

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

RESERVED ON : 22nd APRIL, 2014

DECIDED ON : 18th JULY, 2014

+ CRL.A.1279/2011, CRL.M.B.385/2014 & CRL.M.A.2732/2014

BHUDEV PAL @ BOBY Appellant

Through : Mr.Prem Kumar, Advocate with
Mr.Harindra Singh, Mr.Bhasker &
Mr.Rakesh Kumar, Advocates.

versus

THE STATE (NCT OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.

AND

RESERVED ON : 30th MAY, 2014

DECIDED ON : 18th JULY, 2014

+ CRL.A. 550/2013

SUNIL Appellant

Through : Ms.Aishwarya Rao, Advocate.

versus

THE STATE (NCT OF DELHI) Respondent

Through : Mr.Lovkesh Sawhney, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 23.08.2011 of learned Addl. Sessions Judge in Sessions Case No. 44/08 arising out of FIR No. 607/07 PS Punjabi Bagh by which the appellants – Bhudev Pal @ Bobby (A-1) and Sunil (A-2) were convicted under Sections 304 (II)/323/452/34 IPC. By an order 27.08.2011, they were sentenced to undergo RI for ten years with fine ₹ 5,000/- each under Section 304 (II)/34 IPC; RI for one year with fine ₹ 1,000/- each under Section 323/34 IPC; RI for three years with fine ₹ 5,000/- each under Section 452/34 IPC. The substantive sentences were to operate concurrently.

2. Shorn of details, the prosecution case as unfolded during trial was that on 27.08.2007, at around 10.00 P.M. at house No.L-27/1, Railway Colony, Shakur Basti, Punjabi Bagh, Delhi, the appellants in furtherance of common intention with their associate Prakash (facing trial before Juvenile Justice Board) inflicted injuries to Ram Dulare and Beena Devi after committing house trespass. The police swung into action on getting information about the quarrel and Daily Diary (DD) No. 62B (Ex.PW-2/A) came into existence at 10.35 P.M. at PS Punjabi Bagh. The

investigation was entrusted to ASI Lallan Prashad who with Const.Satish went to the spot. The victims had already been taken to Sanjay Gandhi Memorial Hospital (in short : SGM Hospital) by PCR Van. The Investigating Officer collected the MLCs of the victims. Ram Dulare was unfit to make statement and was referred to Trauma Centre for treatment. On 31.08.2007, after recording Beena Devi's statement (Ex.PW-3/A), the Investigating Officer lodged First Information Report. On 01.09.2007, A-1 and A-2 surrendered in the Court and were arrested. Pursuant to their disclosure statements, the crime weapons were recovered. On 02.09.2007, Ram Dulare succumbed to the injuries in the Trauma Centre. Post-mortem examination of the body was conducted. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against the appellants; they were duly charged and brought to trial. The prosecution examined eleven witnesses to further its case. In 313 statements, the appellants denied their complicity in the crime and pleaded false implication without examining any witness in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeals.

3. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and erred

in relying upon the sole testimony of interested witness i.e. deceased's wife without independent corroboration. The appellants who were not named in the FIR had no extraneous motive to inflict severe injuries to the victim with whom they had no prior animosity. No independent public witness was associated at any stage of the investigation. It was emphatically contended that the statement of the deceased's wife was full of discrepancies and contradictions. Referring to admission in the cross-examination, he urged that the victim was in the habit of consuming liquor and used to quarrel with his family members when they objected to it. On the day of incident itself, he was under the influence of liquor and sustained injuries due to fall after having struck against an electric pole in the street. The appellants were not author of the injuries to the victim and were not present there. Counsel further urged that the delay in lodging the First Information Report remained un-explained. The complainant in her statement did not describe if the victim had suffered any head injury in the quarrel. Exonerating the appellants, she clearly stated that she had no grievance or grudge and did not want any action against them. Ingredients of Section 304 part-II IPC are not attracted and proved. Learned Addl. Public Prosecutor urged that PW-3 (Beena Devi) has supported the prosecution on material facts and there are no valid reasons to discard her

statement. She being an illiterate and rustic woman, certain discrepancies emerged in her statement which are not material to discard her version in its entirety.

