

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

Reserved on: 15th February, 2011
Date of Decision: 03rd March, 2011

+ **CRL. L.P. No. 32/2011**

STATE

... PETITIONER

Through: Mr. Jaideep Malik, APP for the State.

Versus

PREM SAGAR & ANR.

...RESPONDENTS

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

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

J U D G M E N T

G.P. MITTAL, J.

1. **Crl.M.A. No.673/2011 (Exemption)**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

2. **Crl.M.A. No.674/2011 (under Section 5 of the Limitation Act.)**

Delay condoned for the reasons as stated in the application.

Crl. L.P. No. 32/2011

3. By virtue of this petition, the State seeks leave to Appeal against the judgment dated 26.07.2010 of the learned Additional Sessions Judge (ASJ) whereby the Respondents Prem Sagar and Vikas @ Laxman were acquitted of the charge of having committed an offence punishable under

Section 307/34 of the Indian Penal Code (Code). Facts of the case as are necessary for disposal of the leave petition have been narrated by the learned ASJ in Para 2 and 3 of the impugned judgment. The same are extracted hereunder:-

“2. The case of the prosecution is that on 06.04.2009 ASI Mangu Lal and Ct. Dinesh were present at PS Punjabi Bagh when Azad Singh driver of Blue Line Bus no. DL 1P B 3097 produced both the accused Prem Sagar and Vikas @ Laxman with the help of the passengers of the bus. Azad Singh the driver informed that one of the associates of the accused persons who was beaten by the passengers was taken by the conductor and helper of the bus to Sanjay Gandhi Memorial Hospital by auto. The IO recorded the statement of injured Mahender Singh who stated that sometimes he used to work as a helper on bus No. DL 1P B 3097 which plied on route No. 939. On 06.04.2009 at about 7.15 PM he was on duty as helper on the aforesaid bus and was at the front gate of the bus which was being driven by Azad Singh. The conductor Parveen Singh was issuing bus tickets at the rear gate of the bus. The bus was coming from Anand Vihar Bus stand. When the bus reached at the stand of Zakhira Pul, 4-5 boys boarded the bus from the rear gate and front gate of the bus. One of them was standing in the middle of the front foot board of the bus. When Mahender Singh repeatedly requested the said boy to leave the front foot board, he did not follow his instructions on which Mahender Singh caught hold of his hand for pulling him up. Just then one of the associates of this boy took out his knife and started attacking him. Mahender Singh saved himself from the first knife attack by using his hands. However when he was avoiding the first attack and saving himself the said boy gave injury with a knife on the right knee of Mahender Singh. When Mahender Singh raised alarm, conductor Parveen got down from the bus and came to him on the next bus stop. Just then the boy who had given the knife blow to Mahender Singh, handed over his knife to his associate who was thin and dark complexioned, who when Praveen came, gave a knife blow on the chest of Parveen. Mahender Singh with the help of Praveen and the passengers snatched the knife from the said boy who was wearing a red shirt. The name of the boy with the red shirt was later learnt to be Prem Sagar. 2-3 associates of the boy came forward after brandishing a knife and tried to get freed their associates. Amongst these 2-3 boys one of them

was also caught hold of by the passengers and the passengers started making noise to take the bus quickly to the police station. The passengers started beating the said boys in the bus. Azad Singh stopped the bus near the police station. After leaving the boys who had been caught and the recovered knives with the bus driver Azad Singh and the passengers, Mahender and Praveen took the boy who was beaten inside the moving bus by the passengers to the hospital in an auto.

3. It is further the case of the prosecution that Azad Singh produced the two open button actuated knives used by the accused Prem Sagar and Vikas @ Laxman in the police station. Both the accused persons were also injured since they had been beaten by the passengers so they were taken to Sanjay Gandhi Memorial Hospital for their medical examination by ASI Mangu Lal along with a constable. Mahender and Parveen were found admitted in the hospital and one unknown person who was the associate of the accused persons aged 20 years was declared brought dead by the doctor at the hospital. The doctor opined Mahender and Parveen were fit for statement. The accused persons were identified by the injured Mahender in the hospital. The accused Prem Sagar and Vikas @ Laxman disclosed the name of their associate who was declared brought dead by the doctor as Shehjad @ Tinda.”

