

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

% *Date of Decision: September 09, 2013*

+ **CRL.A.NO.359/2004**

NANAK & ORS. Appellants
Represented by: Ms.Saahila Lamba,
Advocate/Amicus Curiae

versus

STATE Respondent
Represented by: Mr.Pawan Sharma, Standing
Counsel (Crl.)

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Since the appeal has reached for hearing and none appears for the appellants I appoint Ms.Saahila Lamba, Advocate, who is on the panel of the Delhi High Court Legal Service Committee as the Amicus Curiae to argue the appeal on behalf of the appellants.
 2. Fee of the learned Amicus Curiae shall be paid by the Delhi High Court Legal Services Committee.
 3. The appellants, 5 in number, challenge the impugned judgment and order dated April 26, 2004 passed by the learned Additional Sessions Judge convicting them for having committed offences punishable under Sections 307 and 323 IPC, read with Section 149 IPC and vide order dated April 27, 2004 sentencing them to undergo imprisonment for a period of seven years and pay a fine in sum of Rs.2,000/- each for the offence punishable under Section 307 IPC read with Section 149 IPC and imprisonment for a period of six months and pay a fine in sum of
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Rs.500/- each, for the offence punishable under Section 323 IPC read with Section 149 IPC.

4. Briefly stated, the case set up by the prosecution against the appellants was that on January 03, 2002, the police recorded the statement, Ex.PW-1/A, of Mahesh PW-1, to the effect that on January 02, 2002, at about 08.30 P.M. he was standing in the corner of a street when appellants; Nanak, Arun @ Chotu, Nitin @ Bittoo and Tarun who were his neighbours came and started beating him. At that time appellant Nanak was armed with a sword, appellant Arun @ Chotu was armed with an iron rod and appellants Nitin @ Bittoo and Tarun were armed with hockey sticks. Due to the assault he fell on the ground and lost consciousness. He was removed to AIIMS where Dr.A.G.Mukherjee PW-9 examined him and rendered medical aid as also prepared the MLC Ex.PW-9/A.

5. During the course of investigation the Investigating Officer recorded statement of one Amit PW-2, who claimed that appellant Jitender @ Sonu had caused injury to him when the other appellants were beating Mahesh. Amit claimed that he was also removed to AIIMS where Dr.Meghanath Pawar PW-5, prepared the MLC Ex.PW-5/A.

6. Before proceedings further, it would be apposite to note the contents of the MLCs Ex.PW-9/A and Ex.PW-5/A; of Mahesh and Amit respectively.

7. The MLC Ex.PW-9/A, pertaining to Mahesh records three injuries on his person; namely: (i) clean lacerated wound approximately 4 cm x 2 cm x 1.5 cm on left frontal region; (ii) clean lacerated wound approximately 4.5 cm x 1.5 cm x 1.5 cm over occipital scalp; and (iii) bruising over left eye with black eye. The MLC Ex.PW-5/A pertaining to Amit records that two mild abrasions were found on the back of the right

knee of Amit.

8. One Kunnu PW-3, a neighbour of Mahesh also told the police that even he was beaten by the appellants, but pertaining to the stated injuries suffered by him I find no MLC on the record.

9. It is apparent that case of the prosecution would rest on the testimony of Mahesh Kumar PW-1, Amit PW-2 and Kunnu PW-3.

10. Mahesh Kumar PW-1, deposed in harmony with his earlier statement Ex.PW-1/A on basis whereof the FIR was registered. However, I need to note that when Mahesh Kumar was cross examined, a suggestion was given to him that a quarrel had taken place between two groups; and during said quarrel he had received injuries when a stone was thrown; which suggestion was denied by Mahesh Kumar, but the language used while denying the suggestion, being relevant for my discussion, requires the same to be noted as spoken of by Mahesh Kumar.

The answer reads as under:-

*“There were some other persons with the accused whom I do not know. It is wrong to suggest accused persons were among the mob. It is wrong to suggest that whole mob was beating me, Vol. only the accused persons were among the mob. It is correct that behind the accused persons there was a large crowd and none of them were known to me. None of person crowd has caused injuries to me nor they tried to save me. I cannot give the description of the persons in the mob. The person in the crowd does not armed with any weapon. The crowd was coming towards me just to see as to whom the accused persons were going to beat.” **(Emphasis Supplied)***

