

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

% *Date of Judgment: 03.12.2013*

+ CRL.A. No.772/2008  
ANAND KUMAR @BEERU @ ORS. ....Appellants  
Through: Mr.Javed Hashmi, Advocate.

Versus

STATE .....Respondent.  
Through: Ms.Richa Kapoor, APP.

+ CRL.A. No.898/2008  
CHARANJEET SINGH @ CHANNI. ....Appellant  
Through: Mr.Javed Hashmi, Advocate.

Versus

STATE .....Respondent.  
Through: Ms.Richa Kapoor, APP.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

**INDERMEET KAUR, J.** (Oral)

1 On 01.5.2000 at about 8.30 p.m. Ram Chander was stabbed by six persons; he was removed to the Babu Jagjivan Ram Hospital where he succumbed to his injuries at 10.00 p.m. Version of the prosecution was unfolded in the statement of Vinod Kumar (PW-2) who claimed to be an eye-witness. He stated that he was working as

a helper at Sanjay Gandhi Transport Nagar for the last 7-8 years. Ram Chander (deceased) belonged to his native village. On the fateful day while he was returning home with the deceased they were attacked by six persons; two persons caught hold of them and one of them stabbed the deceased on his chest and abdomen; two persons managed to escape on their scooter. PW-2 became confused; he shifted the injured to the hospital where he was declared dead.

2 It was on this complaint (Ex.PW-2/A) that the FIR No.279/2000 (Ex.PW-17/A) under Section 302 of the IPC was registered. The investigating team headed by Inspector Pushkar Sharma (PW-31) reached the spot. Site plan Ex.14/A was prepared. At the hospital clothes of the deceased and his blood sample were seized. Body was sent to mortuary. After identification of the dead body by Kushmati (PW-10) the wife of the deceased the dead body was handed over to her vide memo Ex. PW-10/C.

3 Post mortem on the victim was conducted by Dr. Ashok Jaiswal (PW-8). The following injuries were noted upon the victim.

*i. Incised stab wound/oblique two transverse placed on left*

*upper chest outer side in anterior axillary line at 3.00 O'Clock position and 9 cm from left nipple of size 2.8 cm x .8 cm x ? with medial angle acutely cut.*

*ii. Incised stab wound obliquely placed on right hypochondrium placed 20 cm. below right nipple in line with it and 7 cm. from umbilicus at 11.00 O' clock position, of size 3.2 cm. x .8 cm. x ? outer angle acutely cut.*

*iii. Incised wound 2.5 cm. x .8 cm x muscle deep on middle part of left arm on its back, obliquely placed with outer angle acutely cut.*

*iv. A linear laceration 1.5 cm. long on the mid part of left forearm.*

4 The cause of death was opined as hemorrhagic shock consequent to the injuries.

5 In the course of investigation PW-31 received two letters from Anand Verma (PW-7) which had been taken into possession vide seizure memo Ex. PW-7/A. Investigation was thereafter handed over Inspector Kailash Chand PW-32).

6 On 06.10.2002 i.e. more than two months after the date of the incident an information was received from police station Kirti Nagar

(Ex.PW-32/A) that two persons Charanjeet Singh and Narayan Singh had been arrested in FIR No.47/2000; they had made their disclosure statement revealing their involvement in the present case. Both Narayan Singh and Charanjeet Singh were interrogated. Their disclosure statements Ex.PW-26/A and Ex.PW-26/B were recorded. Since they admitted their complicity in the present case they were arrested; arrest memo of Narayan Singh is Ex.PW-32/B and that of Charanjeet Singh is Ex. PW-19/A; their date of arrest is 14.02.2000. Pursuant to their disclosure statement the involvement of Prem Kishore was known; Prem Kishore was arrested vide memo Ex.PW-32/C; co-accused Anand Kumar was arrested vide memo Ex. PW-32/D; accused Rishi was arrested vide memo Ex. PW-32/E.

7 The accused Narayan Singh led the police party to his residence at B-62, Wazirpur, Delhi and produced a diary. Narayan Singh has since died and as such it may not be relevant to discuss this part of the evidence. Accused Charanjeet Singh had got recovered a scooter which was the vehicle used in the commission of crime; this recovery as also the subsequent recovery of the knife which was at

the behest of accused Prem Kumar had been disbelieved by the trial judge and this evidence is also thus not being discussed.

