

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

*Judgment Reserved on: October 29, 2014*

% *Judgment Delivered on: November 03, 2014*

+ **CRL.A. 1075/2013**

PRATAP SINGH

..... Appellant

Represented by: Mr.R.K.Anand, Mr.Chetan Anand,  
Ms.Payal Juneja and Mr.Parminder  
Singh, Advocates.

versus

STATE (GOVT. OF NCT) DELHI

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP for the  
State with Inspector Pratap Singh,  
present posting Traffic.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. Pratap Singh assails the judgment dated April 22, 2013 convicting him for the offence punishable under Sections 302/201/506 IPC and the order on sentence dated April 26, 2013 directing him to undergo imprisonment for life and fine of ₹10,000/- for offence punishable under Section 302 IPC, rigorous imprisonment for a period of two years and a fine of ₹2,000/- for offence punishable under Section 201 IPC and rigorous imprisonment for a period of one year and a fine of ₹1,000/- for the offence punishable under Section 506 IPC.

2. Learned counsel for the appellant Pratap Singh assailing the judgment contends that despite the prosecution case being that Naresh @ Kalu was an eye-witness the FIR was registered on the statement of the mother of the deceased who was not the eye-witness. Naresh was in fact interrogated and

was one of the suspects immediately after the incident. The blood stained clothes of Naresh were not seized. The version of Naresh cannot be believed as he did not take the deceased Atul to the hospital. Even as per the prosecution case the deceased Atul along with his wife had shifted his residence to Bhajan Pura and thus the appellant would not be in the knowledge as to when Atul would come to Janak Puri. The defence version of the appellant has not been considered. Even after the incident and prior thereto number of calls had been exchanged between the appellant, the deceased and wife of the deceased. The deceased had two mobile phones however, the call details of one mobile phone have not been exhibited.

3. In his statement under Section 313 Cr.P.C. Pratap Singh denied that Atul shifted his residence due to the threats extended by him and stated that on the day of incident he was suffering from fever and had received a telephonic call from the wife of the deceased informing that Atul had been stabbed by someone and requested him to verify the same from her in-laws' house. When he went to verify he was implicated in this case. The two relevant questions i.e. Question No.22 and Question No.61 and their answers are as under:

*“Q.22. It is further in evidence against you that PW-9 further deposed that when he demanded rent, Atul replied that he is not having money and also told him that he was already disturbed due to non payment of loan to one Partap of DESU Colony and he is receiving threats from him and therefore he had shifted to C-289. What have you to say?”*

*Ans. It is incorrect. I had never extended any threat to Atul and had not given any money as loan to him so the question of demanding back the money does not arise.*

*Atul had not shifted from DESU Colony because of me, but because of frequent quarrels that used to occurs between his wife and his mother and because of the tension created of such quarrels in their house.*

*Q.61 Do you want to say anything else?*

*Ans. I am innocent. I have no role to play in the alleged incident in any manner. I was not even present at the said spot as alleged by the investigating agency. Deceased Atul was my good friend as we used to reside in the same locality and he used to eat and drink liquor with me occasionally. Mother of deceased, did not like me and told me after consuming liquor deceased Atul used to quarrel with her and other family members in the house and thus requested me that I should not allow Atul to consume liquor with me. I had not lended any money to the deceased as alleged. On the day of incident, I was at my house as I was suffering from fever. At about 10.30 p.m., I received a telephonic call from Rani wife of deceased that somebody had told her that Atul had been stabbed and requested me to enquire from the house of her in-laws about the veracity of the news. Therefore, I went to the house of deceased Atul and found various of residents of the locality standing there including the maternal aunt (mausi) of deceased Atul and on enquiry from her, I came to know that Atul had been stabbed and he was removed to DDU Hospital. I informed her about the call received from Rani and dialled the number of Rani from my mobile and maternal aunt of deceased conveyed about the stabbing to Rani. I also asked the maternal aunt, that I would accompany her to DDU Hospital for seeing the condition of Atul but she refused on the pretext that there is nobody in the house and left.*

