

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

Date of Decision: 09.05.2014

+ CRL.A. 588/2010

RAKESH

..... Appellant

Through: Mr V.K. Shukla, Mr. A.K. Tripathi, Mr.
Saral Chaturvedi & Mr. B.R. Pandey, Advs.

versus

STATE

..... Respondent

Through: Ms. Ritu Gauba, APP for State

And

+ CRL.A. 602/2010

PAWAN

..... Appellant

Through: Mr. Sitab Ali Chaudhary & Mr. Md.
Hanzala Kazim, Advs.

versus

STATE

..... Respondent

Through: Ms. Ritu Gauba, APP for State

And

+ CRL.A. 1143/2010

PRAHLAD

..... Appellant

Through: Mr Banamali Shukla and Mr Shambhu
Sharan Shukla, Advs. with appellant in
person.

versus

STATE

..... Respondent

Through: Ms. Ritu Gauba, APP for State

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

JUDGEMENT

V.K. JAIN, J. (Oral)

On 02.10.2006, at about 9.30 PM, Police Station Uttam Nagar received information with respect to a quarrel at Barkat Ram Hospital, Shani Bazar, Hospital Road. The information was recorded vide DD No.47A and a copy of the said DD was given to ASI Sanwal Mal, for investigation. When the aforesaid police officer reached the spot, the complainant Naveen Kumar, S/o Om Prakash was present there. The complainant handed over to him, the appellants Pawan, Prahlad and Rakesh, whom he had apprehended with the help of his companion Manish Kumar and other persons. The police officer recorded the statement of Naveen Kumar who *inter alia* told him that on that day at about 9.00 PM, he along with his companion Naveen Kumar was going home on his motorcycle. When he stopped in Shani Bazar at Uttam Nagar to make some purchase and reached near Barkat Ram Hospital on Hospital Road, they found three boys quarrelling with a rickshaw puller. They asked the boys not to quarrel with the rickshaw pullers. Another boy on motorcycle also asked those three persons not to quarrel with the rickshaw puller. Thereupon, those persons released the rickshaw puller and two of them took out knives and one of them took out an iron *chheni*. Those persons attacked him, his companion Naveen as well as the other person who had come on motorcycle, using the aforesaid weapons. However, the persons who gathered on spot apprehended those three persons, who were later handed over to the police officer.

2. The case of the prosecution is that one knife having blade measuring 24 centimetre and wooden handle measuring 12 centimetre was seized from the appellant Pawan, one knife with a blade having length of 24.5 centimetre and wooden handle measuring 12 centimetre was seized from Prahlad and one iron *Chheni* sharp on one side and blunt on the other side and measuring 22 centimetre was seized from Rakesh. All the three appellants were arrested on the spot.

3. When Naveen S/o On Prakash was examined in the hospital, it was found that he had a deep cut from the base of his left ring finger till the mid of end and there was no finger movement in the ring finger. When the other injured Naveen S/o of Ram Kumar was examined, it was found that he had a large CLW over right temporal parietal region and the skin on the wound had been lost. He also had abrasions on his right thumb. Another injured Imran Ali was found to have CLW at the base of his right thumb and occipital region which were skin deep. There was numbness in his left hand finger and radial pulsation was negative.

4. All the three appellants were charge-sheeted and later charged under Section 308 of IPC read with Section 34 thereof, for the injury they had caused to Naveen S/o Om Prakash, Naveen S/o Ram Kumar and Imran Ali. Since they had pleaded not guilty to the charges, as many as 11 witnesses were examined

by the prosecution. Three witnesses were examined in defence.