8 Further version of the prosecution being that the motive for the crime was the rivalry between the two competing cousins i.e. Gurdial Singh and Narayan Singh who were both running their respective factories and the deceased Ram Chander being currently in the employment of Gurdial Singh, although earlier he was working with Narayan Singh and this was the bone of contention between them; this murder had been committed by Narayan Singh and his accomplices. Narayan Singh had been arrayed as an accused in this charge-sheet. But after his death the proceedings qua him abated.

9 Further version of the prosecution was that on 08.05.2000 i.e. one week after the date of the offence certain threatening letters had purportedly been written by Charanjeet Singh to Gurdial Singh and in the course of the investigation specimen/admitted handwriting of Charanjeet Singh had also been obtained. The Finger Prints Bureau vide its report Ex.36/B and Ex.36/C had opined that the writing on the envelopes of the letters i.e. purported threatening letters were in

the handwriting of Charanjeet Singh.

10 The accused persons had also refused TIP in the proceedings conducted before the learned M.M. (Ex.34/B); this was also treated as an additional adverse circumstance against the accused.

11 This in brief is the gist of the version of the prosecution.

12 In the statement of the accused recorded under Section 313 of the Cr.P.C. they pleaded innocence; they stated that they had been falsely implicated in the present case; they had been made to sign blank papers.

13 No evidence was led in defence.

14 Arguments have been addressed at length on behalf of Mr.Javed Hashmi, Advocate on behalf of the appellants. Apart from oral submissions written submissions have also been filed. It is argued that the version of the prosecution rests on an eye-witness account of PW-2; he has however not supported the version of the prosecution. Attention has been drawn to various parts of his deposition wherein he has stated that the accused had been shown to him in the police station. Submission being that this was the reason

for the refusal of the TIP; there was a valid ground for refusal. Testimony of the hostile eye-witness even otherwise cannot be relied upon. Further argument being developed on the report of the hand writing expert (Ex.PW-36/B and Ex. PW-36/C); submission being that the case of the prosecution that threatening calls and threatening letters had been sent by the accused Charanjeet Singh to Gurdial Singh after the date of the offence has been completely demolished by the witnesses who had been examined in this regard. Gurdial Singh (PW-1) has specifically stated that he did not receive any threat from Charanjeet Singh; attention has been drawn to testimony of PW-23, PW-24 and PW-25; submission that all these witnesses have also clearly stated that no telephone call been made from their telephone number, as such the version of the prosecution that Charanjeet Singh had made calls to Gurdial Singh is totally belied. The letters which had been seized vide memo Ex. PW-7/A have also been demolished in the version of PW-7 who had not supported the version of the prosecution on this count. Chowkidar Ramji Lal (PW-9) and Jarnardan Paswan (PW-11) had also on oath stated that no such

letters had been delivered to Gurdial Singh; they had also not supported the version of the prosecution. There thus being no evidence of any threatening calls or letters having been sent by Charanjeet Singh to Gurdial Singh; the report of the Finger Print Expert opining that handwriting of Charanjeet Singh appeared on the envelopes (Ex.P7 and Ex.P8) has necessarily to be ignored. Further submission being that since the names of the accused did not figure in the FIR and there being a valid ground for their refusal to join TIP; this circumstance could not have been read against the accused persons. Attention has been drawn to the testimony of PW-2 has also version of PW-32 wherein it has come on record that an application seeking police remand has been filed on 14.10.2000 for a period of two days; the application for TIP (Ex.PW-34/A) had been filed on 16.10.2000 clearly establishing that it was in this period of police remand that the accused persons had been shown to PW-2. Motive has also been demolished as PW-10 is a hostile witness. On no count does the version of the prosecution stands established.

