

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

% *Date of decision: November 14, 2014*

+ **CRL.A. 1529/2011**

VIJAY Appellant
Represented by: Ms.Rakhi Dubey and Mr.Anuj Pal,
Advocates.

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP for the
State.

+ **CRL.A. 580/2012**

DEVI SINGH & ORS. Appellant
Represented by: Mr.Tushar Sharma, Advocate.

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Vijay appellant in CRL.A.1529/2011; Devi Singh, Lokesh and Yogesh appellants in CRL.A.580/2012 were charged with the offence of trespassing into the house of Mannu Dev Sharma and committing his murder and voluntarily causing hurt to Ms.Sunita. Vide the impugned judgment dated September 13, 2011, they have been convicted for the offences punishable under Sections 452/302/323/34 IPC and directed to undergo imprisonment for life for the offence punishable under Sections 302/34 IPC

and pay a fine of ₹10,000/- each, to undergo rigorous imprisonment for a period of 3 years and pay a fine of ₹5000/- each for the offence punishable under Section 452 IPC and to undergo rigorous imprisonment for a period of 1 year and pay a fine in sum of ₹1000/- each for the offence punishable under Section 323/34 IPC.

2. The appellants are all related: Lokesh and Yogesh being the sons of Devi Singh and Vijay his nephew. In their statement under Section 313 Cr.P.C. they have all pleaded false implication. It would be relevant to note the statement of Devi Singh which covers the case of Lokesh and Yogesh as well as under:

“Q. Have you anything else to say?

Ans. It is a false case. I have been falsely implicated in this case. I was inside my house at the said date and time and was having dinner with my wife when the quarrel was going on outside at about 8.30 PM and I went out at 9.30 PM to check and all the people had disbursed by that time and I did not notice anything. My children were not present there at that time. They were living in Aaya Nagar since 2007. I had sent them there when my dairy was demolished by the order of the Government, 2 years before the incident in 2007. Aaya Nagar is about 10-12 km away from my jhuggi. I do not know why Sunita has falsely implicated in this case.”

3. Even the defence of Vijay, the nephew of Devi Singh is that he was innocent and does not know why he was named by the witnesses. He states that he was not present with the other persons at that place on the said date, time and place as alleged and has been falsely implicated in this case being a native of the village. No defence evidence has been led by the appellants.

4. The case of the prosecution rests on the testimony of three eye-

witnesses PW-1 Sunita the wife of the deceased, Sonu Sharma and Lokesh @ Rocky the sons of the deceased. An information was received at PS R.K.Puram vide DD No.52A on October 20, 2008 at 9.58 PM regarding a quarrel at Sector-7, R.K.Puram Ekta Camp. SI Pratap Singh reached the spot from where injured had already been removed. On reaching Safdarjung hospital he found three injured; Mannu Dev, Sonu and Sunita who had been brought to the hospital. He recorded the statement of Sonu who stated on the night at around 9.30 PM his brother Rocky was returning home from duty when he and his father Mannu Dev saw Devi Singh and Yogesh, their neighbours had stopped Rocky in the gali and were abusing him. When Sonu and his father Mannu Dev intervened the accused threatened, bullied and left the place. They all came home. After some time Devi Singh came to their jhuggi along with his sons Yogesh, Lokesh and nephew Vijay. They were all armed with rods and dandas. They came inside the jhuggi in the outer room/verandah where Mannu Dev was resting on 'takht' and started abusing him. They beat his father. When his mother came out to save his father they gave injuries to her also. He saw accused persons hitting his father on head with rods and dandas. On hearing the noise the neighbours collected, on which the four ran away. His brother made a call to 100 number and they were brought to the hospital. On the basis of this statement FIR No.403/2008 under Section 452/308/34 IPC was registered. Later Mannu Dev expired on November 29, 2008 when offences under Sections 302/323 IPC were also added.

5. The post-mortem of Mannu Dev was conducted by Dr.Abhishek Yadav, PW-10 who authored the report Ex.PW-10/A. He found five ante mortem injuries including the surgical wound on the body of the deceased

and in his opinion the cause of death was cranio-cerebral damage due to head injury. All the injuries were ante-mortem in nature and injury Nos.2 to 5 as mentioned in the post-mortem report were produced due to blunt force. On the recovery of the weapons of offence i.e. the wooden danda and hollow metallic pipe he opined vide his subsequent opinion Ex.PW-10/B that the injuries No.2 to 5 in the post-mortem report were possible with the hollow metallic pipe.