5. The injured Naveen Kumar, S/o Om Prakash came in the witness-box as PW-5 and *inter alia* stated that on the day of this incident, he along with his friend Naveen, S/o Ram Kumar went to Shani Market, on motorcycle for purchasing goods. When they reached Shani Bazar, his bike touched the accused Pawan. Thereupon, Pawan started slapping him 30-40 times, whereas accused Prahlad and Rakesh started beating him. Two of them took knives and one took out a chisel and all of them started beating them. Pawan hit him with a knife on his left hand, whereas Rakesh hit him on the forehead with chisel. Pawan hit Naveen, S/o Ram Kumar with knife. The accused also hit other person with knife and chisel. He informed his parents who, in turn, informed Police Control Room. The police reached the spot and took him to Gandhi Nursing Home.

The other injured Naveen, S/o Ram Kumar came in the witness-box as PW-6 and *inter alia* stated that when they reached near Shani Bazar Chowk, their motorcycle collided with accused Pawan, whereupon the accused persons started beating his friend Naveen, S/o Om Prakash. When he (the witness) got down from the motorcycle, the accused started beating him. Pawan took out a knife and hit him firstly on his head and then on his right hand.

The third injured Mohd. Imran came in the witness-box as PW-4 and

stated that when their motorcycle collided with a person, five-six persons started beating him. One of them hit him with a knife on his head and left hand as a result of which he sustained injuries and became unconscious. He, however, could not identify the persons who had attacked him.

6. PW-3 Manoj Kumar *inter alia* stated that on 02.10.2006, he received a telephone call informing him that his cousin brother Naveen, S/o Ram Kumar and Naveen, S/o Om Prakash had been stabbed by someone in Uttam Nagar, Hastal, near Barkat Ram Hospital. On reaching the spot, he found his cousin brothers there in injured condition. The witness also identified the accused persons as the persons who were apprehended by the public and were present on the spot. He claimed that the accused Rakesh had a chisel with him, whereas the other two accused had knives in their hands.

PW-7 Constable Mahabir stated that on 02.10.2006, he along with ASI Sanwarmal went in front of Barkat Ram Hospital, Hastal Road, Uttam Nagar, where the injured Naveen met them. The accused Pawan, Prahlad and Rakesh were also present there having been over-powered by the public and knives as well as chisel were recovered from them.

PW-9 ASI Sanwarmal also deposed on the same lines and claimed that when they reached the spot, complainants Naveen Kumar, S/o Om Prakash and Naveen, S/o Ram Kumar as well as the members of the public handed over to

them, accused Pawan, Prahlad and Rakesh. Prahlad and Pawan had knife in their hands, whereas Rakesh had a chisel with him.

PW-10 Dr. Pawan Gandhi examined the injured Naveen, S/o Om Prakash in the hospital on 02.10.2006 and found a deep cut from the base of the left ring finger till the mid of end (anterior). He found no finger movement in the ring finger. He prepared the MLC of Naveen Ex.PW-10/A. This doctor also examined the other injured Naveen S/o Ram Kumar and found a large CLW over right temporal parietal region as well as abrasion on his right thumb. The MLC of Naveen Kumar, S/o Ram Kumar Ex.PW-10/B was prepared by this witness.

PW-11 Dr. S.K. Bhateja examined the injured Mohd. Imran Ali on 02.10.2006 and found deep cut wound on his left wrist, CLW on the base of his right thumb as well as a CLW on his occipital region which was skin deep.

7. In their statement under Section 313 Cr.P.C., the appellants denied the allegations against them and claimed to be innocent.

8. DW-1 Ms. Kamla stated that at about 10.00 PM on 02.10.2006, two police officials came to their house and took Rakesh and Pawan with them. On making enquiry at the police station, they came to know that they had been falsely implicated in the present case.

DW-2 Smt. Kanti has corroborated the deposition of DW-1 and she also

claimed that the aforesaid accused were taken by two police officials at about 10.30 PM on 02.10.2006.

DW-3 Shri Ashok Kumar also corroborated the deposition of DW-1 and DW-2 and stated that two police officials had taken Pawan and Rakesh with them.