15 Arguments have been refuted by the learned public prosecutor.

It is pointed out that PW-2 is the eye-witness of the prosecution; he had supported the prosecution in his examination in chief and it was only later on that this witness appeared to have been won over and resiled from his earlier version. The trial judge had rightly noted that there was no valid ground for the accused to have refused TIP as they did specifying any reason for refusal. The motive for the crime also stand established from the fact that admittedly the deceased Ram Chander was earlier an employee of Narayan Singh but later on he shifted his loyalties to Gurdial which was the reason for the grudge that Narayan Singh had against the deceased. Impugned judgment does not call for any interference.

16 We have heard learned counsels for the parties and perused the record.

17 The evidence relied upon by the prosecution against the accused persons is not only the eye-witness account of PW-2 but also their refusal to participate in the TIP proceedings for which an adverse inference has been drawn by the trial judge against the accused persons. One week after the incident two envelopes

containing threatening letters sent by Ram Chander to Gurdial Singh were proved to be in the handwriting of Ram Chander in terms of the report of the Finger Print Bureau. These cumulative factors had weighed in the mind of the trial court to convict the appellants for the offence under Section 302/34 of the IPC.

18 Relevant would it be to point out that there were six persons who had been charge-sheeted in the trial court. Narayan Singh has since died and proceedings against him stood abated. Anand Kumar had been declared to be a juvenile and the period already undergone by him had been set off against his conviction. This was vide orders of this Court dated 05.12.2011. There are now three appellants before this Court namely Prem Kishore, Rishi and Charanjeet Singh.

19 We shall deal with each of the aforementioned circumstances noted hereinabove separately.

20 PW-2 was the eye-witness. He was Vinod Kumar. It was on his statement (Ex.PW-2/A) that the rukka had been taken at 1.15 a.m. which was just a few hours after incident which was 8.30 p.m. on 01.5.2000. He had on oath deposed that on the fateful day while he

along with his uncle (deceased Ram Chander) were returning to their house at the red light chowk of G.T.Karnal Road 30-40 paces away from the bus stand four boys came from the front side; two of them caught hold of him and two grappled with his uncle; one of them was having a knife in his hand. The boy stabbed his uncle on his stomach and chest. PW-2 became perplexed and started shouting “Bachao Bachao”. While PW-2 was running for a help those four boys went away in two scooters which were standing nearby. He removed his uncle to the hospital. He was informed that his uncle’s condition was serious. Police was informed. His statement Ex.PW-2/A was recorded. Further version being that Prem Kishore (present in the court) had given the stab blow to his uncle; the other accused persons (present in the court – names not revealed) were also correctly identified by him.

21 This deposition was recorded in the pre-lunch hour on 07.5.2001 i.e. one year of the date of the incident. In the post lunch hour the witness stated that Naryan Singh was not amongst those four persons. This witness had been declared hostile. Learned public

prosecutor was granted permission by the court to cross-examine him. PW-2 in his cross-examination by the learned public prosecutor admitted that his statement was recorded twice; he admitted that the accused persons after arrest were shown to him in the police station. He admitted that in his earlier statement he has stated that six persons were involved in the incident but in court he had deposed that there were four persons who attacked them. He could not recollect whether accused Charanjeet Singh was driving the scooter. In another part of his cross-examination he reiterated that he had gone to police station on 17.10.2000 and identified four accused persons whom he had then identified in court. In his lengthy cross-examination by the learned defence counsel which was conducted on a subsequent date (i.e. 25.7.2001) he reiterated that he had seen the appellants in the police station and he had identified them under the fear of police; this was 2 and 2 ½ months after the incident.

22 Admittedly, PW-2 is the only eye-witness. He is a hostile witness. He has not supported the narration which he had given to the police i.e. his first statement which had formed the basis of rukka

(Ex. PW-2/A). A perusal of this version shows that in his statement he had narrated the incident of 01.5.2000 where he along with his uncle were attacked by six persons but in court he had referred to his assailants as four persons; further in Ex.PW-2/A he had stated that these six assailants had fled away on two scooters three persons seating on each scooter. On oath in court he had reiterated that four persons had attacked them and then fled away on two scooters. This improvement in court qua the number of the assailants was a material contradiction qua his earlier version wherein six persons had been referred to as the attackers. Admittedly, the accused persons were not known to PW-2. The description of the accused persons had also not been given; their height or features had not been described. It was 8.30 p.m. in the evening when the incident had occurred; about 30-40 paces away from the bus stop. PW-2 not only in his cross-examination by the learned public prosecutor but also in the cross-examination by the defence counsel has in four separate places reiterated that the accused persons had been shown to him in the police station and he had been asked to identify the accused persons

in the police station under threat from the police; in another part of his cross-examination he had given the date of their identification as 17.10.2001 and then again stated that he had seen the accused persons in the police station 2 and 2 ½ months after the date of the incident.

