

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

+ CRL.A. 88/2010 & CrI.M.B.Nos. 944/2011, 1512/2011 & 1569/2011

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Reserved on: 19th January, 2012

Decided on: 15th March, 2012

CHANDER PRAKASH & ORS.

..... Appellants

Through: Mr. Mohit Mathur, Mr. Atul Guleria,
Advs.

versus

STATE

..... Respondent

Through: Mr. Mukesh Gupta, APP for State
with SI Pawan Kumar PS Kalyan Puri.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, the Appellants seek setting aside of the judgment dated 9th December, 2009 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi in Sessions Case No. 98/2006 whereby the Appellants were convicted under Section 304 Part II read with Section 34 IPC along with Section 323/34 IPC and order dated 12th December, 2009, whereby the Appellants were sentenced to undergo Rigorous Imprisonment for a period of seven years each for the offence under Section 304 Part-II read with 34 IPC and Rigorous Imprisonment for a period of one month for offence under Sections 323/34 IPC and also to pay a fine of Rs. 1,000/- each and in default of payment of fine to undergo seven days Simple Imprisonment.

2. Learned counsel for the Appellants contends that even if the evidence adduced before the Trial Court is accepted, the ingredients of offence under

Section 304 Part-II read with 34 IPC are not made out. No knowledge can be attributed to the Appellants for commission of an offence under Section 304 Part II IPC. In support of his contention, learned counsel contends that the opinion of PW12 Dr. Vinay Kumar on the post mortem report shows that although the injuries were collectively sufficient to cause death of Mandeep, however, no particular injury could have caused the death. No evidence has been adduced before the Trial Court to show that the Appellants acted in furtherance of a common intention thus recourse to Section 34 IPC cannot be taken to convict the Appellants. The presence of the deceased on the spot is doubtful as PW13 the Complainant has stated in his first statement before the police that the deceased arrived at the spot with him whereas in his examination-in-chief he stated that deceased Mandeep arrived after him. From the statement of PW3 it is apparent that PW9, PW13 and PW14 reached the hospital with him on the receipt of information of death of Mandeep. Learned counsel also relies on DD No. 22A (Ex. PW1/E) wherein there exists a mention of altercation and not of any death having taken place. MLC of the deceased Ex. PW11/A, recorded at the earliest available opportunity, shows that no external injury marks were found on the deceased's body. However, the postmortem report Ex. PW12/A which was done more than 12 hours after the incident, recorded three injuries on the person of the deceased. No specific role was ascribed to any of the Appellants relating them to injuries and no particular injury has been opined to be fatal.

3. It is further contended that there is inconsistency in the statements of the prosecution witnesses especially the eye witnesses with regard to

description of the incident. As per statement of PW13 Virender Pal, the Appellants and juvenile gave beating with fists to deceased Mandeep in a cruel manner while as per statement of PW5 Constable Jairoop, one of the accused had caught hold of the deceased and remaining three gave beatings with kicks and fists. However, PW14 Narender Kumar in his testimony stated that the Appellants and juvenile gave hand and fist blows to the deceased on his stomach and other parts of body. It is further submitted that there are discrepancies regarding duration of incident. As per Virender Pal the incident lasted for 10-15 minutes, while according to Constable Jairoop it lasted for 5-7 minutes and still according to Naresh, it lasted for 2-3 minutes.

4. Per contra, learned APP for the State contends that the statements of PW5 Constable Jairoop, PW9 Kripal, PW13 Virender and PW14 Naresh are consistent on material points, corroborated by other material on record and from the statements of one another. Even if Virender Pal and Kripal are considered as interested witnesses in the sense that they were closely related to the deceased, Constable Jairoop and Naresh are independent witnesses and have corroborated their statements. Merely because Naresh had got arranged a vehicle in the marriage of son of Virender sometime back, it would not follow that Naresh cannot be considered as an independent witness.

