

* **HIGH COURT OF DELHI : NEW DELHI**
Judgment reserved on : April 23, 2009
Judgment delivered on: May 04, 2009

+ **(1) Crl. Appeal No. 655 of 2006**

% Shivender Kumar Verma @ Raj Sinha @ Sinha
... Appellant
Through: Mr. K.B. Andley, Senior Advocate
with Mr. M.L. Yadav, Advocate

versus

State (NCT of Delhi) ... Respondent
Through: Mr. Amit Sharma, Additional
Public Prosecutor for State.

+ **(2) Crl. Appeal No. 20 of 2009**

% Vijay Pratap Singh Rajput @ Pratap ... Appellant
Through: Mr. Sumeet Verma and Ms.
Charu Verma, Advocates.

versus

State ... Respondent
Through: Mr. Amit Sharma, Additional
Public Prosecutor for State.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. In the afternoon of a day prior to Christmas of the year 2001, complainant- Gyanender Gopal, first-informant of FIR No. 3 of 2002, under Section 307/ 34 of the Indian

Penal Code (hereinafter referred to as the 'IPC') registered at Police Station Crime and Railway, Sarai Rohilla, Delhi, was pushed by appellants- Vijay Pratap Singh and Shivender Prasad, out of "Intercity Express" train, which was running between Patel Nagar Station and *Zakhira Pul*, resulting in complainant sustaining serious injuries and the motive for this incident is said to be that accused Shivender Kumar Verma @ Raj Sinha, wanted to avoid payment of due of Rupees one lac only to the complainant on account of business transactions and with this motive, he along with his co-accused, tried to eliminate the complainant/ first-informant (PW-5). The seriousness of the injuries sustained by the injured/complainant (PW-5) in this incident, is evident from the fact that he had to incur a huge expenditure of Rupees three lacs fifty thousand on his medical treatment.

2. These two appeals relate to order of 8th August, 2006, of a court of Sessions, whereby appellants- Shivender Kumar Verma and Vijay Pratap Singh Rajput have been convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to fine of Rupees two thousand each and in default of payment of fine, to undergo simple imprisonment for fifteen days, for committing offence under Section 307/34 of the IPC.

3. In nutshell, the case of the prosecution is that on 24th December, 2001, at about 1:00 p.m., ASI Kalyan Singh (PW-10) while on patrolling duty, received an information about the complainant (PW-5) lying injured near Nehru Nagar Railway Line and he took him to Deen Dayal Upadhyay Hospital. DD No. 10-A was registered and Head Constable Brij Pal (PW-12) went to Deen Dayal Hospital from where the injured had been shifted to LNJP Hosptial. Since the injured (PW-5) was unfit to give any statement till 5th January, 2002, therefore, FIR was registered on the basis of the complaint made by the injured (PW-5), only on 5th January, 2002, and thereafter, on completion of investigation, Charge Sheet under Section 307/34 in the court was filed.

4. The trial court proceeded to frame charges against both the appellants/accused for committing offence under Section 307/34 of the IPC and since both the appellants/accused denied the charges framed against them, the trial ensued.

5. During the course of the trial, prosecution had got examined eighteen witnesses in this case and the material evidence is of injured/complainant (PW-5) and crux of his deposition, is as under:-

Complainant- Gyaninder Gopal (PW-5) was doing business of supply of garments and appellant/accused Shivender Kumar Verma @ S. Raj Sinha, was one of the distributors in Rajasthan and a sum of Rupees one lac was outstanding towards him for payment. On 23.12.2001, in order to recover his debt from appellant/accused, complainant (PW-5), went to Rajasthan and asked the appellant/accused to satisfy his debts. On being assured by the appellant/accused of making the payment in installments, complainant boarded Inter City Express to come back to Delhi. While sitting in the train, he saw the appellant/accused travelling in the same train but remained seated on a separate seat. At about 12 or 12:30 noon, when he went to the toilet, appellant/accused came there and asked him to supply another consignment and when the train reached near Sarai Rohilla, the appellant/accused pushed him outside the train and he fell out from the running train but somehow managed to catch hold the handle of the door with his right hand and tried to save himself. In the meanwhile, appellant- Vijay Pratap Singh, his co-accused, kicked on his hand, as a result of which complainant fell out on the railway track and received injuries on his head and face.

