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

(i) + **CRL.A. 586/2001 & Crl. M.A. No. 2602/2011**

SURENDER ..... Appellant

Through: Mr. Rohit Kumar, Advocate for Mr.S.P. Kaushal, Advocate

versus

STATE OF DELHI ..... Respondent

Through: Ms. Nishi Jain, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(ii) + **CRL.A. 587/2001 & Crl. M.A. No. 2600/2011**

SATISH ..... Appellant

Through: Mr. Rohit Kumar, Advocate for Mr.S.P. Kaushal, Advocate

Versus

STATE OF DELHI ..... Respondent

Through: Ms. Nishi Jain, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(iii) + **CRL.A. 588/2001**

HAWA SINGH ..... Appellant

Through: Mr. Rohit Kumar, Advocate for Mr.S.P. Kaushal, Advocate

versus

STATE OF DELHI ..... Respondent

Through: Ms. Nishi Jain, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(iv) + **CRL.A. 589/2001 & Crl. M.A. No. 2601/2011**

RAKESH ..... Appellant

Through: Mr. Rohit Kumar, Advocate for Mr.S.P. Kaushal, Advocate

versus

STATE OF DELHI ..... Respondent

Through: Ms. Nishi Jain, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(v) + **CRL.A. 602/2001**

VIRENDER ..... Appellant

Through: Mr. Rohit Kumar, Advocate for Mr.S.P. Kaushal, Advocate

versus

STATE OF DELHI ..... Respondent

Through: Ms. Nishi Jain, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(vi) + **CRL.A. 245/2003**

KULDEEP ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

Versus

THE STATE (DELHI) ..... Respondent

Through: Mr. Ravi Nayak, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(vii) + **CRL.A. 247/2003**

VIJAY @ PAPPU ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

Versus

THE STATE (DELHI) ..... Respondent

Through: Mr. Ravi Nayak, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(ix) + **CRL.A. 251/2003**

PRAKASH CHAND ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

Versus

THE STATE (DELHI) ..... Respondent

Through: Mr. Ravi Nayak, Additional Public Prosecutor for respondent-State with ASI Tej Ram

(x) + **CRL.A. 252/2003**

MEDU RAM ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

Versus

THE STATE (DELHI) ..... Respondent

Through: Mr. Ravi Nayak, Additional Public Prosecutor for respondent-State with ASI Tej Ram

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% 23.01.2014

In the above captioned nine appeals, appellants in the first five appeals, were tried in FIR No. 408/1997, under Sections 302/147/148/149 of IPC, registered at police station *Najafgarh,* Delhi whereas appellants of remaining four appeals were accused in FIR No. 409/1997, under Sections 147/148/149/323/325/308 of IPC, also registered at police station *Najafgarh,* Delhi. The aforesaid two FIRs were registered in respect of an incident of 21st June, 1997. It is pertinent to note that FIR No. 409/1997 was registered after five days of this incident i.e. on 26th June, 1997.

In the above captioned first five appeals [Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001], vide impugned judgment of 24th May, 2001 appellants- *Surinder, Satish, Hawa Singh, Rakesh and Virender* have been sentenced for the offences under Sections 304-II/307/323/ 324/147/148 of *IPC* and vide impugned order of 21st July, 2001, these appellants have been sentenced to rigorous imprisonment for a period of six year for the main offence i.e. under Section 304-II of IPC and for the allied offences, they have been sentenced to lesser varying terms.

In the remaining four appeals of *Kuldeep, Vijay @ Pappu, Prakash Chand & Medu Ram* [Crl. Appl. Nos. 245,247,251 & 252 of 2003], impugned judgment of 25th February, 2003 convicts appellants for offences under Sections 308/147/148 r/w Section 149 IPC and under Section 452 IPC r/w Section 34 of IPC. Vide impugned order of 27th March, 2003, they have been sentenced to rigorous imprisonment for 2½ years for the main offence i.e. under Section 308 r/w Section 149 IPC and for lesser terms for the remaining offences.

