

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

% *Judgment Reserved on: November 27, 2014*
Judgment Delivered on: December 17, 2014

+ **CRL.A. 810/2014**

JEET SINGH @ JEETU & ANR Appellants
Represented by: Mr.Kaushal Yadav, Advocate.

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP for
the State with Inspector
Tarkeshwar Singh, SHO Nand
Nagri.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Jeet Singh @ Jeetu and Kalu @ Neeraj both sons of Chattarsen have been convicted for the offence of murder of Deewan, on the strength of testimony of Chet Ram PW-6 the brother of the deceased vide the impugned judgment dated April 29, 2014 and directed to undergo imprisonment for life and to pay a fine of ₹10,000/- each vide order dated May 07, 2014.

2. Learned counsel for the appellants contends that the presence of Chet Ram at the spot when the incident took place has not been proved as PW-4 Raghunath who informed the police does not depose about the presence of Chet Ram. There are contradictions in the version of Raghunath and Chet Ram as Raghunath says that an old person was present but Chet Ram does not say about the presence of an old person at the spot. The conduct of Chet

Ram is unnatural. He did not inform his family members immediately after the incident. No MLC of Chet Ram has been produced on record. No mechanical inspection of the motorcycle was got carried out to prove that the genesis of the occurrence which was due to Deevan and Chet Ram falling down with the motorcycle on the Maruti Car hitting the motorcycle. Further the genesis of occurrence is also not proved from the post-mortem report of the deceased as no injury was attributed to fall by the doctor. The FIR registered was clearly an afterthought as Chet Ram gave a written complaint to the police officer. No attempt was made to get identified the other two persons who were allegedly present with Jeetu and Kalu. There are contradictions in the version of the witnesses as to from where the recoveries were made. Despite the photograph showing a jacket lying at the spot, seizure memo Ex.PW-10/B shows the recovery of upper track shirt. Though Chet Ram claims that his clothes were blood stained however, as per SI Ajay Singh Negi PW-12 and Inspector Satish Kumar PW-19, there was no blood on the clothes of Chet Ram when they met him in the hospital. Chet Ram deposed that he and his brother left for the work after having lunch but the stomach of the deceased was found containing 30 CC mucoid material only. The name of Chet Ram does not find mention in the MLC. The Maruti car allegedly involved in the accident has not been recovered. As per the FSL report no blood was found on the track shoe, track pant and on the knife allegedly used in the crime. Hence the appellants be acquitted.

3. The defence of Jeetu is of false implication and in his explanation under Section 313 Cr.P.C he stated:

“Q.24 Do you want to say anything in you defence or otherwise? Do you want lead defence evidence?”

Ans. When it came to our notice that I have been named in the case, I went to our counsel in Karkardooma court and as per advices and police was called and I was handed over to the police. I had not given any statement to the police nor I took the police to any place. After my production before the Magistrate, the police kept me in Nand Nagri police lock up and I had not gone anywhere nor led the police to any place. The police had taken my clothes from my residence from my mother that I may be required to change after bath but no clothes was got recovered by me nor my clothes were stained with the blood. No knife was got recovered by me. I am innocent. I have been implicated falsely. I had studied upto 6th class and my age was got recorded two years more than my actual age. I was around 17 ½ years on the date of alleged incident. I want to lead DE.

Q.24A What is your date of birth?

Ans. I do not know. I had birth certificate but everything got damaged when our house received fire prior to one and half year of my admission in the school."

4. Before proceeding further we would like to deal with the plea of juvenility which Jeetu has taken in his statement under Section 313 Cr.P.C. as the same goes to the root of the matter. During the pendency of the trial an application was filed by Jeet Singh on March 13, 2013 claiming himself to be a juvenile. The concerned SHO was directed to collect the requisite certificate showing date of birth of Jeet Singh @ Jeetu and other school records from Rajkiya Sarvodaya Senior Secondary Bal Vidyalaya, Vishvas Nagar, Karkari Road, Shahdara, Delhi. As per the verification report received Jeet Singh, S/o of Chattar Singh was a student of the said school

wherein his date of birth was recorded as April 20, 1988 and the date of admission in School in Class VI was July 05, 1999. During the course of arguments learned counsel for Jeet Singh did not dispute the date of birth as recorded in the school records and thus his application was disposed of by the learned Trial Court on April 14, 2013 returning a finding that Jeet Singh @ Jeetu was not a juvenile on the date of incident i.e. February 07, 2008. The enquiry on the juvenility aspect having already been done by the learned Trial Court, no further enquiry on this plea in the statement under Section 313 Cr.PC is required from this Court.

