

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

% *Date of Judgment:06.02.2013*

+ **Crl. A. 313/2000**

MUKESH

...Appellant

Through: Mr. M.R. Chawla and Mr. Soayib
Qureshi, Adv. with appellant-in-
person.

Versus

STATE

...Respondent

Through: Mr. Manoj Ohri, APP.
SI Girraj Singh, PS Badar Pur
Delhi.

AND

+ **Crl. A.322/2000**

PARTAP SINGH

...Appellant

Through: Mr.Ajay Kumar Pipaniya, Mr.
Bishan and Ms. Monika, Advs.

Versus

STATE DELHI ADMN.

...Respondent

Through: Mr. Mukesh Gupta, APP
SI Girraj Singh, PS Badar Pur
Delhi

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 These two appeals have been preferred by Mukesh and Pratap Singh against common judgment dated 08.3.2000 whereby both the appellants along with two co-accused Rajender Singh Negi and Parminder Singh had been convicted under Sections 324 read with Section 34 of the Indian Penal Code (hereinafter referred to as the IPC) and had been sentenced to undergo RI for one year; since Rajender Singh Negi had already undergone the aforesaid period, he was ordered to be released. Accused Parminder had been declared as a proclaimed offender. Convicts Pratap Singh and Mukesh has to suffer the sentence.

2 The nominal roll of both the accused has been summoned. Mukesh has undergone incarceration for about 13 days; the nominal roll of Pratap shows that he had suffered incarceration of almost about the same period.

3 The case as set up by the prosecution is that on 28.3.1994 Ashok Kumar and Mohan were sitting at their Halwai Shop at Badarpur; this was in the evening at about 5.15 PM. Accused Pratap Singh accompanied by two other persons, carrying a knife started abusing them; Mohan got scared and went to the corner of the lane. The accused persons ran after him; accused Pratap gave knife blow to Mohan and other two accused also caught hold of him. When Ashok tried to intervene accused Pratap hit him with a knife in his stomach, this was followed by knife blows upon Ashok by another co-accused; the other

two accused were holding both the brothers. It appears that this dispute had been triggered on account of Pratap abusing the mother of Ashok.

4 Charge sheet was filed under Sections 307/34 of the IPC. Charge was also framed under the aforesaid provisions of law. Accused persons pleaded not guilty and claimed trial.

5 Ten witnesses were examined by the prosecution. The injured Ashok Kumar was examined as PW-2. He deposed that when he was sitting at their Halwai shop alongwith his brother Mohan accused Pratap Singh along with three more persons started abusing Mohan; Mohan went to the gali; accused Pratap along with Mukesh and Rajender ran after Mohan. Rajender and Parvinder caught hold of Mohan; accused Pratap gave him a knife blow in his stomach. Thereafter accused Rajender caught hold of Ashok Kumar PW-2 and Mukesh gave a knife blow on his back and left arm. Accused persons fled away from the scene. PW-2 has further deposed that this incident was a result of the earlier day quarrel when Pratap along with 3-4 boys had come on the occasion of Holi and abused his mother and brother. In his cross-examination, it was denied that the accused did not abuse his mother and brother on the previous day.

6 Mohan PW-4 was the brother of PW-2 and the second injured. He has also recited the incident in the same manner as PW-2. He has deposed that on the fateful day when he was sitting in front of his Halwai shop along with his brother Ashok Kumar the four accused

persons came there and when PW-4 left the shop to save himself they ran after him; accused Parminder and Bitoo caught hold of him, accused Pratap gave him knife blow in his stomach and when his brother Ashok Kumar (PW-2) tried to save him accused Mukesh gave him knife blow in his left arm because of which PW-2 became unconscious. In his cross-examination he has admitted that the accused persons had come to their house; it was the previous day i.e. on the day of Holi and abused their mother. He denied the suggestion that his brother Ashok is quarrelsome by nature or that the accused has been falsely implicated.

7 The mother of PW-2 and PW-4 Smt. Shakuntla was examined as PW-3. She had removed the injured to the hospital. She has deposed that she knew the accused persons by face prior to the incident; she has not been set up as an eye-witness.

8 The MLCs of Ashok Kumar and Mohan have been proved as Ex.PW-9/A and Ex.PW-9/B. The injuries have been opined as simple but dangerous.

9 The part Investigating Officer Des Raj was examined as PW-10. He had arrested the accused persons vide arrest memos after conducting their personal search vide personal search memos. He had also recorded the statements of the witnesses.

10 On behalf of Mukesh, it has been argued that the FIR was registered on the statement of PW-2 but the name of Mukesh does not find mention there; he has been roped in as an afterthought. Weapon of

offence has also not been recovered. PW-2, PW-3 and PW-4 are interested witnesses and their testimony has to be read in that light. Accused is entitled to benefit of doubt.

11 On behalf of accused Pratap, it has been argued that the incident has been concocted and built up by the prosecution because of an enmity between the injured and accused Pratap. Submission being that PW-4 has not been able to give the description of the weapon of offence and it has also not been produced in the court. The medical evidence also suffers from infirmities as the doctor who has prepared the MLCs has not come into witness box.

12 This court is not inclined to interfere with the order of conviction as has been passed by the trial court. Testimonies of PW-2 and PW-4 are clear and categorical; both of them are corroborative of one another; both of them have suffered injuries; injuries being simple but sharp. The medical evidence which is proved through Ex.PW-9/A and Ex.PW-9/B corroborates their ocular version. PW-3, mother of PW-2 and PW-4 has also supported the same version. There was no reason as to why the accused would have been falsely implicated. The accused Pratap was specifically named and other co-accused Mukesh had refused the TIP.

13 Conviction is accordingly maintained.

14 Learned counsel for the appellants, however, submits that since the offence under Section 324 of the IPC proposes a

sentence/incarceration up to a period of three years or a fine, keeping in view the facts of this case the accused be released on payment of fine.

15 Accused Mukesh as noted supra has suffered incarceration of 11 days as an under trial. Accused Pratap remained in judicial custody for almost the same days i.e. 14-15 days. The incident is dated 28.3.1994 i.e. almost 19 years ago. Both the accused persons are present in the court. Submission being that they have reformed themselves and the present incident was the result of a sudden quarrel between the neighbours and the accused have not indulged in any criminal activities post that offence and the aim of punishment being also reformatory, the accused persons be released on payment of fine.

16 Learned APP under instructions from the Investigating Officer informs this court that the victims Ashok Kumar and Mohan are living in the same place where they were living on the date of the incident; accused Pratap was also living in that area at that time. Submission on behalf of accused Pratap is that Ashok and Mohan are still living in the same house and the parties are at peace with one another.

17 In this background keeping in view the circumstances of the case, the nature of the injuries suffered by the victims, the long period of time which has elapsed from the date of incident till today, the accused not having indulged in any anti social activities in this intervening period this is a fit case where alternative punishment of fine is imposed upon the convicts. The sentence is accordingly modified. Accused Pratap

and Mukesh are sentenced to pay a fine of Rs.25000/- each in default of payment of fine they shall undergo SI for eight months. Appeal is disposed of in the above terms.

18 At the request of the appellants the matter is listed for directions on 14.02.2013 on which date the fine shall be brought to the court to be paid to the victims Mohan and Ashok in equal proportion.

FEBRUARY 06, 2013
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INDERMEET KAUR, J.