

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

**RESERVED ON : 3rd APRIL, 2013
DECIDED ON : 1st AUGUST, 2013**

+ CRL.A. 481/2007

VIRENDER @ PAPPU ETC. Appellant

Through : Mr.S.K.Bhattacharya, Advocate with
Mr.Ajay Kumar, Advocate.

versus

STATE Respondent

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

AND

+ CRL.REV.P. 601/2007

RAJU GANDHI Petitioner

Through : Mr.Sanjay Gupta, Advocate.

versus

VIRENDER & ORS Respondents

Through : Mr.M.N.Dudeja, APP.
Mr.S.K.Bhattacharya, Advocate with
Mr.Ajay Kumar, Advocate.

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

S.P.GARG, J.

1. Virender @ Pappu (A-1), Rajesh @ Pappu (A-2), Surender (A-3), Anand Sharma (A-4) and Ved Prakash @ Sonu Sharma (A-5) (the appellants) impugn a judgment dated 25.07.2007 of learned Additional Sessions Judge in Sessions Case No. 140/2006 arising out of FIR No. 19/2001 PS Gandhi Nagar by which they were held guilty for committing offences punishable under Sections 323/452/307/34 IPC. By an order dated 26.07.2007, they were sentenced to undergo RI for three years with total fine ₹ 12,000/- each.

2. Allegations against the appellants were that on 05.02.2001 at around 03.30 P.M. they picked up a quarrel and caused injuries to Raju Gandhi, Pawandev Gandhi, Pinki Gandhi and Ramu. Daily Diary (DD) No.21A (Ex.PW-15/H) was recorded at 16.05 P.M. at PS Gandhi Nagar on getting information about the quarrel. The investigation was assigned to SI Adesh Kumar who after recording victim Pawandev Gandhi's statement (Ex.PW-7/A) lodged First Information Report. The articles lying at the spot were seized. During the course of investigation A-1 to A-5 were arrested. The MLCs (of the victims) were collected. Statements of the witnesses conversant with the facts were recorded. The exhibits were sent to Forensic Science Laboratory for examination. After completion of

the investigation, a charge-sheet was submitted against the appellants. They were duly charged and brought to Trial. The prosecution examined seventeen witnesses to substantiate the charges. In their 313 statement, A-1 to A-5 pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment held A-1 to A-5 guilty of the offences mentioned previously. Being aggrieved, they have preferred the appeal. Victim (Raju Gandhi) has preferred Criminal Revision Petition for enhancement of the sentence awarded to the appellants. It is relevant to note that State did not file any appeal/ revision against the sentence order.

3. I have heard the learned APP, Counsel for A-1 to A-5 and Counsel for the complainant and have examined the record. The appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses. No independent public witness from the neighbourhood was associated at any stage of investigation. The ocular and medical evidence are at variance. No injury with knife was found on the victim (Raju Gandhi)'s body. Section 452 and 307 IPC are not applicable as the incident occurred at the spur of moment without pre-meditation. Identity of any stranger with the

appellants at the spot has not been established and determined. Learned APP urged that the injured persons have corroborated each other on material facts and there are no good reasons to disbelieve their version. Complainant's counsel emphasised that the victim sustained injuries which were 'dangerous' in nature and the punishment awarded to the appellants was not commensurate with the offence committed by them.

4. PW-9 (Raju Gandhi) was admitted at SDN Hospital, Shahdara at 04.30 P.M. on 05.02.2001 by HC Murari Lal. He was referred to LNJP Hospital, admitted there on the same day and discharged on 04.03.2001. PW-2 (Dr.Vivek) examined him and vide MLC (Ex.PW-2/A) six Clean Lacerated Wounds (CLWs) of various dimensions were noticed on his body. PW-1 (Dr.A.K.Kulshreshth) was of the opinion (Ex.PW-1/A) that the injuries were 'dangerous' in nature. PW-17 (Dr.Arvind) proved the documents (marked as P-17) by which medical treatment was given to the victim. The injuries sustained by victim Raju Gandhi are not under challenge. The appellants have suggested that he (Raju Gandhi) got injuries after fall from his scooter and his head stuck against the pavement. They, however did not adduce any evidence to substantiate that injuries on the victim's body were due to fall from the scooter. None of the accused revealed the registration number of the scooter allegedly

