

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

% *Date of Decision: 27th April, 2010*

+ **CRL.APPEAL No.578/2006**

JAIVEER SINGH Appellant
Through: Mr.Jitender Sethi, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL.APPEAL No.765/2006

MAHAVEER Appellant
Through: Mr.Jitender Sethi, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

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. The date of the incident is 20.7.2002. An issue was raised in Crl.A.No.578/2006 whether appellant Jaiveer Singh was a juvenile on the date when the crime was committed. No such issue was raised during trial and hence in view of the decision reported as 2009 (6) SCALE 695 *Hari Ram Vs. State of*

Rajasthan, the matter was placed before the learned Registrar to conduct an inquiry and list the matter in Court with the evidence which is collected.

2. Relevant evidence has been collected, being the school leaving certificate pertaining to the High School Exam cleared by Jaiveer, issued by the High School Board UP, as per which Jaiveer was born on 8.9.1985. The veracity of the certificate, original whereof has been filed in Court, stands affirmed by the learned counsel for the State and hence it is apparent that Jaiveer was a little less than 17 years of age when the crime was committed and hence as per the decision in Hari Ram's case (supra) has to be treated as a juvenile.

3. Jaiveer has been convicted for the offence of murder and has already spent nearly 8 years in jail, being far in excess of the period he could be detained as a juvenile, and hence we direct that insofar as the appeal filed by Jaiveer is concerned, whatever be its fate, he has to be released.

4. The case of the prosecution stands laid bare in the statement Ex.PW-19/A of the injured eye witness Raj Kishore PW-14 which was recorded by ASI Fajruddin PW-19 when he reached the hospital after DD No.8A was registered at the police station on information being received that a person has

been injured at Patra Mohalla, Kumhar Wali Gali Badarpur. The statement Ex.PW-19/A reads as under:-

“Statement of Raj Kishore s/o Nawab Singh R/o 364, Kumhar Wali Gali, Badarpur Village, New Delhi, age 18 years.

I state that I am residing at the above mentioned address along with my two brothers Chavi Ram & Vinod, besides few of my villagers, and I am supplying the Gas Cylinder on Bicycle. Few persons in my neighbourhood are also doing the business of supplying the Gas Cylinder. Today on 20.07.2002 when I reached Gali No.53, Molarband in the morning on my Bicycle with Gas Cylinder there I met Jaiveer who is residing in my neighbourhood and also doing the job of Gas Cylinder supply, met me and told that how I had come there as he was supplying the Gas cylinders in that area then I told him jockingly that I will follow you wherever you go and on this Jaiveer had given me 3-4 fist blows thereafter I came back to my house. At about 11:30 AM when my brother Chabi Ram and Vinod came back to our house then I told them that Jaiveer had given me fist blows. At that time I saw Jaiveer coming towards our house and on this my brother Vinod asked from Jaiveer why he gave me fist blows. Thereupon Jaiveer had slapped my brother and went away by saying that you all the brothers had gone out of mind and I will get it corrected. After this incident we all brothers had our meals and thereafter we were going towards Badarpur market and there near the shop of Dr.Dharampal we met Jaiveer and his brother Mahaveer and I saw that Jaiveer was armed with a knife in his right hand and one saria in left hand. While Mahavir was armed with a saria. Both the brothers started abusing us and Mahavir then told to Jaiveer to finish them and nobody should be escaped unhurt. Upon that both the brothers had grappled with us and Jaiveer had given a knife blow at me but I saved myself and also snatched the Saria from the hands of Jaiveer. When my brother Chavi Ram came to save me, Jaiveer had given a knife blow to my brother and thereafter Chavi Ram fell on the ground and Jaiveer had given many stab injuries to him I then raise alarm upon which Dara Singh who is also

residing with us also came there and tried to save my brother from Jaiveer and then Mahavir gave a saria blow on the head of Dara and Jaiveer had given a knife blow on my right hand and the blood started oozing from there. My brother Chavi Ram was trembling on the ground, my brother Vinod on seeing this took a Saria and gave a blow on the back of Jaiveer and also on the body of Mahaveer and he received head injuries, and both Jaiveer and Mahaveer then ran away from the spot after we raised alarm and I and Dara were taken to hospital by Jagdish and Chavi Ram was taken by my brother Vinod where we were treated by the Doctor and after some time I came to know that my brother Chavi Ram had expired. Both Jaiveer and Mahaveer had caused injuries to me, Dara Singh, Chavi Ram with knife and saria with the intention to kill us and in that incident my brother Chavi Ram had died. Action be taken against them.”