23 It is this testimony of PW-2 which had to be decided on the touchstone of reliability. It is now well settled that merely because a witness has been declared hostile his evidence cannot be rejected in toto; it is not washed off altogether. However, such an evidence has to be closely and cautiously examined. When a case rests upon an eye-witness account and it is a primary piece of evidence; also being a case where the witness has been declared as adversarial to the version of the prosecution and has been permitted to be cross-examined by the defence counsel the standard to judge his reliability is different.

24 The version of PW-2 was recorded on 07.5.2001. He had identified the accused persons as his assailants. This was in the pre-lunch hour. In the post lunch hour, presuming that the witness had been won over by the defence and for that reason he was not toeing

the line of the prosecution; his testimony would have to be viewed differently. However, in the instant case it is in the examination-in-chief itself that the witness has made material embellishments and improvement qua his first version. Thus it is not a case where the witness was declared hostile after sticking to his original and initial stand. PW-2 had deviated from his version in Ex. PW-2/A in his examination-in-chief itself.

25 Tested on this touchstone the version of PW-2 shows that there is a material improvement made by him on oath qua his first version (Ex.PW-2/A). This testimony is thus wholly unreliable. Reliance by the Trial Judge upon this version to convict the accused is an illegality.

26 In criminal law unless and until the prosecution has proved the case beyond all reasonable doubt conviction cannot be founded. This is the basic and fundamental rule of criminal jurisprudence. PW-2 had narrated an incident of 01.5.2000; meaning thereby that an incident of attack had occurred on the said date and time but the question which has to be answered is that whether the persons

accused of the offence were the assailants?

27 PW-2 had on oath at 3-4 places deposed that the accused persons were shown to him in the police station. In one part of his deposition he had even mentioned the date as 17.10.2000. Record shows that on 16.10.2000 an application (Ex.PW-34/A) had been filed by the investigating officer for conducting TIP of the accused persons. Accused person had refused to join TIP. No reason has been mentioned in the application. The legal submission advanced before this court is that the accused persons had justifiably refused to participate in TIP for the reason that they had been shown to the complainant (PW-2) in the police station and this has been so stated by PW-2 in the Court. Record further shows that the accused Charanjeet Singh was already on police remand from 14.10.2000. On 16.10.2000 an application was filed in the Court of the then learned M.M. Ms.Seema Maini qua four accused persons i.e. Prem Kishore, Rishi, Anand Kumar and Charanjeet Singh; this application had sought their police remand for five days i.e. from 16.10.2000 onwards up to 21.10.2000; this application also clearly stated that accused

Charanjeet was already in police custody from 14.10.2000.

28 Thus what clearly emanates is that all the accused persons were in police custody on 16.10.2000 which was the date when the application was filed by the investigating officer seeking a police remand. Version of PW-2 that he had identified the accused persons in the police station thus makes out a justifiable case for the accused persons to refuse the TIP.

29 In Mangal Singh Vs. State 1996 AIHC 2390 where the accused had refused to participate in the test and identification parade on the ground that he was shown to the witness and this fact has been admitted by the police; it was held that the accused was justified in refusing to participate in the test identification parade.

30 No adverse inference could have been drawn by the court against the accused on this count. Dock identification of the accused one year later i.e. on 07.5.2001 was only an eye wash. Such an identification could not be relied upon especially in the background when admittedly the accused persons were not known to the eye-witness. Further the time of incident was 8.30 p.m.; it was almost

completely dark; the spot of incident was 30-40 paces away from the bus stop; site plan (Ex. PW-14/A) does not depict any lamp post at the place of the incident; in fact the traffic lights positioned at point 'D' are at a far distance from point 'A' which was the place of the incident. No description of the accused, either by height, size, weight, colour or creed had also been given. This may be especially important to keep in view the fact one of the assailants is a Sardar and could easily even recognized by his turban. This has also not been mentioned in the rukka. In fact the rukka is not only absent on the names of the accused but is bereft of all or any particulars about them. Identification of the accused for the first time in court thus could not have been relied upon to nail the accused persons. Conviction in this background suffers from an illegality on this ground as well.