driven by him. They did not examine any witness from the neighbourhood to prove their version. The victims have categorically denied injuries due to fall from the scooter. In the incident, PW-7 (Pawandev Gandhi), PW-6 (Pinki Gandhi) and PW-8 (Ramu) were also injured and were medically examined. PW-3 (Dr. Kameshwar Parsad) proved MLCs Ex.PW-3/B (of Pawandev Gandhi), Ex.PW-3/C (of Ramu) and Ex.PW-3/D (of Pinki Gandhi). Injuries were 'simple' caused by blunt object. The appellants did not explain as to how and under what circumstances they sustained injuries on their bodies.

5. PW-9 (Raju Gandhi) in his Court statement deposed that when he went to the spot, A-1 to A-5 with a stranger were breaking the articles in the shop of his brother Pawandev Gandhi. When he enquired from A-1, why his brother & bhabhi were beaten, he inflicted a '*lathi*' blow on his head. A-4 gave a knife blow on the left side of his head behind the ear. When he went inside the shop to make telephone call, the accused persons chased him and A-5 who had '*khapcha*' gave a blow on his person. A-3 hit him with a '*palta*'. A-2 broke his teeth with an iron weight. A-1 and A-3 exhorted to kill him. A-4 again inflicted a knife blow on his head and he was rendered unconscious. In the cross-examination, he was confronted with the statement (Ex.PW-9/DA) where he had not

mentioned some facts deposed in the Court. He denied the suggestion that he sustained injuries due to fall from scooter. No material discrepancies emerged in his cross-examination to disbelieve him for the injuries caused by the accused with weapons in their hands. The accused did not deny their presence at the spot. PW-7 (Pawandev Gandhi) another injured on whose statement the present case was lodged proved the version given to the police at the first instance without variation. He also named A-1 to A-5 to be the authors of injuries to Raju Gandhi, Ramu and Pinki Gandhi. In the cross-examination, he admitted that none of them sustained injuries with knife. He elaborated that he removed his brother to the hospital. Again, material facts regarding the role attributed to the accused remained unchallenged in the cross-examination. PW-6 (Pinki Gandhi) also corroborated PW-7 on all material facts. PW-8 (Ramu) an independent witness employed at Pawan Gandhi's shop is a crucial witness. Initial quarrel took place with him when A-4 abused him for making noise while preparing chowmin. He also deposed that injuries were caused to Pawandev Gandhi and Raju Gandhi with '*danda*' and knife. No ulterior move was assigned to this witness who had no prior animosity with the accused to falsely implicate them. PW-10 (Onkar) also deposed on similar lines. These independent witnesses had no axe to grind to falsely implicate

the accused for the injuries caused to them and to spare the real culprits. The altercation initially took place when A-4 objected to the noise created by PW-8 (Ramu) while preparing chowmin. When Pawandev Gandhi objected to that, A-1 to A-5 went to the shop and picked up quarrel with Pawan Dev Gandhi. PW-9 (Raju Gandhi) on hearing the commotion went to the spot and intervened. He was inflicted 'dangerous' injuries. The accused persons were armed with various weapons/ articles used in the shop (like iron weight, iron palta, vegetable knife, khapcha). The injured were unarmed and in retaliation, they did not harm the appellants and caused injury to them. Apparently, the appellants were aggressors and authors of the injuries inflicted to the victims.

6. MLCs (Ex.PW-3/B, 3/C and 3/D) reveal that Pawan Dev Gandhi, Ramu and Pinki Gandhi sustained simple injuries with blunt objects. In the MLC of Raju Gandhi (Ex.PW-2/A) six Clean Lacerated Wounds were found on his body. None of the injury was caused with 'sharp' weapon as alleged. The MLC did not reveal if any tooth was broken. It appears that PW-9 (Raju Gandhi) has made improvements in this regard and has exaggerated his version. However, exaggerations per se do not render the evidence brittle. Minor contradictions, inconsistencies, embellishments or improvements on trivial matter without

diluting the core of the prosecution case cannot be made a ground to reject the evidence in its entirety. After going through the entire evidence it stands established that A-1 to A-5 inflicted injuries to him in furtherance of their common intention. After the initial confrontation with A-4, they went to the shop of the complainant with various weapons/ articles available to them. Repeated blows with '*lathi*'/ blunt object were caused on Raju Gandhi's body. It is well settled that the testimony of a stamped witness has its own relevance and efficacy. The injury to a witness is an inbuilt guarantee of his presence at the scene of crime and he will not want to let his actual assailant go unpunished merely to falsely implicate a third person.