4. The occurrence in which the victims sustained injuries happened at around 10.00 P.M. on 27.08.2007. PW-11 (ASI Umed Singh), In-charge PCR, after getting information of a quarrel at about 11.00 P.M., went to the spot i.e. house No.L-27/1, Railway Colony, Shakur Basti, Punjabi Bagh, Delhi immediately and found Ram Dulare in an injured condition. He admitted him in SGM Hospital in emergency. PW-2 (Const.Niazzuddin) recorded Daily Diary (DD) No.62B (Ex.PW-2/A) at about 10.35 P.M. regarding the quarrel at the said place. Victim Ram Dulare was medically examined at SGM Hospital by MLC (Ex.PW-4/B) at 11.15 P.M. PW-10 (Dr.Brijesh Singh) examining doctor deposed that the patient was brought to casualty with the history of physical assault, loss of consciousness and mouth bleeding. On local examination, he found the following injuries :

- “1. Swelling & abrasion around left eye.*
- 2. Bruise over left side of chest.”*

The patient was referred to surgery department for further management and opinion. The victim was unconscious to make any statement. In the cross-examination, he stated that the patient was referred for CT Scan and disclosed that from the overall report, he could anticipate 'head' injuries on the patient. The blood had oozed out from the mouth. He denied medical negligence in the treatment of the patient. The witness was not cross-examined to ascertain if the patient was under influence of liquor or had consumed liquor. Nothing was suggested to him if the injuries found on the body were possible due to fall.

Material testimony is that of PW-4 (Dr.Manoj Dhingra) who conducted post-mortem examination (Ex.PW-4/A) on the body on 03.09.2007. Following injuries were found :

“External Injury :

- 1. Abrasion over left side of face & swelling present just below left eye.*
- 2. Abrasion over left side of shoulder of size 3 x 2 c.m.*
- 3. Bruise over left side of chest of size 2 x 1 c.m.*

Internal Injury :

*Head – Sub Scalp Hematoma present over left frontal region.
Sub arachonoid hemorrhage over left tempo parital region.
Fracture right parital bone. ”*

Cause of death was 'coma' as a result of head injury consequent to blunt force impact. All the injuries were ante-mortem in nature and of same duration. The opinion regarding the cause of death remained unchallenged. Again, nothing was suggested if the injuries were result of fall after striking against an electric pole or whether the patient had consumed liquor or was under its influence. The post-mortem examination report (Ex.PW-4/A) does not show if the victim had consumed liquor prior to the occurrence. Nothing was suggested if the injuries suffered by the victim were not sufficient to cause death in the ordinary course of nature or that the death was due to victim's weakness for consumption of liquor or it was the result of medical negligence. The victim was hale and hearty before the incident in his house. After sustaining injuries in the altercation, he lost consciousness and went into 'coma'. Despite regular medical treatment for seven days, he could not come out of 'coma' and ultimately succumbed to the injuries. Apparently, the injuries internal or external caused to him had direct nexus with his death. It was a case of culpable homicide.

5. Crucial testimony to infer the appellants' complicity in the crime is that of PW-3 (Beena Devi) victim's wife whose presence in the house at the relevant time is undeniable. She herself suffered injuries in

the incident at the hands of the assailants and was medically examined. PW-8 (Dr.Manoj Dhingra) proved her MLC (Ex.PW-4/C) by identifying signatures of examining – doctor Mr.Aditya. She was taken to SGM Hospital with the alleged history of ‘physical assault’. On local examination, one Clear Lacerated Wound (CLW) over left parietal wound (1.5 cm x 0.5 cm) was found. PW-3 (Beena Devi) in her testimony also claimed that she was injured by the accused persons on her head. Injuries suffered by the witness, confirms her presence at the spot at the time of the incident.

6. PW-3 (Beena Devi) categorically implicated the appellants for inflicting multiple injuries to her husband Ram Dulare. She deposed that in August, 2007 at night time when she, her husband (since deceased) and children were present in the house. A-1, A-2 and Prakash (facing trial before the Juvenile Justice Board) who lived in their neighbourhood started peeping in their house through window. When her husband objected to it, they entered inside the house with dandas and started beating him; she was also beaten on her head. Police officials took both of them to SGM Hospital. Her husband became unconscious and started bleeding profusely due to the injuries caused to him. He was shifted to

Trauma Centre where he died after two or three days. She identified the crime weapons (Ex.P1, Ex.P2 & Ex.P3).

