

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

Reserved on: 15th September, 2011

Pronounced on: 9th January, 2012

+ **CRL. A. No.444/2011 & CRL.M.(B) No.1431/2011**

PURAN @ MANOJ & ORS Appellants
Through: Thakur Virender Pratap Singh
Charak, Advocate with
Ms. Shubhra & Mr. Pushpender
Charak, Advocates for Appellants
No.1 & 2.
Mr. Bhupesh Narula, Advocate for
Appellant No.3.

versus

THE STATE (G.N.C.T. OF DELHI) Respondent
Through: Mr. Sanjay Lao, APP

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is against a judgment dated 06.08.2010 and an order on sentence dated 09.08.2010 (in Sessions Case No. 36/2009, FIR No.224/2004, Police Station (P.S.) Dabri) whereby the Appellants Puran, Manoj and Deepak were held guilty for committing offences punishable under Sections 302/324/323/149 IPC and were sentenced to undergo imprisonment for life apart from various sentences for other offences.

2. The prosecution version is as follows: Prempal (PW1) and Lakhan (the deceased) were brothers. Sometime before 20th March, 2004, their minor sister Rekha eloped with one Latoori. They were told by Pramod (PW2) that Puran (the Appellant) might be able to give them some clue regarding the whereabouts of Rekha and Latoori. It is alleged that on 25.03.2004, Pramod went to Puran's house and gave him Lakhan's telephone number. On 26.03.2004, Puran telephoned Lakhan to go to him as he had found Latoori and Rekha's whereabouts.

3. According to the prosecution, on 26.03.2004 at about 8:00PM Prempal (PW1) took Pramod (PW2) and the deceased with him on his motor cycle to the house of Banwari in Dabri Extension where Puran lived as a tenant. Puran was not available in his house. Then these three persons proceeded further and noticed Puran along with his associates Deepak, Kalia, Minte and Raja. All of them were known to PW1 Prempal. Before Prempal could enquire from Puran regarding Rekha's whereabouts, the latter exclaimed that Lakhan was a police informer and considered himself to be a *dada*. Puran allegedly stated that he (Lakhan) would inform the police about their activities and, therefore, should be done to death. Raja (the proclaimed offender) took out a sword from his *dub* and attacked Prempal and Pramod. As a result, Prempal's trouser back pocket got cut and he suffered injuries on his left wrist. Pramod also got an injury on his right knee. It is alleged that thereafter Raja captured Prempal and Deepak overpowered Pramod. Kalia and Minte held Lakhan by both his arms and Puran gave several knife

blows to Lakhan. Lakhan started bleeding profusely and fell down. All the five assailants escaped while Prempal and Pramod rushed to P.S. Dabri which was just 1 km away from the spot. According to Prempal (PW1), the incident was immediately reported to the police; the police accompanied them to the spot. By that time Lakhan had already been removed to DDU Hospital. (as per SI Ishwar Singh the first IO, the version is different as he reached the spot on his own and did not find any eye witness which we shall advert to a little later)

4. It is alleged that Lakhan was removed to DDU Hospital by ASI Khyali Ram of PCR and was admitted as an unknown person. Lakhan was declared unfit to make any statement and he succumbed to the injuries at about 1:00 PM. SI Ishwar Singh (according to IO's version), returned to the spot and found the eye witnesses. He recorded the statement of Prempal, lifted blood stained earth, control earth, summoned the crime team, got Prempal and Pramod medically examined and handed over further investigation to Inspector Y.K. Tyagi (PW31) SHO P.S. Dabri.

5. On 02.04.2004, the Appellant Puran was arrested from Mangla Puri bus stand. It is alleged that he made a disclosure statement Ex.PW22/A and got recovered a *buttondar* knife. It (*buttondar* knife) was shown to PW5 Dr. L.K. Barua, who opined that the injuries found on Lakhan could be inflicted with a *buttondar* knife, recovered at Puran's instance. Subsequently, Appellants Deepak and Ajay @ Minte too were arrested. All the

three Appellants allegedly made disclosure-cum-confessional statements. There were no discoveries in pursuance of such statements. The same are, therefore, inadmissible in evidence. Discovery of *buttondar* knife at the instance of Puran is also not of any consequence as this would not come within the meaning of 'fact-discovered' under Section 27 of the Evidence Act. The doctor (PW5) merely gave an opinion that the injuries could be inflicted by the knife. He did not say that the injuries present could not be caused by any similar or perhaps even dissimilar knife. No blood stains matching the deceased's blood group was found. Thus, the alleged recovery of knife does not connect Appellant Puran with the commission of the crime. On completion of the investigation, a report under Section 173 of the Code of Criminal Procedure was presented against the Appellants.

