

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

% *Date of Decision : 29th October, 2009*

+ **CRL.A. 19/2008**

KISHORI S/O BABU LAL Appellant

Through: Mr.Sumeet Verma, Advocate.

versus

THE STATE Respondent

Through: Mr.M.N. Dudeja, A.P.P.

+ **CRL.A. 187/2008**

RAKESH Appellant

Through: Mr.Sumeet Verma, Advocate.

versus

STATE Respondent

Through: Mr.M.N. Dudeja, 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. Vide impugned judgment and order dated 18.9.2007 appellants Kishori and Rakesh have been convicted for the offence punishable under Section 302/34 IPC. It has been held that the testimony of Meena PW-5 and Kishan Swarup PW-6 establishes that appellant Kishori caught hold of Satish and exhorted 'Finish the bastard' whereupon appellant Rakesh inflicted two knife blows, one each on the neck and the chest of

Satish who succumbed to the injuries. Co-accused Virender Kumar and Jaiprakash have been acquitted. Charge for the offence punishable under Section 308/34 IPC against all accused has been held to be not established.

2. It may be noted that the charge for the offence punishable under Section 308 IPC pertained to the alleged assault on Jai Kumar PW-1, who admittedly sustained injuries at the same time and at the same place where Satish received injuries, but during trial Jai Kumar turned hostile and stated that he did not know as to who assaulted him.

3. Meena PW-5 is the sister of the deceased. Kishan Swarup PW-6 is the father of the deceased. As deposed to by both of them they were present in their house and heard noise at around 9:45 PM on 6.1.2003. The noise led them to go outside their house and they saw Satish surrounded by the accused. Kishori was seen holding Satish and he said 'Kill the bastard' at which Chhotu @Rakesh stabbed him i.e. Satish with a knife.

4. The cross-examination of the two witnesses suggests that the defence projected was that there was a blackout in the area due to which the children were on the street. There was excessive noise on the street and thus Meena and her father could not have heard any quarrel and in any case could not have seen who stabbed Satish because there was darkness all around and Meena and her father admitted that the place

wherefrom they saw Satish being stabbed was about 25 to 30 paces from the spot where they were standing.

5. Learned counsel for the appellants concedes, with reference to the testimony of Praveen PW-7, that the same establishes presence of Meena and her father at the spot and there being no blackout in the area.

6. We note that it is not in dispute that Praveen Kumar PW-7, took the deceased to the hospital on a scooter and handed over his i.e. Praveen Kumar's blood stained shirt to the police, which shirt was detected with human blood of the same group as that of the deceased. We note that the testimony of Praveen Kumar that when he came out of his house he saw Meena PW-5 and Kishan Swarup PW-6 at the spot with Satish lying on the street and that the area was well lit has not been questioned by cross-examining Praveen Kumar.

7. Undisputably, Satish was stabbed on the public street at a distance of about 25 – 30 paces from the house where he lived at around 9:30 PM on 6.1.2003 and thus the presence of his father and sister as claimed by them is not unlikely. Both of them are natural witnesses to the incident.

8. We thus hold, that the testimony of Meena and Kishan Swarup establishes that Kishori caught the deceased and Rakesh inflicted two knife blows on him.

9. We note that Meena and Kishan Swarup alleged no role played by the other two co-accused with respect to the

injuries caused to the deceased and hence the two have been acquitted. Their acquittal has attained finality.

10. But, the learned Trial Judge has lost sight of a very important fact. Even appellant Kishori evidenced by his MLC Ex.PW-22/C received injuries. He suffered a lacerated wound on the scalp and had swelling and tenderness in the left leg. As per the testimony of SI Bhopal Singh PW-26 and the testimony of Insp. Balwan Singh PW-29, Kishori was found admitted at Babu Jagjiwan Ram Memorial Hospital as he had received injuries.

11. As deposed to by Jai Kumar PW-1, he was present in his house and rushed out on hearing noise. He saw a quarrel going on and in the hustle and bustle claims that somebody struck him.

12. The PCR form Ex.PW-3/A records information that the caller had informed of a quarrel going on involving Satish and Kishori.

13. Meena and her father had tried to explain the injury on Kishori by stating that the public caught Kishori and gave him a beating. But, neither PW-26 nor PW-29, the two officers who reached the spot where the offence took place on receiving information about the quarrel have stated that anyone from the public handed over Kishori to them and noticing that even Kishori was injured, they took him, or sent him under custody to the hospital. On the contrary, both of them have stated that they found Kishori admitted at the hospital and deputed a guard

to keep a watch on him. Undisputably, Kishori has been arrested from the hospital. There is obviously an embellishment made by Meena and her father.

14. Thus, the contention urged by learned counsel for the appellants that there was a quarrel, origin whereof has remained shrouded in darkness, has to be accepted. In any case, the benefit of the doubt relatable to the origin of the quarrel has to be given to the accused.

15. With reference to the exhortation, it may be noted that the testimony of the witnesses in vernacular is translated and recorded in English. Thus, the actual words used get mutated. The exhortation: '*maar harami ko*', which may mean 'beat the bastard' may get translated as 'kill the bastard'. It all depends upon how the translator perceives the issue.

16. To ascertain as to what was the exhortation referred to by the two witnesses in their statement recorded by the police under Section 161 Cr.P.C., we have seen the statement Ex.PW-5/DA made by Meena. The exhortation referred to by her and as recorded in vernacular reads: 'Chhotu maar saale ko chaaku, bach kar nahi jaana chhahiye'. We have also seen the statement of Kishan Swarup, which has not been exhibited probably for the reason Kishan Swarup was not confronted with the same. No such exhortation is to be found in his statement. Thus, there is all the more reason to read the exhortation to mean that the deceased should be hit.

17. Be that as it may, there is admittedly a quarrel which took place. The origin of the quarrel is not known. Thus, the accused i.e. the appellants are entitled to the benefit of Exception-IV to Section 300 IPC.

18. Thus, the acts of the appellants constitute an offence punishable under Section 304 Part-I/34 IPC.

19. Noting that the appellants have no previous criminal record and were aged 21 years (Kishori) and 23 years (Rakesh), we are of the opinion that the ends of justice would be met if they are sentenced to undergo rigorous imprisonment for 10 years.

20. The appeals stand disposed of by modifying the conviction of the appellants from the offence punishable under Section 302/34 IPC to the offence punishable under Section 304 Part-I/34 IPC, for which offence we sentence the appellants to undergo rigorous imprisonment for 10 years. Needless to state, the appellants are entitled to the benefit of Section 428 Cr.P.C.

21. Since the appellants are still in jail, copy of this order be sent to Superintendent, Central Jail, Tihar for necessary action and being supplied to the appellants.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

October 29, 2009
Dharmender