5. I have heard learned counsel for the parties.

6. Briefly the case of the prosecution is that on 5th July, 2004 at about 6.55 p.m., an information was received at Police Station Kalyanpuri, which was reduced in writing vide DD No. 22A. On receipt of information SI

Sansar Singh along with Constable Chaggan No. 1147/E reached Lal Bahadur Shastri Hospital (in short 'LBS Hospital'). On reaching LBS Hospital, people were found gathered. SI Sansar Singh obtained the MLCs of the deceased Mandeep, injureds Kripal Singh and Chander Prakash. In the hospital, SI Sansar Singh met Virender Pal and recorded his statement. Virender Pal stated that his brother Kripal Singh had let out his small wooden khokha to accused Chander Prakash. Earlier in the day, there was a dispute about payment of money regarding the said khokha between Chander Prakash and Kripal Singh, which was conveyed to him at 6.30 p.m. In the quarrel, Chander Prakash had received injuries and had gone to LBS Hospital. When he reached hospital at 6.45 p.m., deceased Mandeep had also reached. Soon thereafter a fight ensued between Mandeep and Jagdish, Nitin, Juvenile and Chander Prakash with two or three other persons, who started beating Mandeep with fists and kicks. In the said fight Mandeep was held by neck, was given fist blows and accused persons were continuously saying that he was the root cause of the dispute. Virender Pal further stated that besides him Naresh was also present on the spot and both tried to save Mandeep, however, they failed in their attempt. Mandeep fell down and died instantaneously. It was further alleged that when accused persons tried to run away, he apprehended Jagdish, Naresh caught Nitin and the juvenile was caught by the police staff on duty. However, two-three persons managed to escape. During this commotion, he also sustained some injuries. Subsequently, on the statement of Virender Pal, FIR No. 338/2004 was registered at PS Kalyanpuri. Charge sheet was filed under Sections 302/323/34 IPC against the accused persons while the case of juvenile was filed before the Juvenile Justice Board. In all 17 PWs were examined before

the Trial Court and vide impugned judgment dated 9th December, 2009 the Appellants were convicted and sentenced as above.

7. PW13 Virender Pal in his testimony has stated that on 5th July, 2004 at about 5.30 P.M. a quarrel took place between Chander Prakash and Kripal as Kripal has let out one Khokha to Chander Prakash on rent. He was present at his house and was informed of the quarrel by Sachin aged 8-9 years. He was also informed that his father Kripal had been removed to LBS hospital. When he went to LBS Hospital at about 6.45 P.M., Mandeep, the deceased was also present there. The associates of Chander Prakash namely Nitin, Jagdish and a juvenile were also present. They started giving beating with fists to Mandeep on his neck, chest and other parts of the body. They exhorted that Mandeep was the root cause of all the problem/quarrel. After receiving beatings, Mandeep fell down on the spot and died. Same is the version of PW14 Naresh Kumar, who has stated that Chander Prakash, Jagdish, Nitin and a juvenile whose name he did not know were there in the emergency ward of the LBS Hospital and had done hathapai with a boy. They were giving him hand and fist blows on his stomach and other parts of the body. The boy fell down and the doctors declared him dead. PW5 Constable Jairoop, who was present on duty at LBS hospital, stated that Chander Prakash was brought to the hospital by PCR van and sent to ward No. 2 for treatment. After about 5/10 minutes he heard a commotion from Ward No. 2. He saw 4-5 persons giving beating to a person. He intervened and apprehended one person. In the meantime, ASI Udaipal also came at the spot. Two persons were apprehended by the public persons, who were present at the spot. The person who was being beaten was Mandeep. He

was being beaten by four persons. One had caught hold of him and the remaining three were beating Mandeep with kicks and fists. PW9 Kripal Singh stated that about 6.00 P.M. he had a quarrel with Chander Prakash and they started giving beatings to each other. Kripal Singh received injuries on his head and he was taken to LBS hospital. He was accompanied by his son Mandeep and his wife. When they were going from ward No. 1 to Ward No. 2, Chander Prakash along with his associates reached their. On seeing Kripal Singh and his son Mandeep Singh, Chander Prakash and his associates got enraged. Nitin, Jagdish and the Juvenile started giving beatings to his son Mandeep with kick and fist blows and Mandeep fell down on the ground.