11. Amit PW-2, deposed that on January 02, 2002 he was beaten by appellants Nanak, Arun @ Chotu, Tarun and Jitender @ Sonu. The line of cross examination adopted by the appellants qua Amit was the same as it was while cross examining Mahesh Kumar i.e. that the two had received injuries in a group fight involving two groups. Thus, it would be

important for me to extract a portion of Amit's statement during cross examination. It reads as under:-

"I was beaten by Sonu and Chotu only. I was beaten outside the shop in the gali. Again said I was beaten outside the gali. There were about 10 to 12 persons along with the accused persons. I was not beaten by other persons. The other persons were having knives and axes. The other persons were causing injuries to other persons. The persons of crowd were giving beating to someone. First of all Mahesh was beaten thereafter, I was beaten. Mahesh was not beaten in my presence. It is wrong that quarrel had taken place when I reached the spot. I did not know before that what has happen. Except that I was beaten. I do not have any nexus with the quarrel. I do not know if those persons were giving beating because Mahesh has been beaten as a part of revenge." (Emphasis Supplied)

12. Kunnu PW-3, a stated neighbour of Mahesh, deposed that he was beaten by appellants Nanak, Arun @ Chotu, Tarun, Nitin @ Billoo and Jitender @ Sonu in the month of January, 2002. Even he was cross examined on the same line on which the two previous witnesses were cross examined i.e. that there was a quarrel between two groups of people. Thus, it would be important for me to extract a portion of Kunnu's statement during cross examination. It reads as under:-

"There were about 20 to 25 persons in the crowd along with the accused persons. I did not notice if the other persons were also armed with weapons. I do not know if other persons were giving beating to other persons in the gali....I do not know the reasons of quarrel....It is incorrect to suggest that I have received injuries due to pelting of stones by the crowd...."

13. Mahinder PW-4, a neighbour of Mahesh, deposed that on January 02, 2002 appellants Nanak and Arun @ Chotu and other appellants whose names he does not know came to his house and appellant Arun @ Chotu gave a blow with sword on his head; a version totally at variance with the one deposed to by PW-1, PW-2 and PW-3.

14. Dr.Meghnath Pawar PW-5, the author of Amit's MLC Ex.PW-5/A deposed that he had examined Amit at the hospital at 9:25 PM on January 02, 2002 and had recorded the injuries which he had noted on the person of Amit on Ex.PW-5/A.

15. Dr.A.J.Mukherjee PW-9, the author of the MLC Ex.PW-9/A of Mahesh deposed that he had examined Mahesh and had given him medical treatment. He had recorded the injuries on the person of Mahesh on Ex.PW-9/A. That initially he opined the injuries as simple but on second thoughts, being of the opinion that the injuries were dangerous, he recorded so; but on a third review, being of the opinion that the injuries were simple, he recorded the same to be simple.

16. For record of this Court, I note that on the MLC Ex.PW-9/A after recording the injuries to be simple, Dr.A.J.Mukherjee has scored off the word '*simple*' and beneath the same has written the word '*dangerous*'; scoring off the word '*dangerous*' beneath the same he has written the word '*simple*'.

17. Learned counsel Ms.Saahila Lamba who has been appointed as the Amicus Curiae by me has taken me through the testimony of Mahesh, Amit and Kunnu. She points out to me that Kunnu's claim of being beaten is not supported by any medical evidence. Learned counsel points out that no weapon of offence has been recovered and for said reason the claim of Mahesh that Nanak was armed with a sword, Arun was armed with an iron rod and Nitin and Tarun were armed with hockey sticks needs to be considered with a pinch of salt for the reason not only were the weapons of offence not recovered but additionally the reason that the injuries on Mahesh and Amit were not in sync with a sword being used as a weapon of offence. Learned counsel points out that importance of said facet of the evidence is that, accepting that appellant Nanak was armed

with a sword, the learned Trial Judge has held that the acts of the appellants made out a case for they to be held guilty for the offence of attempt to murder.

18. The impugned judgment does not bring out as to with respect to the assault on which injured person i.e. Mahesh, Amit or Kunnu, has the learned Trial Judge opined that it was a case of attempt to murder. But, reading between the lines it is apparent that the said finding has been returned with respect to the injuries caused to Mahesh because the injuries caused to Kunnu, if at all, are not known on account of the fact that no MLC pertaining to injuries caused to Kunnu has been proved. None has been filed. And as regards the injury suffered by Amit, as per MLC Ex.PW-5/A the same are two mild abrasions on the back of the right knee. MLC Ex.PW-9/A pertaining to Mahesh reveals a lacerated wound on the left frontal region i.e. the forehead and a clear lacerated wound over occipital scalp besides a bruise over left eye.

