

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

+ **Crl. Appeal No. 383/2001**

% Reserved on: 31st May , 2011

Decided on: 7th July, 2011

RAMESH

..... Appellant

Through: Mr. Haneef Mohammad and Mr. Anil
Vyas, Advocates.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP.

And

+ **Crl. Appeal No. 982/2002**

ASHOK KUMAR @ RAJU

..... Appellant

Through: Mr. Haneef Mohammad and Mr. Anil
Vyas, Advocates.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. These appeal arise from a common judgment dated 16th April, 2001 convicting the Appellants for offences punishable under Sections 307/34 IPC and order dated 4th May, 2001 directing them to undergo Rigorous Imprisonment for a period of four years and to pay a fine of Rs. 1,000/- each and in default of payment of fine to further undergo R.I. for one month.

2. The prosecution case in nutshell is that on 2nd June, 1995 at about 10.15/10.30 PM when Om Prakash was crossing the road for going to his house he was chased by the Appellants and S, a juvenile who were armed with knives. The Appellant Ramesh gave a knife blow on the abdomen and S gave a knife blow on the chest of Om Prakash. When Om Prakash raised an alarm, S fled away and Appellant Ashok had snatched knife from S and gave a knife blow on the right thigh of Om Prakash. Appellant Ramesh fired a shot towards Om Prakash from a country made revolver. Om Prakash became unconscious. On medical examination he was found to have received 7 clean incised wounds. The injuries were opined to be grievous in nature.

3. Learned counsel for the Appellants contend that out of the two material witnesses of the prosecution i.e. PW3 the injured and PW4 the complainant, PW4 has not supported the prosecution case. The testimony of PW4 shows

that either he did not witness the incident or the incident did not take place as alleged in the prosecution case. The incident occurred at about 10.30 PM on 2nd June, 1995, however the FIR was registered at 1.45 PM on 3rd June, 1995. There is no explanation of the delay in registration of FIR. PW4 did not accompany the injured to the hospital which show that he was a planted witness. PW4 is allegedly a witness to all the recovery memos etc., however he has turned hostile. The other witness of the recovery, that is, Constable Om Prakash has not been examined and, thus, the recoveries have not been proved. Though the case of the prosecution is that one knife was recovered at the instance of Ashok and other at the instance of S the juvenile, however the sketch of knife and the description shows that the knives were identical. Thus, the knives have been planted on the Appellants. No weapon of offence has been recovered from the possession of Appellant Ramesh. Also, the moharar malkhana has not deposed about the depositing of the knife and the blood stained clothes in the malkhana which further shows that the recoveries are planted. There are material improvements in the statement of PW3, the injured. In his statement under Section 161 Cr.P.C. he has not stated that he became unconscious after the injury, however this exaggerated version has been stated in the Court. PW10 the Investigating Officer in his testimony has stated that after receiving DD No. 38A he reached the spot where he found

that the injured has already been removed to the hospital. He went to the hospital, however he did not find any eye-witness even at the hospital. Even on returning back to the spot the Investigating Officer did not find any relative but PW4 the complainant met him at the spot. No other witness has been associated though both PW3 and PW4 are residents of same locality. DD No. 38A also reflects that the incident had not taken place at the spot. Even as per the statement made in the Court, no intention to kill can be attributed to the Appellants. Though it is alleged that prior to this incident both the Appellants had attacked the injured and his brother and FIR was recorded, however the same has not been proved. Thus, the alleged motive is not proved. PW1 Dr. S. Bhalla has not stated that the injured was unconscious or unfit for statement at the time of admission to the hospital. The Appellants have not been named in the alleged statement recorded in the MLC. PW4 in his statement has attributed no role to S, however PW3 has included the name of S and thus, the statement of PW3 is full of exaggeration. Learned counsel further contends that mere recovery of blood stains clothes does not prove that the clothes belonged to the Appellants. The Appellants have been falsely implicated and, thus, they be acquitted of the charges.

