

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

% Date of decision: September 18, 2014

+ **CRL.A. 1213/2010**

ARVIND @ PINTU & ORS

..... Appellants

Represented by: Mr.Mohammad Shamikh,
Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP for
the State with SI Mohd.Faizan
Ghani, PS Welcome.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Appellants challenge the impugned judgment September 20, 2010 convicting them for the offence punishable under Sections 302/34 IPC and the order on sentence dated September 23, 2010 directing them to undergo imprisonment for life and to pay a fine of ₹5,000/- and in default of payment of fine to undergo Rigorous Imprisonment for one year each.

2. DD No.33A received at 10.10 PM on December 12, 2008 sprung the police into action. The information was that “*at 65 foota road near transformer, Water Tank Arvind @ Pintu and Somnath @ Putli along with two-three persons are stabbing Netrapal @ Nishta with knives repeatedly in order to take his life and police be sent*”. HC Shripal PW-3, who was assigned this information, reached the spot. Injured Netrapal had already been taken to the hospital by his brother Babu Ram PW-1. At the spot he met Firoz PW-6 and recorded his statement as under:

“He is an electrician by profession. On that day, at about 9.30 or 10.00 p.m. he was returning from Jaffrabad after meeting his brother. When he reached 65 feet Road, near Transformer, Water Tank, Janta Colony, his friend Netarpal @ Mithan met him and they both began to talk with each other. In the meanwhile, four persons namely Arvind @ Pintu, Somnath @ Putli, Yadram @ Phattu and Bharat @ Chunmun, who were known to him, came from Transformer Wali Gali. Yadram asked Netarpal as to why he had gone to their house. Thereupon, he caught hold of Netarpal @ Mithan. Accused Arvind @ Pintu and Som Nath @ Putli who were holding ‘chhuras’ in their hands, which were wrapped in the newspaper, took out the ‘chhuras’ from the newspaper and stabbed Netarpal @ Mithan indiscriminately. Accused Bharat @ Chunmun also gave beating with fists and blows to Netarpal. Thereafter, he being scared, ran away from the spot. After a short while, when all the four assailants left, he came back at the spot and found that Netarpal was removed to GTB hospital by his brother Babu Ram and other persons.”

3. On the basis of this statement, a case under Section 307/34 IPC was registered. MLC of injured Netarpal @ Mithan was collected. Injured was declared ‘brought dead’ by the concerned doctor. Offence u/s 307/34 IPC was converted into Section 302/34 IPC. Statement of Babu Ram PW-1 brother of the deceased and the eye-witness was also recorded.

4. Post-mortem of the body of the deceased was conducted by Dr.Meghali PW-11 who noticed the following external ante mortem injuries:

1. *Incised wound measuring 12 cm x 0.2 cm x 0.4 cm present on the left parieto-occipital region and also involving the left ear helix. The upper end was 8.5 cm lateral to mid line and the lower end was 2 cm lateral to tragus and 1 cm below highest point on pinna. There was underlying cut fracture left occipital bone measuring 8 x 0.2 x 0.2 cm.*

2. *Incised wound measuring 1 x 0.2 x 0.2 present on left ear lobule and was obliquely placed.*
3. *Incised stabbed wound measuring 2 x 0.2 x 5 cm obliquely placed on left upper chest, 9 cm above left areola and 8.5 cm lateral to mid line. The wound was wedge shaped with lower lateral angle acute. The direction of the wound track was medial, downwards, and posterior cutting through the skin, subcutaneous tissue and muscles of the chest wall. No major blood vessels were cut. Haemorrhage and extravasation of blood seen through out the track.*
4. *Incised stabbed wound measuring 3.2 x 0.2 x 4 cm obliquely placed on left upper chest. 4 cm from mid line and 2.5 cm above left aerola and 6 cm medial and below to injury No.3. The wound was wedge shaped with lower lateral angle being acute. The direction of the track was downwards, medially, and posteriorly cutting through the skin, subcutaneous tissue and muscles of left anterior chest wall cutting the sternum at the level of 3rd inter-costal space and producing a nick in the pericardial sac and entering the pericardial cavity.*
5. *Incised stabbed wound measuring 4.4 x 0.2 x 13 cm present obliquely on left chest 4 cm below left aerola, 7.5 cm from mid line and 13.5 cm below Injury No.3. The wound was wedge shaped with lower lateral angle being acute. The direction of the wound track was downwards, backwards and medially cutting the fifth rib in mid clavicular line, cutting the left lung resulting in partial transaction of lingual and then cutting the pericardial sac entering the pericardial cavity cutting through and through the apex of the heart entering the abdomen cavity but cutting through the left dome of diaphragm and cutting the left lob of liver. Haemorrhage and extravasation of blood seen through the wound track.*

