

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

% *Judgment Reserved on: July 11, 2014*
Judgment Pronounced on: July 15, 2014

+ **CRL.A. 456/2000**

AVINASH SHARMA @NANDI Appellant
Represented by: Mr.Gurinder Pal Singh, Advocate
versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP with
Insp.Manoj Pant and SI Sanjay, PS
Gandhi Nagar

CRL.A. 556/2000

AMAR SINGH Appellant
Represented by: Mr.A.K.Singh, Advocate
with Mr.Pramod K.Tiwary,
Advocate
versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP with
Insp.Manoj Pant and SI Sanjay, PS
Gandhi Nagar

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Committed to face trial for the offence punishable under Section 302/34 IPC on the allegation that sharing a common intention, the appellants inflicted knife blows on the person of the deceased Virender Singh on

February 16, 1992 at about 8.00 P.M., vide impugned judgment dated July 05, 2000 the appellants have been held guilty of the charge framed against them and have been sentenced to undergo imprisonment for life vide order on sentence dated July 10, 2000.

2. Of the two star witnesses of the prosecution, Ravinder Pal PW-2, turned hostile and did not support the case of the prosecution. The second witness: Mahavir Singh PW-16, the father of the deceased Virender Singh has been believed to have witnessed the incident and his testimony has been accepted by the learned trial judge.

3. There is no recovery pursuant to the stated disclosure statements made by the two co-accused. Thus, it is apparent that the fate of the appeal would be decided with reference to the testimony of Mahavir Singh PW-16, who we note was the informant and on whose statement Ex.PW-16/A, the FIR Ex.PW-9/A was registered at PS Gandhi Nagar by SI Maha Narain PW-9.

4. In the statement Ex.PW-16/A, the informant Mahavir Singh (PW-16) has stated to Inspector H.C.Joshi PW-17 that he resided at House No.9/7122, Mahavir Gali, Gandhi Nagar and on February 16, 1992 at around 8.00 P.M. he was standing on the balcony of his house. He saw his son Virender Singh in the company of accused Amar Singh along with Nandi (the nickname of co-accused Avinash) at the corner of the street. Amar Singh was the son of his sister. He heard the three quarrelling and shouting. Suddenly Amar Singh picked up a pair of scissors from the nearby shop of a betel leaf seller and yelled that today he would finish Virender. On hearing said words he came down from the balcony and saw Virender running on the street towards Ashok Street, chased by Amar Singh and Nandi. The former with scissors in hand and the latter with a knife in his hand. As Virender reached Ashok

Street and looked back, Amar Singh stabbed Virender in the stomach with the scissors and Nandi stabbed him on the face. The two then ran away in the direction of the main road. His son fell on the street. His i.e. Mahavir's wife Maya Devi also reached the spot and the two removed their injured son to LNJP hospital in a TSR where his son was declared brought dead.

5. As recorded in Ex.PW-17/A i.e. the endorsement beneath Ex.PW-16/A, Inspector H.C.Joshi PW-17 despatched the statement Ex.PW-16/A with endorsement Ex.PW-17/A thereunder from LNJP hospital at 10.50 P.M.

6. Virender's MLC Ex.PW-14/A records that on February 16, 1992 he was brought to the casualty of LNJP hospital by his father Mahavir Singh at 8.55 P.M. It records that Virender was declared dead when brought to the casualty of the hospital.

7. Post mortem of the dead body of Virender was conducted by Dr.Basant Lal PW-15, who authored the report Ex.PW-15/A as per which nine external injuries were found on the dead body of Virender. The same are as under:-

"1. Incised wound 3.3 x 0.3 x 0.3 cm. over the tip of the nose which was going onwards and lateral side of the left of the nose/tailing was present on upper router part, clotted blood was present. Both the margins were clear.