6. Besides the complainant (PW-5), prosecution got examined Digamber Chaudhary (PW-3) who first saw the complainant/injured lying in injured condition, Head Constable Sangeeta (PW-4) had recorded DD No.-10A on receipt of information from the PCR, ASI Kalyan singh (PW-10) was on patrolling duty, when he received information of a person lying in injured condition near the railway track and removed him to hospital, Doctor Rajiv Gurmukhi (PW-14) had medically examined the injured on the fateful day itself and referred him to LNJP Hospital while opining the injuries to be of serious in nature, Doctor B.N. Mishra (PW-7),

Medical Officer, Deen Dyal Upadhyay Hospital had first attended the injured (PW-5) after this incident, Dr. Anil Karapurkar (PW-18) from Apollo Hospital proved the medical record of the complainant pertaining to this incident, Sub-Inspector Charat Lal (PW-17) had arrested the appellant/ accused Vijay Pratap Singh and obtained non-bailable warrants against appellant /accused Shivender Kumar Verma and arrested him. Head Constable Brij Pal (PW-12) had participated in the investigation of this case and had gone to DDU Hospital, LNJP Hospital and Apollo Hospital to record statement of injured (PW-5) and got the FIR of this case registered. The investigation of this case has been conducted by ASI Kalyan Singh (PW-10), Head Constable Brij Pal Singh (PW-12) and SI Charat Singh (PW-17) .

7. After the recording of prosecution evidence, statement of both the appellants/accused under Section 313 of the Cr.P.C. was recorded by the trial court, wherein, both the appellants/accused denied prosecution case put forth against them and stated that they have been falsely implicated in this case. However, they did not lead any evidence in their defence.

8. Since both these appeals arise of a common impugned judgment and order, therefore, with the consent of the parties, they have been heard together and are being disposed of by this common order.

9. Both the sides have been heard in these appeals and the evidence on record, has been analysed.

10. Learned Senior Counsel for appellant- Shivender Kumar Verma, contends that from the evidence on record, possibility of injured falling from the running train accidentally cannot be ruled out and this can be particularly so said because the injured never raised any alarm when the appellants were allegedly pushing him out of the train and it is strange that no passenger in the train had witnessed this incident of complainant falling from the running train. It is further contended that the motive put forth for appellants to push the complainant down from a running train, is to avoid payment of business dues, but this could not have been the motive because complainant (PW-5) himself has stated in his evidence that appellant/accused – Shivender Kumar Verma had assured the complainant that he would try to make the payments due, in installments.

11. It is asserted by learned Senior Counsel that motive is a double edged weapon and infact, complainant had accidentally fallen from the running train and he has falsely implicated the appellant because the money due was not being paid by the appellant- Shivender Kumar Verma to the complainant. Thus, it is contended that the delay of twelve days in lodging of the FIR in this case, assumes importance. It is pointed out that it is evident from DD No. 10A that the information received was that a person has been injured by a train. Attention of this court has been also drawn to MLC (Ex. PW7/A) of injured (PW-5) to point out that the injured had left DDU Hospital against medical advice and in this view of the matter, endorsement on the MLC regarding injured being unfit for statement, cannot be accepted on the face of it. It is pointed out that the medical record (EX. PW17/PX & EX. PW18/A) of Apollo Hospital does not indicate that the injured was unconscious when he was admitted in the said hospital. Thus, it is asserted that there is no justifiable reason for not recording the statement of injured, till he was discharged from the hospital. Lastly, it is submitted

that in view of the aforesaid shortcomings and the unexplained delay in lodging of the FIR, the prosecution version becomes doubtful and the trial has erred in relying upon it. In the alternative, it is submitted that appellant - Shivender Kumar Verma has already remained behind bars for more than three and a half years and has already faced the ordeal in this case for last more than eight years and he is the only bread earner of his family and he does not have any criminal record and therefore, the sentence imposed upon this appellant deserves to be reduced to the period already undergone by him.

12. Learned Counsel for appellant - Vijay Pratap adopts the aforesaid arguments advanced on behalf of co-accused Shivender Kumar Verma and further submits that this appellant had no motive and he was just a servant of co-accused. It has been submitted on behalf of appellant- Vijay Pratap that he is a poor person, who may have obeyed the orders of his employer/ co-accused in a mechanical manner without appreciating the consequences. In the last, it is submitted that this appellant has clean antecedents and has widowed mother, two younger sisters to support and he is the only earning member of his

family and therefore, the sentence imposed upon him deserves to be reduced to the period already undergone by him, which is of more than four years. Reliance has been placed upon decision of the Apex Court reported in **1992 (3) Crimes 630** to contend that for the offence under Section 307/34 of the IPC, the sentence awarded was of three years only. Nothing else has been urged on behalf of these two appellants.

13. On behalf of the State, learned Additional Public Prosecutor has not only supported the impugned judgment and order but has submitted that the evidence of the injured (PW-5) is consistent and reliable and the testimony of Mahender Kumar (PW-6) supports the version of the injured (PW-5) and the medical evidence corroborates it. Further, it is pointed out that the injured (PW-5) was not to get down at the *Sarai Rohilla* Railway Station and infact, appellant /accused persons had met him outside the bathroom, in the railway coach and had told him to get down at Sarai Rohilla Station so that appellant/accused could collect the consignment. Thus, the defence plea of accidental fall of the injured from the train is ruled out and the Investigating Officer has not been questioned

by the defence on the delay aspect and therefore, no benefit accrues to the appellants/accused. Thus, it is submitted that there is no illegality in the impugned judgment and the appeals of appellants/accused, are without any merits and deserve dismissal.