While entertaining the above captioned nine appeals, the substantive sentence awarded to appellants was suspended. Now at the final hearing of above captioned nine appeals, it was submitted by both sides that since the two FIRs in question relate to one incident, therefore, these appeals can be heard together. Accordingly, these appeals have been taken up for hearing together and by this common order, they are being disposed of.

In the above captioned first five appeals [Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001], the initial prosecution version as noted in the impugned judgment, is as under:-

> *"The allegations against the accused persons are that on 21.6.97 at about 9.30 P.M. complainant Vinod Kumar alongwith his cousin Parkash was sitting on bus stand of village Mitrao when Virender who also happened to be a cousin in relation came there. He was drunk and he started abusing Parkash. The complainant asked him not to do so. Meanwhile, Hawa Singh, brother of Virender, also came there. Hawa Singh gave a slap to the complainant. Virender and*

Hawa Singh left for their house abusing and after about five minutes, Virender, Rakesh, Hawa Singh, Satish and Surender, who were all brothers, came armed with knives, iron rod, jelly and lathi. Satish gave a lathi blow to Parkash, Surender gave iron rod blow to Parkash on his head and Hawa Singh gave fist blows and slaps to him (Parkash). On hearing the noise, Kuldip and Lalu came there. While Rakesh inflicted 3 /4 knife blows to Lalu, Virender caused injury to Kuldip with knife. Thereafter, Mahinder Singh came to intervene and Rakesh gave a knife blow to him (Mahinder) in his stomach and Satish gave lathi blow to Mahinder Other members of the family of the complainant including Medh Singh, Raju, Vijay and ladies who came there to save them were also given beatings by above said five accused persons with respective weapons and the wives of Surinder, Satish and Hawa Singh threw stones from the roof of their house due to which injuries were received by other members of the family of the complainant.

Mahinder died as a result of injuries received by him. As per post-mortem report, the death of Mahinder was as a result of penetrating injury to transverse colon and it was sufficient to cause death in the ordinary course of nature. Injury to Parkash, Medh Singh and Birma Devi were found to be grievous by blunt object while injuries to six other persons were simple by blunt or sharp object. The police completed the investigation of the case and filed challan in the court."

The counter version put forth by appellants in remaining/ last four

appeals [Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001] has been dealt by trial court in the following manner:-

> *'Now looking into the facts of the present case, I find, PW-1 Virender Singh has very specifically deposed that on the day of occurrence, 15-20 persons came in front of their house consisting of Medu Prakash, Kuldip and Pappu and they all started abusing them and at that time, his elder brother Hawa Singh enquired as to what has happened and why they have brought lathis and dandas to their house and on that, Prakash hit Hawa Singh on head with the help of lathi and Pappu gave danda blows and Kuldip and Pappu threw Hawa Singh on the road and when his brother Surener came to save Hawa Singh, Prakash gave a lathi blow over his head and Pappu gave danda blow and Medu gave jelly blow to Surender and in between Kuldip gave a blow with iron rod on his head and when his brother Satish was taking his father inside the room, at that time, Medu asked him as to where he was taking his father and that he is the bone of contention and he should be killed and at that time, accused Joginder alongwith the other person hit his father and all of them sustained injuries. PW2 Sunita, wife of Surender, PW 5 Hawa Singh, PW6 Rakesh Kumar, PW7 Satish Kumar, PW8 Surender Kumar, PW10 Bala, wife of Hawa Singh, PW12 Laxman, they all corroborated the statement of PW1 Viredner Singh and they all were the eye witnesses."*

In FIR No. 408/1997 [Crl. Appl. Nos. 586, 587, 588, 589 & 602

of 2001] prosecution had got examined twenty six witnesses to prove its case. The stand taken by appellants-*Surinder, Satish, Hawa Singh, Rakesh and Virender*, as summarized by trial court in the impugned order is as under:-