5. Kalu also took the plea of false implication and in explanation under Section 313 Cr.P.C he stated:

“Q.23 Do you want to say anything in you defence or otherwise? Do you want lead defence evidence?”

Ans. There was oral altercation on 06.02.08 and the matter came to an end. Thence I made a departure for my duty on 07.02.08 at about 2.00 PM in Punjab and I came back on 08.02.08 in the evening. Since I was not present in Delhi, how I could have done anything as alleged. I am innocent. I have been implicated falsely. I want to lead defence evidence inclusive of owner/employer of the vehicle.”

6. They produced ASI Mahender Singh as DW-1, HC Gyan Chand as DW-2, Ct. Brij Pal as DW-3 and HC Mohd.Ali as DW-4 to prove the log book containing entries dated February 7, 8, 9, and 10, 2008 in respect of Vehicle No.DL-1CH-5466. However, the log book did not mention the purpose for which the vehicle was used.

7. Kalu @ Neeraj, appellant No.2 appeared as DW-5 and on oath stated

that he was driving vehicle DL-4CU-9380 being an employee of Amit Gandhi. On February 07, 2008 he had taken the passengers from Gali No.9, Vishwas Nagar around 2.00 or 2.30 PM and dropped them at Phagwara, Punjab. There were toll tax booths on both sides at Karnal, after crossing Ambala and before Phagwara. He came back to Delhi on February 08, 2008 and again paid toll tax at each of these toll booths.

8. The process of law was set into motion on receipt of DD No.17 at 4.00 PM on February 07, 2008 at Police Post Harsh Vihar, PS Nand Nagri informing that a boy was lying unconscious after beating at House No.383, Gali No.12, 20 feet road, Harsh Vihar. In the meantime, second call was received informing that a boy had received stab injury. HC Surender Singh PW-9 posted in PCR North East District reached the spot along with the other staff and observed one person lying in injured condition having various stab injury marks and was bleeding. One other person also met him at the spot and he disclosed his name as Chet Ram and informed that he was the brother of the injured Deewan. He took both of them to GTB Hospital in PCR van where the doctor declared Deewan brought dead.

9. SI Ajay Singh Negi, PW-12 reached the spot and in the meantime, SHO Inspector Satish Kumar also reached there. At the spot he saw one motorcycle bearing No.DL-7S-AZ-5825, make Bajaj Discover lying on the road. Upper part of the track suit of blue black colour and one black colour shoe of right leg were also lying. Lot of blood was lying 8-10 steps ahead at the spot. SI Ajay Singh Negi and Inspector Satish Kumar reached GTB Hospital where they collected the MLC of Deewan. Chet Ram, the brother of the deceased met them in the hospital and he handed over a hand written statement. He came back to the spot with Inspector Satish Kumar and Chet

Ram and after endorsing the statement of Chet Ram sent the same for registration of the FIR. Inspector Satish Kumar got the scene inspected by the Crime Team and photographed. The Investigating Officer took in possession the upper portion of the track suit and one shoe which was lying on the spot along with the blood etc.

