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

Date of decision: 19th October, 2012

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CRIMINAL APPEAL NO. 488/2011

IMRAN

..... Appellant

Through: Mr. S.B.Dandapani, Advocate.

versus

STATE

... Respondent

Through: Ms. Richa Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (ORAL)

1. Imran has filed this appeal impugning judgment dated 25.05.2009, passed by Additional Sessions Judge, convicting him for murder of Ravi u/s 302 read with Section 34 of the Indian Penal Code, 1860 (IPC). The appellant has also been convicted u/s 307/34 IPC for having attempted to cause murder of Jagdish who has appeared as PW-
2. The appellant has been, by order of sentence dated 27.05.2009, sentenced to life imprisonment for the offence u/s 302 IPC with fine of Rs.30,000/-. In default of payment of fine, he has to undergo S.I for a period of one year. For the offence u/s 307 IPC, the appellant

has been sentenced to R.I of ten years and fine of Rs.20,000/-. In default of payment of fine he has to undergo S.I for six months. The fine, if recovered, has to be paid as compensation to the dependents of deceased Ravi and injured Jagdish, in equal proportion.

2. We have heard Mr. S.B. Dandapani, Advocate who has appeared as amicus curiae in this appeal. He has submitted that the impugned judgment suffers from various infirmities. Firstly, injured Jagdish (PW-2) was not an eye witness as he did not see who actually gave the alleged fatal blow/injuries, to the deceased Ravi. Secondly, there is no evidence to establish common intention u/s 34 IPC. Thirdly, he argued that Jagdish (PW-2) and the deceased Ravi, both had consumed alcohol and probably this led to a sudden quarrel, causing injuries. Lastly, no motive has been established and the alleged motive, referred to in the impugned judgment, is weak for conviction.

3. At the outset, it is to be noticed that other two co-accused, namely, Abhishek and Niranjana are juveniles and are being tried before the Juvenile Justice Board, in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. The appellant Imran alone was tried before the Additional Sessions Judge and has been convicted by the impugned decision.

4. It has been proved by Dr. K.K.Banerjee (PW-20) who conducted

Ravi's post mortem, beyond doubt, that he had a homicidal death, Dr. V.K.Jain (PW-22) proved medical examination of the deceased Ravi vide MLC Exhibit PW-22/A. Dr. D. Mohanty (PW-25) gave his opinion before operation. Ravi, aged about 20 years, was brought to G.T.B hospital, Delhi at about 9.25 P.M. and was examined by Dr. S.K. Gupta who had written the said MLC. The MLC (Ex. PW-22/A) records that Ravi had four injuries, including incised wound on the left lung, left chest and left abdomen. There was an injury on the left forearm also. These injuries were caused by a sharp weapon. Smell of alcohol was present. Ravi was referred for surgery and for further management and opinion. Dr. S.K.Gupta had left the services of the hospital and the MLC, including the handwriting of Dr. S.K.Gupta, were proved by Dr. V.K.Jain (PW-22). The Post Mortem Report (Ex. PW-20/A) records that Ravi had bled profusely, due to the stab wound on the left lumbar region. Packing of the wound was done but Ravi expired, at around 11 P.M. on 26th October 2005 on the operation theatre table, before any surgery could be conducted. The cause of death, as recorded in the Post Mortem Report, is shock due to ante mortem injuries to major blood vessels and internal organs, caused by a pointed single edged weapon. Injury No.5, it has been opined, was sufficient to cause death in ordinary course of nature. The post mortem

was conducted on 27.10.2005 at 12.10 P.M.

5. The prosecution primarily relies upon the statement of the injured witness Jagdish (PW-2). PW-2 has averred that he was a friend of Ravi and they used to sell toys, together, on a patri shop. Four to five days before Diwali, one Niranjan had come to their shop and had picked up a toy. When Niranjan was asked to pay for the toy, he had threatened them that they did not know him and he would teach them a lesson. He asked, both of them, to not to meddle with him, broke the toy and went away. Next day, Jagdish and Ravi, at about 11.30 A.M., started for village Farukh Nagar to purchase crackers and reached there at about 2.30/3.00 P.M. Around 8.30 P.M., the two were returning to Chamunda Mandir, without purchasing crackers. On Jail Road, at the corner of Harsh Vihar, near the kiosk 'pan' shop, the appellant, along with Niranjan and Abhishek, was standing. Three of them approached Jagdish and Ravi and Niranjan, in a threatening manner questioned them why they had asked for the cost of the toy. Niranjan took out an iron gupti and attacked Ravi. Ravi and Jagdish tried to save themselves. A scuffle followed. Abhishek took out a churra and the appellant Imran took out a button operated knife. The three attacked them and, as a result, both of them received injuries. Jagdish fell down on the spot and became unconscious. Ravi tried to escape but the

appellant Imran and others started chasing him. PW-2 saw the three, chasing Ravi before he became unconscious. PW-2 regained consciousness after four days, in G.T.B hospital, where he came to know that Ravi had died. PW-2's relatives met him and the police recorded his statement.

