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IN THE HIGH COURT OF DELHI AT NEW DELHI

**RESERVED ON: 08.05.2012
PRONOUNCED ON: 01.06.2012**

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CRL.A. 28/2010

NEERAJ KUMAR Appellant
Through: Mr. M.L. Yadav, Advocate.

CRL.A. 65/2010

SONI Appellant
Through: Mr. Mukesh Kalia, Advocate.

CRL.A. 66/2010

RAVI KUMAR Appellant
Through: Mr. Mukesh Kalia, Advocate.

CRL.A. 131/2011

VICKEY Appellant
Through: Mr. Sumer Kumar Sethi, Advocate.

versus

STATE Respondent in all Appeals

Through: Mr. Sanjay Lao, APP for State in all Appeals.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

% 1. The appellants appeal against a judgment and order of the learned Additional Sessions Judge, dated 2-12-2009 in SC No. 41/01 whereby they were convicted of the offences punishable under Sections 302/34 IPC and sentenced to undergo imprisonment for life, with other sentences.

2. The case of the prosecution is that on 08.10.2001 at about 07:30 PM, DD No. 26 was recorded regarding information received from HC Jagdish about a stabbing incident at Shahabad Kankarkhera. Again DD No.29 was recorded regarding admission of one Vijender to Bhagawan Mahavir Hospital with the history of stabbing. Thereafter at about 08:15 PM DD No.32 was recorded on receipt of the information from Bhagwan Mahavir Hospital regarding death of injured Vijender. On receipt of this, SI Umed Singh (PW-17) with Ct. Bhim Singh (PW-6) went to the hospital and collected the MLC of deceased Vijender. PW-17 Umed Singh recorded the statement of the brother of the deceased, Ravinder Singh (PW-1), whom he met at the hospital. According to PW-1, in the morning a quarrel had taken place between the deceased, Ravi, Soni, Bonny and Amar Singh. It was resolved then due to intervention of some people around. Ravi had threatened the deceased at that time. In the evening when PW-1 and his brother, Shailender were going towards Kankarkhera drain, to ease themselves, they heard cries for help; they both rushed to the spot and saw that Vicky and Neeraj had caught hold of Vijender and Ravi was stabbing him with a knife; Soni was shouting “*maro saale ko isme bahut akad hai*”. PW-1 further stated that he and PW-3 managed to overpower Neeraj and Vicky, however Ravi and Soni managed to escape.

3. On the basis of PW-1’s statement, a *rukka* (Ex.PW-17/A) was prepared and FIR No. 378 of 2001 was registered with PS Bawana. The investigation was handed over to the SHO. The SHO got the spot photographed and on the pointing out of PW-1 got the site plan prepared. The blood stained earth and earth control were seized. The SHO interrogated the accused Neeraj and Vicky and recorded their disclosure statements; the accused were arrested on 09.10.2001 at about 05:30AM by arrest memos Ex.PW-17/C and Ex.PW-17/B. Ravi and Soni were arrested subsequently, the next day. The police conducted the investigation, after

which, on the basis of the report, the accused were charged with committing the offences punishable under Sections 302/34 IPC. They denied guilt, and claimed trial. The prosecution in support of its case examined 19 witnesses and relied on several exhibits such as post mortem report, FSL report etc. The defense also examined two witnesses. After considering all these and the submissions of the parties, the Trial Court held the appellants guilty.

4. The Learned Counsel for the appellants submitted that the prosecution failed to prove the case against them beyond reasonable doubt and that this Court should acquit them of all charges. The Counsel submitted that in DDs No.26, 29 and 32 the information was only regarding a stabbing incident and the names of the accused were not mentioned. The Counsel submitted that had there actually been eye-witnesses then the name of the accused persons would have appeared in the DD's. Furthermore the MLC, Ex.PW-14/A records that the deceased was brought to the hospital by PW-1. However the name of only one accused Ravi is mentioned; the other accused are not mentioned. It was also pointed out that the person whose Maruti Van was hired to take the deceased to the hospital was not examined.