10. Chet Ram in his statement Ex.PW-6/A stated that he was resident of House No.B-1/506, Gali No.18, Near Safed Mandir, Harsh Vihar, Delhi. He had three brothers. His elder brothers were Satyawar, Balwan and Deewan. Around two months ago his brother Deewan was working as a driver of Safari Car and now for the last one month he was filling the gas in the gas cylinders. When his brother was working as a driver he had befriended Kalu. He had seen Kalu and his brother Jeetu a number of times with his brother Deewan. On February 06, 2008 the two brothers i.e. Kalu and Jeetu who were residing at Harsh Vihar, Phase-II were going by their motorcycle. Kalu demanded money from his brother Deewan which his brother refused to give when Kalu and Jeetu abused him. Thereafter the two brothers i.e. Jeetu and Kalu came to their house on the motorcycle. On February 07, 2008 after having lunch he along with his brother Deewan were going to the shop on their motorcycle. At around 3.30 PM on 20 feet road, Harsh Vihar around 50 meters away from Kalu and Jeetu's residence a white Maruti hit their motorcycle. He and his brother Deewan fell on the road with the motorcycle. Kalu, Jeetu and two other persons whom he did not know but could recognise on seeing got down from the Maruti car with knives in their hands. They stabbed his brother by knives. He got scared and stood in the cover of an electricity pole and started shouting. When his brother Deewan started running in injured condition, Kalu, Jeetu and the two accomplices

stabbed his brother from the back as well and his brother fell on the road whereafter the four of them ran away in the Maruti Car. Someone called the PCR and in the PCR he brought his brother to GTB Hospital where the doctor declared him brought dead. He also stated that the police reached the spot and he has handed over a written complaint to them.

11. Post-mortem of Deewan was conducted by Dr.Sumit Tellewar, PW-13 who exhibited the report Ex.PW-13/A. He opined that the cause of death was due to shock as a result of haemorrhage due to ante mortem injuries to inferior vene-cava and abdomincal aorta produced by sharp cutting/stabbing weapon. The injury was sufficient to cause death in the ordinary course of nature and time since death was 18 hours. He also noted the corresponding cut marks on the clothing the deceased was wearing. He also handed over a shoe of left foot, one pair of socks, one leather jacket, one underwear, one pants having belt and one waist. He noticed the following injuries:

- “1. Reddish abrasion 7 cm x 0.6 cm on right side of chin.*
- 2. Reddish abrasion 1 cm x 1.5 cm on left side of chin.*
- 3. Reddish abrasion 1.3 cm x 1 cm on left side face, 2.5 cm in front of left ear tragous and 6.5 cm from ala of nose.*
- 4. Reddish abrasion 1 cm x 0.6 cm on right side eyebrow just adjacent to its outer border.*
- 5. Reddish abrasion 3 cm x 0.8 cm on right side of face, 1 cm away from outer canthus of right eye and 3.7 cm in front of right ear tragus.*
- 6. Reddish bruise 3 cm x 5 cm present on right lower chest, 6 cm away from the mid line and 11.5 cm below the right nipple.*

7. *Incised stab wound 3.2 cm x 0.1 cm on surface, present slightly obliquely over the right upper outer chest. Its lower, lateral acute angle is 6 cm away from right nipple and its upper medial blunt angle is 10.8 cm below clavicle. The track of the wound goes inwards, downwards and medially cutting through the soft tissues of the chest wall only to a depth of 6.7 cm.*
8. *Incised stab wound 2.9 cm x 0.1 cm on surface, present obliquely over the right upper back, its medial lower acute angle is 3.2 cm away from the mid line and upper lateral blunt angle is 4.7 cm below right shoulder blade. The track of the wound goes inwards, downwards and medially and cutting the soft issues and muscles of the back to a total depth of 5.5 cm.*
9. *Incised stab wound 3.2 cm x 0.1 cm on surface present obliquely over the left upper back. Its medial upper acute angle is 4.5 cm away from the mid line and lower lateral blunt angle is 13.5 cm below the left shoulder blade. The track of the wound was inwards, slightly downwards and medially cutting the soft tissues and muscles on the back to a depth of 7 cm.*
10. *Incised stab wound measuring 3.3 cm x 0.1 cm present obliquely over the left lower back. Its lower medial blunt angle is 7.5 cm from mid line and upper lateral acute angle is 7 cms away from the posterior axillary line. The track of the wound goes anteriorly, upwards and medially cutting through the muscles of the posterior back wall. It enters the left retroperitoneal area of the abdomen, now cutting through the psoas muscle still going medially cutting the inferior vene-cava and nicks the aorta. Thus, making a total length of 9.6 cm. The entire track is haemorrhagic.*
11. *Incised wound measuring 7.2 cm x 0.2 cm x 1.2 cm present at the left elbow joint region, 1.5 cm above the tip of*

olecrenon and 29 cm below left shoulder joint”.

