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

Date of decision: 28<sup>th</sup> April, 2014

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**CRL.L.P. 261/2014 & CrI.M.A. 5811/2014**

STATE NCT OF DELHI ..... Petitioner  
Through Ms. Rajdipa Behura, APP.

versus

SATENDER & ANR ..... Respondent  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE G.P. MITTAL**

**SANJIV KHANNA, J. (ORAL):**

There is delay of 18 days in filing of the application for leave to appeal and hence application for condonation of delay has been filed. However, before issuing notice on the said application, we have deemed it appropriate to examine the leave to appeal application on merits.

2. Learned Additional Public Prosecutor submits that there were two eye witnesses, namely, Usha Rani (PW-2) and Subhash Chand (PW-3), who have deposed and testified about presence of the respondents Satender and Manoj Kumar at the spot and their involvement. She submits that Subhash Chand (PW-3) was the injured eye witness and it does not make any difference that his statement was recorded on 4<sup>th</sup> April, 2005. It

is further submitted that statement of Usha Rani (PW-2) was recorded on the next day of the occurrence i.e. 7<sup>th</sup> March, 2005. It is stated that the 'danda' used by respondent Manoj Kumar was recovered and as per the CFSL report, it had blood of group A, which matched with the blood group of the deceased Sandeep.

3. We have examined the contentions raised, gone through the impugned judgment and the reasons given for acquitting the two respondents Satender and Manoj Kumar. As far as Usha Rani (PW-2) is concerned, the trial court has partly accepted her testimony but also noticed the fact that she was related to the deceased Sandeep. It has been observed that she might not be in her full senses due to trauma after injuries were suffered by Sandeep, which subsequently led to his death. However, it is an accepted position that PW-2 did not tell the police officers or her relatives, name of the assailants when she was in the hospital along with the deceased at Lal Bahadur Shastri Hospital thereafter at Guru Teg Bahabur Hospital and then at St. Stephen Hospital. Her statement was recorded on 7<sup>th</sup> March, 2005 at 9.30 p.m. after cremation.

4. Trial court has referred to the statement of Head Constable Madan Lal (PW-14) posted with PCR Romeo 53, who

after receiving the call regarding quarrel, had reached the spot and had taken the deceased Sandeep, Subhash (PW-3) as well as accused Upender and Surender to the hospital. Trial court has referred to the testimony of Head Constable Prem Kumar (PW-12), also attached to the said PCR and who had reached the spot immediately after occurrence. He has deposed that he met one lady Usha Rani (PW-2) and others at the spot and had spoken to them. Similarly, we have deposition of ASI Srinivas (PW-26), who had reached the spot and recovered danda, saria, knife and churi from the spot and had taken photographs etc. ACP Rajeshwar (PW-28) who was the Investigating Officer had observed presence of weapons i.e. danda, saria, knife and a churi, which were found at that spot. The said weapons/articles were four in number. He had thereafter visited the hospital where the deceased Sandeep, Subhash Chand (PW-3) and two accused Upender and Surender were admitted. Statement of Surender, who was fit for statement, was recorded. He claims that the other three injured were declared unfit for statement. PW-28 had stated that Usha Rani (PW-2) expressed her inability to give any statement till Sandeep and Subhash were given proper treatment. ASI Srinivas (PW-26) had stated that he had also visited hospital but Sandeep and Subhash were

not in a condition to give statement. Usha Rani (PW-2) met them but would not reveal anything. PW-2 told them that she knew the persons who had quarrelled with the deceased Sandeep and Subhash Chand (PW-3), but till the injured were in a fit condition, she would not reveal facts. Thereafter, they proceeded to the spot, collected and seized the incriminating material and evidence. PW-26 had recorded in his diary that Usha Rani (PW-2) had refused to reveal anything about the incident till the injured were fit to make any statement.

5. Prosecution/ State accepts that convicted accused Upender and Surinder had also suffered injuries and a cross FIR being FIR No. 101/2005 at police station Kalyanpuri was recorded against deceased Sandeep and Subhash (PW-2). The said FIR was registered under Section 307/34 IPC. Subsequently, Pankaj, Raj Kumar, Rajeev Mehta and Rakesh were also summoned to stand trial. In the connected judgment arising out of FIR No.101/2005, accused Pankaj, Raj Kumar, Rajeev Mehta and Rakesh have been acquitted giving benefit of doubt, but Subhash Chand (PW-3) has been convicted under Section 308 IPC and sentenced to rigorous imprisonment for 3 years and fine of Rs.1,000/-. In default of which, he has to undergo simple imprisonment for one month. Subhash has filed an appeal being

Crl.A.No.42/2014 against the said judgment, which is pending.