4. The Respondents pleaded not guilty to the charge.
5. In order to establish its case, the prosecution examined as many as 16 witnesses. PW-1 Mahender Singh, PW-2 Parveen Kumar, PW-3 Azad Singh, the helper, the conductor and the driver of bus No. DL IP B 3097 alleged eye witnesses of the occurrence and PW-16 ASI Mangu Lal, Investigating Officer (IO) are the most important witnesses.
6. On close of prosecution evidence, the Respondents were examined under Section 313 of the Code of Criminal Procedure (Cr.P.C.). They denied the prosecution's allegations and stated that there was an altercation between Shehjad @ Tinda (deceased) on the one hand and the helper, the conductor and the driver of the bus on the other hand, on the issue of not purchasing tickets. The helper, the conductor and the driver of the bus beat Shehjad

@ Tinda mercilessly due to which he became unconscious. To save themselves from facing prosecution on the charge of murdering Shehjad @ Tinda, the helper and the conductor of the bus inflicted injuries on their bodies and falsely implicated them in connivance with the police officials and owner of the bus.

7. The learned ASJ noticed a number of contradictions on material aspects of the case in para 24 to 30 of the impugned judgment. He further found that there was unexplained delay in recording of the FIR. The prosecution version was found to be not credible. The learned ASJ opined that the prosecution had failed to prove its case beyond shadow of all reasonable doubt; the Respondents were accordingly acquitted.
8. We have heard Mr. Jaideep Malik, learned Additional Public Prosecutor (APP) for the State at great length and have perused the record.
9. It has been urged by the learned APP that serious injuries were caused on the person of PW-1 Mahender Singh and PW-2 Parveen Kumar, the helper and the conductor of the bus respectively when the two witnesses and the passengers in the bus had objected to the snatching of the money from the passengers. On behalf of the State, it is argued that some contradictions and variations are bound to occur in the testimony of the truthful witnesses. The learned ASJ had erred in attaching undue importance to the discrepancies and acquitting the Respondents. It is therefore, contended that the impugned order is liable to be set aside.
10. We have examined the evidence produced by the prosecution and have perused the record. We have also summoned the police file pertaining to FIR No.148/2009 which was registered in respect of the death of Shehjad @ Tinda on account of beatings alleged to have been given by the passengers of the bus.
11. In the instant case, it was not the prosecution's version that the Respondents and their associates had indulged in any activity of snatching money from the passengers as was tried to be projected by PW-3. This

was not even the case either in the FIR or during the course of investigation. There was merely a reference in the case diary of FIR No.148/2009 that the IO of the said case (Inspector A.S. Negi, PS Punjabi Bagh) made a mention of the activities of the Respondents and deceased Shehjad @ Tinda through their alleged disclosure statements. The reason for the quarrel between PW-1 on the one hand and the Respondents and their associates, according to PWs 1 and 2, was on the matter of standing in the middle of the foot board (of the front gate) of the bus. Thus, there is a major contradiction on the cause of quarrel which has come in the testimony of the PWs 1 and 2 on the one hand and PW-3 on the other hand.

12. The testimony of the two injured witnesses is contradictory on the factum as to who and how the injuries were caused on their persons. In fact, both the PWs 1 and 2 constantly shifted their stand as to who and how the injuries were inflicted, which is indicative of the fact that the occurrence did not take place in the manner as is alleged by the eye witnesses.
13. The eye witnesses who are the helper, the conductor and the driver of the bus tried to justify the infliction of injuries on the person of Shehjad @ Tinda which resulted in his death. According to the initial version of PW-1 the stab injury on his knee was caused by the person who was declared dead in the hospital (meaning thereby that the injury on the knee of PW-1 was caused by deceased Shehjad @ Tinda). It seems that since Shehjad @ Tinda had died due to injuries suffered in the incident, perhaps PW-1 somehow tried to rope him (Shehjad @ Tinda) in as the person who caused injury to him. Later, he (PW-1) absolved the deceased of having inflicted injuries to his knee. He then stated that the injury on the chest of PW-2 was caused by Respondent Prem Sagar. He again changed the stand and deposed that Prem Sagar caused injury to his knee and respondent Vikas stabbed on the chest of PW-2. Similarly, PW-2 also went on changing his version. Initially, he deposed that respondent Prem Sagar stabbed him on the chest then on the next date, when further examination-

in-chief of PW-2 was recorded, he testified that it was Prem Sagar who stabbed on the knee of PW-1.

