

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

+ Cr1.A.No.382/2005

% Reserved on: 19th March, 2010
Date of Decision: 25th March, 2010

SAMUNDER Appellant
! Through: Mr.R.S.Malik, Adv.

versus

\$ THE STATE Respondent
^ Through: Mr.O.P.Saxena, APP

+ Cr1.A.No.378/2005

SURESH KUMAR Appellant
! Through: Mr.R.S.Malik, Adv.

versus

\$ THE STATE Respondent
^ Through: Mr.O.P.Saxena, APP

+ Cr1.A.No.380/2005

RAJESH KUMAR Appellant
! Through: Mr.R.S.Malik, Adv.

versus

\$ THE STATE Respondent
^ Through: Mr.O.P.Saxena, APP

+ Cr1.A.No.379/2005

KISHAN CHAND Appellant
! Through: Mr.R.S.Malik, Adv.

versus

\$ THE STATE Respondent
^ Through: Mr.O.P.Saxena, APP
+ Crl.A.No.388/2005

VIJAY Appellant
! Through: Mr.R.S.Malik, Adv.

versus

\$ THE STATE Respondent
^ Through: Mr.O.P.Saxena, APP

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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

: **V.K. JAIN, J.**

1. By this common judgment, I shall dispose of all the five appeals referred to above, which are directed against a common judgment dated 30.3.2005 and order on sentence dated 1.4.2005, whereby the appellants were convicted under Sections 323/452/506/34 of IPC and were given benefit of

probation.

2. On 16th September, 2003, an information was received in Police Control room that a quarrel had taken place in Village Poot, and two persons had sustained bullet injuries. The information was recorded vide DD No.25-A, a copy of which was given to SI Ved Pal Singh of PS Bawana. He, thereupon, went to Bhram Shakti Hospital, where the complainant Rajpal as well as Rajnikant, S/o Satveer, were found admitted. In his statement to IO, Rajpal alleged that on that day at about 9.00 p.m., when he was present in his house, his neighbour Kishan Chand, along with his sons Samunder, Vijay, Rajesh and Suresh, banged at his door and started abusing and asking him as to why he was objecting to the land of trust. They entered his house and gave legs and fist blows to him. He, thereupon climbed his roof. He further stated that Kishan Chand and his sons armed with Lathies and Jelly reached the roof, where he was caught hold by Kishan Chand and Samunder, whereas Vijay, Rajesh and Suresh started giving Lathi blows to him. When he raised alarm, his nephews Rajnikant and Yogender reached there to mediate, whereupon the appellants started beating Rajnikant,

as a result of which, he sustained injuries on his head. They also gave legs and fist blows to Yogender. He further claimed that Samunder, Vijay and Suresh threw him from the roof as a result of which he sustained injuries on his head.

3. The complainant came in the witness box as PW-5 and stated that on 16th September, 2003, at about 9.00 p.m. when he was lying in his house, all the five accused, who were residing in his neighbourhood, came to his house and started abusing him. At that time, Kishan Chand was having a Jelly in his hand, whereas other four persons were having Lathies with them. They started beating him inside his house. He climbed the roof in order to save himself. The accused persons, however, came to the roof, where he was held by Kishan Chand and Samunder, whereas remaining three accused gave him beatings with lathies. When he raised alarm, his nephews Rajnikant and Yognder came to the roof to save him from them. Rajesh, Suresh and Vijay started beating Rajnikant. In the process of beating Samunder and Kishan Chand threw him from the roof, as a result of which he sustained injuries on his head and other parts of his body.

4. PW-4 Satbir is the brother of the complainant. He has stated that on 16th September, 2003, on hearing alarm raised by the complainant, he sent his son Rajnikant to his house and also himself reached there. He saw Kishan Chand and his sons beating his brother Raj Pal, with Lathies and Jelly. Kishan Chand was having Jelly with him, whereas other four persons were having Lathies with them. When Rajnikant intervened, he was beaten by Rajesh and Kishan Chand. His brother Raj Pal was thrown by them on the ground. When his son Rajnikant became unconscious, he informed the police on telephone, whereafter the accused persons ran away from the spot. This witness was cross-examined by the learned Additional PP and during the course of his cross-examination, he admitted that he had told the police that Yogender was also beaten with fist and legs.

