

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

+ **Crl. Appeal No. 418/2004**

% **Date of Order : March 18, 2009**

SUNIL @ BABLOO ..... Appellant  
Through : Mr.H.J. S. Ahluwalia, Advocate

VERSUS

STATE .....Respondent  
Through : Mr. Pawan Sharma, 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 impugned judgment and order dated 30<sup>th</sup> January 2004 the appellant has been convicted for the offence of murdering Ashish. The appellant has also been convicted for the offence punishable under Section 27 of the Arms Act.

2. Vide order on sentence dated 31<sup>st</sup> January 2004, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs.3,000/-; in default of payment of fine, to undergo S.I. for three months pertaining to the offence of

murder. For the offence punishable under Section 27 of the Arms Act sentence imposed is to undergo R.I. for three years and to pay a fine of Rs.2,000/-; in default of payment of fine, to undergo S.I. for two months.

3. Needless to state, both sentences have been directed to run concurrently.

4. Four persons, namely, Rakesh PW-5, Anil PW-6, Manju PW-9 and Ikram PW-16 were cited as the eye witnesses to the incident.

5. Rakesh and Anil are the brother of the deceased whose name was Ashish. Manju is the wife of Ashish. Ikram is a neighbor.

6. The place of incident is a public street. The exact spot is outside house No.U-554, Bal Hanuman Mandir Marg, 2<sup>nd</sup> Pusta, New Usmanpur. The time of the incident is around 9.00 AM on 1.1.2001.

7. The appellant is a resident of House No.U-555, Bal Hanuman Mandir Marg, 2<sup>nd</sup> Pusta, New Usmanpur.

8. The case of the prosecution is that on 31.12.2000 a quarrel had taken place at around 9.00 – 10.00 P.M. between the appellant and his neighbours i.e. Anil, Rakesh and

Ashish. Ikram, a neighbour had intervened and had sorted out the matter. But, while leaving, the appellant threatened Ashish that he would see him some other time. That on 1.1.2001 at about 9.00 A.M. Ashish was cleaning the drain (nalli) outside his house. The appellant started quarreling with Ashish pertaining to the issue of the previous evening. He started grappling with Ashish who gave a head butt on the left eye of the accused, whereupon the accused took out a knife and inflicted two blows on the chest of Ashish, who fell down and started bleeding profusely. Attempts to apprehend the appellant at the spot were frustrated. He ran away.

9. The events which unfolded on 1.1.2001 stand reflected in the MLC of the deceased; the DD entry recorded at the Police Station when information was received from the duty constable at LNJP hospital regarding the deceased having been brought to the hospital and his having died; the statement of Rakesh PW-5 recorded by SI Pramod and the FIR registered pursuant thereto.

10. The MLC Ex.PW-1/A of Ashish evidences that he was brought to the hospital i.e. LNJP hospital at 10.20 A.M. by Rakesh. Before any timely medical aid could be given to

Ashish he died at 10.30 A.M.

11. In the MLC the name of the patient first written as 'Anil' has been scored off and the name 'Ashish' has been written. The cutting has been initialed by the doctor who prepared the MLC.

12. Information pertaining to an injured being brought at the hospital and the fact of his death has been recorded in DD entry No.5-A dated 1.01.2001. The document is Ex.PW-17/A. The duty constable at Police Station New Usman Pur has recorded the information received from Babu, the duty constable at LNJP hospital that Anil son of Ram Bharose aged about 24 years, resident of U-554, 2<sup>nd</sup> Pusta, Usman Pur was brought in an injured condition; being stabbed with a knife, and that he had died.

13. The DD entry is recorded at 11.30 A.M.

14. On receipt of the information at the local Police Station SI Pramod PW-17 accompanied by Const. Vijender Singh PW-11 left for the hospital and met Rakesh PW-5 whose statement Ex.PW-5/A was recorded in which he informed about the quarrel which had taken place the previous night and that in the morning of 1.1.2001 at around 9.00 A.M. when

his brother Ashish was cleaning the drain outside the house, the appellant had an altercation pertaining to the issue of the previous night and that he stabbed Ashish twice on the chest and thereafter ran away. The attempts by Ikram and Anil to apprehend him failed.

15. Making an endorsement Ex.PW-17/B on the statement Ex.PW-5/A, both were dispatched from the hospital, as recorded in the endorsement Ex.PW-17/B, at 1.30 P.M. The FIR Ex.PW-2/A was recorded at 1.40 P.M. on 1.1.2001.