6. *Incised stabbed wound measuring 6 x 0.2 x 18 cm obliquely present in the mid line of chest, 21.5 cm above umbilicus and 10 cm below supersternal notch. The wound is wedge shaped. The upper end is slightly towards the right and the lower medial angle is acute. The direction of the wound track is upwards, towards the right and posteriorly cutting through the skin, subcutaneous tissue and muscles of the right chest wall. No major blood vessels were cut. Haemorrhage and extravasation of blood seen through out the track.*
7. *Incised stabbed wound measuring 4 x 0.2 x 12 cm present obliquely on right lower chest, 1.5 cm from mid line and 18 cm below sternal notch and 3.5 cm below Injury no.6. The wound is wedge shaped with lower medial angle acute. The direction of the wound was downwards, posteriorly and laterally towards the right side cutting through the skin, subcutaneous tissues and muscles of right chest wall. No major blood vessels were cut. Haemorrhage and extravasation of blood seen through out the track.*
8. *Incised stabbed wound measuring 2.3 x 0.2 x 8 cm present vertically on right chest, just below right aerola, 10 cm from mid line. The wound was wedge shaped with lower and acute. The direction of the wound was downwards, medially and posteriorly cutting through the skin, subcutaneous tissues and muscles of right chest wall. No major blood vessels were cut. Haemorrhage and extravasation of blood seen through out the track.*
9. *Incised wound measuring 11.5 x 0.2 x bone deep horizontally present on antero lateral aspect of left mid arm, 15 cm below shoulder tip with underlying cut fracture of humerus bone.*
10. *Incised wound measuring 3.5 x 0.2 x 4.5 cm vertically present on antero lateral aspect of left mid arm, 0.5 cm*

below injury No.9.

- 11. Incised stabbed wound measuring 3.4 x 0.2 x 11 cm obliquely entering through the lateral aspect of left lower arm, 3 cm above olecranon process. The lower lateral angle was acute. The track of the wound was seen cutting through the skin subcutaneous tissues, muscle and cutting the postero medial surface of left humerus bone and then emerging out on the medial aspect of left lower arm. 14 cm below left axilla. The lower medial angle was acute. No major blood vessel was cut. The incised stabbed wound was 2.6 x 0.2 cm on medial aspect of left lower arm.*
- 12. Incised stabbed wound measuring 2 x 0.2 cm horizontally present on antero medial aspect of right lower thigh, 6 cm above upper border of right patella and outer angle lies in line with the medial border of patella. The medial (inner) angle was acute. The direction of the track of the wound was upwards, posteriorly and laterally cutting through the skin, subcutaneous tissue and muscle of the lower thigh with depth of 4 cm. No major blood vessel was cut and haemorrhage and extravasation of blood was seen through out the track of wound.*
- 13. Incised stabbed wound measuring 5.5 x 0.2 x 9.5 cm obliquely present on antero lateral aspect of left upper thigh, 37.5 cm above superior border of patella and 16 cm from mid line of left thigh. The lower lateral angle was acute and direction of the wound was downwards, posteriorly and laterally. The track of the wound was seen cutting through the skin subcutaneous tissue and muscles of left thigh. No major blood vessel was cut and haemorrhage and extravasation of blood seen through out the track of the wound.*
- 14. Incised stabbed wound measuring 5 x 0.2 x 9.5 cm present on left scapular region, 15 cm below shoulder*

top, 5 cm lateral to posterior axillary fold. The wound was vertically placed. The upper angle was acute. The direction of the track of the wound was forwards, laterally and slightly downwards with extravasation of blood in the track cutting through the skin, subcutaneous tissue and muscles of posterior chest wall. No major blood vessel was cut.