5. PW-6 Rajnikant has stated that on 16th September 2003, at about 9.00 p.m, he rushed to the house of the complainant on hearing the alarm raised by him. He saw the accused persons beating his uncle Raj Pal. At that time, Kishan Chand was having Jelly with him, whereas other accused were having Latheis with them in their hands. When

he tried to intervene, he was also beaten by Kishan Chand and Raju @ Rajesh. During that process, the accused Samunder, Vijay and Suresh threw Raj Pal from roof to the ground. As a result of beating given to him, he became unconscious and when he regained consciousness, he found himself in Brahm Shakti Hospital.

6. PW-7 Yogender has stated that on 16th September, 2003, he was present in the Gher, along with his brother Rajnikant and on hearing alarm raised by the complainant, they went to the roof and found the accused persons beating him. At that time, Kishan Chand was having Jelly with him, whereas other persons were having Lathies with them. He further stated that accused Samunder, Vijay and Suresh threw Raj Pal from the roof to the ground and he also was beaten by them. According to him, Raj Pal was beaten by all the five accused and he became unconscious and was taken to Brahm Shakti Hospital.

7. PW-1, Dr.Alok Chaubay, examined the complainant and Rajnikant in the hospital vide MLC Ex.PW-1/A and Ex.PW-1/B respectively. PW-8 ASI Ved Pal, who is the IO of the case went to the hospital, recorded the statement of the

complainant and carried out investigation in this case.

8. In their statements under Section 313 Cr.P.C., the appellants denied the allegations against them and claimed that they have been falsely implicated in this case.

9. The main contention of the learned counsel for the appellants was that though the appellant Vijay had sustained injuries, as admitted by the Investigating Officer, the prosecution has not explained the injuries sustained by him and, has also not explained the genesis of the quarrel that took place on 16th September, 2003, and therefore, the appellants are liable to be acquitted on this ground alone.

10. In “**State of Gujarat Vs. Bai Fatima**”, (1975) 2 SCC 7, the Supreme Court was of the view that:

“in a situation when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(i) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

(ii) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(iii) It does not affect the prosecution case at all.”

11. In “***Laxmi Singh & Others Vs. State of Bihar***” , (1976) 4 SCC 394, the Supreme Court held that in a murder case non-explanation of injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance, from which the court can draw following inference:

(i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(iii) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

12. In the case of Bai Fatima(supra), the Supreme Court specifically held that there may be cases where the non-explanation of injuries by the prosecution may not affect the prosecution case. This principle would apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, witnesses are independent and disinterested, and their

testimony is so probable, consistent and creditworthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

13. In “***State of Madhya Pradesh Vs. Sardar***”, 2001 (5) AD (SC) 566, the Supreme Court held that where the evidence is clear, cogent and creditworthy, a reasonable inference which can be drawn is that the accused received injuries during the course of occurrence and some members of the prosecution party inflicted such injuries. It was further held that if the prosecution establishes that the accused were the aggressors and went to the residence of the deceased or the prosecution witnesses and inflicted injuries to the deceased and the witnesses, there was no question of right of private defence to the accused. On the contrary in such a situation the prosecution party would have the right of private defence.

14. In “***Kashmir Lal & Others Vs. State of Punjab***”, 1996 1 SCC 471, the Supreme Court held that a person who is unlawfully attacked has every right to counteract and attack his assailant and cause such injury as may be necessary to ward off the apprehended danger or threat.