2. Multiple abrasions 15 x 2 cm. on the upper front of right leg, reddish in colour.

3. Multiple abrasions on the back of left elbow, reddish in colour.

4. Multiple abrasions 8 x 3 cm. on the front middle of left leg, reddish in colour.

5. *Two linear abrasions 1 x 0.3 cms., placed near each other on the front of left shoulder, reddish in colour.*

6. *Incised stab wound 3 x 1.5 cms. Abdominal cavity deep, both the margins were clear, both angles were acute, obliquely placed, lower and facing inwards and situated on the middle front of left side of abdomen 6.5 cm. outer right from middle line, 2.5 cm. above the level of umbilicus and 110 cm. above right feet, Omentum was coming out of it of 5 x 3 x 2.5 cm. size.*

7. *Incised stab wound 2 x 0.3 cm. abdominal cavity deep, both margins were clear, both the angles were acute, vertically placed on right upper outer back of abdomen, 10.5 cm. outer right from mid line and 119 cm. above the right hip. Oozing of the blood was present on pressure and body movement.*

8. *Incised stab wound, 1.5 x 0.4 x 6.5 cm. on the middle back of right hip, buttock, both the margins were clear both the angles acute situated outer right of mid line, direction from behind to forward, inwards and slightly upwards in the muscles and tissues of the middle and upper right buttock region to limits there – caused by double edged sharp cutting weapon and stabbing weapon.*

9. *Contusion – 8 x 6.5 cm. on the lower outer back of abdomen, bluish in colour. All the injuries were depicted in the diagram.”*

8. As per the report, the injuries 1, 6, 7 and 8 were caused by a double-edged sharp cutting weapon and injuries 2, 3, 4, 5 and 9 were caused by a blunt object/surface impact. Injuries No.6 and 7 were opined sufficient, singularly as well as collectively to cause death in the ordinary course. The reason being that the internal examination concerning said two injuries evidenced that the small intestines as also the large intestines were damaged and the right renal artery was cut resulting in excessive bleeding and

consequent haemorrhagic shock.

9. In his testimony in the court, Mahavir Singh PW-16 stated that on February 16, 1992 at around 8.00 P.M. he was standing on the balcony of his House No.9/7122, Mahavir Gali, Gandhi Nagar and saw accused Amar Singh who was son of his real sister and co-accused Nandi having an altercation with his son Virender. During the course of the verbal discussion the three went towards the side of the main road and hence were not visible to him. He then saw Amar Singh go to the betel leaf seller shop across the road and saw Amar Singh with a scissor-shaped knife (*kainchinuma chhura*). He thought that Amar Singh had purchased the *kainchinuma chhura* from the pan shop. He heard Amar Singh say that today he would finish Virender. On hearing this he came down from the balcony of his house and went to the corner of the street and saw both accused in a state of altercation with his son. His son was running towards Ashok Gali with the accused chasing him. Amar Singh was armed with the *kainchinuma chhura* and Nandi was armed with a knife. As Virender reached Ashok Gali he turned back. Amar Singh stabbed him in the stomach and Nandi inflicted a knife blow on the face. The two accused ran away. As a result of the injuries his son fell down. By that time his wife had reached. The two took their son to the hospital where he was declared brought dead. The police met him at the hospital and recorded his statement Ex.PW-16/A. When his wife made a statement to the police he learnt that Amar Singh had stabbed his son twice which he could not see from the balcony of his house. But his wife had seen Amar Singh stab his son twice. He helped the police in preparing the site plan. Sample earth and blood stained earth was picked up from the site in his presence.

10. Before we proceed to analyze the testimony of Virender Singh and

deal with the contentions urged by learned counsel for the appellants to discredit the witness, it assumes importance to note that on the day of the incident i.e. February 16, 1992, at the same time, i.e. around 8.00 P.M., Amar Singh had gone to PS Gandhi Nagar and had made a statement to the Duty Officer SI Maha Narain PW-9 which was recorded by SI Maha Narain as DD 45B (Ex.PW-9/B). As per the statement which is recorded at 8.20 P.M. accused Amar Singh told PW-9 that near the handcart of an egg seller deceased Virender Singh had hit him on his head with a bottle of soda and the reason thereof was he i.e. Amar Singh telling Virender to pay money to the egg seller for the eggs purchased by him because Virender was not paying money to the egg seller. The MLC Ex.PW-11/A of accused Amar Singh records that Const.Dalbir Singh of PS Gandhi Nagar had brought Amar Singh to SDN hospital, Shahdara. He had two clear lacerated wounds, one above the left eyebrow and the other on the left temporal region. The wounds had to be stitched.