5. The Appellants Counsel argued that PW-1 and PW-3 have contradicted each other on material aspects which go to the root of the case and therefore their testimony should be discarded. He submitted that PW-1 and PW-3 contradicted each other as to whether PW-1 was wearing a T-shirt or a vest. Further PW-1 stated that his statement was recorded on the bench whereas PW-3 stated that PW-1's statement was recorded on the scooter. The Ld. Counsel further submitted that both the witnesses admitted that there was no electricity at the spot and therefore it would not have been possible for them to see the deceased being stabbed. Further

there was full grown 'Jawar' crop in the field and therefore it is highly unlikely that they would have seen the incident taking place.

6. It was submitted that the accused, Neeraj and Vicky in their statements under Section 313 Cr.PC stated that they were going home from their work-place when they found deceased lying in an injured condition in the field; they (Neeraj and Vicky) brought him to the village chowk and informed his family members. The mother of the deceased dialed 100 number and at about 08:30 PM, the police came to the house of Neeraj and Vicky and took them to the police station. To support their story, they have examined two defense witnesses.

7. DW-1, Baljeet deposed that he knew accused Neeraj and Vicky as well the deceased and his family as they were his neighbours. He deposed that about 6-7 days after 2nd October at about 7/7:30 PM, he heard some noise and came out of his house and saw accused Neeraj and Vicky bringing deceased Vijender to the village chowk. He further deposed that immediately the mother of the deceased, his brothers Ravinder and Shailender and uncle Jagdish also reached the chowk. Nanak (PW-13) took the deceased along with Ravinder (PW-1) on his motorcycle to the hospital. He further deposed that after about an hour and a half, the police came to the village and took Neeraj and Vicky away. He further stated that on inquiry, he came to know from Neeraj and Vicky that he was brought from a field where he was lying in an injured condition. He denied the suggestion that he was deposing falsely at the instance of the accused.

8. Counsel submitted that DW-2 Om Narain deposed that on 08.10.2001 he had gone to the shop of Bhure Lal for getting his scooter painted and at about 8 PM a gypsy with 3 police officials came there. He further deposed that accused Ravi was painting his scooter at that time and accused Soni was carrying out painting work

on a four wheeler. He further deposed that the police officials took the accused persons away after getting their clothes changed. He denied the suggestion that he had cooked up the story.

9. The Ld. Counsel for the appellants submitted that the deposition of the two defense witnesses proves that the accused have been falsely implicated in this case and that they have been arrested on mere suspicion. The deposition of DW-1 showed that the alleged eye-witnesses were not eye-witnesses and had falsely cooked up the story to implicate the accused persons. DW-1 has no reason to depose falsely. Moreover the alleged eye-witnesses are brothers of the deceased and therefore their testimony should be dealt with utmost caution. It was argued that being interested witness, the Court should be alive to the fact that they had a motive to rope in the accused. It was also submitted that the court should have given due weight to the defense evidence, and could not have brushed it aside, as the Trial Court did, in this case.

10. The learned APP argues that the findings of the Trial Court do not call for interference. It was submitted that the impugned judgment is founded on the evidence of PW-1 and PW-3, who were eyewitnesses. It was submitted that the fact that the incident was reported to the police within half an hour of the occurrence, leading to a DD entry, and that the injured was taken to the hospital almost immediately, at 8:30 PM (Ex PW-14/A) and the *rukka* was recorded at 11-20 PM (Ex PW-17/A), the FIR registered at 12:20 AM (Ex. PW-2/A). These circumstances, coupled with the fact that the names of the attackers were identified at the earliest point, ruled out the possibility of false implication. It was submitted that the eyewitnesses' testimony could not be discarded merely because they were related to the deceased.

11. The learned APP argued that having regard to the nature of injuries, there was no question of the conviction in this case being for any offence other than Section 302 IPC. It was argued further that so far as the role of Vicky, Sonu and Neeraj are concerned, they facilitated the knife blows by Ravi, and were jointly responsible by virtue of Section 34 IPC.