5. Appellant Jaiveer and Mahaveer are brothers and even they received injuries on the same day. The injuries on Mahaveer are noted on the MLC Ex.PW-15/A. He had 3 injuries. The first is a clear lacerated wound on the left parietal region of skull. The second is a clear lacerated wound over the right thumb and the third is tenderness over right elbow. The MLC Ex.DW-2/A of Jaiveer records his having 5 injuries being: (i) Lacerated wound scalp deep over head, (ii) Lacerated wound muscle deep over left index finger (mid dorsum), (iii) Lacerated wound muscle deep on right little finger, (iv) Contusion in the scalp, and lastly (v) Abrasion over right shoulder.

6. Thus, it is apparent that the appellants were assaulted with a blunt object.

7. Raj Kumar PW-14 on whose statement the FIR was registered was also injured and his MLC at page 321 of the Trial Court Record which was filed by the prosecution but not proved records a solitary cleared lacerated wound bone deep across the ulna of the palm. Deceased Chavi, as per his most-mortem report Ex.PW-12/1 had 3 stab wounds, one on the left side of chest, the second on the left side thoracic and the third at the back near the superior iliac spine. Another person named Dara Singh PW-10 who also claimed to be injured was not believed by the learned Trial Judge because at the first instance he did not support the case of the prosecution but thereafter supported the case of the prosecution and hence was held to be a most untrustworthy witness.

8. Deposing in Court Raj Kishore PW-14 made considerable changes vis-à-vis his statement Ex.PW-19/A. He deposed as under:-

“Deceased Chabi Ram was my brother. Vinod is my brother. We were supplying gas cylinders on cycles. I know accused present in the court as they also used to supply gas on cycles. On 20.7.02 at about 9.30 A.M., I was going to supply gas cylinder on my bicycle. When I reached Gali No.53 in Molarband, accused Jaiveer present in the court gave beating to me. He gave severe beating to me and ran away from there. I then came back to my house where I used to reside with my brother. At about 11.30 A.M. I alongwith my brother Chavi Ram and Vinod were going to market to purchase ration. Accused Jaiveer and Mahaveer present in the court met me at the chowk near the shop of Doctor Dharam Pal. Jaiveer

said that we had gone out of our mind and he would set our mind right. Accused Jaiveer was carrying a knife in his right hand and saria in his left hand. Mahavir was carrying saria in his right hand and his left hand was empty. Accused Mahavir and Jaiveer present in the court gave beating to my brother Chavi Ram with saria. Thereafter, accused Jaiveer present in the court gave 5/6 knife blows in the stomach of my brother Chavi Ram. When I tried to save my brother, Jaiveer said that he would kill me also. When Jaiveer tried to give knife blow in my stomach, I took the blow on my left hand and as a result sustained injury on my left hand. Prior to our going to market, accused Mahavir and Jaiveer had snatched the cycle and cylinder of Dhara Singh, who hails from our village and Dhara Singh had complained to my brothers about it. Thereupon my brother Chavi Ram had gone with Dhara Singh towards market and I and my brother Vinod had followed them. Accused Mahavir had given saria blow on the head of Dhara Singh before I was attacked and I had tried to save Dhara Singh. Mahavir had given saria blow on my shoulder. My brother Vinod did not do anything. I was taken to hospital by Jagdish."