11. The Investigating Officer, Inspector H.C.Joshi PW-17 has deposed that during investigation he found that Amar Singh's statement Ex.PW-9/B, of being hit by deceased Virender with a soda bottle, was correct.

12. In his statement under Section 313 Cr.P.C., when the incriminating evidence in the form of MLC Ex.PW-11/A and his statement Ex.PW-9/B was put to accused Amar Singh, he stated, and we quote :-

"I sustained injury earlier. Till then Virender was alright and nobody had inflicted any injury on Virender till I left."

13. And now the contention advanced by learned counsel for the appellants.

14. It was firstly contended that Mahavir Singh has made improvements

while deposing in Court vis-a-vis his statement Ex.PW-16/A on basis whereof the FIR was registered. The improvement being the shift of the weapon of offence used by Amar Singh. In the statement Ex.PW-16/A, the stated weapon of offence was a knife. While deposing in court the weapon of offence became a *kainchinuma chhura*. Learned counsel urged that in view of the post mortem report of the deceased where the categorical opinion was that the weapon of offence was double-edged, the witness improved upon his previous statement. The second attack to discredit the witness was with reference to he having disclosed only one injury blow inflicted on his son by accused Amar Singh and one by co-accused Avinash and while deposing in court stating that Amar Singh inflicted more than one blow for the reason by the time he deposed in court, the witness had the benefit of the post mortem report of his deceased son. The third point on which Amar Singh's testimony was sought to be discredited was with reference to his statement and depositions in court that the corner of the street (where the stabbing took place) was not visible from the balcony. As noted above, while deposing in court, Amar Singh stated that the repeated stabbing by Amar Singh was a fact told to him by his wife.

15. Apart from the aforesaid alleged improvements/infirmities, it was urged that no attempt was made by the Investigating Officer to record the statement of the betel leaf seller from whose shop the alleged weapon of offence used by Amar Singh was picked up and he was not even cited as a witness. It was urged that the story of the deceased being chased by the appellants as spun by Mahavir Singh was belied from the fact that there was no blood trail on the street, which would be the natural result if an injured is chased down the street.

16. Learned counsel urged that Mahavir Singh saw nothing. Since his son was stabbed on the street on which their house existed, in all probability, Mahavir Singh was told by somebody that his son was stabbed. Somebody told him that his son had an altercation with the appellants. Rest was the story spun by Mahavir Singh.

17. From the conspectus of the salient features of the evidence noted by us above, it strikes that accused Amar Singh had suffered two cut wounds on his person. The two wounds were the result of two blows directed towards his face or may be one and the object was something which caused two clear lacerated wound on the left eye brow and the left temporal region. When examined under Section 313 Cr.P.C. Amar Singh did not deny having suffered the twin injury, but claimed that it was before the deceased was assaulted. We have noted hereinabove in paragraph 12 above the answer given by Amar Singh when the incriminating circumstance pertaining to he having gone to the police station and having made the statement Ex.PW-9/B and his MLC Ex.PW-11/A was put to him. He said:- *I sustained injury earlier. Till then Virender was alright and nobody had inflicted any injury on Virender till I left.*

18. Now, the answer throws up more questions than what it answers. Amar Singh said that he sustained the injury earlier. It means that he knew that Virender Singh had sustained injuries and this would beg the question: How would Amar Singh know said fact? It means that Amar Singh claims that when he sustained the injuries, Virender Singh was alright. This would beg the question: How would Amar Singh know said fact? He answered that nobody had inflicted any injury on Virender till he left. This would mean that he admitted that he and Virender were together.