*Naresh @ Kalu is also known to me being resident of*

*the locality and in fact he had lended money to deceased Atul from his bank account with Canara Bank A-3/12, Janakpuri, Delhi-110058 and his account number was 6929. Naresh @ Kalu used to quarrel with the deceased and in fact after the incident he was also picked up by the police officials along with three-four other boys and was beaten up by the police officials in police custody and there he told police officials that if he is released then he would depose as per their wishes and will against anybody. Naresh @ Kalu also visited jail to meet me seven times. Even prior to his deposition in the court, he visited me and demanded Rs.2 lacs from me and my family also to save me and threatened me if I do not pay him the money demanded then he would depose against me and would implicate me in the present case.*

*Deceased Atul was using two mobile phones i.e. Reliance connection no.9312542864 but investigating agency had deliberately not shown this mobile number.*

*I am innocent and have been falsely implicated in this case.”*

4. The appellant examined Arvind Kumar Singh, Assistant Superintendent, DW-1 to demonstrate that Naresh Kumar, PW-7 the sole eye-witness had come to meet Pratap Singh in jail on six dates. He also exhibited the details of the bank account and the cheque of ₹500/- drawn by Naresh Kumar in favour of Atul Kumar on January 13, 2007. He also examined witnesses with regard to the mobile phone No.9312542864 but no call details record were produced
5. Heard learned counsel for the parties and perused the record.
6. Process of law was set into motion on receipt of a message from the

Duty Head Constable at DDU Hospital at PS Janak Puri which was recorded as DD No.38A at 10.55 PM on July 18, 2007 informing that Atul son of Ashwini Kumar aged 30 years, House No.308, DESU Colony has been admitted in the hospital in injured condition by his mother vide MLC No.16926/2007 at the Hospital. SI P.K.Jha who was assigned the DD No.38A along with Constable Sunil Kumar reached DDU Hospital. He collected the MLC of Atul who was brought dead to the hospital by his mother Smt.Usha. He recorded the statement of Smt.Usha vide Ex.PW-19/B who stated that she was residing at 308, Type-II, DESU Colony, Janak Puri and has two sons. The eldest son's name was Atul who was driving the vehicles and the younger son was named Amit Dhir who was working in Dominos. On that day at around 10.00 PM she was present at her house when a boy named Kalu came to her and informed her that Atul was lying near the dustbin (Kudedaan). She went with Kalu and found that Atul was lying there smeared with blood. She asked Atul as to who had injured him on which Atul informed her that Pratap had injured him by a knife. She stated that Pratap was a friend of her son Atul and was staying near a Temple in DESU Colony. She brought Atul in a rickshaw to DDU Hospital where the Doctor declared him brought dead. She further stated that Atul had taken ₹23,000/- on loan from Pratap and Pratap used to often threaten to kill Atul and his wife for not returning the loan. Her son and daughter-in-law had left Janak Puri and taken a room on rent at Bhajan Pura since her son was terrorised from Pratap. She further stated that she was confident that her son had been murdered by Pratap.

7. Post-mortem on the dead body of Atul Dhir was conducted by Dr.Anil Shandil PW-11 who authored the report Ex.PW-11/A. He noticed the

following injuries on Atul:

*“1. Incised stab wound of size 4 cm x 2 cm x cavity deep over epigastrium 9 cm above umbilicus and 2 cm left midline, longitudinally placed with clean cut well defined regular margins with dried up blood and cots over the wound and margins. The injury penetrating through skin and underlined tissues with effused blood clots traversing through liver and stomach through and through correspondingly with corresponding cut (liver 2.6 cm, stomach 2.5 cm). Whole abdominal cavity filled with liquid blood and clots about 2.2 ltrs. (Haemoperitoneun) with spillage of unidentified gastric contents. All abdominal viscera pale.”*

8. Dr.Anil Shandil opined that the cause of death to the best of his knowledge was haemorrhagic shock from stab injury to liver and stomach which was ante mortem in nature and was sufficient to cause death in the ordinary course of nature from sharp edged weapon. On recovery of weapon of offence he also gave his subsequent opinion vide Ex.PW-11/B that the injuries mentioned in the post-mortem could be caused by the examined weapon of offence or similar like weapon.

