inquest papers. On the post-mortem report the following injuries on the person of the deceased have been recorded:-

1. A stab wound, slightly and obliquely placed on the right side of the chest. In the third inter coastal space of size 3x1.5cm with slightly contused upper margins contused, 1.5cm from the midline, 7cm from sterna notch, 9 cm from the right nipple and 31cm from the umbilicus. On exploration of the wound third rib was found to be transected along with right main bronchus, left atrium was punctured on the posterior wall. Pulmonary veins were cut in the immediate proximity of the atrium.

2. Abrasion reddish brown colour 3x2cm size on the right shoulder posteriorly.

8. He noted that the internal examination revealed that the right lung had collapsed as the knife had pierced through the right lobe of the lung. The pericardial cavity was found filled with 220 ml of blood. He opined that the cause of death was haemorrhagic shock due to injury No.1 which was caused by a sharp edged weapon. The injury was stated to be sufficient to cause death in the ordinary course of nature.

9. The blood stained knife recovered at the instance of the appellant, the clothes recovered at the instance of the

appellant, the chappals recovered at the site, and the blood sample of the deceased were sent to a serologist and as per FSL report Ex.P-Y, it was opined that the blood group of the deceased was A and that human blood of group A was found present on the knife. Human blood was found on the pair of chappals but group thereof could not be detected. Human blood was detected on the pant and the shirt recovered at the instance of the appellant but group thereof could not be detected.

10. Apart from Sher Singh, at whose instance the FIR was registered, one Chet Ram also claimed to be an eye witness to the incident. Even his statement under Section 161 Cr.P.C. was recorded by the Investigating Officer.

11. Needless to state, Sher Singh and Chet Ram told the Investigating Officer that the appellant, Devki and Bhupan were responsible for the death of Jaggu. Thus, the appellant, Devki and Jaggu were sent to trial; charged with the offence of acting in concert and murdering Jaggu.

12. Needless to state, the case of the prosecution hinged upon the eye witness account; namely on the deposition of Sher Singh and Chet Ram.

13. Sher Singh PW-5 deposed that he knew the accused who are his neighbours and that the deceased Jaggu was their tenant. That on 16.6.2003, at about 8/8:15 AM, he was about

to go to his office when he heard a commotion and came out. All the accused and the deceased were exchanging hot words due to a nalli. Appellant Dharam Singh inflicted a blow with a churi on the chest of Jaggu. That Bhupan and Devki were present. Thereafter all the accused ran away. A call was made to the police who arrived after about 15 minutes. That the statement Ex.PW-5/A was signed by him. Since qua Bhupan and Devki, the role which he had prescribed to them in his statement Ex.PW-5/A was not attributed to Devki and Bhupan, the learned Additional Public Prosecutor got the witness declared hostile and cross examined him. On being cross examined by the learned APP, he said that something might have happened before he was present and that he had no knowledge that Bhupan was armed with a danda and inflicted a blow on the head of Jaggu with the same. He stated that he informed the police only about the incident of Dharam Singh having stabbed Jaggu. He admitted that Bhupan got recovered a danda as recorded in the memo Ex.PW-5/C. He admitted that the articles shown seized from the spot as per seizure memo Ex.PW-5/D and Ex.PW-5/J were recovered from the spot in his presence. On being cross examined by the accused, Sher Singh stated that the deceased kept lying at the spot for about 1 hour or 1¼ hours and that during this period nobody tried to give him medical aid. That the area being

thickly populated about 100 people assembled at the spot. That the police stayed at the spot for about 1½ to 2 hours. That on the day of the incident he went to duty. He deposed that his duty hours were from 9:30 AM to 5:30 PM. The last sentence of his cross examination is relevant. He stated: '*the police had come to the spot within 15-20 minutes after stabbing*'.

14. Chet Ram PW-9 deposed that he was a TSR driver by profession and knew the accused who were his neighbours. On 16.6.2003 a road was being constructed in the area due to which the nallis got choked and water stopped flowing in the nallis. Jaggu was trying to open a nalli and Dharam Singh came and hot words were exchanged between the deceased and Dharam Singh. They grappled with each other. The crowd separated them. After hearing about the quarrel, Bhupan and Devki arrived. Bhupan was having a danda. Dharam Singh said that he would see to it and went inside his house and brought out a knife and inflicted a blow on the chest of Jaggu. That he does not know what role was played by Bhupan or Devki because there was a big crowd. Since Chet Ram was not supporting the case of the prosecution qua the role of Bhupan and Devki, he was declared hostile and was cross examined by the learned APP. On cross examination he denied having seen Bhupan inflict a blow with a danda on the

head of Jaggu or Devki having given chappal blows to Jaggu, but admitted that Bhupan and Devki caught hold of the deceased when Dharam Singh inflicted the knife blow. On being cross examined by the accused, he stated that the quarrel took place at about 8/8:15 AM and he telephoned the police who came to the site after 20-25 minutes. He stated that about 50 persons were present at the spot. Confronted with his statement under Section 161 Cr.P.C. where it was not recorded that he had seen Bhupan and Devki having caught the deceased when Dharam Singh stabbed the deceased, he stated that though not recorded in his statement, but he had disclosed said fact to the police.