9. It is apparent that Raj Kishore has materially improved upon his statement Ex.PW-19/A qua appellant Mahaveer. In his said statement, except for alleging that Mahaveer gave an exhortation at which Jaiveer assaulted him and his brother Chavi Ram, no role is assigned to Mahaveer qua injuries caused to Chavi Ram and Raj Kishore. Qua the injury caused to Dara, role alleged is that Mahaveer hit Dara on his head with a saria. But, while deposing in Court he deposed that even Mahaveer gave saria blows to his brother Chavi Ram. We have noted hereinabove the contents of the post-mortem report Ex.PW-12/1 of Chavi Ram as per which

only 3 stab blows were inflicted upon him, two on the front side of the body in the chest region and the third at the back near the superior iliac spine. No injury on Chavi Ram exists which has been caused by a blunt object being hit. It is obvious that Raj Kishore was falsely trying to inculcate Mahaveer qua the death of Chavi Ram by improving upon his earlier statement which alleged only exhortation to Mahaveer; improvement being to allege Mahaveer assaulting Chavi Ram. Further, to inculcate Jaiveer qua the injury on Raj Kishore, which as noted in para 7 above is a lacerated wound on the palm and hence could not be caused by a knife, yet in spite thereof, Raj Kishore alleges while deposing in Court that Jaiveer tried to stab him in his stomach but he took the blow on his left hand and hence sustained the injury on his left hand. Further, as against only 3 stab injuries on the body of Chavi Ram, 2 in the thoracic region and 1 on the back, Raj Kishore falsely deposed in Court that Jaiveer inflicted 5/6 knife blows on the stomach of his brother Chavi Ram.

10. It is apparent that Raj Kishore is not a wholly truthful witness and his statements against both appellants have to be weighed in the context of both appellants being brothers and Raj Kishore having a motive to even ensnare Mahaveer for the acts of Jaiveer.

11. Going by what Raj Kishore stated to the police at the first instance and restricting role of Mahaveer to what stands recorded in Ex.PW-19/A it is apparent that only role attributable to Mahaveer is of exhortation. That even Mahaveer and Jaiveer were injured shows that there was retaliation and it throws even a suspicion on the origin of the fight, in that there may be a possible source of taint of the fight as deposed to by Raj Kishore.

12. Thus, prudence guides us to give the benefit of doubt to Mahaveer, being that, to hold that the evidence probablizes his intention to injure the deceased and Raj Kishore and not to share any common intention with Jaiveer who must pay for his reckless acts assuming he had no intention to kill the deceased and had the intention only to injure him with a knife. But, he who inflicts 3 stab wounds on a person, 2 of which are directed in the thoracic region would have knowledge that his act is imminently dangerous and may in the ordinary course of nature result in death. As regards Mahaveer, knowing that his brother was carrying a knife knowledge can be attributed to him that on his exhortation if his brother used the knife there was likelihood of death being the result.

13. Thus, we hold that the acts of Jaiveer constitute the offence punishable under Section 302 IPC and the acts attributable to Mahaveer constitute the offence of culpable homicide not amounting to murder.

14. Qua the sentence on Mahaveer, noting that he has suffered incarceration for nearly 8 years we hold that the ends of justice would be met if he is sentenced to undergo imprisonment for the period already undergone.

15. We do not deal with the conviction of the appellants for the offence punishable under Section 324/34 IPC pertaining to the injuries caused to Raj Kishore for the reason the appellants have been sentenced to undergo imprisonment for 2 years for said offence since we hold that sentence imposed by us against Mahaveer as also sentence to undergo imprisonment for 2 years would run concurrently. Qua Jaiveer, his being a juvenile entitles him to secure his freedom forthwith.

16. Both appeals stand disposed of as under:-

A. Maintaining the conviction of Jaiveer for the offence of murder of Chavi Ram we direct Jaiveer being released as he was a juvenile when the crime was committed and has suffered incarceration for more than 8 years, a period in

excess of the period of 3 years for which he could be kept in custody in a Juvenile Home.

B. The conviction of Mahaveer for the offence of murder is set aside and so is the sentence. For having exhorted Jaiveer and intending Mahaveer to cause knife injury on the deceased we make liable Mahaveer with the aid of Section 34 IPC for having committed the offence of culpable homicide not amounting to murder for which offence sentence him to undergo imprisonment for the period already undergone.

17. Since the appellants are in jail we direct that two copies of the instant decision be sent to the Superintendent Central Jail Tihar for compliance and necessary action.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 27, 2010
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