12. It can be discerned from the above discussion that the genesis of the dispute lay in the incident which occurred in the morning of the incident, when an altercation took place between Ravi and the deceased. The quarrel was settled with the intervention of neighbours and others around. However, according to the account of PW-1, Ravi swore to look out for the deceased.

13. PW-1 deposed that on 08.10.2001 at about 08:00 AM a quarrel took place between the deceased (Vijender) and Ravi, Soni, Bobby and Amar Singh; the matter was settled due to the intervention of local people but Ravi threatened the deceased that he will “see” him later. Thereafter in the evening at about 07:00PM the witness and his brother Shailender (PW-3) were going towards Kankarkhera drain to urinate when they heard the deceased shouting *bachao bachao*. On hearing the cries both PW-1 and PW-3 reached the spot and saw that Vicky and Neeraj had caught hold of Vijender and Ravi was stabbing him with a knife; Soni was shouting “*maro saale ko isme bahut akad hai*”. PW-1 further stated to the police that he and PW-3 managed to overpower Neeraj and Vicky however Ravi and Soni managed to escape. He further stated that his uncle Jagdish (PW-5) was passing from there and on hearing the noise, he too came to the spot and he (PW-5) and PW-3 took the accused Neeraj and Vicky to the police station. PW-1 further stated that he took his injured brother to Nanak’s (PW-13’s) house in the village from where Nanak informed the police and they took Vijender to Shahbad on a motorcycle. From Shahbad they hired a Maruti Van and took Vijender to Bhagwan

Mahavir Hospital where Vijender was declared brought dead. On the basis of PW-1's statement, the *rukka* (Ex.PW-17/A) was prepared and an FIR bearing no. 378/2001 was registered with PS Bawana. The investigation was handed over to the SHO. The SHO got the spot photographed and on the pointing out of PW-1 got the site plan prepared. The blood stained earth and earth control were seized. The SHO interrogated the accused Neeraj and Vicky and recorded their disclosure statements; the accused were arrested on 09.10.2001 at about 05:30AM by arrest memos Ex.PW-17/C and Ex.PW-17/B.

14. Further on 10.10.2001, PW-1 met the SHO on Kankarkhera Road and informed him that accused Soni was present in the village. However they spotted a boy coming on foot about a half kilometer before the village and on the pointing out of PW-1 accused Soni was apprehended. Accused Soni upon interrogation disclosed that co-accused Ravi was hiding in Parhladpur. The police party reached Parhladpur and on the pointing out of accused Soni, the accused Ravi was apprehended; accused Ravi was also identified by PW-1. Thereafter, the accused Ravi made a disclosure statement and got the weapon of offence i.e. a knife recovered from the bushes; the knife was seized and a sketch of the knife was prepared. The police also seized the blood stained clothes accused Ravi was wearing at the time of the commission of the offence.

15. PW-1 Ravinder Singh and PW-3 Shailender Singh are the eye-witnesses in this case and are star prosecution witnesses. In cross-examination PW-1 stated that they had no enmity with the accused persons. He also stated that his house was "pucca" but there was no toilet due to which all the family members used to go outside to ease themselves. He further stated that he spotted Vijender from a distance of about 40-50 paces when he along with Shailender (PW-3) was easing himself; they were sitting before the *pulliya* in the agricultural field and no crop