In the cross-examination by learned Addl. Public Prosecutor after seeking Court's permission, she disclosed that the accused persons entered into her house after her husband objected to their peeping into the house and they started abusing them. She admitted the suggestion that appellants had thicker / thinner dandas. She further admitted that when she tried to intervene to save her husband, A-1 said "first we would see my husband" and thereafter, the accused persons started beating her husband as a result of which he (Ram Dulare) fell down. The accused persons again hit him on his face several times. She was also pushed and injured in her attempt to rescue him. The testimony proves the version given to the police at the first instance in her statement (Ex.PW-3/A) without major variations. The assailants who lived in the neighbourhood were known to her. No ulterior reasons or motive was ascribed to her to falsely name the appellants as assailants for inflicting injuries to her husband. The victim gave detailed account of the occurrence and attributed specific and definite role to each of the assailants for their participation in the crime. She accused all of them for the fatal injuries caused to the victim. She being the victim's wife and herself injured in the incident was not

expected to spare the real offenders and implicate innocent ones. Her testimony inspires implicit confidence and in the absence of inherent infirmities or flaws, her version cannot be suspected. Her testimony is in consonance with medical evidence referred above and there is no conflict between the two.

7. It is true that there was delay in lodging the First Information Report on 31.08.2007 by the Investigating Officer. For the delay, the complainant cannot be held responsible as the police machinery was set in motion in promptitude when information about the incident was conveyed and Daily Diary (DD) No.62B (Ex.PW-2/A) came into existence at 10.35 P.M. at PS Punjabi Bagh, ASI Lallan Prashad was entrusted with the investigation. It was for him to record the statement of the complainant at the time of his visit to the hospital. Ram Dulare was unconscious to make any statement. PW-3 (Beena Devi) being an illiterate lady was not in a position to compel the Investigating Officer to record her statement. The Investigating Officer has reasoned that on the day of incident she was reluctant to record her statement due to injuries inflicted to her husband. It appears that initially the matter was not taken seriously as the injuries on the body of the victim were not externally visible. When the victim could not come out of 'coma' despite regular treatment for number of days, the

Investigating Officer thought it fit to record complainant's statement. In her statement (Ex.PW-3/A), she gave vivid description of the incident and named the appellants and their associate Prakash for causing injuries to her and her husband. For delay in lodging the report, the otherwise cogent testimony of the witness cannot be discredited.

In the cross-examination, she admitted the suggestion that she did not make any case against the accused and it were the police officials who registered the case against them. She was fair enough to state that after the incident, she had no quarrel with the family of the accused persons; she had no grudge against any of them and had no complaint against them. She admitted that prior to the incident there was no quarrel or enmity. Certain discrepancies definitely emerged in her cross-examination. However, Beena Devi's deposition is to be scrutinised as a whole. She being an illiterate and rustic lady could not face the grilling cross-examination when attempt was made to confuse her by putting one after the other question. She was, however, certain and firm that the accused persons were the author of injuries inflicted to her husband. Even in the cross-examination, she admitted that her husband had received injuries on his left eye and chest which were in the nature of abrasions / bruises and she did not care much considering them minor.

She admitted that her husband did not get any injury from 'danda' but was quick to add voluntarily, "the accused were beating me and when my husband intervened, he received injuries."

8. During examination-in-chief, the complainant informed the Trial Court that she was unable to remember all the details of the incident as she had received four stitches on her head. Apparently, the witness was not completely in a physical and mental position to narrate the details of the incident due to injuries sustained by her. For that reason, she even admitted that her husband had consumed liquor on the day of incident and he used to keep unwell in general. She further admitted that she used to tell her husband not to take liquor but he never paid heed; they used to quarrel on his habit to take liquor. She further stated that on the day of incident none else except she and her husband were present in the house. No quarrel between her husband and all the three accused persons took place regarding consumption of liquor. She also admitted that injuries were caused on the person of her husband by hitting against electricity pole on chest and he lost consciousness. All these wavering statements reflect her state of mind during her deposition before the Court.

9. During investigation, nothing emerged if any such quarrel had taken place near any electricity pole in the street. Site-plan (Ex.PW-