15. Discussing the deposition of PW-5 and PW-9 i.e. Sher Singh and Chet Ram, the learned Trial Judge, in para 13 of the impugned decision dated 17.4.2004 has observed: *It is thus clear that their evidence is an inchoate mix or irreconcilable opposites.*

16. Though not expressly stated in the impugned decision, the underlining reasoning of the learned Trial Judge appears to be that Sher Singh having not assigned any role to Bhupan and Devki and the role assigned by Chet Ram to them i.e. of having caught hold the deceased when appellant attacked the deceased with a knife, a fact not told by him to the police when his statement was recorded by the police and

hence the same being an improvement, did not establish the participative role of Bhupan and Devki. However, qua the appellant, noting that both the eye witnesses had corroborated each other qua the acts of the appellant, his accomplicity in the crime stood established. The result is the conviction of the appellant for the offence of having murdered Jaggu, and acquittal of the co-accused.

17. At the hearing of the appeal, Mr. Aman Lekhi, learned senior counsel for the appellant urged that the finding recorded by the learned Trial Judge in para 13 of the impugned decision that it was clear that the testimony of Sher Singh and Chet Ram was an inchoate mix of irreconcilable opposites, logically leads to their evidence being discarded in its totality and hence the appellant cannot be convicted for the offence of having murdered Jaggu.

18. At the outset, we may note that on what basis has the learned Trial Judge recorded an opinion in para 13 that the evidence of Sher Singh and Chet Ram is an inchoate mix of irreconcilable opposites has not been brought out with clarity in the decision. In the preceding two paras, the learned Trial Judge has simply noted the testimony of Sher Singh and Chet Ram. Without juxtaposing the statements made by the two and then analyzing them, the learned Trial Judge has recorded his opinion.

19. A perusal of the impugned decision shows the penchant of the learned Trial Judge to use flowery language, without really understanding the precise meaning of the words and phrases used by the learned Judge. 'Irreconcilable opposites', means two statements which are diametrically opposite to each other and cannot be reconciled at all, because each is destructive of the other. For example the statement: A is my wife, is destructive of the statement that: A is my daughter. The reason is obvious. Evidence of A being the wife of the maker of the statement, would itself destroy that A is the daughter of the maker of the statement, and vice versa. But, the statement: A is my wife would not be diametrically opposite to the statement: Myself and A have a live in relationship; for the reason, proof of the first would not itself destroy the basis for the second.

20. A variation in the narrative of an incident by two eye witnesses cannot be ever a case of irreconcilable opposites for the reason both disclose the same facts in issue but differ on other facts which encompass the facts in issue. A series of acts spread over a duration of time but interconnected with each other are relevant facts because they form a complete chain enwombing the fact in issue. Thus, merely because there is some discrepancy which narrating the facts which encompass the fact in the issue,

would not mean that irreconcilably opposite views are emerging. In such a situation, care has to be taken to find out whether the difference in the narrations relate to the facts in issue or the attendant facts. Similarly, it has to be kept in mind that human beings seldom have photogenic memory and while deposing to events seen by them in the past, do tend to blur the facts, but merely on said account, it cannot be said that the witnesses are deposing falsely. Similarly, improvements and variations vis-à-vis the previous statements of the witnesses, unless they are on material points, have to be ignored.

21. Sher Singh has deposed that he heard a commotion and came out and saw that the accused and the deceased were exchanging hot words and Dharam Singh inflicted a blow on the chest of Jaggu. In other words, Sher Singh categorically deposed that all the accused i.e. Devki, Bhupan and Dharam Singh were present, but only Dharam Singh inflicted the blow. He deposed that thereafter all the accused ran away. Chet Ram deposed that Jaggu and Dharam Singh exchanged hot words and grappled with each other. The crowd separated them. On hearing the quarrel Bhupan and Devki arrived. Dharam went inside and brought out a knife and inflicted a blow on the chest of Jaggu.

22. It is quite possible that Sher Singh came out a little later than Chet Ram and did not see the first part of the quarrel seen by Chet Ram i.e. when Jaggu and Dharam exchanged hot words and grappled and were separated by the crowd and on upon hearing the quarrel Bhupan and Devki arrived. It is possible that Sher Singh came out at that stage and saw the appellant inflict the stab wound on the chest of the deceased.

23. The deposition of Sher Singh evidences that he saw only the later part of what actually happened and not the first part thereof, as deposed to by Chet Ram.

24. Far from there being any irreconcilable opposites emerging from the testimony of Sher Singh and Chet Ram, we find substantial corroboration in the testimony of each.

25. Now, dealing with the submissions urged in the appeal, Mr.Aman Lekhi, learned senior counsel for the appellant urged that on being cross examined Sher Singh deposed that the body kept lying at the spot for 1 hour to 1¼ hours and nobody gave medical aid, meaning thereby, as urged by learned counsel for the appellant, that as per the witness, the police came to the spot after 1 hour or 1¼ hours. Thus, learned counsel urged that it becomes doubtful whether Sher Singh was at all present because he admitted during

cross examination that on the day of the incident he went to duty and that his duty hours were from 9:30 AM to 5:30 PM.