6. Next month, on the 14th day, the police came to his house and asked him to join investigation and, despite his serious condition, he agreed. The appellant Imran and the other two accused, Niranjana and Abhishek were found standing on a vacant plot and, on seeing them, the three accused started running. The police apprehended them, after a chase to some distance. PW-2 identified the three assailants who had caused injuries to him and Ravi, on the date of the incident. Thereafter, he came back to his house.

7. The Additional Public Prosecutor examined PW-2 on certain aspects. In the examination by the APP, PW-2 admitted that Niranjana had taken the toy forcibly, from the shop, on 25.10.2005 and the stabbing incident had occurred on 26.10.2005. He admitted that he knew the appellants Imran, Abhishek and Niranjana from before. He accepted the position that the three appellants, including Imran, were apprehended not in front of a vacant plot but a plot which was not properly constructed. PW-2 further clarified that he had tried to run, to

save himself, but he fell down at some distance, on a slab in front of a shop, while the deceased Ravi ran towards Subhash Kansal Marg. He stated that the appellant Imran had chased him and Ravi with an intention to kill them. The place of occurrence was inspected by the police, in his presence, on 2.01.2006. He submitted that, in the earlier portion of his statement-in-chief, he has not stated these facts as he was an illiterate. On further examination, PW-2 stated that Niranjana had taken out a gupti from his possession and had attacked him and Ravi. Both of them started running. Thereafter, the appellant Imran took out a knife and Abhishek took out a churri and the two were attacked, repeatedly.

8. PW-2 was cross examined at length but no facts came forth which could cast doubt on his testimony. In the cross examination, PW-2 accepted that his statement was recorded, on several occasions, by the police. He admitted that there was a case, u/s 304 IPC, pending in the Karkardooma Courts, against him. Some minor contradictions in the statements made by PW-2, u/s 161, were put to him, in the cross examination, but these do not materially effect the credibility or truthfulness of his statement. PW-2 has stated that Ravi was wearing a pant and shirt at the time of the incident but he did not remember the colour. PW-2 was wearing blue colour jeans and T-shirt but he did

not remember the colour of his T- shirt. He recollected that the police apprehended the three assailants, at about 10 A.M, but not the day on which arrest was made or names of the police officers who were with him. He could only reveal that there were shops near the place of occurrence, including residential houses and rehriwalas and khomchawalas were standing there. It was a crowded area but there was no street light. However, there was light from the shops, as well as, the khomchawalas. Ravi was about 5 steps ahead of him, when PW-2 fell down. No grappling took place amongst the three accused and them, before the incident. He denied the suggestion that the appellant Imran had not caused any injury to him or Ravi. He denied that Imran was on his duty somewhere else, at the time of the incident, and had been falsely implicated. He voluntarily stated that on seeing the incident of stabbing, the public started running away. He admitted that there was a police booth, near the corner towards Harsh Vihar, Jail Road but the said booth was established about 1 or 1-1/2 years back and was not there on the date of the occurrence. After the arrest of the appellant, PW-2 was brought to his house by SI Ajay Singh Negi (PW-26), one of the police officers. Two more police officers were with him. He denied a suggestion that the accused were not arrested in his presence.

9. In the impugned judgment, the trial court has doubted the arrest of the appellant and the recovery of the knife, thereafter. We agree with the findings recorded by the trial court. SI Ajay Singh Negi (PW-26) has testified that, on 14.11.2005, at about 9.00-9.15 P.M, a secret informer revealed that three accused were seen in Nand Nagiri area and could be found in the appellant Imran's relative house. D.D entry Ex.18/A was recorded and a raiding team was formed. After making *recce* of the area, they went to PW-2's residence and requested him to join the investigation. Thereafter, they returned and the injured PW-2 was shown the accused, from an open window. PW-26 knocked on the house door and when the door was opened, the three assailants, including the appellant Imran, were apprehended. PW-2 identified Imran by his name. They also interrogated Niranjana and Abhishek, who were arrested. Disclosure statements were recorded and, on the basis of disclosure statement (Ex. PW-11/D), the appellant Imran took out a button actuated knife from the *tand* of the house. He took out one pant of saleti colour along with a shirt of white colour. PW-26 has stated that both the knife and the clothes were blood stained. H.C. Sohanbir (PW-21), allegedly part of the raiding team, could not state number of storeys of the house but stated that the house was constructed in an area of 25 sq.yds. He did not remember number of