9. Vide impugned judgment dated 09.04.2010, all the appellants were convicted under Section 308/34 of IPC and vide impugned Order on Sentence dated 12.04.2010, they were sentenced to undergo RI for two years each and to pay fine of Rs 5000/- each or to undergo SI for three months in default. Being aggrieved from their conviction and sentence awarded to them, the appellants are before this Court by way of these appeals.

10. The learned counsel for the appellant Prahlad has assailed the impugned decision on the following grounds:-

- i. the injuries, if any, were self-inflicted;
- ii. the accused were not medically examined though they were stated to be under influence of drug;
- iii. according to PW-4 Mohd. Imran, 5-6 persons had given beating to them, but only three persons have been prosecuted;
- iv. one witness, namely Mohd. Imran did not support the prosecution.

11. I do not find any merit in the contentions advanced by the learned

counsel for the appellant – Prahlad. There could be no reason for the injured person to cause injuries to themselves. This is more so, when the appellants do not claim any previous enmity. Even if some of the culprits were not prosecuted, that does not become a ground for acquittal of those charge against whom stands duly proved. Mohd. Imran supported the prosecution case, as regards the incident and injuries were also caused to him. His failure to identify the accused persons loses significance, since they have been identified by the other witnesses and were apprehended on the spot.

Rakesh

12. According to PW5 Naveen Kumar S/o Om Prakash, when the motorcycle hit the accused Pawan, he gave beatings by all the three accused namely Pawan, Prahlad and Rakesh and thereafter two of them took out knives and one took out a chisel. He claimed that Rakesh had hit him with chisel on his forehead. No other specific injury was imputed by the witness to the appellant Rakesh. A perusal of the MLC of this witness prepared at Gandhi Nursing Home does not indicate any injury at all on his forehead. He had only deep cut from the base of left ring finger till mid of the hand (interior) and no finger movement of his ring finger was noticed. A sharp cut was also found on his body though the MLC does not indicate at which part of the body the said sharp cut was noticed. Therefore, the deposition of the witness Naveen S/o Om

Prakash, imputing injuries on his forehead to the appellant Rakesh cannot be accepted. He did not impute injuries at other parts of his body to the appellant – Rakesh.

Admittedly, the incident in question was not a result of any pre-planning or pre-meditation and there was no previous enmity between the witnesses on the one hand and the accused persons on the other. The incident occurred all of a sudden on account of the motorcycle having touched the appellant Pawan. In these circumstances, the appellant Rakesh could not have anticipated that his co-accused would be using the weapons attributed to them or would cause injuries using those weapons at some vital part of the body of the injured persons. Therefore, it would be difficult to say that he shared a common intention with any of his co-accused to do an act with such intention or knowledge and under such circumstances that if death was caused by such act he would be guilty of culpable homicide not amounting to murder. The appellant Rakesh, therefore, is liable to be convicted only under Section 323 of IPC.

Pawan

13. According to the injured Naveen S/o Om Prakash, Pawan besides slapping him 30-40 times and giving knife blow on his left hand, had caused injury to Naveen S/o Ram Kumar with a knife. The injured Naveen S/o Ram

Kumar *inter alia* stated that Pawan had hit him with a knife on his head as well as on his right hand. PW4 Mohd. Imran stated that one person had hit him with a knife on his head and left hand. However, he could not tell who had caused injuries using knife on his head and his left hand. A perusal on the MLC of the injured Naveen Kumar S/o Ram Kumar would show that he had clean lacerated wound (CLW) with skin loss over right temporal region besides abrasion in his right thumb. The CLW could not have been caused from the blade of the knife though it could have been caused from the handle of the knife. I have perused the sketches of the knives seized from the appellant Pawan and Prahlad Ex.PW7/A & Ex.PW7/B. Both the sketches indicate that the knives alleged to have been seized from them were sharp edged weapons. Therefore, the injury to Naveen Kumar S/o Ram Kumar could not have been caused using the blade of these knives. If the appellant Pawan had caused injuries on the head of Naveen S/o Om Prakash from the handle side of the knife, it would be difficult to say that he did so with an intention or knowledge and under such circumstances that if by that Act he caused death he would be guilty of culpable homicide not amounting to murder. Therefore, the offence under Section 308 of IPC is not made out against the appellant Pawan on account of the injury found on the person of Naveen S/o Ram Kumar.