had come up at that time. He stated that he heard the noises when he was about to sit. He further stated that the faces of the accused were towards them (PW-1 and PW-3) and they saw Vicky and Neeraj holding Vijender. He further stated that he saw accused Ravi attacking Vijender with a knife when he (PW-1) was running towards the deceased. He stated that when he reached the spot, the deceased was about to fall however he supported him and also caught hold of accused Neeraj; he pulled the collar of Neeraj from behind. He further stated that PW-3 caught hold of accused Vicky; the other two accused ran away. He admitted that as per his visibility, the deceased was stabbed four times. He further admitted that there was no electricity on the road but as it was dawn some natural light was available. He stated that Uncle Jagdish (PW-5) reached the spot within a minute of apprehending the accused; the accused were handed over to PW-5. He further stated that he took the deceased to Nanak's house; it took 10-15 minutes. He further stated that he had instructed PW-3 and PW-5 to take the accused persons to the police post. He admitted that he alongwith Nanak (PW-13) went to Shahbad on Nanak's motorcycle and from Shahbad they took a van belonging to Shyam Sunder and reached the hospital; the police arrived at the hospital after about half an hour. He stated that the police recorded his statement and from the hospital he alongwith the SHO and the police staff went to the spot in the police car; from the spot they went to the PS where he saw accused Neeraj and Vicky.

16. In his further cross-examination, he denied that his brother Vijender was lying injured in the field and the accused Vicky and Neeraj brought injured Vijender to his (PW-1's) house. He denied that his mother informed the police by telephone at that time and that all the family members took Vijender to the hospital. He further denied that accused Vicky and Neeraj had been implicated in this case on mere suspicion. He stated that they raised an alarm when they were

running towards Vijender; they were at a distance of about 7 to 8 paces from Vijender when they saw him being stabbed. He further stated that he took Vijender to Nanak's house in the chowk and not to his own house. He further stated that they had left his house at about 06:45 PM and the incident took place at about 7 PM; it took him 15 minutes to reach the chowk from the spot. On reaching the chowk Nanak (PW-13) took out his motorcycle. Blood had fallen on the way to the chowk. He admitted that they reached the hospital at about 8 PM. From the hospital he went to the police post and from the police post he went to the spot.

17. In his further cross-examination he stated that when he reached the spot, accused Ravi and Soni were running away as they heard his cries. He further stated that he informed the police about accused Soni's presence in the village on 10.10.2001 and he was apprehended at about 8/8:30 AM. The accused Soni disclosed about accused Ravi's whereabouts and Ravi was apprehended from village Pralhad. He admitted that at the time of the incident 'Jawar' crop was fully grown. He further admitted that after the incident his brother was not able to speak to him due to the injuries and Vijender was not able to tell who had caused the injuries.

18. PW-3 Shailender who is an eye-witness to the incident has fully corroborated PW-1's version. Both the witnesses were cross-examined at length but the defense was not able to shake their account. Both the witnesses clearly saw accused Neeraj and Vicky holding the deceased and Ravi stabbing the deceased while accused Soni was shouting '*maar saale ko*'. The MLC, Ex.PW-14/A also records the name of accused Ravi. Even PW-5 has deposed that when he reached the spot he saw injured Vijender in a serious condition and accused Neeraj and Vicky were in his custody. The Ld. APP submitted that they have proved the

accused persons guilt beyond reasonable doubt and that the Trial Court's decision should not be interfered with.

19. PW-10 Dr. RK Punia, the doctor who conducted the post mortem of Vijender and prepared the post mortem report Ex.PW-10 /A has deposed that in his opinion the injuries were caused by a sharp edged weapon and the cause of death was due to shock and hemorrhage as a result of stab injury to the heart. He further deposed that on 08.11.2001 he received a request from the SHO along with a parcel of a weapon. He gave an opinion Ex.PW-10/D that the injuries mentioned in the post mortem could have been caused by the knife examined by him. Therefore, PW-10's deposition also corroborates with the eye-witness account.

20. This court notices that the earliest intimation in this case was the DD entry Ex. PW-7/C which was recorded by the police at 7:30 PM on 8-10-2001. The injured Vijeder was taken to the hospital, at 8:30 PM (Ex PW-14/A). The *rukka* was recorded at 11-20 PM (Ex PW-17/A), the FIR registered at 12:20 AM (Ex. PW-2/A). These circumstances, coupled with the fact that the names of the attackers were identified at the earliest point, in the *rukka*, recorded at 11-20 PM, improbabilizes false implication of the accused. The court also notices that the special report under Section 157 Cr. PC was sent to the concerned magistrate immediately; the endorsement appears on Ex PW-2/A as of 9-10-2001.