26. The argument is a roller coaster argument and is founded by picking up statements here and there, and drawing inferences. Now, Sher Singh has clearly deposed that at about 8-8:15 AM, when he was about to go to his office, he heard a commotion which propelled him to go out and that on going out he saw Dharam Singh stab the deceased. As noted hereinabove, in cross examination, he deposed that the police came to the spot within 15-20 minutes of the stabbing incident. To a question as to what were his duty hours, he replied that they were from 9:30 AM to 5:30 PM. To the question whether on the day of the incident he went to duty, he replied in the affirmative. Where was the supplementary question asked: *On the day of the incident, when did you report for duty?* Had this question been asked, the witness would have given some answer. If the answer was that he reported for duty at 9:30 AM, another question would have become relevant as to what was the distance between the house of the witness and his office and what was the mode of transport used by him to cover the distance. No such question was asked. Thus, no inference can be drawn that on the day of the incident Sher Singh was in his office at 9:30 AM. It is further important to note that the statement Ex.PW-5/A of Sher

Singh, with the endorsement Ex.PW-10/A was forwarded to the police station by SI Mukesh PW-10, as recorded on the endorsement itself at 9:40 AM. Further, the FIR Ex.PW-1/A, records the time of its registration being 9:55 AM. No suggestion has been put to SI Mukesh Kumar or to Sher Singh pertaining to the time when the statement Ex.PW-5/A was recorded; the time on which the said statement and the endorsement thereon was sent from the spot for registration of an FIR and the time when the FIR was registered. Thus, the presence of Sher Singh at the spot when the police arrive within 15-20 minutes of the commission of the crime stands corroborated through the medium of said documentary evidence, purity of which has not been questioned by learned counsel for the appellant.

27. We need not make a list of a plethora of judicial pronouncements, for the reason their list would run into 1000s of cases, where it has been held that witnesses in India tend to exaggerate facts and frolic in verbosity; requiring the Court to be careful and remove what possibly has been fantasized by the witness and spoken of as having been seen by him, vis-à-vis, what has been actually seen by the witness and narrated thereto, while appearing as a witness in a Court.

28. The only difference we find in the deposition of Sher Singh and Chet Ram on the issue of appellant having inflicted

the stab blow on the deceased is that Sher Singh who deposed of Devki and Bhupan being present does not ascribe the role to them of having caught hold of the deceased, but Chet Ram ascribing said role to them.

29. Both the witnesses have spoken of the crowd having assembled. According to Chet Ram about 50 people had assembled. According to Sher Singh about 100 people had assembled. In a crowd, estimation of persons being present would vary from person to person, for the reason, obviously a head count was not taken. The point we want to bring out is that when so many people had gathered, a chaotic scene would obviously be the result, and in such situation, either somebody not seeing something or somebody just imagining something happening cannot be ruled out.

30. In any case, benefit thereof would be to the account of co-accused, which benefit we note have already been given to them.

31. From the evidence on record we are satisfied that the role of the appellant stands clearly established.

32. It was argued that since a single stab blow was inflicted on the deceased, at best offence made out attracts Section 304 IPC and not Section 302 IPC.

33. Merely because a single stab blow is inflicted, by itself, does not mean that Section 302 IPC is not attracted. It

all depends upon the facts and circumstances of each case and the relatable evidence thereto. Where an intention surfaces and it is shown that the intention was to cause an injury and that the injury which has been caused is proved to be sufficient in the ordinary course of nature to cause death, the act clearly attracts Section 300 thirdly. In the instant case, the intention to cause the injury is clearly evidenced by the fact that the appellant had used a knife and had directed the blow towards the chest of the deceased, a vital part of the body, containing vital organs i.e. the lung and the heart.

34. From the post-mortem report, it is apparent that the knife pierced the right lung which collapsed. Due to excessive bleeding, the deceased died at the spot itself. It is obvious that the knife was thrust with a considerable force.

35. Seldom, in criminal law, can one find a case near identical to another on facts and thus strictly speaking there can be no precedent in a criminal case. But there are always exceptions. Instant case has a precedent on identical facts. In the decision reported as 2007 Cri LJ 1663 Imthiaz & Anr. Vs. State of U.P. on a civil dispute between the deceased and the accused over drainage, on the day of the incident, the deceased and his brother were cleaning a drain and the accused, one of whom was armed with a spear inflicted a single stab injury on the left side of the chest, 3 inches above

the left nipple, which pierced the lung of the deceased who suffered an instant death. The conviction of the accused was sustained for the offence punishable under Section 302 IPC. The Supreme Court observed that being armed with a deadly weapon such as a spear itself evidences the definite intention to cause death or at least a grievous injury with the spear, and if the injury caused is found to be sufficient in the ordinary course of nature to cause death, the offence would be under Section 302 IPC and not Section 304 IPC.

36. We find no merit in the appeal.

37. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 23, 2009
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