16. The appellant was apprehended and arrested, as recorded in the arrest memo Ex.PW-17/C, at 6.20 P.M. on the same day i.e. on 1.1.2001. The place of arrest is ISBT Kashmere Gate. The appellant was interrogated and made a statement Ex.PW-5/B in which he disclosed to the police that he knew the whereabouts of the weapon of offence i.e. churri with which he had inflicted the injuries on Ashish and offered to get the same recovered.

17. Thereafter, appellant led the Investigating Officer to a sweet shop at 2<sup>nd</sup> Pusta of Hanuman Gali and from a drain near electric pole got recovered a knife Ex.P-1 which was seized vide seizure memo Ex.PW-16/B. Sketch whereof

Ex.PW-16/A was drawn by the SHO of the Police Station who had also joined the investigation.

18. The dead body of Ashish was sent to the mortuary where Dr. Anil Kumar PW-13 conducted the postmortem at 2.45 P.M. on 2.1.2001 and noted two external injuries: (1) Incised stab wound 2 x 0.8 cms: chest cavity deep on the left side of the chest; 7 cm above the left nipple. The wound was placed obliquely with both angles acute. (2) The second stab wound with dimension 2.5 x 1.2. cms on chest, cavity deep, on the left side lower front of chest at a distance of 7.2. cms below the left nipple and 9.5 cms from the midline. The internal examination was noted that the left lung had been pierced. The dimension of the internal injuries may be noted from the postmortem report itself, which records the same as under:-

“Rt. Lung – NA Wt. 450 Gms. Left lung shows a cut in the lower edge of upper lobe & upper edge of lower lobe of dimension 4 cms x 0.5 cms passes through the lower lobe of lung to enter the outer aspect of chest wall of left side to furnish there in sixth intercostals space with cut mark 4 x .8 cms (via injury No.2) the direction of track of injury No.2 being downwards backwards and outer wards. The total length of track being about 12 cms.

Injury No.1 enters the 1st intercostals space on left

side, to enter and pass through the original of ascends  
auta making a cut 2.5 x 0.2 cms passed backward with  
a cut in pulmonary truck 1.5 x 0.2 cms and then  
passing through the right main brounchus cutting its  
front all of funish in the lumen. The direction of the  
wound being downwards backwards and slightly  
inwards. The length of the backbeing about 10 cms."

19. The postmortem report is Ex.PW-13/A.

20. The opinion of the doctor was specifically sought  
with respect to the knife Ex.P-1 and vide report Ex.PW-13/B it  
was opined that the injuries could be caused by the knife in  
question.

21. At the trial, Rakesh PW-5 deposed that he was a  
resident of House No.U-554, 2<sup>nd</sup> Pusta, New Usmanpur. That  
on 1.1.2001 appellant inflicted knife blows on his brother  
Ashish. He was present. His brother was cleaning a nalli  
outside the house. That the accused inflicted two blows on  
the chest of his brother. That the previous night there was a  
quarrel between the accused and his brother. That he took  
his brother to the hospital. That Anil, his younger brother  
chased the accused but could not apprehend him. Ikram and  
other people were present. He took his brother to the  
hospital. His brother was named Ashish. He stated that

initially he incorrectly gave name of his brother to the doctor as 'Anil' but later on got the same corrected as 'Ashish'. He stated that his statement Ex.PW-5/A was recorded by the police and that it bears his signatures at Point A. He went on to depose that the accused was brought to Usmanpur and got recovered a churri from a nalli. He deposed that the accused was interrogated and that the accused told the police that he had murdered Ashish.

22. On being cross examined, Rakesh stated that the police never recorded his statement but he was made to sign some papers. He stated that he did not sign any paper in the hospital and that whatever he was made to sign was at the Police Station. When questioned as to in what manner Ashish was taken to the hospital, he stated that firstly in a rickshaw and then in a TSR.

23. We note that Rakesh is a witness to the recovery memo Ex.PW-16/B and is also a witness to the disclosure statement Ex.PW-5/B.

24. Anil PW-6, deposed that on 31.12.2000 a quarrel had taken place between Ashish and the appellant and with the intervention of the neighbours the quarrel was quenched.

That in the morning, on 1.1.2001, he was standing outside his house. The time was 9.00 A.M. Ashish, his brother, was cleaning a naali. Appellant started quarreling on reaching the spot and took out a knife and inflicted blows on Ashish. That Rakesh and Ikram were present. That his brother was removed to the hospital in a TSR. That after inflicting the injuries the appellant ran away from the spot and took the knife along with him.

25. Manju PW-9, deposed that she was the wife of Ashish and that on 31.12.2000 at 9.30 P.M. a quarrel had taken place between the appellant and her husband. With the intervention of neighbours, in particular Ikram, the issue was sorted out. That the next day at 9.00 A.M. her husband was cleaning the nalli. She was inside the house. She heard commotion and came out of the house. She saw appellant quarreling with her husband. That all of a sudden, the appellant struck two blows with a knife on her husband. That thereafter appellant ran away. Her elder brother-in-law took her husband to the hospital. That she became nervous and started crying and did not remember as to what happened thereafter.

