

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

+ **Crl. Appeal No. 522/2010 & Crl.M.B. 1642/2010**

% **Decided on: 2nd June, 2011**

AJAY PAL Petitioner

Through: Mr. M.A. Niyazi, Advocate

versus

STATE Respondents

Through: Mr. Manoj Ohri, APP for the State.

AND

+ **Crl. Appeal No. 519/2010 & Crl.M.B. 1625/2010**

RAVI KUMAR Petitioner

Through: Mr. M.A. Niyazi, Advocate

versus

STATE Respondents

Through: Mr. Manoj Ohri, APP for the State.

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. Briefly, the prosecution case is that on 26th March, 2005, the day of Holi, an information was received at Police Station Mayur Vihar vide DD No.29B Ex.PW 7/A at about 3:40 PM from someone that his friend has been stabbed with knife and police be sent. PW7 Sub Inspector Kishan Chand along with Constable Rajender reached at E-30/64, Trilok Puri and found a Motor Cycle make Hero Honda, bearing number DL7S AC 8401 on the spot. They came to know that the injured has been removed to LBS Hospital by his friend in a rickshaw. PW7 SI Kishan Chand went to LBS Hospital leaving behind constable Rajender at the spot. The MLC of PW7 Rakesh the injured was collected from LBS Hospital. The injured had been referred to GTB Hospital. PW7 met his friends Deepak and Bharat Mal. In his statement Ex. PW1/A, Deepak stated that he was resident of E30/150, Trilok Puri, Delhi and at about 12:30 PM the injured PW3 came to his house to play Holi, in the meantime their other friend PW2 Bharat Lal also came and they played Holi over there. Around 3:10 PM while they were going, they came near the Nala Pusta Road along with Rakesh who had come to drop them. In the meantime, he and PW2 Bharat Lal went to urinate at the drain which was slightly towards downside and Rakesh continued standing there. They saw one motorcycle No. DL7S-AC-8401 make Hero Honda Ambition coming from

the wrong side on which Ajay Pal and his brother were sitting. The Appellant Ajay Pal who was riding the motorcycle hit Rakesh from front due to which he fell down. Thereafter the brother of Ajay Pal caught hold of Rakesh and Ajay Pal gave 4/5 knife blows to Rakesh and leaving their motorcycle on the spot they ran away. On this statement of PW1 Deepak, ruqqa was sent and FIR No. 117/2005 under Section 307/34 IPC was registered at PS Mayur Vihar. Investigation was conducted. During the investigation, the statement of PW2 Bharat Lal and PW3 Rakesh, injured were recorded. The nature of injury on the person of PW3 was opined to be grievous. On 27th March, 2005 both the Appellants were arrested from their house. A knife was recovered pursuant to the disclosure statement Ex. PW1/G-1 of Appellant Ajay Pal which was sent for serological examination. On completion of investigation, a charge-sheet was filed. After recording of the prosecution evidence, statements of the accused, the Appellants were convicted for offences punishable under Sections 307/34 IPC. Appellant Ajay Pal was sentenced to undergo Rigorous Imprisonment for a period of five years and a fine of ₹5000/- and in default of payment of fine to further undergo simple Imprisonment for six months. The Appellant Ravi Kumar was sentenced to undergo Rigorous Imprisonment for a period of 3½ years with a fine of ₹5000/- and in default of payment to further undergo simple imprisonment for

a period of six months. This judgment of conviction and order on sentence is impugned in the present appeals.

2. Learned counsel for the Appellants contends that PW1 Deepak and PW2 Bharat Lal are not eye-witnesses to the incident because PW3 Rakesh the injured in his cross-examination has stated that when the incident took place both of them had left the place and came back after 10-15 minutes. This is corroborated by the fact that the clothes of PW1 & PW2 were not blood-stained and thus were not seized and sent to the CFSL. PW8, Dr. R.N. Dass C.M.O. at LBS Hospital in his cross-examination has stated that when the injured reached the hospital on 26th March, 2005 at about 3:45 P.M. he was naked. That shows that PW1 and PW2 were not present when the incident took place and they took him subsequently after sometime to the hospital. The factum of the injured being brought by PW1 to the hospital mentioned in the MLC only shows that PW1 took him to the hospital and not that he was an eye-witness to the incident. It is contended that both PW1 & PW2 in their cross-examination have denied having witnessed the arrest, disclosure or the recovery and deposed that they have been made to sign all the memos in the police station and thus the version of the prosecution is not true. As per the pointing out/recovery memo Ex.PW1/J and the testimony of the witnesses, it is stated that the knife was recovered from the drain and was mud-stained.