6. In the present decision, the trial court after exhaustively examining the relevant evidence including statements of Usha Rani (PW-2) and Subhash Chand (PW-3) has come to the conclusion that the surrounding circumstances create doubt about involvement of Satender and Manoj. It has believed and accepted statements of PW-2 and PW-3 on involvement of Surender and Upender. It is noticeable that Surender, Upender, Subhash (PW-3) and the deceased Sandeep were found at the spot and were taken to the hospital in a PCR van. The four weapons i.e. danda, saria, knife and churi were recovered from the spot and no other weapon of offence was recovered. It has also come on record that several persons had gathered at the spot, but their statements were not recorded by the police. The trial court has accepted and agreed that public persons had gathered at the spot but not accepted that public persons had given beatings to convicted accused Upender and Surender. It has observed that it has not been explained as to how Satender and Manoj managed to run away and were not detained. Reference can be made to the following observations:-

“43. Statements of PW2 and PW3 are found to be consistent regarding the manner in which both were assaulted by accused

Surender and Upender. As per them, accused Surender and Upender were armed with knives and with these knives they have assaulted deceased Sandeep and PW3 Subhash. Their statements are found to be credible and trustworthy regarding the involvement of accused Surender and Upender in this assault on deceased Sandeep and PW3. However, statements of these witnesses and other surrounding circumstances create doubt regarding the involvement of accused Satender and Manoj in this incident. As per the prosecution case, accused Surender and Upender were present at the spot and were taken by PCR to LBS Hospital along with PW3 and deceased Sandeep. Ex.PW7/C and Ex.PW8/D are the MLC of accused Upender and Surender, as per which they did not sustain any serious injuries in this incident. They were conscious and oriented. As per PW2 and PW3, both the accused Surender and Upender were apprehended by public person. As already discussed, no public witness has been examined to support statements of PW2 and PW3 to this effect. The point to ponder is that if as per PW2 and PW3, two accused Satender and Manoj managed to run away, then why accused Surender and Upender also did not slip away from the spot. The point which confronts this conclusion that if only Surender and Upender were involved in the assault, then prosecution version about recovery of four weapons of offence gets falsified. There are no finger prints taken by IO PW28 from these weapons to establish which accused used which weapon. While appreciating evidence in above paras, this court has come to the conclusion that it is a case of free fight and both groups were armed with weapons. It is thereby quite possible that two weapons were wielded by accused Surender and Upender and two were wielded by PW3 and

deceased Sandee.

44. Regarding the involvement of accused Satender and Manoj in this case, statements of PW2 and PW3 are found exaggerated being not supported by circumstances proved on record. The Court has to scrutinize evidence of the witnesses to find out whether the so-called exaggerations and embellishments really pertain to the basic prosecution case so that the entire evidence has to be discarded as being untrustworthy or the Court would be justified in embarking upon an inquiry for the purpose of separating the chaff from the grain and accept grain to base the convict. Reliance is placed upon (1999) 4 Supreme Court Cases 268 Manoj Alias Bhau and Others Vs. State of Maharashtra.

45. PW2 and PW3 are trying to mix truth with falsehood by falsely implicating accused Satender and Manoj. It the duty of the court to separate falsehood and if after scrutinizing the remaining evidence carefully the same is found to be trustworthy and the substratum of the prosecution case remains intact, then prosecution case can be believed to that extent. Reliance is placed upon (2009) 16 SC Cases 269 Janardan Singh Vs. State of Bihar. Relevant observation of Apex court is as follows:-

In such cases, as noticed earlier, a duty is cast upon the court to sift the evidence and after a close scrutiny with proper care and caution, to come to a judicial conclusion as to who out of the accused person can be considered to have actually committed the offence. This court is Deep Chand Vs. State of Haryana pointed out that the maxim falsus in uno, falsus in omnibus is not a sound rule to apply in the conditions in this country and, therefore, it is the duty of the court in cases where a a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinize the rest of his

evidence with care and caution. If the remaining evidence is trustworthy and substratum of the prosecution case remains intact, then the court should uphold the prosecution case to that extent. To the same effect is the judgment of this Court in Ranbir Vs. State of Punjab. In the instant case, the High Court has very elaborately dealt with the evidence of the eye witnesses and come to the conclusion that the appellant along is responsible for the deaths of Ashok Singh and Dalan Singh. We do not find any ground to interfere with such a finding of fact arrived at by the High Court. It may not be out of place to mention that the trial court, on facts, had also held that the accused was responsible for the murder of Ashok Singh and Dalan Singh.”

7. The conclusions reached by the trial court are reasonable and plausible and we do not think that the said conclusions require interference by granting leave to appeal against Satender and Manoj Kumar. The delay in recording statements of PW-2 and PW-3 under Section 161 Cr.P.C. on the involvement of the convicted accused, who were taken to hospital from the place of occurrence, itself was inconsequential. Their presence, it appears, was well established. The said delay is of consequence and importance on the question of involvement of Satender and Manoj, who were not found at the spot, no weapon used in the occurrence were recovered from them, the four weapons of offence used contradicts presence of more than four parties

at the occurrence specially when both the sides had suffered injuries as per the police version and animosity and ill-will is apparent and writ large. It is, in these circumstances, the trial court felt that the prosecution has not been able to prove the case beyond reasonable doubt against Satender and Manoj and they have been acquitted while Upender and Surender have been convicted. Noticeably, no public witness or third person has spoken about involvement of Satender and Manoj. In the cross-case also, the same trial court has acquitted Pankaj, Raj Kumar, Rajeev Mehta and Rakesh and has only convicted Subhash, who has deposed as PW-3 in the present case. The application for condonation of delay and leave to appeal are dismissed. We clarify that the observations made in the present order are for the purpose of disposal of the present application for leave to appeal and the appeal filed by Upender and Surender or the appeal filed by Subhash Chand being CrI.A. 42/2014, will be examined on their own merits, without being influenced by the findings recorded in this order.

**SANJIV KHANNA, J.**

**G.P. MITTAL, J.**

**APRIL 28, 2014  
NA/VKR**