26. Ikram PW-16, deposed that on 31.12.2001 a quarrel had taken place between the appellant and the deceased. He had sorted out the matter. On 1<sup>st</sup> January Ashish was cleaning a nalli. A quarrel ensued between the appellant and Ashish. A hue and cry was raised. He saw blood oozing from the body of Ashish, who had fallen down. That appellant had given knife blows. That Rakesh and Anil removed Ashish to the hospital. That the appellant was apprehended there and then and was tied to a pole. One Balraj went to the Police Station and brought the police to the spot. That the appellant took out a knife from a naali and was apprehended. That the sketch Ex.PW-16/A of the knife bears his signatures. He identified the knife as Ex.P-1. On being cross examined, he denied that the appellant was not apprehended at the spot.

27. SI Pramod Chauhan PW-17 deposed that on receipt of DD No.5-A, Ex.PW-17/A, accompanied by Const. Vijender he went to LNJP hospital and learnt that injured had died. That he recorded the statement Ex.PW-5/A made by Rakesh and that he made an endorsement Ex.PW-17/B thereon and sent the same through Const. Vijender for registration of an FIR.

He deposed that on receiving information that the appellant was at ISBT Kashmere Gate, accompanied by the SHO of the Police Station he went to Kashmere Gate and apprehended the appellant and prepared his arrest memo Ex.PW-17/B. That on interrogation, the accused made a statement Ex.PW-5/B. That thereafter the appellant led the police party to Saini Halwai Shop, 2<sup>nd</sup> Pusta and from near a electric pole got recovered a knife Ex.P-1. That seizure memo Ex.PW-16/B was prepared and sketch Ex.PW-16/A was drawn.

28. Inspector Ramesh Chand PW-18, the SHO of the police station deposed that he went to the spot where the offence has occurred at around 2.30 P.M. on 2.1.2001 and prepared the site plan Ex.PW-18/A. He deposed that he received secret information that appellant was available at ISBT Kashmere Gate. That he took Rakesh along with him as also PW-17. That at the pointing out of Rakesh, the appellant was arrested and arrest memo Ex.PW-17/C was prepared. That he interrogated the appellant who made a statement Ex.PW-5/B and pursuant thereto led the police to Saini Halwai Shop and from a naali near Hanuman Mandir got recovered the knife Ex.P-1. That it was seized vide memo Ex.PW-17/D

and that the sketch Ex.PW-16/A thereof was drawn in his presence.

29. The learned trial Judge has held that eye witnesses have corroborated each other with respect to the presence of each other and the appellant being the assailant. Learned trial Judge has held that the motive of the crime i.e. the quarrel which took place the last evening has also been established by the testimony of each witnesses who have corroborated each other.

30. Certain variations and contradictions which have been urged even before us and which we would be discussing hereinafter, have been noted by the learned trial Judge and a finding has been returned that the variations are natural and pertains to the fringes of the deposition of the witnesses and do not affect the credibility of their evidence pertaining to the core area of the fact in issue.

31. The first and foremost thing noted by the learned trial Judge and which has been argued before us is that Rakesh PW-5, the complainant, at whose instance the FIR has been registered stated during cross examination that he made no statement at the hospital and that he had signed

some papers in the Police Station. That the police had shown him the papers. He had merely signed the same.

32. As regards the said statement made by Rakesh during cross examination, it is important to note that in examination in chief he deposed that he took his brother to the hospital where his brother was declared dead. He deposed : *"My statement was recorded by the police. Same is Ex.PW-5/A. It bears my signatures at Point A"*. He stated that the police took him to various places to search the accused and that he was taken to a bus stand. He deposed: *"the accused was found present at the bus stand and I identified him. The accused was brought to New Usmanpur where from he brought out a chhuri which was lying in a naali"*.

33. That Rakesh comes from a humble background is evidenced by the fact, as disclosed by him while deposing in Court, he is a carpenter by profession. His command over the language would presumably be weak. Witnesses and especially those who come from humble background get overwhelmed in a Court room. They tend to mix up facts. What is relevant to be noted is that Rakesh has admitted that

the police recorded his statement and that the same was Ex.PW-5/A and that it bears his signatures at point 'A'. It is not out of place to note that while deposing in Court, Rakesh has stated the same facts which have been recorded in Ex.PW-5/A. Further, Rakesh has deposed that the police took him to various places to search the accused and that he pointed out the accused at a bus stand and after he was arrested by the police the accused was brought to New Usmanpur and from a naali in New Usmanpur the accused brought out a chhuri.