Thus there was no possibility of blood being present on the knife. However, the CFSL Report Ex. PW 7/E opined that the knife was blood-stained which is hence not reliable. Moreover, though the knife was mud-stained, Ex.PW1/H sketch of the knife, allegedly prepared on the spot does not bear any mud-stains. The conduct of the Appellants in leaving the motorcycle on the spot and running on foot is highly improbable, as they would have used the motorcycle for escaping than leaving it on the spot and running away on foot. There is no motive attributed to the Appellants by the prosecution however the defence has suggested the motive for false implication at the instance of one Dinesh through his friends Rakesh, Deepak etc. Further, despite the area being crowded, no public witnesses were associated during investigation by the police. The statement of PW 3, the injured was recorded belatedly. Thus, in view of the discrepant testimony of the witnesses and faulty investigation, the Appellants are entitled to the benefit of doubt and hence liable to be acquitted.

3. Per contra, learned APP for the State contends that the incident occurred at about 2:45 P.M. on the 26th March, 2005. The MLC Ex. PW8/A shows the arrival of the injured at 3:45 P.M. on 26th March, 2005 and was admitted by PW1 in the hospital. Moreover, PW1 was living in the neighbourhood of the injured PW3 and being Holy, they were celebrating it

together. Thus, PW1 was a natural witness to the incident. The FIR was registered on the statement of Deepak PW1 and Appellant Ajay Pal has been named in the statement Ex.PW1/A. Presence of Ajay Pal's brother is also mentioned in Ex.PW1/A though he is not named. The mere fact that the clothes of PW1 and PW2 were not blood-stained is no ground to arrive at the conclusion that they were not present at the spot at the time when incident took place and hence were not the eye-witnesses. PW 2 has categorically stated that the Appellants were arrested in his presence and has also supported the recovery of knife from the drain at the instance of Appellant Ajay Pal. PW1 and PW2 in their statements have stated that when they went to urinate at the drain which was at a slope, they could see the injured and the Appellants above the middle portion of their body. Though, PW3 could not see them but PW1 and PW2 could witness the incident and soon they reached at the spot and removed the injured to the hospital. PW1, PW2, and PW7 have stated that the knife was blood-stained and had some mud on it. PW7 have also stated that along with mud-stain there were some stains of blood on the knife. PW7 has not been cross-examined on the aspect of absence of mud on the sketch of the knife Ex. PW1/H and thus the same cannot be used against the prosecution. The motorcycle which was seized from the spot belonged to the Appellants which proves the presence of the Appellants at the

spot. As regards the clothes of the injured, the investigating officer PW7 moved an application to the C.M.M., LBS Hospital vide Ex. PW7/DA1. However, it was replied that as per the records available in the causality i.e. valuable things book of CM1 and CM2 available with staff nurse on duty, no clothes of the abovementioned patient if he was wearing any were sealed at LBS Hospital. The testimony of PW3, injured witness is further corroborated by the testimony of other eye-witnesses, the medical evidence, forensic evidence and the recovery of knife i.e. the weapon of offence which is connected to the injuries caused, both by the opinion of PW9 the doctor and through identification by the witnesses. There is nothing unnatural in the conduct of the prosecution witnesses. The prosecution has proved beyond doubt. Thus, there is no merit in the contentions raised by the learned counsel for the Appellants and the appeals are liable to be dismissed.

4. I have heard learned counsel for the parties and perused the record. PW3 Rakesh is an injured witness who in his testimony has stated that on 26th March, 2005, he had gone to play Holi at the house of PW1 where PW2 also reached. Thereafter they went to Pusta Road, Block-30, Trilokpuri. PW1 and PW2 went to urinate. As he was standing at pusta towards village Chilla, the Appellants i.e. Ajay Pal and Ravi Kumar came on a motor cycle from Kondli side and struck the motorcycle against him. The Appellant Ajay Pal was

driving the motor cycle. Thereafter Appellant Ravi caught hold of his hands and Appellant Ajay Pal gave him 4-5 knife blow on him on the chest and abdomen. PW1 and PW2 took him to LBS Hospital and from there he was referred to GTB Hospital where he was medically examined and treated. This witness has also identified the knife Ex. P1 with which injuries were inflicted on him. From the testimony of this witness it is clear that the PW1 and PW2 had gone to urinate towards the slope side of the pusta and in his cross-examination he has stated when they went to urinate, the quarrel took place which lasted for 10-15 minutes and within 10 minutes both of them arrived back. However, they did not rescue him. Thus, it is clear from the testimony of this witness that both of them i.e. PW 1 and PW2 were around the place of incident. The incident had already taken place and they could not come to his rescue. The 10-15 minutes stated by a witness cannot be an exact conclusion of time as it is not possible for anyone to tell the exact time in a mechanical manner. It is thus apparent that after PW1 and PW2 went towards the slope, the incident started and by the time they came back the incident was already over but since PW1 and PW2 were present at a very short distance, they could witness the incident. This witness in his cross-examination has denied the suggestion given to him that PW1 and PW 2 were not present at the spot with

him. He has clearly stated that it was incorrect to suggest that Deepak and Bharat Lal were not with him at the time of incident.