Though Imran claimed that he was given a knife blow on his head and

his left hand, since he did not identify the person who caused those injuries to him it cannot be said that whether the injuries to him were given by the appellant Pawan or the appellant Prahlad. A perusal of the deposition of PW11 Dr. S.K. Bhateja would show that Imran had CLW at the base of right thumb as well as on the occipital region. As noted earlier CLW could not have been caused using the blade of the knives alleged to have been seized from the appellants Prahlad and Pawan. Therefore, either those injuries could have been caused using the *chheni* which is alleged to have been recovered from the appellant Rakesh or from the handle of the knife alleged to have been seized from Pawan and Prahlad. None of the witnesses has imputed the injuries on the occipital region of Imran to Rakesh. In fact, according to the injured the aforesaid wounds were caused to him by a knife. The inference, therefore, would be that either the appellant Prahlad or the appellant Pawan caused those injuries to him using the handle of the knife for the purpose. Therefore, offence under Section 323 and not the offence under Section 308 of IPC is made out against the appellant – Pawan on account of the injuries found on the person of the injured Mohd. Imran and Naveen son of Ram Kumar. However, he would be guilty of the offence punishable under Section 324 of IPC for giving a cut blow, using the knife from the blade side, to the injured Naveen son of Om Prakash.

Prahlad

14. It has come in evidence that all the three accused had caused injuries to PW5 Naveen Kumar S/o Om Prakash and PW6 Naveen Kumar S/o Ram Kumar. Therefore, all of them would be guilty of the offence punishable under Section 323 of IPC read with Section 34 thereof.

Though in the MLC the injuries have been opined to be grievous, there is nothing on record to show that the aforesaid injuries were grievous hurt within the meaning of Section 320 of the Indian Penal Code.

15. For the reasons stated hereinabove, while acquitting them of the charges under Section 308/34 of IPC, all the appellants are convicted under Section 323/34 thereof. The appellant – Pawan is also convicted under Section 324 of IPC, for giving cut blow to Naveen son of Om Prakash from a knife. A perusal of the nominal rolls of the appellants dated 13.04.2010 shows that the appellant Prahalad has undergone 9 months and 16 days, appellant Pawan has undergone 1 month and 10 days and appellant Rakesh has undergone 1 month and 10 days in jail. Pawan, however, claims to have spent more than one year in jail. In the facts & circumstances of the case, the appellants are given benefit of probation. Accordingly they are released on furnishing bonds of peace and good conduct, in the sum of Rs.10,000/- each, with one surety each of the like amount, to the satisfaction of the trial court concerned for a period of one (1) year each.

During the period of probation the appellants shall maintain peace and good conduct and refrain from committing any crime. They shall appear, as and when directed, to receive the sentence imposed on them. The bonds will be furnished within four (4) weeks from today. They are also directed to pay Rs.10,000/- each as compensation. The appellant-Rakesh would pay compensation by way of pay order in the name of the injured Naveen Kumar S/o Ram Kumar. The appellant – Pawan shall pay compensation by way of pay order in the name of the injured Naveen Kumar S/o Om Prakash. The appellant-Prahlad shall pay compensation by way of pay order in the name of the injured Mohd. Imran. In the event of default in furnishing the bond and/or payment of compensation within four (4) weeks, the appellants shall undergo RI for one (1) year each.

The appeals stand disposed of accordingly.

One copy of this order be sent to the concerned Jail Superintendent for information and necessary action.

The LCR be sent back along with a copy of this order.

V.K. JAIN, J.

MAY 09, 2014
BG/b'nesh