14. The motive aspect first. It is truly said that motive is a double edged weapon. However, it is required to be seen as to whether the injured (PW-5) had any motive to falsely implicate the appellant/accused or not. Had it been a case of appellant- Shivender Kumar Verma refusing to pay the outstanding dues to the complainant/injured, then certainly injured (PW-5) had the motive to falsely implicate this appellant/ accused, provided it could be reasonably shown that injured (PW-5) had accidentally fallen from the running train.

15. There is clinching evidence of injured (PW-5) on record that appellant Shivender Kumar Verma had assured complainant (PW-5) that he would pay the outstanding dues in installements. This categorical assertion of the complainant (PW-5) remains unshaken in cross examination by the defence. Therefore, false implication of appellants by the complainant /injured (PW-5) is a remote possibility and it can be safely said that none else than the appellants had the motive to

eliminate the injured/complainant (PW-5) to avoid payment of outstanding dues to the tune of Rupees one lac.

16. Now, I shall deal with the defence plea of this incident being purely accidental. It emerges from the evidence of the complainant/ injured (PW-5) that the appellants/accused had met him outside the bathroom in the railway coach and the offer made by the appellant/accused to the complainant for getting down at *Sarai Rohilla* Railway Station, was not accepted by the complainant because he had told the appellant/accused that it was a Monday and the factory is closed on Mondays, in the area, and therefore, he could not give consignment to them on that day. It has not been brought out in the cross examination of the complainant by the defence that for any other reasons complainant was to deboard the train at *Sarai Rohilla* Railway Station. Thus, there was no occasion for the appellant to have come to the door of the train coach to deboard providing an occasion for an accidental fall. It is no body's case that complainant (PW-5) was to get down at *Sarai Rohilla* Station or that train slowed down and he sustained injuries while trying to get down. It was argued before

trial court by appellants that complainant (PW-5) was ticket less traveler and on seeing, Ticket Checker , he jumped from the running train. Infact, complainant (PW-5) has stated in his evidence that while he was looking out to see whether Sarai Rohilla Station has come or not, he was pushed by appellant Shivender Kumar Verma outside the door of the train coach and he managed to hang on to the handle of the door, but, appellant/accused Vijay Pratap gave a kick on his hand and the complainant (PW-5) fell down from the running train and had received injuries on his head and face.

17. I have carefully scrutinized the cross examination of this star witness (PW-5) conducted by the defence to find out as to how far the aforesaid narration of the injured is challenged. Unfortunately, there is no worthwhile cross examination of the complainant (PW-5) by the defence regarding the actual incident. All that has come in the cross examination of the injured is that he became perturbed when he was pushed out of the running train by the accused. It is true that the complainant did not raise an alarm. But, what inference can be drawn out of it. Different people react differently in a given situation. Some raise alarm

and others are dumb founded in a perilous situation like the present case.

18. On the delay aspect, complainant (PW-5) does not have to say much. He was discharged from the hospital on 5th January, 2002, and he states that thereafter his statement was recorded. It has not been suggested to the complainant (PW-5) by the defence, that the period of his hospitalization has been utilized by him in concocting a story, to falsely implicate the appellant/accused. It is for the Investigation Officer to promptly record the statement of the complainant/injured. Investigating Officer (PW-12) has stated in his evidence that he has visited Apollo Hospital and had found that injured (PW-5) was unfit for giving statement. It has come in the cross-examination of this witness that he had gone to the hospital to record the statement of injured (PW-5) on three or four occasions, but the injured was not fit to give statement. The Apollo Hospital record does not indicate that there was any loss of consciousness by injured (PW-5), but it would not '*per se*' mean that the injured was fit to make the statement. In any case, not much depends upon it, because, it is not shown as to how the delay in lodging of the FIR has been of any

benefit to the complainant/injured. As per the medical record, injured had sustained a severe head injury, which was life threatening. Thus, it stands sufficiently proved from the evidence on record that the offence committed by the appellants is nothing short of attempted murder.

19. In a criminal case, each verdict is on its own facts and there can be no precedents. In the decision reported in **1992 (3) Crimes 630**, the sentence awarded is of three years for the offence under Section 307 of the IPC, but it cannot be ignored that this sentence was awarded by the High Court in an appeal against acquittal. No leniency can be shown to the appellants/accused, who had left no stone unturned in ensuring that the complainant/injured (PW-5) is eliminated, as they had left nothing to chance, by pushing the complainant (PW-5) out of the coach of a running train. The sentence awarded to the appellants is well justified in the facts of this case.

20. The impugned judgment and order on sentence does not suffer from any illegality or infirmity. Rather the conviction of the appellants is well borne out of the evidence on record and there is no scope for reduction of the sentence awarded to the appellants

by the trial court. Both these appeals are bereft of merit and are hereby dismissed.

21. Both the appellants are in custody. They be apprised of the fate of their appeals through the concerned Jail Superintendent.

22. These two appeals are accordingly disposed of.

Sunil Gaur, J.

May 04, 2009
rs/n