6. On Appellants' pleading not guilty to the charge, the prosecution examined 32 witnesses. Prempal(PW1), Pramod (PW2) are eye witnesses; PW4 Ram Snehi reached the spot immediately after the incident and noticed the deceased lying on the ground with stab injuries; PW29 ASI Khyali Ram of PCR reached the spot on receipt of information regarding the incident and moved the deceased Lakhan to DDU Hospital; PW 30 SI Ishwar Singh(the first IO) reached the spot when DD No.12A regarding the incident was handed over to him, he went to the Hospital and returned to the spot and carried out initial investigation in the case. PW31 Inspector Y.K. Tyagi (second IO) carried out the investigation after

the death of Lakhan. Rest of the witnesses provided various links in the prosecution case.

7. Prempal (PW1) deposed that he used to reside with his parents, brothers and sisters. When he was away to his village (in March 2004), he got information that his sister had eloped with Latoori. He returned to Delhi and searched for her till 21st March, 2004. Pramod informed him that Puran was Latoori's friend. On 25.03.2004, Lakhan and Pramod went to Puran's house in Dabri. Puran was not present at his house. His (Puran's) mother gave his telephone number. On 25.03.2004, Puran invited them, through a telephone call. He, Pramod and Lakhan, reached Puran's house at about 8:00 AM; it was locked. They decided to return to home. On the way, Puran together with his four associates met them. He took them to the *nulla*. Without asking anything they started assaulting them. Puran exhorted that Lakhan was a police informer and that he should be finished. The Appellants, Manoj and Deepak, caught hold of Lakhan. Puran attacked Lakhan with a knife, which was with him. He (the witness) was assaulted by a person (the PO) who was not present in the Court. The Appellant Ajay caught hold of him, with the other person who was not present (PO). Pramod was also caught hold of by Ajay and was assaulted by the unknown accused (PO). Lakhan ran to save himself. He was chased by Ajay and another accused (PO). Lakhan fell down and they (PWs 1 and 2) rushed to the police station to lodge a report. He deposed that his statement Ex.PW1/1 was reported by the police which was signed

by him. They returned to the spot where blood-stained earth etc. was seized by the police.

8. Pramod (PW2) deposed that on 20.03.2004, Prempal's sister Rekha went missing. A report in this regard was lodged with Police Station Matiala by Rekha's brother Prempal and Ram Bhagwan. Prempal, Lakhan and he tried to search for Rekha, but in vain. On 25.03.2004, he went to Dabri to contact Puran to find out Latoori's whereabouts. Puran (the Appellant) asked him to give his telephone number to him and assured him that whenever he would hear anything about Latoori, he would intimate him (PW2). He gave his telephone number to him. He also gave Lakhan's telephone number to Puran (on his asking). He (PW2) contacted Prempal and conveyed the development to him. According to this witness, on 26.03.2004 Lakhan received a telephone call from Puran and thereafter all three of them (Lakhan, Prempal and Pramod) went to Dabri to meet Puran on Prempal's motor cycle. Puran was not at home. When they were returning, and had reached Shop No.100, Dabri, they saw Puran and his associates. The witness identified Puran, Minte, Deepak and Kalia out of the five associates; (Raja PO was not present in the Court). On seeing them, Puran exclaimed that Lakhan was a police informer and that he should be killed. At this Kalia and Minte caught hold of Lakhan. He (PW2) was overpowered by Deepak. Raja (PO) took out a sword and attacked him and Prempal. Puran inflicted knife blows on Lakhan after he (Lakhan) was caught by Minte and Kalia. Lakhan fell down due to injury. Raja (PO) escaped in one direction and the remaining four

assailants fled in different directions. Raja also gave blows to Prempal with a sword, as a result of which he suffered injuries on his buttocks. They (he & PW1) ran to the police station to lodge a report. By the time they returned to the spot, Lakhan had already been removed to DDU Hospital by the police.

9. Ram Snehi (PW4) deposed that on 26.03.2004 at about 8:30 AM, while he was in the bathroom, he heard the noise of quarrelling coming from outside. He went out of the bathroom and saw several persons standing there. One boy lay injured on the floor outside his shop. Two boys were standing with a red coloured motor cycle. He heard people standing there saying that Puran had assaulted the injured with a knife. Two boys with the motor cycle i.e. Pramod and Prempal also said that Puran along with his friends Minte, Deepak, Raja and Kalia had caused injuries to Lakhan.