15. In “***Rajender Singh Vs. State of Bihar***”, AIR 2000 SC

1779, the Supreme Court reiterated that ordinarily the prosecution is not obliged to explain each injury on an accused even though the injuries may have been caused in the course of the occurrence, provided that the injuries are minor in nature. But if the prosecution fails to explain a grievous injury to one of the accused persons, which is admitted to have been caused in the course of the same occurrence, then certainly the court looks at the prosecution evidence with a little suspicion on the ground that the prosecution has suppressed true version of the incident.

16. The following proposition of law emerge from these cases:

(i) The prosecution needs to explain the serious injuries sustained by an accused in the course of the some transaction in which he is alleged to have committed the offence attributed to him. This applies particularly to a murder case.

(ii) The prosecution is not bound to explain the minor injuries, if any, sustained by an accused.

(iii) If the serious injuries sustained by an accused in the course of some transaction is not

explained by the prosecution, a defence version is put up by the accused and the injuries sustained by the accused are compatible with the defence version, the court may believe the defence version, giving benefit of doubt to the accused.

(iv) Even if the prosecution fails to explain the serious injury sustained by an accused, that by itself will not result in the entire case of the prosecution being rejected on this ground alone where the testimony of the witnesses is found to be unambiguous, creditworthy and reliable and the court is in a position to ascertain the true facts of the incident by separating chaff from the grain.

(v) If the court, on analyzing the evidence produced by the prosecution, finds that the accused was the aggressor who went to the place of the prosecution witness(es) and inflicted injuries to him, right of private defence will not be available to the accused who by going to the place of the prosecution witness and attacking him had invited a counter-attack on him.

17. In the present case, there is absolutely no evidence which would show the nature of the injuries sustained by the appellant Vijay Kumar. The MLC of appellant Vijay Kumar has not been produced in evidence. He has not chosen to come in the witness box. In his statement under Section 313 of Cr.P.C. neither the appellant Vijay Kumar nor any other appellant claimed that Vijay Kumar had sustained any serious injury during the incident which took place on 16th September, 2003. The only evidence which the court has in this regard is an admission by the IO that appellant Vijay Kumar was also found in the hospital and he had recorded his statement. This, by itself, does not show that any serious injury was sustained by the appellant Vijay Kumar. The inevitable inference, in these circumstance, is that the appellant Vijay Kumar sustained only some minor injury. Since no serious injury was sustained by the appellant Vijay Kumar, it was not obligatory for the prosecution to explain those injuries.

18. The second important aspect in this regard is that the appellants themselves have not given their own version of the incident which took place on 16th September, 2003. When

the appellants were examined under Section 313 Cr.P.C., they had ample opportunity to give their version of the incident, but they did not avail the opportunity. During cross-examination of prosecution witnesses, no such suggestion was given to them as would constitute any defence version of the incident which took place in this case. During their cross-examination only general suggestions were given to them to the effect that no such incident had taken place and that the accused have been implicated in a false case. Therefore, it cannot be said that the injuries sustained by the accused are compatible with the version given by the defence in this case.

19. The testimony of PW-4 Satbir, PW-5 Raj Pal, PW-6 Rajnikant and PW-7 Yoginder show that the incident in question took place primarily on the roof of the house of PW-5 Raj Pal. When the appellants were examined under Section 313 Cr.P.C., they did not claim that the incident had taken place at some place other than the roof of the house of PW-5 Raj Pal. In these circumstances, there is no reason to disbelieve the prosecution witnesses, according to whom, the appellants had entered the house of PW-5 Raj Pal and had

then caused injuries to Raj Pal and others at the roof of his house. Since the appellants entered the house of Raj Pal armed with Jelly and Lathies, they obviously were the aggressors. Hence, in the process of defending themselves from attack by the appellants, the prosecution witnesses were entitled to counteract in their defence and cause such injuries, in exercise of their right of self-defence, as were necessary to save themselves from more injuries, that could have been caused to them.

20. As regards genesis of the incident which took place on 16th September, 2003, it has come in the testimony of the prosecution witnesses that there were disputes between the parties in regard to the land of the Trust in the Village. The land, therefore was the bone of contention between the parties and resulted in the appellants entering the house of the complainant and causing injuries to him.