19. The place of the incident where Virender was injured is the street on which Virender lived with his father Mahavir Singh i.e. Mahavir Street. Virender's MLC Ex.PW-14/A records that Mahavir Singh had brought him to the hospital at 8.55 P.M. Amar Singh is the nephew (sister's son) of Mahavir Singh. It is not the case of the appellants that there was previous enmity between the two families. Mahavir Singh would thus have no motive to falsely implicate Amar Singh. Amar Singh's statement Ex.PW-9/B made before the Duty Officer SI Maha Narain PW-9 is an admission by him that he and deceased Virender Singh had an altercation during which Virender Singh had hit him on the face with a soda bottle thereby causing injury to him. Amar Singh's MLC Ex.PW-11/A confirms and corroborates said statement of Amar Singh. In the teeth of said overwhelming evidence, Amar Singh's claim that there was no altercation between him and Virender Singh is patently false. He has admitted having gone to the police station and having made a statement concerning the injuries suffered by him. In his statement under Section 313 Cr.P.C. he failed to give any rational justification for the injuries sustained by him and his evasive answer, which raises more questions than what it seeks to answer, is a factor which is incriminating him.

20. Thus, we have overwhelming evidence to hold that Mahavir Singh had witnessed the altercation between his son who unfortunately died and the appellant Amar Singh.

21. But the question would be: Did Mahavir Singh capture the entire fight or only part thereof? The answer to the said question would determine whether Mahavir Singh weaved either his fantasy or the knowledge gained by him with reference to the post mortem report of his deceased son into what he actually saw and as a result spun out a story which was partly

truthful i.e. was the narration of what he actually saw and the remainder being the weaving of either his fantasy or the knowledge gained by him with reference to the post mortem report of his deceased son.

22. We re-visit Mahavir Singh's statement recorded soon after the incident i.e. Ex.PW-16/A. He said that he was on the balcony of his house which as per the site plan Ex.PW-3/A was on the first floor. He heard a verbal altercation between his son and accused Amar Singh who was in the company of co-accused Avinash. He saw accused Amar Singh walk to the betel leaf seller's shop and arm himself with a scissors (deposed to in the court as a *kainchinuma chhura*). On hearing the contemporaneous utterance of accused Amar Singh that he would kill Virender he obviously commenced his descend from the balcony towards the street.

23. The site plan Ex.PW-3/A would show that Mahavir Singh was on the balcony at reference point 'C' and the place where the verbal altercation was taking place is at reference point 'B'. The distance is 13.7 meters. Reference point 'B', as per the site plan is at the junction of the street named Mahavir Gali. It forms a T-junction on the street onto which street another street which Mahavir Singh, in his deposition, has said is Ashok Street. The site plan would show that reference point 'G' is the place where the deceased was stabbed and at which point blood was lifted. The said reference point 'G' is at the T-junction of Ashok Street with the street we have referred to above on which street Mahavir Street also forms a T-junction. The distance between the two T-junctions is 48 meters. In other words the chase from point 'B' to point 'G' was over a distance of 48 meters.

24. Now, when sensing danger to the life of his son, when during course of altercation Amar Singh said that he would kill Virender, and at which

point of time Virender ran towards Ashok Street, Mahavir Singh started his descend from the balcony, the chase had already commenced. Mahavir Singh would obviously have taken time to reach the staircase descending from the first floor of his house to the street and the time consumed would be for him to cover the distance from balcony to the landing of the steps on the first floor of his house. He would then consume some time to descend the flight of steps to reach the street from the first floor. He would consume further time to run 13.7 meters on the street. He could have witnessed the assault on his son only if he had reached the T-point, if not further.