rooms in the house or whether any family members were present at the spot. Similarly, Const. Ramesh Kumar (PW-17) has averred that the button actuated knife was recovered from the *tand* of the house. Clothes were recovered too. He joined investigation, at 9.25 P.M. from the police post, and they raided the house of PW-2, appellant's, maternal uncle at 10.00 P.M. He has stated that SI Ajay Singh Negi (PW-26) had got the door opened and, on interrogation, the appellant told them about the knife and clothes. He did not remember who took out the knife from the *tand*. Similarly, ASI Jagbir Singh (PW-11) has stated that the police team had reached the house of Imran's maternal uncle, at 10.00 P.M. 6-7 persons were present, including Imran's uncle, his aunt and 4-5 children. The knife was recovered from a *tand*, at the instance of the appellant Imran.

10. The Trial Court has rightly pointed out that while PW-2 had stated that they entered the house in Sunder Nagri at 10 A.M., the entire police team has stated that they reached the spot at 10 P.M. Some police witnesses stated that the knife was recovered from the *tand* on the pointing out of the accused. However, Const. Ramesh Kumar (PW-17) has stated that the knife was wrapped in a cloth and was found when they searched the house. He did not remember who had taken out the knife from the *tand*. It was noticed that H.C.

Sohanvir (PW-21) did not know, whether the house, in question, was single or double storeyed and was fully constructed or partially constructed. As noticed above, PW-2 has stated that the house was not fully constructed. The Trial Court has further recorded that public witnesses were not joined. However, this by itself, does not mean that we cannot rely upon the oral statement of Jagdish (PW-2), regarding the actual incident which resulted in injuries caused to him and led to Ravi's death. PW-2's statement is corroborated by the medical evidence relating to the deceased Ravi, which has been placed on record, in the form of MLC (Ex. PW-22/A), the Post Mortem Report (Ex. PW-20/A) and the Death Report (Ex. 24/F). Medical evidence regarding injuries suffered by PW-2 also corroborates, his statement.

11. Mohanlal (PW-1), deceased Ravi's father, stated that in the night, intervening 26th /27th October 2005, he was on duty at Old Delhi Railway Station, as a booking clerk. He received a telephone call that some boys had injured his son Ravi and his friend Jagdish and they were admitted in G.T.B hospital. When he reached the hospital, his son had expired and Jagdish was admitted in the ICU. He identified the dead body of his son, preserved in the mortuary, vide memo Ex.PW-1/A. Naresh (PW-3), Jagdish's brother, has stated that, at about 9 P.M on 26.10.2005, he came to know that Jagdish and his

friend Ravi were lying injured, on the corner of Bhopura Theka, Jail Road. He informed the PCR, called an ambulance and reached Jail Road. When he reached there, he found Jagdish lying unconscious. Ravi was lying at 23 ft road. PCR Van took Ravi to the hospital and Jagdish was taken in CAT ambulance to GTB Hospital. When PW-3 reached the Emergency Ward Room of G.T.B Hospital, Jagdish and Ravi were unconscious. Police also met him in the hospital. Ravi expired in the hospital on the same night. Thereafter, police brought him to the crime spot, where the blood was still lying, and investigation was conducted. ASI Jalbir Singh (PW-11) has stated that, on receipt of DD Entry 24, he, along with Constable Arjun, reached the crime spot but found that the injured had been taken to the hospital. They went to G.T.B hospital and collected the MLC of Ravi. He was later a party to the raiding team which arrested the assailants. In the cross-examination, he has stated that no eye witness could be found, at the spot. He collected the MLC of the injured Jagdish (PW-2). The injured PW-2, as well as, Ravi were declared unfit for statement, when he had visited the hospital. Const.Manoj (PW-13) avers that, on 26.10.2006 at 09.30 P.M., while patrolling they reached at Subhash Kansal Marg, Gali No.2, Harsh Vihar and found blood spots there. On verification, PW-13 came to know that one Ravi had been stabbed.