5. PW-11 Dr.Meghali opined the cause of death to be due to shock as a result of haemorrhage from multiple incised and stab wounds present on head, chest, abdomen and limbs. All the injuries were produced by sharp edged weapon. Injury Nos.4 and 5 were sufficient to cause death in the ordinary course of nature both independently and collectively. Time since death was about 3/4th of a day.

6. Pursuant to arrest of Arvind and Somnath, a knife each was recovered at their instance. The same were seized and subsequent opinion was sought. After examining the knives and the post-mortem report Dr.Meghali opined vide Ex.PW-11/C that:

“(1) Injuries No.1, 2, 4, 5, 7, 9, 10 and 11 were possible with either of these two weapons A & B or these type of weapons;

(2) Injuries No.1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12 were possible with weapon A or this type of weapon;

(3) Injuries No.1, 2, 4, 5, 6, 7, 9, 10, 11, 13 and 14 were possible with weapon B or this type of weapon.”

7. In the witness box Firoz PW-6 deposed in sync with his statement made before the Police. The contention of learned counsel for the appellants is that the conduct of Firoz is highly unnatural. He being an eye-witness did not call the Police nor took the injured Netrapal to the hospital rather went away to his house. Firoz in his cross-examination has clarified that he was

not having mobile phone as his mobile phone was kept at his residence. Thus he could not have called at the Police Station. He deposed that immediately after the incident Babu Ram PW-1 took the injured to the hospital. Further the call had been made by some other number to the Police Station. There is nothing unnatural in the conduct of Firoz not accompanying the injured to the hospital as the injured was taken by his brother Babu Ram who was also an eye witness.

8. Babu Ram PW-1, the brother of the deceased was present at the spot whose statement was recorded immediately on the same date. As per the MLC of Netrapal he got admitted in the Hospital by Babu Ram. Babu Ram deposed that on December 10, 2008 he was going to Dharma Hotel in his colony to have food. When he reached near the Transformer Wali Gali, near Water Tank, B Block, Janta Colony at about 9.30-10.00 PM he saw a gathering and saw his brother was being beaten by the accused persons. According to him Putli and Pintoo were having 'chhuris' in their hands and were inflicting injuries to Netrapal. Chunmun was giving beatings to his brother by legs and fists and Pattu was holding his brother from behind. When Babu Ram abused all these persons they threw Netrapal at Babu Ram and ran away. He took him to the hospital in a TSR where he was declared brought dead.

9. Learned counsel assails the fact that Babu Ram was not an eye witness on the account that he has not mentioned the name of the assailants in the MLC. The names of the assailants have been mentioned in the PCR call itself which was recorded immediately when the incident was happening. Babu Ram had taken his brother to the hospital with multiple stab wounds in a panic situation. Thus not informing the doctor about the

names of the assailants cannot be a reason to discard his version.

10. As noted above as per the post mortem report the deceased has received as many as 14 stab injuries mostly on the left and the right side of the chest and all on the front side of the body, which shows that he was caught from the back. The number of injuries also corroborate the version of the eyewitnesses that there was more than one person assaulting Netrapal. The FSL report examined the clothes of the deceased and the knives recovered and opined that the corresponding cut marks on the clothes of the deceased were possible by the two knives recovered.

11. There is no reason to disbelieve the version of the two eye-witnesses Babu Ram and Firoz which is sufficiently corroborated on material particulars. Thus we uphold the judgment of conviction and order on sentence. The appeal is accordingly dismissed. The appellants will suffer the remaining sentence.

12. T.C.R. be returned.

13. 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

SEPTEMBER 18, 2014
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