

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

% *Judgment reserved on :07.05.2014*
Judgment delivered on :13.05.2014

+ CRL.A. 219/2006
AMARJEET @ MINTO Appellant
Through Appellant with his counsel
Mr.Jayant K. Sud, Adv.
versus
STATE Respondent
Through Ms. Kusum Dhalla, APP
+ CRL.A. 221/2006
DEEPAK @ DEEPU Appellant
Through Appellant with his counsel Mr.
S.K. Tandon and Mr. R.V. Naik,
Adv.
versus
STATE Respondent
Through Ms. Kusum Dhalla, APP
+ CRL.A. 389/2006
MONU @ PARVEEN Appellant
Through Ms. Suman Chauhan, Adv.
versus
STATE Respondent
Through Ms. Kusum Dhalla, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The appellants before this Court are aggrieved by the impugned judgment and order of sentence 16.03.2006 & 18.03.2006 respectively

wherein they have been convicted under Sections 307/147/148 read with Section 149 of the IPC and each of them has been sentenced to undergo RI for a period of four years for the offence under Section 307 read with Section 149 of the IPC; for the offence under Section 148 of the IPC, they have been sentenced to undergo RI for a period of 2 years; for the offence under Section 147 of the IPC, they have been sentenced to undergo RI for a period of 1 year; each of the three convicts have been further sentenced to pay fine of Rs.4,000/- for each of the offence and in default of payment of fine, to undergo RI for a period of 1 year. Out of the total accumulated fine, Rs18,000/- had to be paid to the victim as compensation. The sentences were to run concurrently. Benefit of Section 428 of the Cr.PC had been granted to the appellants.

2 The version of the prosecution was unfolded in the statement of Kalu examined as PW-7. He had given his statement to the police on the date of the incident (Ex.PW-2/A). In this version which had been recorded in the hospital by the Investigating Officer S.B. Gautam (PW-5) on 16.03.1998 itself (after the patient had been declared fit for statement), it had been disclosed that on the fateful day while he was resting in his room at C-11, Khajuri Khas, one boy namely Jenu along

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with a friend came to his room asking him about the name of some person in Meerut; PW-7 disclosed that he did not know his name; Jenu asked PW-7 to come down; PW-7 accompanied Jenu and his friend down stairs; they went to A-Block; it was about 07:00 pm; Jenu and his accomplice attacked PW-7 with fists and thereafter he was given blows with a knife; he was also attacked with a talwar; he was removed to the hospital by the PCR. It was on this statement that the present FIR was registered.

3 The version of PW-7 on oath has reiterated the averments made in his complaint. He has deposed that on the fateful day while he was resting in his room, Jenu and one Sarkari had come to his room; they had inquired about a person from Meerut; he told them that he did not know that person; he was asked to accompany them down stairs; on reaching down, the said person along with his accomplices who were nine in number attacked PW-7; Sarkari cut his finger with a sword; Minto @ Amarjeet cut his arm; accused Moosa caught hold of him; Monu @ Praveen hit him with a rod on his head; Jenu stabbed him with a kirpan on his left leg. PW-7 became unconscious. PW-7 identified the accused persons present in Court which included the three appellants

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before this Court. In the course of his testimony, the Court has put a specific question to PW-7 asking him to detail the role of each of the accused persons. In answer, PW-7 stated that Monu @ Praveen hit him with an iron rod on his head. He reiterated that the police reached the spot and he had been removed to the GTB hospital. He further deposed that Monu @ Praveen was arrested by the police in his presence. In his lengthy cross-examination, he admitted that the place of incident was about 20-30 meters away from his residence; public persons had gathered there; he was present in his room along with Raju; his landlord lives on the ground floor; police had reached the spot in 15-20 minutes after he had regained consciousness; his statement was recorded in the hospital on the same day; he further stated that Sarkari and Deepak were known to him prior to the incident; he admitted that he had not mentioned the names of the accused persons in his statement Ex.PW-2/A because he did not know their addresses. He further admitted that he had not given description of the accused persons also as he did not know them.

4 It is this statement of PW-7 which is the crux of the case of the prosecution and has formed the basis of the conviction of the appellants.

5 This Court shall revert back to the statement of PW-7 at a later point.

6 The injuries suffered by the victim were 'grievous'. Dr. G.L. Arora (PW-1) had examined him at the first instance noting six injuries which read herein as under:-

1. *Incised wound 8cm X 2cm X 2 cm on the lateral aspect of left hand and bone was exposed.*
2. *Incised wound 6 cm x 2cm x 2cm on the left upper arm muscle deep.*
3. *Incised wound 5 cm x 1 cm x 1 cm on the right hand lateral aspect.*
4. *Incised wound 4cm x 2cm 1.5 cm on the left parital area.*
5. *Incised wound 5cm x 2cm x 1cm on the right parital bone.*
6. *Stabbed wound 2.5cm x 1cm on the middle part of the posterior."*

7 It was admitted that the patient was conscious and he was fit to make statement on the same date. The fracture of fourth metacarpal joint of the victim was reported in his X-ray report examined by Dr. Rajpal (PW-3) vide his report Ex.PW-3/A. Dr. T. Gupta (PW-6) had noted the injuries on the victim as 'grievous'.