7. The incident happened over a trivial issue when A-4 objected to noise by PW-8 (Ramu) while preparing 'chowmin' in his employer's shop and there was a hot exchange of words. There was no history of previous quarrels between the neighbours. PW-9 (Raju Gandhi) was not at the crime scene at the time of initial confrontation. A-1 to A-5 went to the shop with articles in their possession and inflicted injuries to Ramu, Pawandev Gandhi and Pinki Gandhi. Raju Gandhi went to the spot on hearing the commotion and intervened. Apparently, the appellants did not expect and anticipate his arrival at the spot. They had no pre-plan to cause

injuries to him. They were not armed with deadly weapons. Though A-4 allegedly had a knife, it was not used to cause injury on any vital organ of the complainant/ victim. Other victims suffered only 'simple' injuries by blunt objects. To justify a conviction under Section 307, it is sufficient if there is present an intent coupled with some overt act in execution thereof. The Court has to see whether the act, irrespective of its result was done with the intention or knowledge and under circumstances mentioned under Section 307. It depends upon the facts and circumstances of the each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death. In the instant case, altercation took place on a trivial issue with Pawandev Gandhi and Ramu. The medical examination showed that the injury was 'dangerous' being situated on a vital part. The injuries however were not described sufficient in the ordinary course of nature to cause death. These circumstances rule out that the appellants were inspired by the intention to commit murder of their neighbour Raju Gandhi. They however, are liable for committing offence under Section 308 IPC. If an accused does not intend to cause death or any bodily injury, which he knows to be likely to cause death or even to cause such bodily injury as is sufficient, in the ordinary course of nature to cause death, Section 308 would apply. In

‘Sushil Kumar vs. NCT of Delhi’, 1998 SCC (CrL.) 1552, Supreme Court held that offence punishable under Section 308 postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. In the instant case, there was no previous animosity between the appellants and the victims. There was no pre-meditation. The appellants in a sudden scuffle injured the intervener with the articles/instruments ordinarily used in their shop. The appellants could only be attributed knowledge that by inflicting those injuries described in MLC (Ex.PW-2/A) they were likely to cause death and did not have the intention of causing death.

8. The appellants (A-1 to A-5) have been sentenced to undergo RI for three years with fine. Considering the specific role attributed to A-1 who was armed with a ‘*lathi*’ and was instrumental in inflicting vital injuries on PW-9’s body, the sentence awarded to him is commensurate with the offence committed by him and needs no intervention. However, considering the participation of A-2 to A-5 and the role played by them in inflicting injuries, they deserve lesser sentence. No injuries with knife was inflicted by A-4 (Anand Sharma). A-2 and A-5 also did not cause any

injury with 'iron palta' and 'khapcha' with their sharp ends. Iron weight in A-2's possession was not used to break victim's tooth as alleged. They are not previous convicts and are not involved in any other criminal case. The substantive sentence of RI for three years deserves to be modified to one year each (A-2 to A-5).

9. I find no valid reasons to accept Criminal Revision Petition No. 601/2007 filed by the victim for enhancement of the sentence for the reasons detailed above. Crl.Rev.P.601/2007 is accordingly dismissed.

10. In the light of above discussion, A-1 to A-5 are convicted for committing offence punishable under Section 308/34 IPC instead of 307/34 IPC. Sentence to undergo RI for three years for A-1 is left undisturbed. The substantive sentence of the appellants A-2 to A-5 is reduced to one year under Sections 308 and 452 IPC. The sentences shall run concurrently and the appellants shall have benefit under Section 428 Cr.P.C. Needless to say, the appellants shall pay the fine imposed by the Trial Court and the victim shall be entitled to ₹ 50,000/- as compensation awarded by the Trial Court.

11. The appeal stands disposed of in the above terms. The appellants are directed to surrender and serve the remainder of their sentence. For this purpose, they shall appear before the Trial Court on

12th August, 2013, The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

(S.P.GARG)
JUDGE

AUGUST 01, 2013

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