

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

**RESERVED ON : 13th AUGUST, 2013
DECIDED ON : 4th SEPTEMBER, 2013**

+ CRL.A. 324/2001

RAMESH KUMAR & Ors. Appellants

**Through : Mr.R.N.Mittal, Sr.Advocate with
Mr.Ankit Goal, Advocate.**

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Ram Kishan, Ramesh Kumar, Rajesh Kumar, Suresh, Rajbir & Krishan were arrested in case FIR No. 13/1991 registered at PS Delhi Cantt and sent for trial for committing offences punishable under Sections 302/325/34 IPC on the allegations that on 09.01.1991 at 06.30 P.M. at Stall No.8, Sadar Bazar, Delhi they formed an unlawful assembly and in furtherance of their common object committed murder of Jagdish by inflicting injuries with lathies on his body. They also caused injuries to Jagjit Singh. Both Jagjit Singh and Jagdish were taken to DDU Hospital.

Jagdish was referred to Willington Hospital and on 16.01.1991 he succumbed to the injuries. The Investigating Officer lodged First Information Report after recording Jagjit Singh's statement (Ex.PW-6/1). During the course of investigation, the accused persons were apprehended and arrested. The crime weapon was recovered. The Investigating Officer recorded statements of the witnesses conversant with the facts and after completion of investigation, a charge-sheet was submitted against them in the Court. The prosecution examined fourteen witnesses. In their 313 statements, the accused persons pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted Ram Kishan under Section 302 IPC & 325/34 IPC. Ramesh Kumar, Suresh and Krishan were held guilty under Section 325/34 IPC. Rajesh Kumar and Rajbir were acquitted of the charges. It is significant to note that the State did not challenge their acquittal.

2. Ram Kishan impugned the judgment in CrI.A. 371/2001 before this Court which was decided on 18.08.2009. Conviction of the appellant – Ram Kishan under Section 302 IPC was modified and altered to Section 304 part-I IPC while maintaining conviction under Section 325/34 IPC. He was sentenced to undergo RI for ten years under Section

304 part-I IPC. It is further relevant to note that during the pendency of the appeal Ramesh Kumar (the appellant) expired and proceedings against him were dropped as abated on 13.08.2013.

3. The appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and the judgment is based upon conjectures and surmises. PW-1 (Amrik Singh), PW-4 (Nanak Singh), PW-5 (Braham Dutt) and PW-9 (Neer Singh) resiled from their statements and did not support the prosecution. PW-6 (Jagjit Singh) gave a vague statement that after sustaining injuries they fell down. He did not elaborate as to which of the appellants had inflicted which injury on his body. Recovery of lathi is doubtful. Jagjit Singh was conscious and oriented and was discharged on the same day. There are over-writings on the MLC (Ex.PW-8/A) and Radiologist was not examined to prove fracture on Jagjit's body. The injuries were not 'grievous' in nature. Learned counsel adopted an alternative contention to release the appellants on probation, if found guilty. Learned Addl.Public Prosecutor urged that there is no valid reasons to discard the PW-6 (Jagjit Singh)'s testimony who was injured in the incident.

4. I have considered the submissions of the parties and have examined the record. Ram Kishan was convicted under Section 302 IPC

on the same set of evidence. In the Crl.A. 371/2001 before this Court his conviction under Section 302 IPC was altered to 304 part-I IPC. The said conviction was based primarily on the statement of PW-6 (Jagjit Singh) and it was accepted and believed by this Court. There are no sound reasons to disbelieve him as he sustained injuries in the incident and was taken to DDU Hospital from the spot. Number of injuries sustained by him confirms his presence at the spot. He had no ulterior motive to falsely rope in the accused and to let the real culprit go scot free for the injuries caused to him and his brother Jagdish. This Court in Crl.A. 371/2001 confirmed Ram Kishan's conviction under Section 325/34 IPC. The First Information Report was lodged on the statement Ex.PW-6/1. The occurrence took place at about 06.30 P.M. Rukka (Ex.PW-12/1) was sent for lodging the First Information Report at 08.15 P.M. without any delay. The FIR is a very material document on which the entire case of the prosecution is built. In his statement (Ex.PW-6/1) given at the first instance to the police the victim Jagjit Singh gave graphic details as to how and under what circumstances, the assailants inflicted injuries to him and his brother Jagdish. The appellants were named and specific role was attributed to them. He also assigned motive to the assailants to inflict injuries as on that day at 06.00 A.M. a quarrel had taken place between