21. The two eyewitnesses no doubt are related to the deceased; however, that by itself cannot be a suspicious circumstance. If the accused's plea had been that these witnesses had some animus against them, the court would have been justified in being circumspect in placing credence on their testimonies. However, that is not the case. The Court further notices that the witnesses were subjected to extensive cross examination; the accused could not shake their testimony.

22. The testimony of witnesses is corroborated by the post mortem report, which says that the deceased had been inflicted four sharp edged injuries; two on the face, and two on the chest. One of the chest injuries was deep enough to penetrate to the heart. The post mortem report and the testimony of PW-10 proved that the knife injury which penetrated the heart was the cause of death. This court also notices that Ex.PW-17/B and Ex. PW-17/C are arrest memos in respect of Vicky and Neeraj, who were nabbed at the spot; the police showed their arrest at 5-30 AM. This fact, together with the timing of the FIR and the *rukka*, in the opinion of the Court, provide external corroboration to the prosecution witnesses' version.

23. In view of the above discussion there is no doubt that Ravi nursed some kind of grudge against the deceased. He clearly was waiting for an opportunity to get even with him. The knife, wielded by him, and the nature of injuries inflicted on a vital part of the body, i.e the chest, which was deep enough to cause the fatality, rule out the applicability of explanation to Section 300 fourth exception, IPC. The intention here was to clearly kill Vijender, and the appellant Ravi succeeded in doing it. In *State of Karnataka v. Vedanayagam* (1995) 1 SCC 326 the accused inflicted one knife injury on the chest resulting in instant death and the trial court convicted him under Section 302 but on appeal to the High Court the conviction was altered to one under Section 304 Part II. When the matter was brought to the Supreme Court, the judgment of the Trial Court convicting the accused under Section 302 was restored and the Court observed that:

"there is no doubt whatsoever that the accused intended to cause that particular injury on the chest which necessarily proved fatal. Therefore clause thirdly of Section 300 IPC is clearly attracted".

In *Dhupa Chamar v State of Bihar* 2002 (6) SCC 506, the Court, similarly observed that:

“The above circumstance would show that the accused intentionally inflicted the injury and the same would indicate such a state of mind of the appellant Dhupa Chamar that he aimed and inflicted the injury with a deadly weapon. In the absence of evidence or reasonable explanation to show that this appellant did not intend to inflict injury by bhala in the chest with that degree of force sufficient to rupture important blood vessels and cutting of aorta and other artery, it would be perverse to conclude that he did not intend to inflict the injury that he did. When once the ingredient "intention" is established then the offence would be murder as the intended injury was sufficient in the ordinary course of nature to cause death. Therefore the inevitable conclusion would be that Appellant 1 Dhupa Chamar has committed the offence of murder and not culpable homicide not amounting to murder. This being the position, we do not find that the High Court has committed any error in upholding conviction of Appellant 1 Dhupa Chamar under Section 302 of the Penal Code.”

24. In view of the above reason, this court is of the opinion that Ravi's conviction under Section 302 IPC was justified. The next question is whether the role of Neeraj and Vicky (of catching hold of Vijender) and that of Sonu (exhortation) warrant applicability of Section 34 IPC, read with Section 302.