17. The learned counsel for the appellants has referred to the decision of Gujarat High Court in “**Momna Babu Jamal & Others Vs. State of Gujarat**”, 1995 (1) Crimes 174. In the case before the Gujarat High Court, one of the accused persons Jiva Punja had sustained serious injuries in

fight and had succumbed to the same. Admittedly, the prosecution was not able to explain the injuries sustained by him. In these circumstances, it was held that the gist and genesis of prosecution version may have been concealed. In the present case, however, no one has died and no one has sustained any serious injury.

18. The next judgment referred by the learned defence counsel is “**Rahis Ahmed Vs. State**”, 1994 (2) CC Cases 570, which was a case under NDPS Act and it was found that the appellant had sustained injuries when he was in police station. He was found bleeding from his head. In these circumstances, the defence taken by the accused was found to be creditable. This judgment is of no help to the appellants since neither any serious injury has been sustained by any of them nor have they given any particularly version of the incident.

19. In the case of Laxmi Singh (supra), which is the next judgment relied upon by the learned counsel for the appellants, accused Dashrath Singh had sustained serious injuries which were testified by the doctor during trial. Injury No.1 was found to be grievous in nature, having been

resulted in compound fracture and other two injuries were found inflicted by a sharp cutting weapon. Some of the witnesses made a clear statement that they did not see any injury on the person of the accused. It was, therefore, held that in a murder case, where one of the accused was proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution was a manifest defect in the prosecution case and showed that the origin and genesis of the occurrence had been deliberately suppressed which led to the irresistible conclusion that the prosecution had not come out with a true version of the occurrence. This judgment is of no help to the appellants, since there is no evidence of any serious injury having been suffered by Vijay Kumar and more importantly, during cross-examination of the prosecution witnesses not a single question was put to them to elicit their response as to how Vijay Kumar had sustained injury during the course of the incident. It was obligatory for the appellants to cross-examine the witnesses on this aspect and given them an opportunity to tell the court as to how Vijay Kumar had sustained injury during the course of the incident. In fact,

even the Investigating Officer was not asked as to how Vijay Kumar had sustained injury during the incident which took place on 16th September, 2003. In the absence of any opportunity to the witnesses to explain the injuries, if any, caused to the appellant Vijay, no adverse inference can be drawn against them on the ground that they had failed to explain the injuries caused to Vijay.

20. The learned defence counsel has next referred to the decision in “**Patori Devi & Another Vs. Amar Nath & Others**”, AIR 1988 SC 560, which again was a murder case. In that case a right of private defence was put forward by the appellant which the trial court did not accept. The Supreme Court found that prosecution witnesses had suppressed their own part and had exaggerated the part played by the accused besides suppressing the injuries caused to him. In the present case, however, no defence version has been put forward by the appellants and no opportunity has been given to the witnesses to explain the injuries, if any, sustained by the appellant Vijay Kumar.

21. The learned counsel for the appellants has next referred to the decision in “**State of Rajasthan Vs. Madho &**

Another” , AIR 1991 SC 1065. In that case the prosecution was unable to explain how the respondent had sustained injuries. The court noticed that the respondent Kishna had sustained as many as six injuries, five of which were on the skull. The respondent Madho had sustained six injuries, some of which were on exposed part of the body. The Apex Court felt that the prosecution witnesses should have explained how those injuries were sustained by the respondent and since they did not do so, the impression formed by the court was that they were suppressing some part of the incident. Again, this judgment is of no help to the appellants since neither any serious injuries have been sustained by any of them nor had they called upon the prosecution witnesses to explain the injuries sustained by Vijay.