Ram Kishan and Jagdish over a trivial issue. While appearing as PW-6 in his Court statement Jagjit proved the version given to the police without variation. His testimony could not be shattered on material facts in the cross-examination. His ocular testimony has been corroborated by medical evidence. PW-8 (Dr.Umed Singh) has proved MLC (Ex.PW-8/A) prepared by Dr.Mitra Basu. As per the MLC, injuries were 'grievous' in nature caused by blunt object. PW-8 (Dr.Umed Singh) had medically examined Jagjit Singh and found evidence of fracture left scapular and ulnar bone of right forearm. His observations on MLC (Ex.PW-8/A) are Ex.PW-8/B. In the cross-examination, he elaborated that fracture can be deducted on clinical examination as well. The word '*grievous*' was incorporated in MLC (Ex.PW-8/A) on the basis of report of the Radiologist. He was fair enough to admit that the word '*grievous*' was not written in his presence. It is true that PW-4 (Nanak Singh), PW-5 (Braham Dutt) and PW-9 (Neer Singh) have resiled from their previous statements and have not opted to support the prosecution on all material facts but that does not dilute the PW-6 (Jagjit Singh)'s version. PW-9 (Neer Singh), nevertheless, deposed that on 09.01.1991, he had gone to meet Jagdish at Delhi Cantt. At about 06.30 P.M. all the accused came in a tempo at Jagdish's shop. The accused Krishan then called Jagdish and he went

towards him (the accused). He heard that someone had given a lathi blow to Jagdish. He was about 20 steps away from that place and was not aware as to who had inflicted the lathi blows to him (Jagdish). When he reached the spot, he saw accused Krishan giving a lathi blow to Jagdish. He asked Krishan not to assault Jagdish after he fell down. Krishan then left Jagdish and gave a lathi blow on his back and left hand. The testimony of this witness establishes presence of Krishan at the spot with co-accused persons. It is settled legal proposition that statement of hostile witnesses cannot be rejected in toto. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether. It can be accepted to the extent that their version is found to be dependable, upon a careful scrutiny thereof. Statement of PW-9 (Neer Singh) can be taken in to consideration to the extent it is in consonance with the testimony of PW-6 (Jagjit Singh). In Crl.A. 371/2001 this Court observed that PW-6 (Jagjit Singh) had given an exaggerated version and for that reason Ram Kishan's conviction was altered to 304 part-I IPC. However, his testimony was believed for conviction under Section 325/34 IPC. I find no reason to disbelieve him qua the appellants' involvement/ complicity in the incident.

5. In the case of ‘*State of Uttar Pradesh vs. Naresh and Ors.*’, (2011) 4 SCC 324, the Supreme Court held:

“The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”

6. In the case of ‘*Abdul Sayed Vs. State of Madhya Pradesh*’, (2010) 10 SCC 259, the Supreme Court held :

“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".

7. The conviction of the appellants under Section 325/34 IPC is based upon fair appraisal of the evidence and no interference is called for. The appellants have been sentenced to undergo RI for one year with fine ₹ 8,000/- each. The incident took place in 1991. Both the appellants have remained in custody for some period in this case after their arrest and before grant of bail. They have no criminal antecedents and are not involved in any other criminal case. There was no animosity/ enmity between the victims and the assailants. The altercation had taken place in the morning over a trivial issue. The appellants were not held guilty for inflicting injury to the deceased Jagdish. Rajesh Kumar and Rajbir arrested in this case remained in custody for some period before acquittal. Ramesh Kumar has expired during the pendency of the appeal. No useful purpose will be served to send the appellants to jail to serve the remaining period of sentence. They can however, be ordered to pay reasonable compensation to the victim Jagjit. Taking into consideration, these mitigating circumstances, sentence order is modified and both the appellants are sentenced for the period already undergone by them in this case with fine ₹ 8,000/- each as imposed by the Trial Court. Both the appellants are directed to pay ₹ 40,000/- each as compensation to the victim Jagjit. They shall deposit ₹ 40,000/- each with the Trial Court

within 15 days and the amount will be released to the victim Jagjit Singh as compensation. Notice will be issued to the victim Jagjit Singh to receive the amount along with compensation already awarded by the Trial Court.

8. The appeal is disposed of in the above terms. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

SEPTEMBER 04, 2013

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