

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

Date of Decision: 31st January, 2014

+ **CRL.A. 629/2000**

KALI RAM & ORS. Appellant
Through Mr. K.K. Sharma, *Amicus*
Curiae

versus

STATE N.C.T. OF DELHI Respondent
Through Mr. Sunil Sharma, APP
Inspector Arvind Kumar, SHO,
Sub Inspector Anil, Police
Station Kalyan Puri, Delhi.

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CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The celebration of birth of newly born child of Satbir turned into mourning when due to anguish of not receiving invitation to attend the party, neighbour Pramod and other family members went to the house of Satbir and stabbed him with knife, resulting in his death and causing simple and grievous injuries to Mahipal (PW1),

Harbir(PW2), Jaipal(PW3) and Dharampal(PW4) who had also come to attend the function.

2. The factual matrix of the case lies in narrow compass. On 14th September, 1990, there was a function in the house of Satbir on the occasion of birth of his son. Many persons were present. Accused Pramod came in drunken condition and said 'he would see how they are celebrating the birth of the child'. He stabbed Satbir with knife in his abdomen which proved fatal. In the meantime, his father Ant Ram with his uncles, namely, Kali Ram and Mithan and brother Manu, armed with lathis and dandas came and gave several blows on the persons of Mahipal, Harbir, Jaipal and Dharampal, as a result of which Mahipal, Harbir and Jaipal sustained simple injuries while Dharampal sustained grievous injuries. During the course of investigation, all the accused persons were arrested. In pursuance to the disclosure statement made by accused Ant Ram and Manu, lathi and danda were recovered. After completing investigation, charge sheet was submitted against all the accused.

3. Charge for offence u/S 302/307/323/308/34 IPC was framed against the accused persons to which they pleaded not guilty and

claimed trial. However, during the proceedings of the case, accused Ant Ram and Mithan expired.

4. In order to bring home the guilt of the accused, prosecution in all, examined 17 witnesses. Statement of accused persons was recorded under Section 313 Cr.P.C., which were one of the denial simplicitor. They claimed their innocence and alleged false implication in this case.

5. After meticulously examining the evidence led by the prosecution, vide impugned judgment dated 21st July, 2000, learned Additional Sessions Judge convicted accused Pramod u/s 302 and 307 IPC while accused Kali Ram and Manu were held guilty for offence punishable u/S 323/308/34 IPC. Vide order dated 27th July, 2000, accused were sentenced as under:-

- (i) Accused Pramod was sentenced to undergo rigorous imprisonment for life and fine of Rs.5000/- for offence u/s 302 IPC and in default of payment of fine, he was further sentenced to rigorous imprisonment for two years. He was further sentenced to undergo rigorous imprisonment for 5 years and fine of Rs.2000/- for

offence u/S 307 IPC and in default of payment of fine, one year simple imprisonment.

- (ii) Accused Kali Ram and Manu were sentenced to undergo rigorous imprisonment for 5 years and fine of Rs.2000/- for offence punishable u/S 308/34 IPC and in default of payment of fine, further simple imprisonment for six months. They were further sentenced to undergo simple imprisonment for one year and fine of Rs.1,000/- each for the offence u/S 323/34 IPC. In default of payment of fine, one month simple imprisonment.

Benefit of Section 428 Cr.P.C. was given to the convicts.

All the sentences were to run concurrently.

6. Accused Pramod filed an appeal bearing No.633/2000. However, during the pendency of the appeal, he expired, as such, the appeal stands abated against him.

7. Separate appeal bearing No.629/2000 was preferred by Kali Ram and Manu assailing the judgment and order on sentence passed by learned Additional Sessions Judge. However, the appellant Kali

Ram also expired on 5th November, 2005, as such, the proceedings against him stands abated.

8. We have heard Sh. K.K. Sharma, *Amicus Curiae* on behalf of the appellant-Manu and Mr. Sunil Sharma, learned Additional Public Prosecutor for the State and have perused the record.

9. It is submitted by the learned counsel for the appellant that PW1-Mahipal has deposed that Manu gave him lathi blow on his back. The injuries have been opined to be simple by the doctor. PW2-Harbir although has deposed that Manu gave him lathi blow, however, as per the MLC, the injuries, i.e., CIW in right hand with sharp weapon and no injury was caused by the blunt weapon, as such, the appellant has not caused any lathi blow to PW2-Harbir. According to PW3-Jaipal, Manu gave lathi blow to him when he tried to intervene. As per the opinion of the doctor, the injuries were opined to be simple. PW4-Dharampal has deposed that when he tried to intervene, accused Ant Ram and Kali Ram started beating him with lathis. The injuries have been opined to be grievous but the same cannot be solely attributed to accused Manu because lathi blows were also given by other accused. As such, the appellant is entitled to

benefit of doubt on this account. Furthermore, although, it is the case of prosecution that the danda was recovered in pursuance to the disclosure statement made by the accused, however, that danda was neither deposited in Malkhana nor was shown to the witnesses in order to ascertain whether the danda was the same with which they were given blows by the appellant. The danda was exhibited only in the statement of the Investigating Officer of the case. Under the circumstances, it was submitted that prosecution has failed to bring home the guilt of the accused beyond shadow of doubt and, as such, the accused is entitled to benefit of doubt. Alternatively, it was submitted that at the most, offence u/S 323 IPC is made out. The appellant has remained in Jail for a period of more than 1½ years and, as such, he is entitled to be released on the period already undergone. No offence u/S 308 IPC is made out in the facts and circumstances of the case.