25. This explains the somewhat hazy part of the version of Mahavir Singh as to what he saw and as recorded in his statement Ex.PW-16/A and what he finally deposed by way of improvements thereon when he deposed in the court. It establishes two things. Firstly that Mahavir Singh saw the commencement of the incident i.e. the verbal altercation between the accused Amar Singh and his son Virender when co-appellant Avinash was in the company of Amar Singh. He saw that during the verbal altercation Amar Singh picked up some object from the shop of the betel leaf seller. He heard Amar Singh threatening to liquidate his son. He saw the commencement of the chase. He could not have seen what was the object picked up by Amar Singh, but probably having seen betel leaf sellers cut betel leaves using scissors, he led himself to believe that the object concerned was a pair of scissors, and this explains he telling the investigating officer that Amar Singh picked up scissors. He then probably saw the last part of the climax of the unfortunate incident. He definitely did not see the whole incident.

26. The injuries noted by us above on the person of the deceased, which we have reproduced from the post mortem report of the deceased would

bring out, through the percipient evidence of injury No.2, 3, 4, 5 and 9 which are linear and multiple abrasions on the back of the left elbow, upper front right leg, front middle of the left leg and the left shoulder as also the lower outer back of the abdomen, that the deceased was inflicted blows, and in all probability fist and kicks. The incised wounds being injury No.1, 6, 7 and 8 would evidence that a sharp double-edged cutting weapon was used to cause the injuries. Said injuries record that both the margins of the injuries were clear. PW-15, the doctor who conducted the post mortem, has deposed that said injuries were caused by a double edged sharp cutting weapon.

27. Evidence establishes the fact that Mahavir Singh had only seen co-accused Avinash in the company of accused Amar Singh and had seen him chase his son when Amar Singh started chasing his son after arming himself with a knife and it is clear that Mahavir Singh weaved a bit of lies in his testimony to assign a role to Avinash, which probably was not played by Avinash. From the fact that Mahavir Singh could not have witnessed the entire incident and he saw the commencement of the incident followed by he not being in a position to see what happened during the chase and then saw the dying moments of the incident, keeping in view the injuries suffered by the deceased being the result of the use of a sharp double edged weapon, which in all probability was only one, Avinash would be entitled to the benefit of doubt.

28. The contention advanced to discredit Mahavir Singh concerning the improvements in his testimony, having been dealt with by us, we note that the argument that there was no trail of blood in the street and thus entire testimony of Mahavir Singh is to be ignored, overlooks the fact that it is not the case of the Mahavir Singh that his son was stabbed at the T-junction of

Mahavir Street. The stabbing, has obviously taken place at the T-junction of Ashok Street.

29. As regards appellant Amar Singh, even the testimony of Mahavir Singh would bring out that there was a sudden quarrel between Amar Singh and the deceased. The quarrel which commenced as a minor verbal altercation assumed an ugly proportion. Amar Singh picked up a knife from the shop of the betel leaf seller. A chase ensued. As Amar Singh and Avinash narrowed the distance, they were able to kick and inflict fist blows on Virender Singh. Amar Singh reached within striking distance and inflicted the stab blows. The blows were inflicted indiscriminately without any particular part of the body being targeted which had to be when the blows are inflicted during or soon after a chase. The stab injury No.8 at the back of the right hip shows that it was inflicted from the back. The two other stab injuries would show that they were inflicted from the front. That everything happened upon a sudden quarrel and without any pre-meditation would entitle Amar Singh to the benefit of exception 4 to Section 300 IPC if we proceed on the basis that Amar Singh committed the act knowing that it is so eminently dangerous that it must, in all probability, cause death of Virender Singh; it is not a case that the offender had taken undue advantage or acted in a cruel or an unusual manner. There is no evidence of any common intention and from the mere fact that the two co-accused chased the deceased all of a sudden during the course of a verbal altercation one cannot impute a common intention to both to kill the deceased.

30. We bring the curtains down by allowing CrI.A.No.456/2000 filed by Avinash. We acquit him of the charge framed against him. Being admitted to bail pending hearing of the appeal, we discharge the bail bond and surety

bond furnished by Avinash.

31. We dispose of CrI.A.No.556/2000 filed by Amar Singh setting aside his conviction for the offence punishable under Section 302 IPC. We convict him for the offence punishable under Section 304 IPC and sentence him to undergo RI for a period of five years. He would be entitled to the benefit of Section 428 Cr.P.C.

32. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 15, 2014

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