19. From the line of cross examination adopted when Mahesh, Amit and Kunnu were cross examined it becomes apparent that the appellants have not disputed their presence at the spot; albeit they have tried to suggest that the injuries were caused to Mahesh and Amit during a mob fight. But, from the answers given by Mahesh and Amit during cross examination, relevant portions whereof I have extracted in paragraphs 10 and 11 above, it would crystal clear that Mahesh and Amit accepted that there was a mob. Mahesh has voluntarily stated that the accused were a part of the mob which consisted of a crowd. So has Amit admitted, additionally giving the number of the persons constituting the mob i.e. 10 to 12. Amit has stated that other persons in the mob who were armed with knives and axes caused injuries to other persons. Amit has also stated that people in the crowd were beating others. In other words it is

clear that Mahesh, Amit and Kunnu have not deposed to the whole truth when examined by the prosecutor. They have hidden a substantial part of the truth and the same would be the origin of the incident, which origin remains shrouded in mystery. The three star witnesses of the prosecution have not spoken a word as to what prompted a mob fight. Their claim that the appellants came armed and assaulted them is not correct. The evidence probablizes that during a mob fight in which two groups participated, Mahesh and Amit received injuries.

20. From the fact that no weapon(s) were recovered and finding merit in the analysis of the evidence based upon the MLC of Mahesh and Amit which we have noted in paragraph 17 above, which I adopt as my reasoning, it has to be held that Mahesh and Amit have deposed to exaggerated versions and in particular to the manner in which they received injuries. The two mild abrasions on the back of the right knee of Amit could not be the result of being hit by a sword or an iron rod or even hockey sticks. The mild abrasions could be at best the result of being hit by a stone or a fist or a fall. The injury on the left frontal region and over the occipital scalp of Mahesh, which we note are lacerated wounds could not possibly be caused by a sword, notwithstanding a lacerated wound would have a tear of the skin for the reason I find that the MLC pertaining to Mahesh does not record that the cut wound had to be stitched. It is apparent that the clear lacerated wounds were not deep. Now, Medical Jurisprudence recognizes the fact that the skin on the forehead and the scalp being tight, a blow on the forehead and the scalp by even a blunt object can tear the skin. Only a microscopic examination of the torn skin on the forehead and the scalp, in the context of the fineness of the cut, could break the deadlock of whether the skin got torn when a sharp edged object was used or a blunt object was used.

21. Under the circumstances I hold that the evidence on record requires the testimony of Mahesh and Amit to be taken with a pinch of salt i.e. their versions being exaggerated; in any case the possibility thereof not being ruled out. Coupled with the fact that no sword was recovered and that the injuries on Mahesh prima facie rule out the possibility of a sharp edged object being the weapon of offence, I conclude by holding that the weight of the evidence leads to the fact that Mahesh and Amit received injuries in a group fight in which fight appellants were the part of one group and the two were a part of the other. The origin of the fight remaining shrouded in mystery, the MLCs being the only guide, at best, offence committed by the appellants would be causing hurt using a blunt object, which could possibly be a stick, a hockey stick or an iron rod; and when used to assault a person it could possibly be said that the hurt is caused using a dangerous means i.e. the offence punishable under Section 324 IPC.

22. The appellants are on bail. Appellants Arun @ Chotu and Tarun have remained in custody for a period of about nine months. Appellants Jitender @ Sonu and Nitin @ Bitoo have remained in custody for a period of about six months. Appellant Nanak has remained in custody for a period of about one year and eleven months. The appellants were aged between 20-25 years at the time of incident. The appellants have been facing agony in relation to an incident which took place eleven years back on January 03, 2002. The appellants do not have any history of being involved in any other criminal case. It is a case of a group fight, the origin whereof has not surfaced. Taking into consideration all these mitigating circumstances and in particular their young age, and the fact that no useful purpose would be served in sending the appellants to jail I dispose of the appeal acquitting the appellants from the charge of having

committed an offence punishable under Section 307 IPC. I convict the appellants for having committed an offence punishable under Section 324/149 IPC pertaining to the injuries caused to Mahesh and for the injuries caused to Amit I convict them for having committed an offence punishable under Section 323/149 IPC and as regards the sentence I hold that the sentence imposed on the appellants would be the period of imprisonment they have already undergone.

23. Since the appellants have been admitted to bail, in view of the sentence imposed upon the appellants, the bail bond(s) and surety bond(s) furnished by the appellants are discharged.

23. LCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 09, 2013

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