12. Insp. Satish Kumar, the investigating officer stated that on March 08, 2008 at about 7.00 PM he got an information that Jeetu involved in this case would be coming to his house to meet his mother. Thus they reached Police booth, A block, Harsh Vihar and took positions near the house of Jeet Singh. At about 8.00 PM Jeetu was apprehended. Pursuant to his arrest he made a disclosure statement about throwing the weapon of offence i.e. knife by the side of the road approaching Haridwar. On February 10, 2008 Jeetu led the Police party to a place 3-4 Kms prior to Meerut bypass and Jeetu picked up a polythene bag which was lying at a short distance from the road-side in the bushes. The said polythene bag contained one knife which was having blood and was rusted at certain places. The polythene bag also contained one jeans pant and T-shirt of blue colour which were also blood stained. On April 10, 2008 the investigating officer received an information that Kalu will be visiting his house in Harsh Vihar and thus Police officer took position and apprehended Kalu @ Neeraj from near his house. He made a disclosure statement, however no recovery could be effected as according to him he had destroyed his clothes and thrown away the knife. Though the accused disclosed of having abandoned the Maruti car at Bhopura border, however the same could not be retrieved.

13. Chet Ram appeared as PW-6 and deposed in sync with his statement on the basis of which FIR was registered. One of the grounds challenging his testimony is that the post-mortem report does not show any fall injury and thus the version of Chet Ram that on the Maruti car hitting their motorcycle both Chet Ram and Deewan fell down on the road along with the

motorcycle is belied. This contention of learned counsel for the appellant ignores external injuries No.1 to 6 on the deceased which are reddish abrasions/ reddish bruise. Chet Ram alleged assault on deceased Deewan by Jeet Singh and Kalu and their two accomplices by knives and as per Dr.Sumit Tellewar injuries No.7, 8, 9, 10 and 11 were possible by the knife recovered. In cross-examination Dr. Sumit Tellewar stated that injuries No.1 to 6 mentioned in the post-mortem report are possible due to blunt force impact on the body and denied that they were possible by road side accident for the reason that these injuries were on the face. We are not in agreement with this opinion of Dr.Tellewar for the reason if a person falls on the face without helmet then these injuries are possible. Chet Ram did not state that they were wearing the helmet nor was one seized from the spot.

14. Though Raghunath PW-4 who made the phone call does not say about the presence of Chet Ram, however PW-9 HC Surender Singh who reached the spot immediately in the PCR has stated that at the spot he met one other person beside the injured who disclosed his name as Chet Ram and also informed him that the injured was his brother Deewan. He stated that he took both Chet Ram and Deewan to GTB hospital in the PCR. The MLC of Deewan Ex.PW-14A notes Deewan, S/o Rohtas, age 19 years, R/o G.No.18, Harsh Vihar, Delhi which particulars could have only been given by a known person.

15. Learned counsel for the appellant has sought to contend that the version of Chet Ram cannot be relied upon as according to him they had left the house after taking lunch, however as per the post-mortem report the stomach contained about 30 CC of mucoid material. Chet Ram did not give

the exact time when they had lunch and said they had the lunch and at around 3.30 they left their house to go to the shop of Deewan when on way the incident took place. Thus if the lunch was taken two hours prior to the incident the stomach would be empty. Moreover the abdominal cavity of the deceased contained 2 litres of clotted blood in retroperitoneal area and thus the stage of digestion of food could not be noticed. In the decision reported as (2010) 10 SCC 259 Abdul Sayeed Vs. State of M.P. the Supreme Court laid down the legal position regarding contradiction between medical evidence and ocular evidence held that it can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value viz-a-viz medical evidence, when medical evidence makes the ocular testimony improbable that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of ocular evidence being proved the ocular evidence may be disbelieved. This legal position was reiterated in (2012) 10 SCC 433 Kuriya & Anr. Vs. State of Rajasthan.