10. In their examination under Section 313 Cr.P.C. the Appellants denied the prosecution's allegation and pleaded false implication. They stated that PWs 1 and 2 had caused injuries on Lakhan. They declined to produce any evidence in defence.

11. By the impugned judgment, the Trial Court concluded that the prosecution case was established beyond all reasonable doubt. The Trial Court held as under:-

“30. PW1, PW2 and PW4 are natural and truthful witnesses. No justification has been given by the accused persons for their false implication in the present case. The stand taken by them in their statement u/s 313 Cr.P.C. does not inspire

confidence. Knife Ex.P1 was recovered on the disclosure statement made by accused Puran and at his instance. Accused have not alleged that police officers were previously known to them or they carried a grudge against them. No reason has been assigned by the accused persons as to why police officers would have falsely implicated them in the present case. Accused did not examine any witness in their defence to prove their innocence. Version of PW1 and PW2 is corroborated by MLCs, post-mortem and FSL reports. The subsequent opinion Ex.PW5/B which was taken regarding the weapon of offence favours the prosecution story. It corroborates the version of PW1 and PW2. The judgment relied upon by Ld. Counsel for the accused are not applicable to the facts of the present case.”

12. It is urged by the learned counsel for the Appellants that although the prosecution claimed that injuries were caused on PW1 and PW2's person by Raja (PO) with a sword held by him and thus PWs 1 and 2 are stamped as natural witnesses, yet absence of any incised wound or injury with any sharp weapon on their person falsifies their presence at the spot. It is urged that the testimonies of PWs 1, 2 and 4 are contradictory on material points making the prosecution version doubtful. It is argued that the Trial Court fell into error in relying on their testimonies to return a finding of guilty against the Appellants and holding that the Appellants had not produced any evidence to prove their innocence.

13. On the other hand, the learned APP contended that some discrepancies and contradictions do occur in every criminal case because the witnesses are not expected to have a photographic memory to retain and reproduce minute details. The prosecution

witnesses bore no ill-will nor any grudge against the Appellants and, thus there was no reason for them to falsely implicate the Appellants.

14. Before we advert to the various contradictions in the testimonies of the prosecution witnesses, we would refer to the MLCs of PW1 and 2. As per PWs 1 and 2, they were attacked with a sword by Raja (the PO) in concert with the Appellants and the juvenile accused. PW1 Prempal was examined by Dr. Nishu Dhawan(PW6). She proved his MLC as Ex.PW6/A. The Doctor found an abrasion over the upper part of the left forearm of the size 1.5 x 0.5 cms and another abrasion on the right leg medially at junction of lower 2/3 and upper 1/3 of the size 2 cm x 1 cm. The injuries were opined by the Doctor to be simple and caused by a blunt object. In cross-examination, PW6 deposed that such injuries could be caused if a person falls on a hard substance.

15. Similarly, the MLC Ex.PW9/A of injured Pramod (PW2) and PW9 Dr. Vineta Mittal's testimony reveal that he suffered some bruises caused by a blunt object. Thus, the prosecution version that PWs 1 and 2 were attacked by Raja (the PO) with a dangerous weapon like a sword (*talwar*) is falsified. Therefore, their testimonies require greater scrutiny before they can be relied upon to base the Appellants' conviction.

16. According to the prosecution, PW1 Prempal and the deceased Lakhan wanted to meet Puran (the Appellant) so as to get some clue of their sister Rekha who had eloped with Latoori. It was Pramod

(PW2) who told PW1 and the deceased that Puran could give them some information. There are different versions in the statement of PW1 Prempal Ex.PW1/1, on the basis of which the present case was registered and also in the testimonies of PW1 and PW2. In Ex.PW1/1, Prempal said that in the evening on 25.03.2004 Pramod went to Puran's house and had given Lakhan's telephone number to him. In his testimony in Court as PW1, Prempal deposed that at the time of the first visit to Puran's house by Pramod and him, Puran's mother only met them and gave Puran's telephone number to them. When PW2 Pramod entered the witness box, he deposed that on 25.03.2004, it was only he who went to Puran to know about Latoori's whereabouts. Puran had a talk with him; he gave his and Lakhan's telephone number to Puran. Thus, there are three different versions available in respect of Puran's meeting with PWs before the date of the incident.