6. Sonu Sharma while deposing as PW-6 in the witness box stated that on October 20, 2008 at about 9.30 PM while he was present at his house with his parents and brother Pawan, all of sudden he heard the noise of quarrel. Immediately he along with his father came outside and saw that Devi Singh and Yogesh present in the Court were abusing Rocky in the gall approaching towards their house. Thereafter Sonu along with his father and brother came to their house and the accused persons left the spot. His father was lying on the Takht in the Jhuggi and the mother in the room inside the jhuggi. After 5-10 minutes of this incident Devi Singh, Lokesh, Yogesh and Vijay came to their Jhuggi. Lokesh and Devi Singh were holding iron rods and Vijay and Yogesh were having dandas. All the accused persons started beating his father by the respective weapons. On hearing the alarm by his father, his mother also came out. They all tried to save their father on which Vijay gave a danda blow on his left hand. Yogesh gave blows on the hands, back and legs of his mother. They raised alarm and persons from the neighbourhood collected.

7. No MLC of Sonu has been placed on record to corroborate his version. Even the MLC of Sunita who has deposed in sync with Sonu only complains of assault and there is no external injury present. Thus the

version that Yogesh gave blow on the hands, back and legs of his mother by danda is an exaggeration, however the presence of Sonu and Sunita at the spot cannot be disputed since it was night time and they had also been taken to the hospital.

8. Though Rocky deposed in sync with Sonu however, Rocky stated that except Devi Singh who was having a rod in his hand, the other three accused persons were holding dandas in their hands whereas the case of Sonu was that Lokesh and Devi Singh were having iron rods and Vijay and Yogesh were having dandas. As per Rocky as soon as his mother and brother Sonu came there Vijay gave danda blow on the hand of Sonu and Vijay gave danda blow on the hand and back of his mother. As noted above there is no external injury to Sunita.

9. Despite some exaggeration in the testimony of witnesses there is a ring of truth in it and there is no reason to disbelieve their version in entirety. Though the plea of the appellants as noted above is of false implication and of alibi however, no defence evidence has been led. Further even in the cross-examination though it has been suggested that they have been falsely implicated it has not been suggested that the appellants were not present at the spot. It is trite law that a plea of alibi has to be proved by the defence though not beyond reasonable doubt but by preponderance of probability either by leading defence evidence or through cross-examination of the witnesses. However, this plea has not been proved by the defence as per the requirement of law.

10. As per the MLC of Mannu Dev Ex.PW-16/A there are three contused lacerated wound over the scalp of the deceased. The fact that only Devi Singh was having iron pipe and the rest were having the dandas is proved

from the recovery made at the instance of the accused wherein one iron pipe, two bamboo sticks and one wooden danda have been recovered. As per the opinion of Dr. Abhishek Yadav injury Nos. 2 to 5 were possible with the hollow metallic pipe recovered. Thus the iron rod stated by witnesses was a hollow metallic pipe. In the light of the evidence on record, after separating grain from the chaff it would be noticed that all the four accused had gone to the house of Mannu Devi in furtherance to their common intention where injuries were caused and the fatal injury Nos. 2 to 5 were from the hollow metallic rod which was in the hand of Devi Singh.

11. In the decision reported as 2012 (8) SCC 289 Rampal Singh vs. State the Supreme Court while considering the distinction between offences punishable under Section 302 IPC and Section 304 IPC held that the fine tools which help in determining the offences made out is an extent of brutality or cruelty with which the offence was caused. In the decision reported as (2009) 15 SCC 327 Sellapan Vs. State of Tamil Nadu in a case where the deceased was struck with a stick two or three times and died on account of craniocerebral injuries the Supreme Court converted the conviction from 302 IPC to 304 II IPC.

12. From the facts proved on record no case for conviction of the appellants for offence punishable under Section 302 IPC is made out. However, the appellants can clearly be attributed the knowledge that the act was likely to cause death. Thus the conviction of the appellants is altered from Section 302 IPC to one under Section 304 Part-II IPC read with Section 34 IPC.

13. Regarding the quantum of sentence as per the nominal roll the appellants have been in custody since the date of arrest i.e. November 20,

2008. Thus they have spent nearly six years of actual imprisonment and further nearly ten months of remissions.

14. Considering the sentence undergone by the appellants the impugned order on sentence is modified by reducing the same to the period already undergone. Consequently the appeals are disposed of directing the Superintendent, Central Jail, Tihar to release the appellants forthwith if not required in any other case.

15. T.C.R. be returned.

16. Copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the others to be handed over to the appellants.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 14, 2014
‘ga’/‘vn’