From the spot, blood and earth sample were lifted and sealed. Const.Arjun (PW-14) has stated that, at about 09.05 P.M., DD No.24 was received by ASI Jalbir and thereafter, both of them went to Jail Road, Bhopura Theka, Harsh Vihar and found the blood lying. On inquiry, they came to know that two persons had been stabbed and one injured was taken by PCR van while other injured was taken by CAT ambulance. The injured were Jagdish and Ravi. Photographer took pictures of the crime spot from different angles. Blood and blood control earth was lifted and sealed for forensic examination. Later on, they came to know that Ravi had expired and post-mortem of the dead body was conducted. ASI Maha Singh (PW-15) has stated that he was in charge of PCR Van No.14 and, on 26.10.2005 at about 09.00 P.M., he reached the site in question and from there had taken a boy, named Ravi, in injured condition to GTB Hospital. SI Mukesh Kumar Jain (PW-23) is a draftman who had visited the spot and, after taking measurement, prepared rough notes of the spot. The scaled site plan (Ex.PW-23/A) was prepared by him. In the cross-examination, he has stated that he prepared site plan with the directions of public witness Jagdish (PW-2). SI Ajay Singh Negi (PW-26), incharge of PP Harsh Vihar, PS Nand Nagri, was on patrolling duty. He reached the spot and found that Const. Arjun (PW-14) was present. Blood was lying on the

slab of the shop at Amar Hardware, Bhopur Road, Jail Road Corner, Harsh Vihar, Delhi. He was informed by Const. Arjun (PW-14) that an injured had been removed to the Hospital and that there was another injured lying at Subhash Marg, outside Gents Beauty Parlour. He reached and noticed that blood, in substantial quantity, was spread, in front of Gents Beauty Parlour, on the road. Const. Manoj (PW-13) informed that injured had been removed to the hospital in a PCR van. Later on, an old man named Satpal came and informed that the names of the two injured were Jagdish and Ravi. The crime team reached there, inspected the spot, and took photographs. PW-26 went to the GTB Hospital and met Naresh (PW-3) brother of injured Jagdish (PW-2). The injured were under treatment and MLC had already been collected by ASI Jalbir (PW-11). PW-26 came back to the spot for inspection where blood and earth control sample were sealed, for chemical examination. After Ravi expired, Section 302 was added to the FIR and investigation was conducted by Insp.Veer Singh Tyagi (PW-24), SHO, PS Nand Nagri and SI Ajay Singh Negi (PW-26) assisted him in the investigation. On 30th Oct 2005, he along with PW-24 went to GTB Hospital and recorded the statement of Jagdish (PW-2), who was by then declared fit for statement. PW-2 named Niranjana, Abhishek and Imran as the assailants. Thereafter, attempts were made

to arrest the assailants. They were later on arrested.

12. We have already referred to the statement of Dr. K.K.Banerjee (PW-20) who conducted the post-mortem on Ravi's body. He had seven ante mortem injuries and injuries No.4 and No.5 were stabbed injuries, caused by sharp edge weapon. He has stated that injury No.5 was sufficient to cause death in the ordinary course of nature and when shown the weapon of offence i.e. button dar knife, he further deposed that injuries No.4 and 5 were possibly caused by sharp edge weapon.

13. Injuries, as recorded in the Post Mortem Report, are as under :

“ Ante mortem injuries :

- 1. Abrasion 4x3 cm reddish present over tip of left shoulder.*
- 2. Abrasion 2x1.5 cm reddish present over front of left shoulder.*
- 3. Incised wound 3 cm x 0.5 cm x 2 cm with one angle more acute than the other, muscle deep present over the outer aspect of L upper arm obliquely placed 19 cm below the tip of L shoulder and 10 cm above the tip of L elbow.*
- 4. Stab wound 1 cm x 0.5 x 2 cm present on the outer aspect of L side of chest 6.5 cm below the L posterior axillary fold, 22.5 cm above the L anterior superior iliac spine on the posterior axillary line directed upward muscle deep, one end is acute and other end blunt.*
- 5. Stab wound 3.5 cm x 1 cm x cavity deep present on the outer aspect of back of lower part of L side of abdomen 8 cm lateral to the mid line, 2 cm below the L costal margin, the lower angle was acute and the upper angle was blunt being wedge shaped, on probing the wound was directed inwards and upwards into the abdominal cavity. On opening the abdomen the wound was found to have cut*

tangentially the posterior surface of L kidney, the blood vessels around L kidney and abdominal position. The length of the track was 12 cm.

- 6. Incised wound 2.5 cm x 0.5 cm x S.C tissue deep present on back of L forearm 7.5 below tip of L elbow, 16.5 cm above the L wrist.*
- 7. Small abrasions, reddish present over knuckles and middle fingers.”*

14. Dr. V.K. Jain (PW-22) has proved the MLC Ex. PW-22/A. He has, as noticed above, referred to the injuries suffered by the deceased, and as recorded in the MLC Ex. PW-22/A, which are:

1. Incised wound 3x1 cm left loin
2. Left forearm 4x1 cm
3. Left chest third intercostals space 3 cm
4. Left abdomen 6x4 cm

15. Jagdish (PW-2), the injured witness, had suffered extensive injuries too. His MLC (Ex.PW-12/A) shows that he had deep penetrating wound of 4 cm length on left lumbar region; 3 cm penetrating wound on mid sternal region; 3 cm penetrating wound on right hypocondrial; 2 cm deep penetrating wound of 1.5 cm on mid sterna region.