17. There is no material on record that a copy of the FIR Ex.PW10/A was sent to the Magistrate immediately on registration of the case in compliance with Section 157 Cr.P.C. PW10 SI Adith Lily duty officer who recorded the FIR is completely silent if a copy of the FIR was sent to the Ilaqa Magistrate. Admittedly, the stabbing incident took place at about 8:30 AM and, according to the prosecution, the FIR was recorded only at 2:30 PM. Thus, there was delay of six hours in recording the FIR. SI Ishwar Singh (PW30) tried to explain this delay by stating that when he reached the spot, no eye witness was available. PW1 Prempal, the author of the FIR as well as PW2 Pramod, another eye witness, deposed in

their examination-in-chief that the statement Ex.PW1/1 (on the basis of which the FIR was registered) was made by PW1 immediately upon reaching the police station. PW2's testimony also is that Police Station Dabri was just 1km away. If PWs 1 and 2 travelled to the police station on the motor cycle, it would have hardly taken them a few minutes to reach there. Thus, the FIR could have been recorded even before 9:00 AM in order to avoid introduction of any coloured version. It goes without saying that the FIR in a criminal case, particularly in a heinous crime like murder is a valuable material for the purpose of appreciating the evidence led at the time of trial. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR is not only bereft of the advantage of spontaneity, there is also danger that there may be introduction of a coloured version or on exaggerated story. (*Mehraj Singh v. State of U.P.*, AIR 1999 SC 324).

18. PW4 Ram Snehi claims to have reached the spot within a few minutes of the incident. He went out in the street from the house and noticed Lakhan lying in a pool of blood. He saw two boys (PWs1 and 2) with a red motor cycle; they claimed that they were assaulted by Puran. Although the prosecution draws support from PW4's testimony, on the ground that whatever was stated to him by PWs1 and 2 and the bystanders, is relevant under Section 6 of the Evidence Act, yet he makes a dent in the prosecution version as according to him the two boys on a motor cycle were present at the spot after the incident and did not leave for the police station

immediately after the incident as was claimed by PWs 1 and 2. If we believe PW4, there is no explanation for delay of five hours in recording the FIR.

19. There are contradictions in the statement Ex.PW1/1 and PW1 and 2's testimony as to who i.e. the Appellant, the juvenile and Raja (PO) held whom, and how the injuries were inflicted. We would have not attached much importance to them, as the witnesses may not remember minute details after lapse of sufficient time, yet in view of the fact that there was an inordinate delay in recording the FIR and that there were contradictions as to how Appellant Puran or his mother were approached before the incident, who had approached them and how the incident had occurred, the contradictions about which Appellant held whom and the sequence of events create further doubt about the prosecution version.

20. When there is direct evidence about the commission of offence, motive pales into insignificance. In view of the contradictory versions, the motive also assumes importance. The motive for commission of the offence was that Lakhan (the deceased) was a police informer. PW30 SI Ishwar Singh was cross-examined on this aspect. Neither he nor PW31 (the second IO) uttered a word that the Appellants were involved in any criminal activity making them suspicious about Lakhan's conduct.

21. On a question put up by the Court, PW4 testified that when he went out of his house, he saw the injured lying outside the shop. 20/25 persons of the locality were standing there. Similarly, PW2

deposed that a number of public persons were present at the spot. The incident lasted for about 15 minutes. Unfortunately, none of them (20/25 persons) have been cited as a witness by the prosecution. If we accept the version which has been given by SI Ishwar Singh (PW30 the first IO), neither PW1 and 2 went to the police station to lodge a report nor were they present at the time of his first visit at the spot after 9:00 AM. They were available to him only at the time of his second visit at about 1:30 PM. Prempal was Lakhan's real brother. He was not under threat of injury when the assailants had escaped. Normal human conduct would have induced him to remove his brother Lakhan, who was seriously injured, to the hospital without any waste of time. It is possible that due to fear, he would have gone to the police station to report the matter immediately. However, it defies logic that he would vanish from the spot and would reappear after a couple of hours without even attending to his brother (Lakhan) who was battling for his life.

22. It is well-settled that the burden of proof is always on the prosecution to prove its case beyond all reasonable doubt. The presumption of innocence and the right to a fair trial are twin safeguards available to an accused under our criminal justice system. The Trial Court fell into error in holding that the accused did not examine any witness in their defence to prove their innocence.

23. It cannot be said that the incident took place in the manner alleged by the prosecution, neither can it be determined who out of

the Appellants was involved in the incident. PWs1 and 2 admitted that they were detained in the police station for three days, although PW30 SI Ishwar Singh denied this. The Appellant Puran in his examination under Section 313 Cr.P.C. took the plea that the assault on Lakhan was the handiwork of PWs 1 and 2. In any case, it was for the prosecution to prove its case beyond all reasonable doubt which it has failed. In our view there are grave doubts in the prosecution case. The Appellants are entitled to be given the benefit of doubt. The order of conviction and sentence is accordingly set aside and the Appellants are ordered to be acquitted.

24. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

JANUARY 09, 2012
pst