

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

% Date of Decision : 9th April, 2010

+ **CRL.A. 266/2010**

DEV RAJ @ POLAR Appellant
Through: Mr.Mukesh Kalia, Advocate

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr.M.N.Dudeja, APP

+ **CRL.A. 342/2010**

ANOOP SINGH Appellant
Through: Mr.Mukesh Kalia, Advocate

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr.M.N.Dudeja, APP

+ **CRL.A. 343/2010**

KRISHAN PAL Appellant
Through: Mr.Mukesh Kalia, Advocate

versus

STATE Respondent
Through: Mr.M.N.Dudeja, APP

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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Appellants Krishan Pal, Dev Raj @ Polar and Anoop Singh were charged that on 27.09.2007 at about 10:30 PM near Kumar Tent House, Main Road, Gali No.1, Kailashpuri Road, Main Sagarpur, New Delhi, they inflicted bodily injuries by kicks and fists to the deceased Rajender @ Raju @ Pappu S/o Sh.Babu Lal with intention to kill him and in furtherance of their common intention murdered him and thereby committed an offence punishable under Section 302 read with Section 34 IPC.

2. Vide impugned judgment and order dated 16.01.2010 the appellants have been convicted for the offence which they were charged of. Vide order on sentence dated 27.01.2010, the appellants have been sentenced to undergo imprisonment for life and pay fine in sum of Rs.15,000/- each.

3. In sustaining the conviction of the appellants, the learned trial judge has held that PW-1 who gave an eye-witness account of the incident has fully supported the case of the prosecution. With reference to the post-mortem report Ex.PW-15/A, the learned trial judge has held that injuries on the person of the deceased corroborate what has been disclosed as the eye-witness account by PW-1.

4. We note that the learned trial Judge has not

discussed the testimony of PW-2. The learned trial judge has simply noted the testimony of Satish Kumar PW-2. We further note that the learned trial judge has not discussed whether on the evidence on record it could be held that the necessary intention or knowledge contemplated by Section 300 IPC could be attributed to the appellants, or whether their acts simply constituted the offence of voluntarily causing grievous hurt.

5. As deposed to by Kishan PW-1 he was informed by some person at around 10/10:30 PM when he was at Brahmpuri Nala that some people were beating his brother Rajender at the main Sagarpur Road in front of the Kumar Tent House. On receiving information he immediately reached the said place and saw the accused Krishan Pal, Dev Raj and Anoop assaulting his brother. He saw that Dev Raj had caught hold of his brother by both hands and the other two were giving beating and while beating, accused Krishan Pal was uttering *"Maro saale ko yeh humse kiraya mangta hai aur hamari gali ke samne TSR khada karta hai, maro isse hum batayenge paise kaise mangta hai"*. He i.e. Kishan PW-1 raised an alarm at which accused fled. He removed his brother to the hospital where he was declared brought dead and that at the hospital his statement Ex.PW-1/A was recorded in which he disclosed aforesaid facts to the police.

6. Satish Kumar PW-2, deposed that he was a TSR driver by profession for the last 30 years and used to mainly operate his TSR in Sagarpur area and knew Rajender, who also used to drive a TSR. That on 27.09.2007 at around 9:20 PM there was some altercation between accused Krishan Pal and Rajender. The altercation pertained to Rajender demanding fare in sum of Rs.5/- from Krishan Pal which was objected to by Krishan Pal. The altercation turned into a physical quarrel. When the quarrel was on, brother of Rajender came and he left the spot.

7. Satish PW-2 was declared hostile by the learned APP and on being cross-examined and confronted with what he had stated before the Investigating Officer and as recorded in his statement under Section 161 Cr.P.C., admitted the fact that he had told the police that Rajender had started the fight when he caught hold of accused Krishan Pal and inflicted blows upon Krishan Pal and that accused Dev Raj and Anoop Singh joined later and assaulted Rajender with fists and kicks.

8. Now, it is apparent that Kishan PW-1 did not see the origin of the fight. Indeed, Kishan PW-1 has not claimed to have seen the origin of the fight. As noted above, Kishan has deposed that he was at the Brahmpuri Nala when somebody informed him that his brother Rajender was being beaten in

front of the Kumar Tent House, main Sagarpur Road and he went there.

9. A co-joint reading of the testimony of PW-1 and PW-2 brings out that upon Rajender demanding fare in sum of Rs.5/- from accused Krishan Pal, a verbal altercation ensued which resulted in a physical fight with Rajender being the aggressor. Rajender assaulted Krishan Pal. Accused Dev Raj and Anoop came to the rescue of Krishan Pal. Rajender got out numbered and received a sound thrashing.

10. With reference to the post-mortem Ex.PW-15/A as proved by the author thereof Dr.Komal Singh PW-15, it be noted that a Sub-scalpular haematoma over the occipital region as also brain oedematous with sub-arachnoid haematoma over the over parietal area were detected.