6/D) does not show existence of any such electricity pole near the house of the victim. In Ex.PW-6/D 'A' has been shown the place / spot where the victim was beaten with dandas inside the house after committing trespass. PW-6 (ASI Lallan Prashad), the Investigating Officer, who prepared the site-plan was not questioned in the cross-examination regarding the existence of any such electricity pole near the victim's house. From the very inception, the prosecution had claimed that the occurrence had taken place inside the house of the victim. The PCR official – PW-11 (ASI Umed Singh) was not asked a question as to where the victim was lying in injured condition when he took him for admission in the hospital. His statement is categorical that after receiving a call of quarrel, he went to the spot i.e. house No.L-27/1, Railway Colony, Shakur Basti, Punjabi Bagh, Delhi, and found Ram Dulare in injured condition. The testimony remained unchallenged. Nothing was suggested to him if there was any electric pole in the street and the injured was lying there unconscious. PW-3 (Beena Devi), in her examination-in-chief, did not testify if the victim had come out of the house after sustaining injuries and had struck against an electric pole. As observed above, no material except the bald statement in the cross-examination of the witness came on record to ascertain if the deceased had consumed liquor on that day or was under

its influence. The medical evidence does not substantiate consumption of liquor by the deceased. Simply because, PW-3 (Beena Devi) has given certain answers to the questions put to her favouring the appellants, ocular testimony given by her in the examination-in-chief, coupled with medical evidence cannot be disbelieved. Her evidence is required to be considered in proper perspective.

In the opinion of PW-4 (Dr.Manoj Dhingra) cause of death was 'coma' as a result of head injuries consequent to blunt force impact. Since the victim had fallen on the ground inside the house after the assault, it is unbelievable that he would go in the street near the electric pole as alleged. PW-4 (Dr.Manoj Dhingra) found a fracture of the right parital bone. No question was put to him if internal injuries sustained by the victim were possible due to fall after hitting against an electric pole.

10. The Trial Court has dealt with all these contentions minutely to outrightly reject them with cogent reasons. The findings are based upon fair and proper appraisal of the evidence and need no intervention. Since the injuries were inflicted on vital organs, the conviction under Section 304 part-II IPC cannot be faulted. The unarmed victim was assaulted and attacked repeatedly by dandas by assailants numbering three sharing common intention. When his wife intervened to save him, she was also

injured. Post-event conduct of the assailants to flee away from the spot also points an accusing finger against them. Instead of taking care of their neighbour, they absconded after the incident. The impact of the injuries caused to the victim was so serious that he lost consciousness and started bleeding from mouth. Despite continuous treatment for number of days, he could not come out of 'coma' and finally, succumbed to the injuries. PW-3 (Beena Devi) categorically deposed that the appellants were responsible and perpetrator of the crime in causing injuries to her husband. Minor discrepancies, improvements and contradictions highlighted by the appellants' counsel are not fatal to the prosecution case. Recovery of the crime weapons at the appellants' instance is another incriminating circumstance against them. The plight of the lady can be seen as she could not visit her husband during his stay in the hospital. She was under misconception that the injuries sustained by him were not serious and he would come alive.

The appellants did not give plausible explanation to the incriminating circumstances in their 313 statements. They had no reasons to be present inside the victim's house at odd hours. In 313 statements, they were not categorical to claim that the victim had struck against an electric pole and had suffered injury on head on that count.

11. The appellants were awarded various prison terms including RI for ten years with fine ₹ 5,000/- under Section 304 (II)/34 IPC. A-1's nominal roll dated 26.02.2014 reveals that he has suffered incarceration for four years, four months and twenty one days besides remission for one year as on 26.02.2014. A-2's nominal roll dated 23.07.2013 shows that he is in custody for five years and eleven months besides remission for eight months and twenty three days as on 01.08.2013. They are not involved in any other criminal case and are not previous convicts. They are the first offenders and their overall jail conduct is satisfactory. The occurrence took place over a trivial issue. The parties lived peacefully as neighbours since long without any past history of hostile relations. The injuries inflicted to the victim were not visible and due to internal injuries, despite treatment, he could not be saved. Sentence order records that A-1 had a family consisting of his old parents, pregnant wife and son aged about five years. He was about 26 years of age and was the sole bread earner of the family. A-2 was aged about 22 years and was to support a family consisting of his old parents; he was also the sole bread earner of the family. At the same time, the Court is not oblivious of the fact that an innocent life was done to death without any fault of his by giving merciless beatings without provocation inside his house. Taking into

consideration the mitigating and aggravating circumstances, substantive sentence is reduced / altered to RI for eight years from RI for ten years. Other terms and conditions of the sentence order are left undisturbed. The appellants shall deposit ₹ 50,000/- each to be paid as compensation to the deceased's wife – Beena Devi, in the Trial Court within fifteen days and the amount so deposited will be released to her after notice.

12. The appeals stand disposed of in the above terms. Pending applications also stand disposed of. A-2 is on bail. He is directed to surrender and serve the remainder of his sentence. For this purpose, he shall surrender before the Trial Court on 28th July, 2014. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

JULY 18, 2014 / *tr*