> *"Accused Satish denied the entire incident and has pleaded that he is innocent and he was present at this house at the time of occurrence. He has further deposed that Parkash, Medu, Kuldip, Vijay and others came to his house and started abusing them. When his father intervened, he was also abused by Parkash. They also committed trespass by forcibly entering into their house and caused injuries to them. They also received injuries and were hospitalized and the occurrence has taken place inside and outside their residence. The cause of aggression was that the complainant party had lost civil battle in the court in respect of land case. Accused Hawa Singh has also denied the entire incident and has taken the plea that there is no tailoring shop in front of bus stand and has deposed that they were called in the police station and were shown arrested. The chura has been planted on them and he has also taken the plea that the injured persons came to their house and committed tress pass and caused injuries to them in a land case. Accused Virender, Rakesh, Sunita, Anita and Bala has also denied the entire incident and has taken the same plea."*

Appellants in FIR No. 408/1997 [Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001] got examined three witnesses in their defence. While relying upon deposition of *Prakash Chand (PW-1), Medu Ram (PW-2)*

and *Vijay Kumar (PW-3)*, trial court held appellants- *Surinder, Satish, Hawa Singh, Rakesh and Virender* guilty for offence under Section 304 II of IPC etc.

Mr. Ravi Nayak, learned Additional Public Prosecutor for respondent-State supports the impugned judgment and order in FIR No. 408/1997 and has placed on record Verification Report confirming that appellants *Surinder & ors.* have clean antecedents and as per nominal roll, appellants- *Surinder* has remained behind bars in this case for a period of three years and appellants- *Satish, Hawa Singh, Rakesh and Virender* have remained behind bars for a period of above four years.

At the hearing of these appeals, conviction of appellants- *Surinder, Satish, Hawa Singh, Rakesh and Virender* [in Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001] was rightly not assailed on merits, as upon scrutiny of the impugned judgment, I find that their conviction for offence under Section 304 II and allied offences is well merited. On the quantum of sentence, it was submitted on behalf of appellants- *Surinder, Satish, Hawa Singh, Rakesh and Virender* that they are first offenders and it was pointed out that even in the impugned judgment, trial court has held that the incident in question had taken place near house of appellants-accused- *Surinder & ors.* and that death of deceased was due to *septicemia.* It is submitted on behalf of appellants- *Surinder & ors.* that appellants have faced agony of trial and these proceedings since the year 1997 and these appellants have family responsibilities to shoulder and that they have remained behind bars for a period of four years and so.

Thus, it is submitted that in the peculiarity of this case, the substantive sentence awarded to appellants- *Surinder, Satish, Hawa*

Singh, Rakesh and Virender deserves to be reduced to the period already undergone by them.

While maintaining conviction of appellants- *Surinder, Satish, Hawa Singh, Rakesh and Virender*, the peculiar facts and circumstances of FIR No. 408/1997 persuades this Court to reduce the substantive sentence awarded to them by trial court to the period already undergone by them in view of clean antecedents of these five appellants and the fact that they have already faced agony of these proceedings for last seventeen years.

So far as appeals of appellants - *Kuldeep, Vijay @ Pappu, Prakash Chand & Medu Ram* [in Crl. Appl. Nos. 245,247,251 & 252 of 2003] are concerned, I find that none has appeared on their behalf. Mr.Ravi Nayak, learned Additional Public Prosecutor for respondent-State submits that he had informed Mr. Ikrant Sharma, Advocate for these appellants on his mobile No.9810069880 and he said that he would be appearing before this Court today in these matters but he has not appeared today in the Court.

Since these appeals pertain to one incident which is subject matter of appeals in the cross FIR No. 408/1997, therefore, Ms. Sahila Lamba, Advocate present in Court, who is on the panel of *Delhi High Court Legal Services Committee,* is appointed as *Amicus Curiae Counsel* to appear on behalf of appellants- *Kuldeep, Vijay @ Pappu, Prakash Chand & Medu Ram* in appeals [Crl. Appl. Nos. 245,247,251 & 252 of 2003] pertaining to FIR No. 409/1997.