10. Per contra, it was submitted by the learned Additional Public Prosecutor for the State that there are four injured persons and all of them have taken a consistent stand attributing the role to each and every accused. When injury is caused to several persons by several

accused, it is difficult to ascertain the role of each and every individual accused. However, all the witnesses have deposed regarding stabbing of Satbir by knife, giving danda blows to remaining injured which stands corroborated by the medical evidence and the scientific evidence. The danda was recovered in pursuance to the disclosure statement made by the accused and was duly identified by the investigating officer of the case. As such, the impugned order does not suffer from any infirmity. However, it was fairly conceded that offence u/S 308 IPC is not made out but since Dharampal sustained grievous injuries, as such, offence u/S 325/323 IPC are clearly made out against the accused. The appeal, being bereft of merit, is liable to be dismissed.

11. We have given our considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

12. The prosecution case has been substantiated by the eye-witness account of the incident, who are also the injured persons. PW1 Mahipal has unfolded that on 14th September, 1990, there was a function in the house of his brother-in-law on the occasion of birth of

his son. He had gone to attend the party. Accused Pramod came in drunken condition, who was not invited for the party. He said that he would see how they were making celebrations. Thereupon, he stabbed his brother-in-law Satbir with a knife in his abdomen. Satbir fell down. He tried to lift Satbir. In the meantime, Ant Ram @ Atma Ram gave a lathi blow on his head, then Manu came there and gave a lathi blow on his back, even then he lifted Satbir. Thereupon, Kali Ram gave him lathi blow. They were about to take Satbir to Police Station, then Mithan gave a knife blow to Harbir, who stopped him from doing so and caught the knife with his hand. Thereafter, he went to the hospital. Police came at the spot and took them to police station. He lodged the report Ex.PW1/A. Satbir died in the hospital. He was medically examined.

PW2 Harbir was also present in the party and has also deposed about Satbir being stabbed by knife by the accused Pramod. He also deposed that he was given lathi blow by the accused Mithan and Manu. An attempt was made to stab him with knife, however, he caught the knife with his right hand and received injuries on his ring finger.

PW3-Jaipal corroborated the version of PW1 and PW2 for submitting that Satbir was stabbed by the accused Pramod. He further deposed that when he tried to intervene, he was given lathi blows by Manu, Ant Ram and Kali Ram.

To the same effect is the testimony of PW4-Dharampal who also deposed regarding stabbing of Satbir by Pramod and giving lathi blows by Ant Ram, Kali Ram and Manu.

13. The law is well settled that the evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. In *Akhtar and Ors. Vs. State of Uttaranchal*, (2009) 13 SCC 722 their Lordships held that credence to the testimony of injured eye witness is to be given since his presence at the scene of crime is seldom doubtful. The report reads as under:-

“18. In Krishan vs. State of Haryana, (2006) 12 SCC 459 this Court has taken the view that if the prosecution case is supported by two injured eyewitnesses and if their (injured eyewitnesses) testimony is consistent before the police and the Court and corroborated by the medical evidence, their testimony cannot be discarded. Similarly, in Surender Singh Vs. State of Haryana, (2006) 9 SCC 247, this Court has opined that:-

“9. The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence, lends

support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes."

14. Substantially similar view was taken in *Mano Dutt and Anr. Vs. State of UP*, (2012) 2 SCC (Cri) 226; *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259 and *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719.

15. In the instant case, all these witnesses were subjected to cross-examination, however, nothing material could be elicited to discredit their testimony. All of them have reiterated that the incident took place when celebration of birth of son of Satbir was going on and accused Pramod in drunken condition came to the house of Satbir being annoyed as to why he and his family members were not invited in the party followed by the remaining accused. All these witnesses sustained injuries at the same time when Satbir was stabbed by Pramod. All the accused were well known to the injured persons from before. No animosity has been alleged against them for which reason they will falsely implicate them in this case allowing the real culprit to go scot free.