14. Further, as per PW-1 the knife used by Prem Sagar was snatched by him at the spot and then handed over to the driver who in turn produced it before the police. According to PW-2, PW-1 snatched the knife from Prem Sagar and he (PW-2) took the knife from Vikas. PW-3 gave a different version and deposed that knives were snatched from the boys (i.e. the Respondents) by the passengers and were handed over to him.
15. There are contradictions in the manner of the independent witnesses accompanying the injured and the culprits; production of the culprits before the IO in PS Punjabi Bagh and recovery of the knives from the Respondents. In fact, this is the most intriguing and disturbing part of the prosecution story and the deposition made by the witnesses. The incident had taken place at about 7:00-7:15 P.M. and according to prosecution version, the bus was straightaway taken to the PS (from Ram Pura) without any stoppage on the way. PW-1 stated that all the passengers had accompanied them to PS Punjabi Bagh as the bus did not stop at any of the bus stops between Ram Pura and Punjabi Bagh. PW-1 deposed that the police personnel gathered outside the PS where the bus stopped. He did not narrate about the incident to the police officials and he was straightaway taken to Sanjay Gandhi Memorial Hospital (SGM Hospital). He further deposed in his cross examination that he had stated in his statement to the police that the police officials took him, the conductor PW-2 Parveen and the deceased Shehjad @ Tinda to SGM hospital. He was confronted with his statement to the police Ex.PW-1/A where it was not so recorded. He could not tell the names of the police officials who accompanied them to the SGM hospital. On this aspect PW-2 Parveen deposed that *"Passengers of the bus came forward and beat up the accused persons and another associate, who became unconscious at the spot. The driver took the bus to the Punjabi Bagh Police Station and they handed over the accused persons and the knives recovered from them to*

the police. His statement was recorded by the police. He, PW-1 Mahinder and the injured associate of the accused persons were taken to Sanjay Gandhi Memorial Hospital. PW-1 Mahinder was discharged after some time. He remained admitted in the hospital for two days. The associate of both the accused persons was declared brought dead.”

16. PW-3 gave a different version and deposed that *“The said 3-4 boys started snatching money from the passengers. When PW-1 Mahender objected to the same they gave a knife blow on his knee. PW1 Mahdner raised alarm and conductor PW2 Parveen Kumar objected to the action of those boys, they also gave him a knife blow on his chest. Passengers started making noise and told PW3 Azad Singh to take the bus to the nearby PS. PW3 Azad Singh did not stop the bust at any bus stand and stopped the bus at PS Punjabi Bagh. The passengers were shouting chakku maar diya. The passengers caught three boys and gave beating to them. The passengers snatched the knives from the hand of those boys and handed over the same to him. The police took custody of the said three boys and he handed over two button actuated knives to the police of PS Punjabi Bagh. He had not seen the incident as he was driving the bus at that time. The third boy who was beaten by the passengers was taken to the hospital by the police. PW1 Mahender and PW2 Parveen Kumar were also taken to the hospital where they were medically examined.”*
17. All the three eye witnesses have stated in unison that the custody of the three boys i.e. the Respondents and the deceased was taken by the police. They had also narrated the incident to the police but the record speaks to the contrary. The MLCs of the two injured PWs 1 and 2 show that they were *“B/B self”* meaning thereby that they were not taken to SGM hospital by the police and falsifies the version as given by the three eye witnesses. The MLC of deceased Shehjad @ Tinda also shows that he was *“B/B Mahender Kumar S/o Narayan Singh (PW-1.)”*

18. As per the prosecution version the incident took place at 7:00 -7:15 P.M. From Ram Pura the bus was straightway taken to PS Punjabi Bagh which might have taken another 15/20 minutes. Thus, all the three eye witnesses including PW-3 Azad Singh, the driver of the bus and a host of passengers had reached the PS well before 8:00 P.M. As per record, the FIR was recorded only after statement of PW-1 Mahender Singh Ex. PW-1/A was projected to be recorded in the hospital at about midnight and the endorsement Ex.PW-16/A was made by the IO (PW-16) to the Duty Officer and was forwarded to him at 12:15 A.M. i.e. after a delay of more than four hours.
19. We are pained to observe that a person is beaten up either by the passengers of the bus, (as is alleged by the three eye witnesses or by the conductor and the helper of the bus), as was suggested to the three eye witnesses by the Respondents in their cross examination and was stated by them in their examination under Section 313 Cr.P.C. by the three eye witnesses. The dead body was carried by the driver, the conductor and the helper of the bus to the Police Station and then to SGM hospital. Although, Shehjad @ Tinda had been declared as brought dead on admission and was shown to have been taken to SGM hospital only by PW-1. DD No.39-A is the first report recorded in the PS at 8:55 PM with regard to the admission of an unknown person injured in the incident. Moreover, by endorsement made by the Inspector A.S. Negi an offence under Section 304 IPC was alleged to have been committed and FIR was ordered to be registered at 12:30 A.M. yet no effort was made by the Inspector A.S. Negi, SHO PS Punjabi Bagh to find out the manner in which the injuries were inflicted on the person of Shehjad @ Tinda.
20. Admittedly, the incident had taken place in a crowded bus. We do not know if there was any other accomplice with the Respondents. As stated by us earlier, PW-1 had very candidly deposed that the incident was witnessed by all the passengers of the bus who came along till PS Punjabi

Bagh as the bus did not stop at any other bus stand. To the same effect is the testimony of PW-2 and PW-3.