34. It is apparent that the witness has proved, if not the disclosure statement of the accused, at least, the factum of recovery of a knife from a place at the pointing out by the accused.

35. It is true that on being cross-examined Rakesh stated that firstly the deceased was taken in a rickshaw and thereafter in a TSR to the hospital. But, that does not mean that there is a contradiction in the testimony of PW-6 and PW-16 who deposed that the deceased was removed to the hospital in a TSR.

36. The sight of blood unnerves even man of steel.

When a person is injured with a knife, the scene at the spot becomes fairly chaotic. Witnesses and specially if they are the near and dear ones of the injured, get extremely perturbed, confused and in a state of excitement. Their concern is to see that medical aid is given to the injured without loss of time. Their concern is not to know as to who is doing what. As observed by the Supreme Court in the decision reported as Bharwada Bhoginbai Hirjibhai v State of Gujarat AIR 1983 SC 753:-

“Over much importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen:

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the

main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person,

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses." (Emphasis supplied)

37. Indeed, every person who witnesses a murder

reacts in his own way. Some are stunned, some become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction.

38. Indeed, the deposition of Manju Devi PW-9 brings out the aforesaid. She stated that when she saw her husband attacked she became nervous. She started crying. She just do not remember as to what happened thereafter. This is natural conduct of an Indian housewife. Manju wife of Ashish was aged 18 years when she saw her husband being attacked.

39. With respect to the presence of Rakesh, Anil, Manju and Ikram at the spot, as noted herein above, she has corroborated the presence of each other. The only point worth noting is that Rakesh, Anil and Ikram have not talked about Manju being present. They have not done so for the reason as stated by Manju herself, she started crying. She

became nervous. She just did not remember as to what had happened. It is obvious that Manju remained stationed and rooted at the door of her house. The male members of the family and Ikram did the rescue act. Thus, presence of Manju was not noted by them.

40. Pertaining to the place of arrest of the accused, no doubt, Ikram has stated that the accused was apprehended at the spot by the public and was tied to a pole and was handed over to the police who came to the spot soon thereafter.

41. But, it would be important to note that in his deposition, pertaining to the recovery of the knife he deposed: *"Knife was recovered in front of Saini Sweet Shop. The knife was packed. Its search memo Ex.PW-16/A bears my signatures. Pointing out-cum-recovery memo Ex.PW-16/B bears my signatures at point 'A'. The knife is Ex.P-1."*

42. Ikram has supported the recovery of the knife at the instance of the appellant from in front of Saini Sweet Shop. Ikram has affirmed and proved the pointing out-cum-recovery memo and the sketch of the knife which was drawn in his presence.

43. Now, if the appellant was apprehended at the spot,

the knife would be recovered from the spot itself. This has not happened.

44. Ikram also comes from a humble background. He deals in sale and purchase of cloth. New Usmanpur is an unauthorized colony in Delhi. It is inhabited by the under-privileged. The wild imagination of Ikram to project a scene of Hindi movie perhaps seen by him had led him intermingle imagination with reality. His statement that the accused was apprehended at the spot and tied with a pole, is an introduction of fantasy in the reality. After fantasizing the same, Ikram re-entered the world of reality by deposing facts pertaining to the recovery of the knife at the instance of the accused from a place in front of Saini Sweet Shop.

45. The part of testimony of Ikram pertaining to apprehension of the appellant at the spot has to be severed. In any case, two witnesses, viz. PW-5 and PW-6 have corroborated PW-17 and PW-18 pertaining to the apprehension of the appellant from ISBT Kashmiri Gate.

46. We are satisfied that the evidence on record establishes the presence of the appellant at the spot and that the appellant attacked the deceased and inflicted two knife

blows on the chest of the deceased which have proved to be fatal. Indeed, the doctor who conducted the post-mortem of the deceased opined that both injuries were individually and collectively sufficient to cause death in the ordinary course of nature.

47. The knife used by the appellant as per its sketch Ex.PW-6/A shows that it has a blade of 16 cms. It has a handle of 13 cms. The knife is akin to a dagger. The ferocity of the blows is evidenced by the internal injuries which have cut through the lung. It is obviously a case where the intention to cause death is evidenced by the act and the weapon of offence used. The motive for the crime, as noted above, is the incident of the previous night. That at 9'o clock in the morning the appellant came armed with a knife also indicates the intention of the appellant.

48. We are satisfied with the view taken by the learned Trial Judge. We find no infirmity in the impugned decision.

49. The appeal is dismissed.

**PRADEEP NANDRAJOG, J.**

**ARUNA SURESH, J.**

March 18, 2009  
vk