16. Further, ocular testimony of the injured persons find due corroboration from medical evidence. All the injured persons were taken to hospital. PW12-Dr. Dipankar Chatterjee examined injured Satbir, Harbir, Jaipal and Dharampal. He examined PW1-Mahipal and prepared his MLC- Ex.PW12/A. He opined injury as simple caused by blunt object. He also examined PW3 Jaipal and prepared his MLC-Ex.PW11/B and further opined that the weapon was blunt. Injuries on the person of Jaipal were opined to be simple by PW11- Dr.C.B.Dabbas. Dr. Dipankar Chatterjee also examined PW2-Harbir and prepared his MLC-Ex.PW11/A and opined that weapon of offence was sharp. PW4-Dharampal was also examined and his MLC-Ex.PW11/C was prepared and the injuries were opined to be caused on his person by blunt object. As per the MLC-Ex.PW11/C, Dharmpal has sustained “fracture on the tip of tibia” besides other injuries, as such, the injuries were opined by PW11- Dr.C.P Dabbas to be “grievous”.

17. It is a matter of record that on 17th September, 1990, accused Ant Ram and Manu were arrested by Inspector R.S.Nehra in the presence of PW9-Head Constable Ranbir and PW17-SI Babu Singh

when he along with co-accused Ant Ram was getting down from the bus. Both of them were arrested. Accused Manu made disclosure statement-Ex.PW7/C that he can get the danda recovered from his jhuggi. Thereupon, he led the police party to his jhuggi and got recovered danda (Ex.P1) which was seized vide seizure memo Ex.PW7/F.

18. Much emphasis has been laid by the learned counsel for the appellant for submitting that the danda(Ex.P1) was not deposited in the Malkhana and it was not shown to the injured witnesses in order to ascertain as to whether it was the same danda with which the injuries were inflicted on their persons. Although, it is true that no cogent evidence has come on record to prove that the danda was deposited in the Malkhana, however, nothing was elicited in the cross-examination either of the Investigating Officer or of the MHCM to ascertain as to whether it was deposited in Malkhana. It was produced in the Court when the witnesses of recovery were examined and PW7-Inspector R.S. Nehra, PW9-HC Ranbir Singh and PW17-SI Babu Singh identified the danda-Ex.P1 to be the same which was recovered at the instance of accused Manu. Even otherwise, at the

most, it can be taken that in the absence of showing the danda to injured witnesses, it is not proved beyond reasonable doubt that danda-Ex.P1 was the same with which injuries were inflicted on the persons of the injured. However, in view of the cogent, consistent and the clinching evidence coming on record in the testimony of all the injured witnesses that they were given danda/lathi blows by the accused and the doctor has also opined that injuries were caused by blunt object, the mere fact that danda was not shown to the injured does not cast any dent on prosecution case.

19. The last limb of the arguments that although the injuries on the person of Dharampal has been opined to be grievous but the same cannot be solely attributed to accused Manu because lathi blows were also given by other accused, same is devoid of any substance, inasmuch as, the fact that all the accused came together and while accused Pramod inflicted knife blow on the person of Satbir, the other accused gave lathi blows. That being so, it was difficult to ascertain the role of each and every individual accused but the common intention of all the accused is manifest from the fact that indiscriminate lathi and danda blows were given on the person of

Mahipal, Harbir, Jaipal and Dharampal by accused Kali Ram, Ant Ram and Manu. As such, even if it cannot be ascertained as to which lathi blow resulted in grievous injuries to Dharampal, the appellant cannot escape his liability.

20. The result of the aforesaid discussion is that the prosecution had succeeded in establishing that the appellant Manu along with co-accused came to the house of Satbir and while accused Pramod stabbed Satbir with a knife, the remaining accused gave danda/lathi blows on the persons of Mahipal, Harbir, Jaipal and Dharampal resulting in simple injuries to Mahipal and Jaipal and grievous injuries to Dharampal.

21. Learned Trial Court has convicted the appellant u/S 308/323 IPC. However, it was rightly conceded by learned Additional Public Prosecutor for the State that Section 308 IPC is not attracted in the facts and circumstances of the case, however, keeping in view the fact that PW4-Dharampal sustained fracture on the tip of tibia, as such, the injuries being grievous falls under Clause *Seventhly* of Section 320 IPC punishable u/S 325 IPC.

22. Under the circumstances, the judgment dated 21st July, 2000 and order on sentence dated 27th July, 2000 is modified to the extent that the conviction of the appellant u/S 323/34 IPC and the sentence to undergo simple imprisonment for one year and fine of Rs.1000/- each is upheld. However, the conviction u/S 308/34 IPC is modified to Section 325/34 IPC. As per the record, the appellant has remained in jail for about 1½ years, as such, ends of justice will be met if he is sentenced to the period already undergone. He is, however, directed to pay a sum of Rs.15000/- as fine, in default of payment of fine, to undergo simple imprisonment for two months. He is granted 15 days' time to deposit the fine with the Trial Court and place the receipt on record.

23. The appeal stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

(KAILASH GAMBHIR)
JUDGE

JANUARY 31, 2014

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