5. I also do not find any merit in the contention of leaned counsel for the Appellant that the statement of PW3 the injured was recorded after one month and two days and thus cannot be relied upon. The date of incident is 26th March, 2005. This witness was declared fit for statement by the doctor on the 28th April, 2005 and then his statement was recorded. The Appellants were arrested immediately on the next date of incident i.e. on 27th March, 2005 on the basis of the statements of the eyewitnesses. This also proves that the eyewitnesses had seen the Appellants committing the offence. PW1 is a natural witness, as soon after the incident an information was sent to the police by a friend of the injured and even in the MLC, it is recorded that PW1 Deepak had got the injured to be hospital. I find no reason to disbelieve the version of injured PW3 just because the statement was recorded belatedly. The testimony of PW3 is duly corroborated by the testimony of PW1 who has also deposed on similar lines. The only aspect this witness has not supported is the arrest, the disclosure statement and the recovery of knife. Though he has identified the knife Ex. PW1/D. PW2 Bharat Lal has also deposed on the same lines as PW3. This witness has stated that PW1 and his clothes were not blood-stained too much but only a little, 'halka phulka' blood stains may have

been there. This witness has also supported the prosecution case. As regards the recovery of the weapon of offence, he has stated that the knife was mud-stained. This witness has stated that from the place they were urinating, they could see Rakesh from stomach upward position and just after hearing the noise they reached the place of incident.

6. I do not find any infirmity in the fact that on the sketch Ex.PW1/H, there are no blood-stains or mud shown. PW7 has not been cross-examined on the aspect, as to how there were no mud-stains on the sketch once the recovery was of a mud-stained knife and there were no blood stains on the knife. In fact, in his cross-examination, PW7 has further stated that there was some mud on the knife and he also noted some blood-stains on the knife. Motorcycle which belonged to the Appellants was recovered from the spot further fortifying the presence of the Appellants at the spot. The explanation to this regard rendered by the Appellants in their statement under Section 313 Cr.P.C. is that the motorcycle was seized from their residence by the police. However, no such suggestion has been given to police witnesses. PW8 Dr. R.N. Dass, CMO of LBS Hospital in his cross-examination has stated that PW3 was not wearing any clothes (vest/shirt) when he came to the casualty on 26th March, 2005 at 3:45 PM. However, in his reply to the request made by the IO to handover the clothes of the injured vide Ex. PW7/DA-1, it is stated,

“The I.O. has come with the request to hand over the clothes worn by the pt. Rakesh vide MLC no.2557 on 26/3/04 on 26/4/04 i.e. 31 days after the pt had come to the hospital and was referred to Deptt. of Surgery. As per the records available in the casualty i.e. VALUABLE THINGS BOOK of Em.I & Em.II available & Staff nurse on duty, no clothes of the above mentioned patient (if he was wearing any T-shirt or vest etc.) was sealed at LBS Hospital”. The same does not lead to the inference that he came in a naked condition to the hospital. It is not known that in the casualty department besides PW8 the doctor who was the CMO, whether there were other junior doctors, nurses who first saw the patient PW3. PW1 and PW2 have categorically stated that PW3 was wearing a t-shirt. Thus, just because the Doctor has deposed that he was not wearing cloth, does not lead to the inference that PW1 and PW2 came subsequently and got him admitted and were not the eye-witnesses. At the time when an injured reaches the hospital in a casualty in a rush, such confusions are bound to occur as a number of staff members deal with him. PW9 Dr. Mohanty in his testimony has stated that he declared the injured fit for statement on the 28th April, 2005 at 12:40 PM. This witness has not been cross-examined on this aspect and thus, the testimony of PW3 the injured cannot be discarded merely because he was unfit for statement & his statement was recorded after one month and two days. The testimony of PW3

is duly supported by his medical examination which records four wounds on vital parts of the body leading to the clear inference that the Appellants in furtherance of their common intention caused such injuries that if death would be caused they would have been guilty for offence punishable for murder.

7. I find no infirmity in the impugned judgment of conviction and order on sentence. The appeals and the applications are, accordingly, dismissed. The Appellants who are in custody, be informed through the Superintendent, Tihar Jail.

(MUKTA GUPTA)
JUDGE

June 02, 2011/dk