16. Learned counsel for the appellant has also assailed Chet Ram being the eye-witness on account of the fact that his testimony is not corroborated by the mechanical inspection report of the motorcycle which would show that it had damages due to fall. The investigating officer Satish Kumar PW-19 has deposed that he inspected the motorcycle lying at the spot and found skid mark on the guard of headlight of the motorcycle. In cross-examination though the investigating officer states that he did not get the motorcycle mechanically inspected, however he found damages like breaking of the glass/ headlight of the motorcycle. This lapse on the part of the investigating officer would not enure to the benefit of the appellants as in

case the testimony of an eye-witness is found reliable the Court can safely base conviction thereon and would look for corroboration only on material aspects as a rule of prudence. It is not a rule of Evidence that each and every statement of the eye-witness should be corroborated by other evidence on record.

17. The evidence of Chet Ram as eye-witness is also assailed on the ground that neither his MLC has been proved nor did he make any call to his family members after the incident. Immediately after the incident a call was made to the PCR and on arrival of the PCR Chet Ram and Deewan were taken to the hospital. Chet Ram has stated that due to panic he stood behind the electricity pole which is not unnatural. Chet Ram was a boy aged 17 years at the time of incident and his trying to hide at the time when four persons stabbed his brother cannot be said to be unnatural. The conduct of Chet Ram in writing the complaint on his own has also been assailed by the defence. Chet Ram was with his brother Deewan when the incident took place and he went along with him to the hospital. Chet Ram having written the complaint instead of the police officer on dictation of Chet Ram would make no difference.

18. In 1997 (7) SCC 712 Bhag Singh & Ors. Vs. State of Punjab Supreme Court noted the predicaments of an eye-witness and held:

“10. It is a general handicap attached to all eyewitnesses, if they fail to speak with precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all the events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be

weighed in golden scales, but with cogent standards. ”

19. The cross-examination of HC Dinesh Kumar PW-5 who was posted as Duty officer at PS Nand Nagri and had registered the FIR is not that he ante-timed the FIR but that he did not type it on his own but got it dictated to the concerned person who was expert on the computer and he did not mention in the copy of the FIR that the same are being sent to the concerned MM.

20. It is trite law that prosecution has to prove its case beyond reasonable doubt and not rule out every possible hypothesis put by the defence or meet any or every suggestion of the defence. In the decision reported as AIR 1992 SC 1579 Kirtan Bhuyan & Ors. Vs. State of Orissa it was held that

“It appears that the suspicion was entertained on a mere suggestion made by the defence to the investigating officer who admitted that after the FIR was recorded, Kirtan Bhuyan appellant along with two others appeared before him and told him that it was being said in the village that Bachha Naik P. W.3 had killed his grand-mother. The trial Judge went on to assume that thereafter a duty was cast on the prosecution to disprove or demolish such suggestive defence and that neither during the investigation nor at the trial stage did the prosecution venture to do so. To this approach, the High Court did not agree and we tend to agree with the High Court. Each and every suggestion of the defence at the investigation need not lead the investigator to follow it.”

21. As noted above the plea of Kalu @ Neeraj is of alibi. Appellant No.2 Kalu appeared in the witness box and stated that he had gone to Phagwara at 2/2.30 PM on February 07, 2008. The incident took place at around 3.30 PM. The six photocopies of the toll receipt though not exhibited but on the Trial Court record would show that even if Kalu had taken passengers to

Phagwara, he had reached the toll plaza at Karnal at 2015 hours on February 07, 2008 which is much beyond the time of incident i.e. 3.30 PM. Kalu neither produced the owner of the vehicle as to what time he had left Delhi nor the passenger to prove his version that he was not in Delhi at 3.30 PM which version is belied by the toll receipt which he himself has produced on record.

22. Consequently, we find no merit in the appeal and the same is dismissed. The appellants would suffer the remaining sentence.

23. T.C.R. be returned.

24. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 17, 2014
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