8. Merely because PW5 Constable Jairoop has stated that one person caught hold and others gave kick and fist blows will not belie the testimony of other witnesses because in a commotion this is bound to happen. In a commotion when a number of people are beating slight variations are bound to happen in view of the reception of the particular facts by each individual. Each person may notice some facts which the others have not noticed. As per the post mortem report the cause of death was 'shock' due to polytrauma. All injuries were ante mortem in nature and recent in duration. It was further opined that the injuries present collectively were sufficient to cause death in the ordinary course of nature. As per the external injuries, there was swelling 4x3 cms over the left temporal parietal region 6 cm above left ear and two abrasions on the middle of throat and outer side of middle fingers. Further, internal examination showed diffuse sub-scalpal haematoma over left and right tempo-parietal region. Further there was chest haematoma of

4x3 cms in the mid part of the chest over the sternum level of 4th and 5th postrocontrol junction.

9. In *Om Singh @ OMI v. The State, Delhi Adm, 2009 (4) JCC 3194* this Court was dealing with a matter where the deceased suffered as many as 14 injuries by kicks and fist blows. The Division Bench of this Court held that the Appellant cannot be attributed with the knowledge that such physical beating given by them to the deceased with kicks and fist blows would result in unfortunate demise and the only inference which could be gathered was that the Appellants when started beating the deceased developed a common intention to cause grievous hurt as while brutally kicking and giving fist blows, they were supposed to have known that their collective acts would result in grievous injury to the deceased. The conviction was thus altered to one under Section 325/34 IPC.

10. In *Dev Raj @ Polar v. State Govt of NCT of Delhi, 2010 (2) JCC 1174* this Court was dealing with a case where two fist blows directed one each towards the occipital and parietal region resulted in extravasations of the arteries which in turn caused hematoma. The injury was at the external surface of the brain immediately at the point where the membrane enwombing the brain touching the scalp. It was held that in a physical quarrel by fist and kicks it cannot be said that the accused intended to cause the death of the deceased or even that the accused had knowledge that their acts are likely to result in death much less that the accused had the knowledge that the injuries in all probability would cause the death of the deceased. No dangerous weapon had been used. Thus the offence committed by the Appellant therein was held to be of voluntarily causing grievous hurt.

9. This Court in *Mohd. Sharif vs. State, 2011 (1) JCC 529* observed that whether the fist and leg blows given by the accused amount to simple hurt or grievous hurt would depend on a number of factors. When the act done by the offender in the process of causing hurt is such as any person of ordinary prudence knows it likely to cause grievous hurt, he may be taken to have intended to cause grievous hurt or to have contemplated that grievous hurt was likely to occur. If the act is such that nothing more than simple hurt can reasonably be likely to ensue from it, although grievous hurt may unexpectedly have ensued, the offender can be convicted of simple hurt only. What the offender knew was likely to happen is a question of inference from the nature of the act committed by the offender, his conduct and the surrounding circumstances. The same would depend on a number of factors such as the number of blows inflicted, the part of the body where the blows are inflicted, force and impact by which they are inflicted.

11. Applying the above principles, I find that in the present case the kick and fist blows given to the deceased was such that the Appellants can be attributed with the intention or the knowledge that the same were likely to cause grievous hurt. The Appellants are thus liable to be convicted for offences punishable under Section 325/34 along with Section 323/34 IPC.

12. The nominal roll of the appellants does not show any other involvement or conviction in any criminal offence. Since the Appellants have already undergone a sentence for a period of more than three years as per the nominal roll, ends of justice would be met if the sentence is modified to the period already undergone.

12. The appeal and applications are disposed of by modifying the conviction of the Appellants to one under Section 325/34 along with Section 323/34 IPC and the sentence for the period already undergone. The bail bonds and surety bonds are discharged.

(MUKTA GUPTA)
JUDGE

MARCH 15, 2012
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