25. There is no doubt that these accused accompanied Ravi. However, the sequence of events shows that there was no apparent pattern; Ravi wielded the knife, and attacked the deceased. The other three accused were unarmed. Though they shared a common intention with Ravi, that by itself is not conclusive for the Court to hold that the common design was to commit murder. In this context, the court recollects the decision in *Vencil Pushparaj v State of Rajasthan*, AIR 1991 SC 536 to the following effect:

“The only question that arises for consideration is whether the facts and circumstances of the case unerringly fasten the appellant with the criminality in question so as to robe him with the aid of S. 34 IPC. The High Court disagreeing the review of the Trial Court found the appellant guilty holding thus:-

*"We are fully convinced that Pappu caught hold of Durga and kept him pinned down till Kannu had stabbed him five times over on the chest, and abdomen region. Pappu's conduct in running away from the scene of occurrence also lends corroboration to the conclusion that he participated in the **murder** of Durga by Kannu"*

5. Admittedly, Kannu at time of his arrest by the SHO on the morning of the very next day i.e. 31-8-72 was having injuries on his person namely on the fingers of his hands, feet, back and left thigh which injuries are not explained by the prosecution. The evidence of PW-22 indicates that the deceased and the appellant were very close friends and that this itself annoyed Kannu who found fault with the appellant and questioned him as to why he was having friendship with his enemy, namely, the deceased. These facts indicate that the occurrence had happened not in the manner as put forth by the prosecution but under different circumstances.

6. Further a scrutiny of the materials placed before us does not spell out that the appellant had shared the intention of Kannu in murdering the deceased and that he held the deceased in order to facilitate Kannu to stab the deceased. There is no material worth-mentioning even to draw an inference that the appellant and Kannu had acted in concert and/or there was existence of a pre-arranged plan to commit the murder of the deceased. Therefore, we are unable to infer the common intention on the part of this appellant with Kannu."

Similarly, it was held in *Harbans Nonia v State of Bihar* AIR 1992 SC 125, that:

*"Shyambali Nonia has been convicted under Section 302 IPC which is not under challenge before us. Therefore, we have to examine as to what is the nature of the offence these two appellants committed in the circumstances of the case. The various circumstances attending the prosecution which we have pointed out above show that these two appellants did not have any intention to participate with Shyambali Nonia to cause the death of the deceased. At the same time it is, however, absolutely impossible to relieve them of any liability whatsoever in connection with the stab injury which was facilitated by their catching hold of the deceased when Shyambali Nonia was inflicting the stab wound. Hence, there is no escape for the conclusion on the evidence available that these two appellants shared at least the common intention with Shyambali Nonia to cause grievous hurt punishable under Section 326 read with Section 34 IPC vide *State of U.P. v. Ram**

Kishun [(1976) 3 SCC 449 : 1976 SCC (Cri) 443]. For all the reasons stated above, we set aside the conviction of these two appellants under Section 302 read with Section 34 IPC and the sentence of imprisonment for life, instead convict them under Section 326 read with Section 34 IPC.”

26. In the absence of any clear cut motive, or proof of pre-meditated design, what this court discerns is that the intention of all the accused who went to the victim's house, is undoubtedly suspect. Yet, it is difficult to conclude without any doubt that Vicky, Neeraj and Sonu shared the common intention with Ravi to commit the offence punishable under Section 302 IPC since they could not have been aware that injury would be inflicted on such a vital part of the body. In these circumstances, they can be attributed that the acts of Ravi would have resulted in injuries on the deceased, that would have led to death in the ordinary course of nature. Their conviction under Section 302 IPC is accordingly modified to one under Section 304 Part I IPC. The conviction of Ravi, for offences under Sections 302/34 IPC is maintained.

27. In view of the above discussion, Ravi's appeal CrI. A. 66/2010 has to fail. CrI A. 65/2010, (by Soni) CrI. A. 28/2010 (by Neeraj Kumar) and CrI. A. 131/2011 (by Vicky) have to partly succeed; their conviction is altered to one under Section 304 Part I, IPC. Their sentences are reduced to ten years' rigorous imprisonment. Other sentences shall remain undisturbed. They shall also be entitled to the benefit of Section 428 Cr.PC, as well as the period of detention undergone, post-conviction. Criminal Appeal No.66/2010 is dismissed. Criminal Appeal Nos. 65/2010, 28/2010 and 131/2011 are allowed in part, to the above extent. Order Dasti.

S. RAVINDRA BHAT, J

JUNE 01, 2012

S.P.GARG, J