9. The sole eye-witness of the incident is Naresh Kumar @ Kalu PW-7 who deposed that on July 18, 2007 at about 9.45 PM he was coming from Sagar Pur side towards DESU Colony. When he reached near House No.308, DESU Colony he noticed Atul was lying on the road and Pratap was running away with the blood stained knife. While running away Pratap threatened him that if he disclosed this incident to anyone he will meet the same fate and he also waived the knife in the air by threatening Naresh. He stated that he knew Pratap for the last 20-22 years as they both reside in the same colony. Naresh rushed to the house of Atul and called his mother. She

accompanied him to the spot where Atul was lying in the injured condition. In cross-examination Naresh clarified that when he saw Pratap and Atul there was no other person at the spot at 9.45 PM. However, he could neither admit nor deny that Pratap was threatening deceased Atul. He also stated that he had not accompanied the mother of Atul to the hospital rather went to his house due to the threats by the accused.

10. The case of the defence was that Naresh had given loan to Atul however, in the witness box Naresh denied having any loan transaction. However, Naresh stated that he had taken loan of ₹20,000/- from the Citi Bank during the lifetime of Atul and Atul had introduced him in the said bank while opening the account. Further as per DW-2 Ram Avtar Marwah, Clerk from Canara Bank, Janakpuri, only one cheque of ₹500/- was issued in favour of Atul Kumar by Naresh on January 13, 2007. Thus, the defence has not been able to prove any dispute between Naresh and Atul on money transaction.

11. However, we would ignore the version of Naresh Kumar as an eye-witness for the reason that when Naresh went to the mother of the deceased Smt.Usha Dhir he did not say to her that he saw the incident and that Pratap had injured her son but merely stated that her son was lying near the dustbin. There is yet another reason to discard the testimony of Naresh. As per the defence, Naresh had been visiting Pratap in Tihar Jail and demanding money from Pratap to give evidence in his favour. The defence by the evidence of DW-1 Arvind Kumar Singh, Assistant Superintendent, Central Jail, Tihar has sought to prove that Naresh visited Pratap on six dates i.e. January 27, 2009, January 30, 2009, June 19, 2009, July 10, 2009, July 28, 2009 and lastly on August 11, 2009. A perusal of the order sheet would show that

summons for the witnesses were issued on November 10, 2008 returnable on December 04, 2008 by the learned Trial Judge whereafter the case was transferred. However, till May 18, 2009 either the summons were not served or Naresh was not produced. On May 18, 2009 summons were issued for the presence of Naresh as a witness for July 31, 2009. Despite service Naresh was not present on July 31, 2009 and thus bailable warrants were issued in the sum of ₹1000/- against him with one surety of the like amount returnable on August 19, 2008 when Naresh was present. A perusal of the six dates on which Naresh met Pratap Singh would reveal that the dates for which summons for his presence as witness were issued and he did not appear and entered the witness box only after August 11, 2009 i.e. his last visit to Pratap in Tihar Jail.

12. Even ignoring the testimony of Naresh, there is sufficient evidence to prove beyond reasonable doubt that Pratap Singh stabbed Atul. Usha Dhir in her statement on the basis of which FIR was registered has stated that on asking her son told her that he had been stabbed by Pratap. This is a dying declaration made by the deceased to his mother which fact she deposed in her testimony before Court as well. This part of deposition of Usha Dhir in the Court is not challenged in the cross-examination.