The counter version of this incident, as put forth in FIR No. 409/1997 and as noticed in the impugned judgment of 25th February,

2003 is as under:-

> *"Thereafter, the I.O. recorded the statement of Hawa Singh who have his statement to the effect that he is doing the job of cultivation. He has further deposed that on 21.6.1997 at about 9.30 p.m. while he was at his house, he came to know that Vinod @ Kala and Parkash Chand have quarreled with his brother Virender Singh. He reached there and gave slap to Vinod and one slap to his brother Virender and asked them as to why they were quarrelling and then both the parties went back to their house. After some time, 15-20 persons including Satpal @ Lalu, Jagbir, Vinod @ Kala, Parkash Chand, Kuldip, Mahender Singh, Ramesh, Pappu etc. came to their house and they were armed with lathi, jelly and started beating them. Satpal gave lathi blow on his head and Kale, Jagbir and Ramesh also gave lathi blows to him and his brother Virender was also beaten by Mahender Singh, Kuldip, Pappu with lathis and dandas and his another brother Surender Sing was beaten by Jagbir and Vinod. Then, they all went to their other house where his father is residing and gave him beatings and they sustained injuries."*

While accepting the afore-referred counter version put forth by *Virender Singh (PW-1), Sunita (PW-2* and *Hawa Singh (PW-5),* appellants- *Kuldeep, Vijay @ Pappu, Prakash Chand & Medu Ram* have been held guilty of offence under Section 308 of IPC and for allied offences.

With the able assistance of Ms. Sahila Lamba, learned *Amicus*

Curiae Counsel appearing for appellants [in Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001] and Ms. Nishi Jain, learned Additional Public Prosecutor for respondent-State, evidence on record has been scrutinized and impugned judgment is perused.

After hearing both the sides, I find that two versions in respect of one incident are put-forth and both the versions cannot be accepted to be true. Trial court has erred in doing so in FIR No. 409/1997. After accepting the initial version given in FIR No. 408/1997 [Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001] , it was not open to trial court to have accepted the counter version in FIR No. 409/2007 [Crl. Appl. Nos. 245,247,251 & 252 of 2003]. It is nobody's case that there was a free fight and it was known as to who was the aggressor. Otherwise also, it does not appear to be so from the fact of these cases. I find that conviction of appellants-*Surinder, Satish, Hawa Singh, Rakesh and Virender* in FIR No. 408/1997 1997 [in Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001] is acceptable and legally sustainable whereas conviction of appellants-*Kuldeep, Vijay @ Pappu, Prakash Chand & Medu Ram* [in Crl. Appl. Nos. 245,247,251 & 252 of 2003] in FIR No. 409/1997 is not clearly unsustainable.

In view of the aforesaid, appeals of appellants-*Kuldeep, Vijay @ Pappu, Prakash Chand & Medu Ram* [Crl. Appl. Nos. 245,247,251 & 252 of 2003 pertaining to FIR No. 409/1997] are accepted and the impugned judgment of 25th February, 2003 is set aside. However, conviction of appellants - *Surinder, Satish, Hawa Singh, Rakesh and Virender* [Crl. Appl. Nos. 586, 587, 588, 589 & 602 of 2001 in FIR No. 408/1997] is maintained while directing that the substantive sentence

awarded to them by trial court stands reduced to the period already undergone by them in view of the fact that they have already faced agony of these proceedings for last seventeen years.

The above captioned nine appeals and applications are accordingly disposed of in aforesaid terms. Ms. Sahila Lamba, learned *Amicus Curiae Counsel,* shall be entitled to the scheduled fee from *Delhi High Court Legal Services Committee* for her able assistance rendered in disposal of Criminal Appeal Nos. 245/2003, 247/2003, 251/2003 & 252/2003.

(SUNIL GAUR)
JUDGE

JANUARY 23, 2014
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