4. Learned APP for the State contends that the time of incident is around 10.30 PM on 2nd June 1995. DD No. 38A was being lodged at 10.45 AM and

subsequently DD No. 39A and DD No.40A were lodged at around 11.00 PM regarding this incident. The Police immediately reached the spot and FIR has been registered at 1.40 AM which is recorded vide DD No. 3A on 3rd June, 1995. The time of admission of injured in the hospital as per MLC is 11.00 PM on 2nd June, 1995. Thus, there is no delay in registration of FIR and no manipulation can be alleged. PW4 though an eye-witness has turned hostile but he has stated that he saw the injured lying at the place of incident. Though PW5 moharar malkhana has not stated about depositing the knife and blood-stained clothes but the Investigating Officer in his statement has deposed in regard to them. The defence of the Appellants is that they were very good friends with PW3 Om Prakash and they were having cordial relation with him. However, since both the Appellants were fast friends and Om Prakash, the injured was jealous about it. No injuries were inflicted by them and they have been falsely implicated. However, in the suggestion given to the witness while cross-examination is that on the day of incident under the influence of liquor, they had picked up a fight with some other persons and due to enmity with the Appellants, they have been falsely implicated. In the MLC, no smell of alcohol has been detected by the doctor. The shirt and other clothes of the injured, bear cut-marks corresponding to the injuries on his body. The size of

the two knives as is evident from Ex.PW4/13 and Ex.PW4/14 is different and thus, it cannot be said that they are planted.

5. I have heard learned counsel for the parties and perused the record. Though PW4, the complainant an eye-witness has turned hostile, however PW3, the injured witness has clearly stated that while the Appellant Ashok held him from behind, Appellant Ramesh and S attacked him with knives. The Appellant Ramesh gave a knife-blow on his abdomen while S gave a knife blow on his chest. When he started making a noise, S ran away and Appellant Ashok snatched the knife from the hand of S and gave blows on his right arm and right thigh. Thereafter, Appellant Ramesh shot a fire from a country made revolver on his right cheek. He became unconscious. The testimony of PW3 the injured witness is duly corroborated by the MLC Ex.PW1/1 which records 7 clean incised wounds (CIW) on different parts of the body including the abdomen, thigh, chest, elbow, cheek etc. The injuries have been opined to be grievous in nature caused by sharp object. At the instance of Ashok Kumar blood-stained clothes, which he was wearing at the time of commission of crime, and knife have been recovered. As per the CFSL report Ex.PW10/11 the clothes of Ashok Kumar were stained with human blood of group 'A' and, thus, the same tallied with the blood group of

the injured. The knife also had human blood though the blood group on it could not be determined.

6. I find no reason to discard the testimony of injured witness which is duly corroborated by his MLC and recovery of the blood-stained weapons and clothes. Merely because PW4, the complainant, an eye-witness has turned hostile and has not supported the prosecution case, the same will not belie the testimony of the injured witness. The defence of the Appellant as per the suggestion given to PW3 is that he was under the influence of liquor and he raised quarrel with some other person and because of enmity with the accused persons he falsely named them as assailants. However, in their statement recorded under Section 313 Cr.P.C. the defence taken is that PW3 was not enmical to them. They were having cordial relations with the injured. However, since PW3 and PW4 were very fast friends the injured felt about it and that they have caused no injury. The recoveries have been duly proved by PW10 S.I. Ranveer Singh, the Investigating Officer, who has not been cross-examined by the Appellants. Thus, his testimony has gone unchallenged. Merely, because the injured has stated that he was given a gun-shot injury on the right cheek and the weapon, that is, a revolver or a gun has not been recovered, it will not belie his entire testimony. The fact that the injured received an injury on the right cheek is fortified by his MLC which records an

injury on the right cheek of the injured also. The intention of Appellants to cause such an injury that if death was caused they would have been guilty for an offence under murder is clearly made out from the way the Appellants have caused number of injuries by catching hold of the injured and inflicting knife blows on all vital body parts. I find no reason to disturb the finding of the Learned Trial Court on the point of the conviction of the Appellants for offences punishable under Section 307/34 IPC.

7. As regards the quantum of sentence, the Appellants have been awarded Rigorous Imprisonment for a period of four years and to pay a fine of ₹1,000/- each and in default thereof to further undergo Rigorous Imprisonment for one month. I do not find it to be a fit case for reduction of sentence. Appellant Ramesh is already in custody. He will undergo the remaining sentence. Appellant Ashok is on bail. His bail bond and surety bond are cancelled. He be taken into custody to undergo the remaining sentence of his punishment.

8. The Appeals are accordingly dismissed.

9. Copy of this judgment be communicated to Appellant Ramesh through Superintendent Tihar Jail.

(MUKTA GUPTA)
JUDGE

JULY 07, 2011/‘ga’