13. Though it is the defence of the appellant that in fact Naresh was the assailant as there was money deal and the appellant has been falsely implicated however, the same is contrary to the version of Smt.Usha Dhir and Rani, the mother and the wife of Atul, the deceased. Usha Dhir in rukka itself had stated that her son Atul had taken ₹23,000/- on loan from Pratap and for this reason Pratap used to often threaten Atul and his wife for life and for this reason her son and daughter-in-law left the premises at Janak

Puri and shifted to a house in Bhajan Pura a week prior to the incident. This version is reiterated by Usha Dhir in her deposition before the Court. She has further deposed that even after Atul left for Bhajan Pura along with his family Pratap approached her two-three times inquiring about her deceased son and she assured him that his son would pay the amount in instalments but Pratap challenged that as and when the deceased will face him, he will smother him to death.

14. Rani PW-1 wife of Atul in her deposition has supported the version of her mother-in-law Usha Dhir. She stated that Pratap was a friend of her husband and used to visit their house in DESU Colony. Her husband had borrowed an amount of ₹23,000/- from Pratap for the purchase of Vikram three-wheeler scooter and had agreed to pay an interest @5% per month. Her husband was arranging to return the loan amount but he could not and Pratap was insisting on the return of the same at the earliest. Pratap started extending threats to her husband to kill him and because of the threats of Pratap a week prior to the incident she along with her husband had shifted to Bhajan Pura. On July 18, 2007 her husband had taken her and her son to her parents' house and left them there. While dropping them her husband stated that he would return after meeting his mother. At about 2.00 PM on July 18, 2007 a call was received on the mobile phone of her husband bearing No.9211390611 from Pratap who wanted to talk to her husband. When she stated that he had gone for some work and telephone was with her Pratap threatened her that in case the amount of ₹23,000/- with interest was not returned on that day he would kill her husband. Thereafter at about 8.00-8.15 PM Pratap again made a phone call. She requested Pratap to grant some more time but Pratap did not listen to her request and disconnected the

phone. She was terrified because of this call and thereafter made a call on the mobile number of Pratap i.e.9210790642. Despite her pleading to grant more time Pratap told her that she need not make any call to him as he had already murdered her husband (*MAINE USKA KAAM TAMAM KAR DIYA HAI*). Later she received an information from her mother-in-law about the murder of her husband in DESU Colony.

15. The version of Rani is corroborated by the phone call records which have been placed on record. There is no reason attributable to Rani and Usha to falsely implicate Pratap more so when the incident of Atul taking loan from Pratap and the threats extended by Pratap have been mentioned in the rukka itself. The making of phone calls between Rani and Pratap has been proved by the phone call records produced in Court by PW-16 M.N. Vijayan, Nodel Officer, Tata Tele Services, who has also exhibited the certificate under Section 65 of the Indian Evidence Act as Ex.PW16/E thus corroborating the version of Rani.

16. The threats given by Pratap which was the reason for shifting of Atul with his family to Bhajanpura also stand corroborated by the version of independent witness Moti Lal PW-9 who was the owner of premises at Bhajanpura, Street No.C6, Plot No.289. Moti Lal deposed that Jagdish Prasad Verma called him and requested that that one room of his house No.C-289 be given on rent to his nephew Atul, who would reside there along with his wife and kid and on the guarantee and responsibility of Jagdish Prasad Verma. Thus, he rented the said room to Atul, who started living there from July 10, 2007 on a monthly rent of ₹500/-. When Atul met him in H.No.C-289, he demanded rent from him, however Atul stated that he had no money and that Jagdish Prasad Verma has taken guarantee and would pay

the amount. Atul further told him that he had already disturbed due to non-payment of loan to Pratap of Desu Colony and he was receiving threats from him due to which he had shifted to C-289.

17. Thus, we are of the opinion that even discarding the testimony of Naresh Kumar there is ample material on record proved by the prosecution that proves beyond reasonable doubt that Pratap was the assailant who killed Atul for non-repayment of ₹23,000/- along with the interest thereon. The fact that Usha Dhir immediately took Atul to the hospital in the TSR is corroborated by the seizure of her blood stained clothes.

18. Consequently, we find no merit in the present appeal. The same is dismissed. The appellant will suffer the remaining sentence.

19. T.C.R. be returned.

20. 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**

**NOVEMBER 03, 2014/‘vn’**