16. The MLC mentions that PW-2 smelled of alcohol but this does not justify the nature and extent of injuries suffered by the deceased Ravi and PW-2. These injuries cannot be caused by one single edged weapon as these are large in number and several injuries are grievous

and serious in nature. PW-2, the injured witness, is clear and categorical that the three assailants including Imran, who had knife, Gupti and chhura with them, had attacked him and then he saw them attacking Ravi. Both of them tried to run away. In the process, he fell down outside a shop, on the floor. At that time, he saw Imran and others chasing the deceased Ravi. He had indicated the reason or motive for the occurrence, as earlier i.e. one day before, Niranjan had come to their shop, on the patri near Chamunda Mandir, Bhopura theka Moad, Delhi and there was an altercation between them since Niranjan wanted to take away a toy, without paying. At that time, Niranjan had threatened them that he would see them and they do not know what he could do and they should not make up any quarrel or protest or question his action. It is further apparent that the appellant was one of the persons who had attacked both, PW-2 and the deceased Ravi. Statement of injured witness is entitled to considerable weight and is generally considered to be reliable. The injuries suffered by witness PW-2 shows that there is a guarantee of his presence, at the crime spot and that he and the deceased were unprepared when the assailants attacked them. In the facts, it is not possible to hold that the injured witness PW-2 would falsely implicate the appellant. In '*Abdul Saeed vs. State of M.P.*' 290 (10) SCC 259, in which several decisions

have been referred to, it has been held that:

“26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide *Ramlagan Singh and Ors. v. State of Bihar* : AIR 1972 SC 2593; *Malkhan Singh and Anr. v. State of Uttar Pradesh* : AIR 1975 SC 12; *Machhi Singh and Ors. v. State of Punjab* : AIR 1983 SC 957; *Appabhai and Anr. v. State of Gujarat* : AIR 1988 SC 696; *Bonkya alias Bharat Shivaji Mane and Ors. v. State of Maharashtra* : (1995) 6 SCC 447; *Bhag Singh and Ors. (supra)*; *Mohar and Anr. v. State of Uttar Pradesh* : (2002) 7 SCC 606; *Dinesh Kumar v. State of Rajasthan* : (2008) 8 SCC 270; *Vishnu and Ors. v. State of Rajasthan*(2009) 10 SCC 477; *Annareddy Sambasiva Reddy and Ors. v. State of Andhra Pradesh* AIR 2009 SC 2261; *Balraje alias Trimbak v. State of Maharashtra* : (2010) 6 SCC 673).

27. While deciding this issue, a similar view was taken in, *Jarnail Singh v. State of Punjab* : (2009) 9 SCC 719, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when

the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka*: 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In *State of U.P. v. Kishan Chand*: (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

28. The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

17. Dr. D. Mohanti (PW-25), GTB Hospital, Lecturer in Department of Surgery had examined and operated on PW-2. The operative

findings were laceration over the right lobe of liver, perforation over anterior wall of stomach, perforation of transverse colon, with hemoperitoneum.

18. We may note that the MLC Ex. PW-12/A mentions that injuries were caused by sharp edged weapon and it is also recorded that the nature of injuries suffered were grievous. In view of the injuries suffered by PW-2 (Jagdish), we are satisfied that the Trial Court has rightly recorded the findings that offence under Section 307 IPC have been established and made out.

19. Keeping in view the nature and extent of injuries suffered by PW-2, we uphold the appellant's conviction under Section 307 IPC and maintain the sentence of rigorous imprisonment for ten years imposed on him for the said offence.

20. We also uphold the conviction and sentence of life imprisonment for the murder of Ravi.

21. However, the fine of Rs.30,000/- and Rs.20,000/- imposed on the appellant for the offences under Section 302 and 307 IPC, respectively is excessive and accordingly, we reduce the fine to Rs.5,000/- on each count. Fine, if recovered, shall be paid as compensation to the dependants of Ravi and the injured Jagdish, in equal proportion. In default of payment of fine by the appellant, he

shall further undergo simple imprisonment for a period of one month for each. The appeal is accordingly disposed of.

SANJIV KHANNA, J.

S.P. GARG, J.

October 19, 2012
AS/tr/VKR