8 The accused persons had been arrested at later point of time. Accused Monu @ Praveen was arrested on 05.06.1998. This was admittedly three months after the date of the incident. He was

apprehended from his house. This has come in the version of constable Om Prakash (PW-4). Accused Amarjeet @ Minto and Deepak @ Deepu had been apprehended on 04.08.1998 by SI Yogesh Malhotra (PW-11). Their personal search memos Ex.PW-11/A & Ex.PW-11/B were prepared. Accused Amarjeet @ Minto and Deepak @ Deepu had surrendered in Court and this has come in the version of PW-7 and is in fact contrary to the version of PW-11 who had stated that Amarjeet @ Minto and Deepak @ Deepu had been arrested by him. Relevant would it be to point out that Ex.PW-11/A and Ex.PW-11/B did not bear the signatures of PW-7 to support the submission of the prosecution that the aforementioned accused persons were arrested in the presence of the complainant. Submission of the learned defence counsel on this aspect being that accused Amarjeet @ Minto and Deepak @ Deepu were not arrested at the pointing out of the complainant. Admittedly after the disclosure statements of Amarjeet @ Minto and Deepak @ Deepu, no recovery had also been effected.

9 PW-7 has admittedly assigned no role to Deepak @ Deepu. The only role assigned to him was that he was known to him. Neither in Ex.PW-2/A and nor in his version on oath in Court has PW-7 otherwise

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attributed any role to Deepak @ Deepu. Deepak @ Deepu is thus entitled to an acquittal. On no count, does the impugned judgment holding Deepak @ Deepu guilty can be sustained. He is accordingly acquitted.

10 The role attributed to Amarjeet @ Minto by PW-7 is that he had cut his arm. Admittedly in the first statement of PW-7 (Ex.PW-2/A), no role has been attributed to Amarjeet @ Minto. The role given to Monu @ Praveen is that he had hit him with an iron rod on his head. In Ex.PW-2/A, no role was given to Monu @ Praveen. No recovery has also been effected.

11 The cross-examination of PW-7 clearly recites that the accused persons were not known to PW-7; he had given no description; they being not known to PW-7, their names and addresses had not been given. Ex.PW-12/A only recites that Jenu had come to his room along with a friend asking for the name of a person in Meerut. When PW-7 went down stairs along with Jenu and his accomplice, he was attacked by nine persons of whom Amarjeet @ Minto and Monu @ Praveen were also included. However at the cost of repetition PW-7 having admitted that Amarjeet @ Minto & Monu @ Praveen were not known to him

prior in time and that is why their names and addresses could not be given and that is also why no description of the said persons had also been given in Ex.PW-2/A and Amarjeet @ Minto having been arrested on 04.08.1998 (i.e. five months after the date of the offence) and Monu @ Praveen arrested on 05.06.1998 and therebeing no intervening TIP having been conducted by the Investigating Officer, this Court is of the view that the identification of the accused persons for the first time in Court would be a useless identification. Admittedly when the complainant did not know the accused persons and he having seen them only in a glimpse at 07:00 pm which is a period after dusk when the sun had almost set and he having identified them thereafter for the first time in Court when he had come into the witness box in 2004 i.e. after almost six years after the date of the incident, such an identification would be of no value.

12 Section 9 of the Evidence Act speaks of a relevant fact; this relates to the identity of a 'thing' or a 'person'. Identification parade becomes necessary where accused person is not known to the complainant and this rule has been devised as a safety method to test the veracity of the testimony of the complainant for the purpose of

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identification of the accused persons who are otherwise strangers to him.

13 The Apex Court has time and again ruled that where the complainant and the accused persons are not known to one another, in the absence of a TIP, the identification of the accused persons for the first time in Court should not be relied upon. In this context, the Apex Court in AIR 2002 SC 3325 Dana Yadav @ Dahu & Others Vs. State of Bihar has held as under:-

“Ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence.”

14 In this background, this Court is of the view that the accused Amarjeet @ Minto and Monu @ Praveen admittedly not being known to the complainant who had seen them only for glimpse of a moment and then having identified them in Court after six years when he had come
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into the witness-box in January, 2004 and identifying them at that stage is an identification which cannot be relied upon. Benefit of doubt has to accrue on this count and accordingly the accused persons are entitled to an acquittal on this ground alone.

15 The appellants are accordingly acquitted. Appeals disposed off.

INDERMEET KAUR, J

MAY 13, 2014

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