31 The next circumstance relied upon by the trial judge to base conviction against the accused were the threats purportedly given by accused Charanjeet to Gurdial Singh (PW-1). The version of the prosecution was that threatening calls and threatening letters had been

written by Charanjeet to Gurdial Singh informing him that he would meet the same fate as that of the deceased. These threatening letters had been given by Anand Verma (PW-7) vide memo (Ex.PW-7/A) to the police. PW-7 was the son of PW-9 who was working in the factory at Sanjay Gandhi Transport Nagar. PW-7 in Court however denied this version; he categorically stated that he had not handed over any such letters to the police (which has been seized vide memo Ex. PW-7/A). This version remained unassailed.

32 PW-9 was the chowkidar working at the Sanjay Gandhi Transport Nagar at the time of incident. He also did not support the version of the prosecution. He denied the version that while he was working as a chowkidar in the factory he picked up two envelopes containing two letters lying in the factory premises and had sent these letters to the police through his son (PW-7). This witness did not shift his stand in his cross-examination.

33 PW-11 Janardan Paswan was also working as a chowkidar at the Sanjay Gandhi Transport Nagar. This witness was also declared hostile. He toed the version of PW-9. On oath he categorically stated

that no letters were found in the factory premises where he along with PW-9 were working or that PW-9 had handed over these letters to his son (PW-7).

34 Gurdial Singh (PW-1) has also on oath stated that he did not receive any threat from any person through letters. He had received a threatening call on his mobile number but he could not say as to who had given him this threatening call to him. His categorical version was that no threatening letter had been received by him.

35 It is in this background that the report of the Finger Print Expert has to be examined. Report of the Finger Print Bureau (Ex.PW-36/D) had opined that the person who wrote the specimen writing S-36 to S-53 wrote the questioned documents Q1 and Q4 i.e. they were in the writings of Charanjeet on the envelopes (Ex.P7 and P8) containing these threatening letters.

36 Besides the fact that this ocular testimony is contrary to the report (Ex.PW-36/D); even otherwise these specimen handwritings of Charanjeet having been taken by the investigating officer during the course of investigation while the accused was on police remand

and without the permission of the court. In view of the judgment of the Full Bench of this Court titled as Sapan Halдар Vs. State; Criminal Appeal No.804/2001 decided on 25.5.2012 such sample writings cannot be used against the accused having been obtained without the permission of the court.

37 Prosecution has thus has failed to prove this circumstance either.

38 Even qua the telephone calls purported to have been made by accused Charanjeet to PW-1 prosecution has failed to prove it. The relevant witnesses related to this circumstance i.e. PW-22, PW-23, PW-24 and PW-25 have not supported the version of the prosecution. All of them in unison have on oath stated that no telephone calls were made from their shop or from their phone numbers as public person were not permitted to use their phone. PW-22 was the owner of telephone number 5151947; her husband has deposed as PW-23. PW-24 was the owner of telephone number 5123767. His deposition was categorical to the effect that his uncle Charanjeet Singh had not made any call from this number. PW-25 brother of the accused

Charanjeet Singh had also deposed on the same line as PW-24 qua this phone number.

39 Reliance by the learned trial judge on this piece of evidence i.e. drawing a conclusion that threats had been advanced by Charanjeet Singh to PW-1 through phone also suffers from an illegality.

40 On all counts the accused are entitled to benefit of doubt and a consequent acquittal. Accused Rishi is on bail; his bail bond is cancelled; his surety is discharged. Accused Prem Kishore and Charanjeet Singh are in judicial custody. They be released if not required in any other case.

41 The appeals are allowed and disposed of in the above terms.

42 A copy of this order be sent to the Jail Superintendent for necessary intimation and compliance.

**INDERMEET KAUR, J**

**KAILASH GAMBHIR, J**

**DECEMBER 03, 2013/ndn**