21. It has also come in the evidence of PW-1 *“that the accused were surrounded by him, the conductor, the driver and 7-8 regular passengers of the bus”*. However, Inspector A.S. Negi was unable to find even a single witness to the incident of inflicting injuries on the person of said Shehjad @ Tinda which resulted in his death. If we seek, an answer is readily available in the suggestions made to PWs 1, 2 and 3 and the statement of the accused/respondent recorded under Section 313 Cr.P.C. Both the accused stated in unison *“I am innocent and falsely implicated in this false case. As a matter of fact, the altercation took place between me, Vikas @ Laxman, Shehjad @ Tinda with helper, conductor and driver of the bus for not purchasing ticket. Helper, conductor and Driver beat Shehjad @ Tinda mercilessly, due to which he became unconscious. To save themselves, the helper & conductor inflicted the injuries themselves on their body and falsely implicated me and Vikas in the present case in connivance with the police officials and the owner of the bus.”*
22. Though the case for the offence punishable under Section 307/34 of the Code was registered against the Respondents, a perusal of the injury on the person of PWs 1 and 2 shows that these were simple injuries caused by a sharp object. Injury on the person of PW-1 as per MLC Ex.PW-13/A, was *“incised wound .5cm x 2cm x 1 cm over posteromedial aspect of Lt. knee; As per X-ray report No.1385 dated 6.04.2009 no bony injury noted. Nature of injury Simple”*. Injury on the person of PW-2 as per MLC Ex.PW-13/B, was *“lacerated wound of 1cm x .5cm x .25 cm over lower end of sternum; As per X-ray report No.1384 dated 06.04.09 no bony injury noted. X-ray report No.1384 dated 06.04.09 no free sub diaphragmatic air noted. Nature of injury Simple”*. Though, PW-2 stated that he was unfit to make the statement but the MLC Ex.PW-13/B shows that the injured was never declared unfit to make the statement.

23. The contradictions on all major aspects of the prosecution case coupled with the delay of four hours in recording of the FIR; not joining independent public witnesses who were readily available (and had gone to the PS along with PWs 1, 2 and 3) shows that the incident had not taken place in the manner alleged by the prosecution. It is apparent that the true facts were withheld by the prosecution, perhaps to shelter the culprits who were responsible for causing culpable homicide/murder of Shehjad @ Tinda.
24. At the same time, we are constrained to hold that proper and fair investigation had not been conducted by Inspector A.S. Negi, PS Punjabi Bagh in case FIR No.148/2009. A perusal of the case diary of FIR No.148/2009 shows that he was content to rely on the disclosure statements purported to have been made by the Respondents, in spite of the fact that a large number of passengers had reached the PS along with the bus. The police officer on duty ought to have taken down the names and addresses of some of them. Moreover, it has emerged in the evidence of PW-1, that 7-8 passengers in the bus were regular passengers. It seems that the police did not want to bring out the truth; rather they wanted to hide the same by shielding the culprits who were responsible for causing the death of Shehjad @ Tinda. There is nothing on record to show that the two Respondents or for that matter deceased Shehjad @ Tinda were dreaded criminals. It needs hardly any emphasis that every life is precious. As per the prosecution case, a quarrel had started between the helper and the two Respondents who were standing on the bus foot board. No overt act had been attributed to deceased Shehjad @ Tinda for commission of any offence.
25. Case FIR No.148/2009 needs to be properly investigated. The Commissioner of Police is therefore, directed to get the case further investigated through any police officer under supervision of an officer not below the rank of Additional Commissioner of Police. The interim investigation report shall be presented to the Chief Metropolitan

Magistrate, Delhi on or before 6th May, 2011 and shall be monitored by the learned CMM from time to time, if needed.

26. We are of the opinion that the findings and conclusions recorded in the impugned judgment are reasonable, having regard to the evidence led before the Trial Court. In the circumstances, the State's petition for leave cannot be granted. The Petition is, subject to compliance with directions in Para 25, dismissed.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

MARCH 03, 2011
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