11. We have looked up the medical dictionary and do not find any word "*sub-scalpular*" thus we are unable to comprehend the exact nature of injury on the occipital region. But, it appears that what the doctor intends to convey is that the injury on the occipital region was not deep in the brain and was hovering somewhere at the scalp.

12. The two injuries show that there was extravasation of the capillaries of the membrane enwombing the brain matter i.e. the membrane just beneath the scalp.

13. The post-mortem report further shows that the fourth rib towards the right and the fifth rib towards the left in the chest cavity were fractured with clotting of blood at the surface of the left and the right lung immediately at the point of two lungs beneath the spot where the two ribs were fractured. The liver had some injury evidencing a hard blow on the stomach.

14. Cause of death opined was craniocerebral injury, which has been opined to be the result of blunt impact produced by fists and kicks.

15. It is apparent that two blows were inflicted with fists on the chest of the deceased as also two blows were inflicted, one each on the occipital and parietal region of the scalp. One blow was inflicted on the stomach. The blows were inflicted with considerable force.

16. The hurt caused may sometimes result in death. In order to determine whether the offence committed is murder or culpable homicide not amounting to murder or grievous hurt or simple hurt, it is the intention of the accused that serves as the guideline or the knowledge which can be imputed to the accused with reference to his acts. The death caused as a result of the acts will not be murder unless the accused had the necessary intention or could be fastened with the

necessary knowledge as contemplated by Section 300 IPC. If the accused had intended to cause only hurt and could not be attributed with the knowledge of knowing that the act is likely to cause death or in all probability would cause death, then neither Section 299 IPC nor Section 300 IPC would be attracted and then, notwithstanding the fact that death has occurred, the act of the accused only would be an offence of causing voluntary grievous hurt.

17. In cases where more than one person has attacked and it is not possible on evidence to infer any common intention as contemplated by Section 34 of the Code or a common object as contemplated by Section 149 of the Code, each of them will be responsible for his individual act only.

18. Where death is caused and there is no evidence to show which of the accused inflicted the vital blow and neither Section 34 nor Section 149 of the Code is applicable, the accused can be convicted only for the offence of voluntarily causing hurt or grievous hurt. Further, where the medical evidence is uncertain as to which of the blow was vital, only the minimum intention can be attributed to the act of the accused and the conviction can be only for the offence of voluntarily causing hurt or grievous hurt.

19. In view of the testimony of PW-1 and PW-2, it

cannot be said that the three appellants shared any common intention. The cause of death opined is the craniocerebral injury, but we do not know who caused the same. Neither PW-1 nor PW-2 has disclosed to the court as to which accused gave the fist blow on the head of the deceased.

20. It is unfortunate for the deceased that two fist blows directed one each towards the occipital and parietal region resulted in extravasation of the arteries which in turn caused haematoma. But, as noted above, the same is at the external surface of the brain immediately at the point where the membrane enwombing the brain touches the scalp.

21. Under the circumstances, noting the fact that the deceased was the initial aggressor, it cannot be said that the accused intended to cause the death of the deceased or even that the accused had knowledge that their acts are likely to result in the death, much less the fact that the accused knew that in all probability the deceased would die. Thus, the offence committed by the appellants is that of voluntarily causing grievous hurt. No dangerous weapon has been used. What has been used by the appellants are their fists. Thus, the offence committed by the appellants is punishable under Section 325 IPC.

22. The appellants are in custody since they were

arrested on 28.09.2007. The appellants have thus undergone a sentence of 2 years, 6 months and 13 days.

23. The nominal roles of the appellants do not show that the appellants are involved in any other criminal offence neither have they been convicted nor are they facing trial for any other offence.

24. Under the circumstances, we are of the opinion that ends of the justice would meet if the appellants are sentenced to undergo imprisonment for the period already undergone and to pay a fine in sum of Rs.35,000/- (Rupees Thirty Five Thousand) each; in default of payment of fine the appellants shall undergo simple imprisonment for six months.

25. If realized the fine shall be paid to the widow of deceased Rajender.

26. The three appeals stand disposed off modifying the conviction of the appellants; the appellants are acquitted of the charge of having murdered deceased Rajender but are convicted for the offence of voluntarily causing grievous hurt to Rajender and for said offence are sentenced to undergo imprisonment for the period already undergone and pay fine in sum of Rs.35,000/- each, in default of payment of the fine to undergo SI for six months.

27. Since the appellants are in jail we direct that if the

appellants pay the fine they shall be set free forthwith failing which the appellants or such of them who does not pay the fine would suffer further SI for six months.

28. Three copies of the instant decision be handed over to learned counsel for the appellants under signature and authentication by the Court Master.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

APRIL 09, 2010
'mr'