22. The learned counsel for the appellants has lastly relied upon the decision in “Ram Singh & Others Vs. The State of Haryana”, 1998 III AD (SC) 683, where besides a number of infirmities in the evidence, the court found that they had not explained the injuries caused to the accused persons. The appellants before the court had given their own version of the

circumstances in which they had gone to the spot and had caused injuries to the other side and the court found the version given by them to be more probable. This judgment does not help the appellants since they have not given their own version of the incident to the court.

23. It was submitted by the learned counsel for the appellants that had the complainant been thrown from the roof, as claimed by him, he would have sustained injuries on all over the body, as stated by PW-1 Dr.Alok Chaubay and since injuries were not found on the whole body of the complainant the version given by him should not be believed. The submission, I feel, is based upon a misreading of the testimony of PW-1. What the witness stated was that if a person is thrown from the roof, he can sustain injury on all over his body. He did not say that in every case where a person is thrown from the roof, he must necessary sustain injuries all over his body. It is difficult to accept that in every case a person who is thrown from the roof he must necessarily sustain injuries all over his body. Extent of injuries will depend upon a number of factors, including the height from which he was thrown, the force that was applied

for throwing him, the nature of the surface on which he was thrown and the portion of the body which came into contact with the surface when he was thrown from the roof. A perusal of the MLC of complaint Raj Pal would show that he had CLW on right frontal region, right parieto occipital region on right side cheek. These injuries would indicate that it was right side portion of the body of the complainant which came into contact with the surface when he was thrown from the roof of his house.

24. The learned counsel for the appellants has pointed out some contradictions. He has pointed out that as per FIR lodged by the complainant, he was thrown from the roof by the appellants Samunder, Vijay and Suresh, whereas when he came in the witness box, he stated that he was thrown from the roof by Samunder and Kishan. PW-6 and PW-7, however, maintained the version given in the FIR and stated that it were the appellants Samunder, Vijay and Suresh who had thrown the complainant from the roof of his house. It was further pointed out that according to the complainant, Rajnikant was beaten by Rajesh Samunder and Vijay, whereas according to Rajnikant himself as well as Satbir, he

was beaten by Rajesh and Kishan. These discrepancies, to my mind, cannot be said to be material in the facts and circumstances of this case. All the witnesses have supported each other on the core parts of their testimony. All of them have stated that the appellant Kishan was armed with Jelly, whereas other appellants were armed with Lathies. All of them have stated that the incident took place on the roof of the complainant. All of them have stated that the complainant was thrown from the roof of his house. The contradictions on peripheral matters which do not impinge upon the core part of the case set up by the prosecution can be attributed to poor recollection of the incident which took place years long before the witnesses were examined in the court and, therefore, do not destroy the testimony of the witnesses which has otherwise been found to be credible. The court needs to appreciate that when there is an incident of this nature involving a number of aggressors, it may not even be possible for the injured person to notice as to what particular role was played by a particular accused, since his main concern at that time is to save himself. It would be unrealistic to expect him to concentrate on the individual

acts of each accused during the course of the incident. The testimony of PW-1 coupled with MLC of complainant Ex.PW-1A and MLC of Rajnikant PW-1/B leaves no reasonable doubt that they had sustained injuries in the incident. Even if the testimony of Satveer and Yoginder is excluded from consideration, the deposition of Raj Pal and Rajnikant who were injured in the incident and therefore whose presence on the spot cannot be disputed is sufficient to prove the charge against the appellants.

25. Since the appellants committed trespass in the house of the complainant for the purpose of causing injuries to him and they were armed with weapons at that time, the charge under Section 452 of IPC stands duly established against them. Since injuries were caused to the complainant and Rajnikant, they are also guilty of offence punishable under Section 323 of IPC. The testimony of the complainant and other witnesses shows that the appellants had also criminally intimidated them. Hence, the charge under Section 506 of IPC also stands proved against them. Hence, conviction of the appellants is maintained.

26. As regards sentence, the trial court has been most

liberal with them and there is no scope for any interference by this court. The appeals have no merit and are, hereby dismissed.

(V.K.JAIN)
JUDGE

MARCH 25, 2010
RS/