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

% *Judgment reserved on : May 18, 2016*
Judgment delivered on: May 19, 2016

\+ CRL.A. 1316/2015

MANGAL SINGH ..... Appellant

Represented by: Mr. Saurabh Tyagi, Ms. Richa Sharma, Advs.

versus

STATE (GOVT OF NCT) DELHI ..... Respondent

Represented by: Ms. Rajni Gupta, APP for State with SI Praveen Kumar, PS Ranhola.

\+ CRL.A. 198/2016

AJAY ..... Appellant

Represented by: Mr. Sunil Singh, Adv.

versus

STATE ..... Respondent

Represented by: Ms. Rajni Gupta, APP for State with SI Praveen Kumar, PS Ranhola.

\+ CRL.A. 3/2016

SUMIT ..... Appellant

Represented by: Mr. Sunil Singh, Adv.

versus

THE STATE (NCT OF DELHI) ..... Respondent

Represented by: Ms. Rajni Gupta, APP for State with SI Praveen Kumar, PS Ranhola.

+ CRL.A. 95/2016

VINEET @ PAWA ..... Appellant

Represented by: Mr. Ajit Kumar with Ms. Nutan Kumar, Advs.

versus

THE STATE (NCT OF DELHI) ..... Respondent

Represented by: Ms. Rajni Gupta, APP for State with SI Praveen Kumar, PS Ranhola.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By these appeals the appellants challenge the common impugned judgment dated 7th October, 2010 whereby they along with accused Sunil Paswan have been convicted for offence punishable under Section 307 IPC r/w Section 34 IPC in FIR No.80/2012 registered as PS Ranhola, Delhi and the order on sentence dated 23rd October, 2015 directing them to undergo Rigorous Imprisonment for a period of five years and fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment of three months each.

2. The prosecution case in brief is that on receipt of DD No.2A Ex.PW-9/A at 12.50 AM on the intervening night of 7th/8th April, 2012 recorded by ASI Resham Pal (PW-9), ASI Ashok Kumar (PW-12) reached the spot, that is, B-2 Block, Suraksha Vihar, Commander Chowk where he found no eye witness nor did he receive any information regarding the incident so he kept the DD pending. On the same day another DD No.6A Ex.PW-11/A recorded at 2.30 AM was received regarding admission of injured Ajay in the DDU hospital. ASI Ashok Kumar went to DDU Hospital where he

came to know that the injured had been taken to Tilak Nagar for X-ray. Thereafter he went to Tilak Nagar Janta X-ray where he met the injured Ajay Kumar Sharma and recorded his statement Ex.PW-2/A.

3. Ajay Kumar Sharma, son of Bhullan Singh PW-2 stated that he was working as Head Constable in Delhi Police. His father used to sit at Shop No.1 Sharma Market, Durga Chowk, Vikas Nagar. On 7th April, 2012 flooring work was being done in the shop. At around 10.30 PM there was some confrontation with respect to lifting of the pant of the mason between the mason and Pawa, younger brother of Ajay S/o Harnam. The matter was settled after Pawa apologised to the mason. At around 11.00 PM, the appellants along with other persons came to the spot. Sunil Paswan S/o Asarfi Paswan was carrying a knife, younger brother of Sunil was carrying a danda. Sunil exhorted that *"yehi police wala Ajay hai. Aaj Yeh nahi bachna chahiye"*. Sunil Paswan gave him several knife blows and younger brother of Sunil gave him a danda blow on his head. Pawa**,** Sumit**,** Ajay, the fat boy and two-three boys were throwing pieces of bricks on the complainant. The complainant tried to stop Sunil from giving him knife blows due to which the complainant injured his hand. Due to injuries, the complainant fell down and on this Sunil stated '*ab iska kaam tamam ho gaya hai, ab hum apne ko khud chot mar kar police ko dhoka dekar bachne ke liye kaam karenge*' and thereafter all of them ran away from the spot. He stated that somebody took him to Ashirwad Clinic from where his brother brought him to DDU hospital.

4. Learned counsel for the appellant Mangal Singh contends that despite the complainant knowing Mangal Singh prior to the incident which fact he admitted in the cross-examination, still his name was not mentioned in the

ruqqa. The appellant has been falsely roped in the present case. No test identification parade of the appellant got conducted. The case against Mangal Singh was manipulated by way of supplementary statement dated May 18, 2012 after the appellant filed an anticipatory bail application wherein statement was made by IO that no FIR was registered against Mangal Singh. The victim was under the influence of alcohol and may have received injuries somewhere else. No recovery was effected at the instance of Mangal Singh and he had no motive to cause injury to the complainant. Subhash Gupta PW-5 who reached the spot immediately after the incident and was the only witness besides PW-2 did not depose against the appellant Mangal Singh. The motive of quarrel has not been established even in the statement of PW-2. No role has been assigned to Mangal Singh. No intention on the part of Mangal Singh to have committed the offence is attributable. Sanjay, brother of PW-2 who took the injured to DDU, Hospital has not been examined. Neither the mason nor anybody else from the locality was examined.

5. Learned counsels for the appellants Sumit, Ajay and Vineet @ Pawa contend that no recovery whatsoever has been effected at their instance. Further the appellants were not taken on remand for the recovery of alleged weapons. It was alleged that confrontation took place on account of lifting of pant, stealing Rs.40/- to Rs.50/- and one dairy between Pawa and the mason however neither the money nor the diary was recovered. The mason was never produced in the witness box. Statement of PW-5 is not reliable as he was a planted witness. PW-5 in his examination in chief denied seeing any accused causing injuries to the complainant. No public witness has supported the prosecution case. The complainant alleged that he suffered 17

injuries by the use of knife from Sunil Paswan but nothing has been specifically alleged to show the participation of the appellants. Further the MLC shows that only 12 injuries were inflicted upon the complainant. Despite the fact that house of PW-2 was just 200 meter away from the place of alleged incident, nobody from his family came forward to save the complainant. Further other accused persons who were named in the statement of the complainant made under Section 161 Cr.P.C., were not arrested by the Investigating Officer and no valid reason was furnished for the same. Even as per the statement of PW-2, the motive if at all was attributable to Sunil Paswan and no other accused persons. Though younger brother of Sunil Paswan is also mentioned in the FIR however he was not apprehended. In the MLC only three injuries are by sharp weapon. The basic ingredients of offence punishable under Section 307 IPC have not been proved. Reliance is placed on the decisions of this Court reported as 2008 (4) JCC 2420 *Rajesh @ Hunny & Munny Vs. State* and 204(2013) DLT 35 *Rahisuddin & Ors. Vs. State*.

6. Learned counsel for the appellants Sumit and Ajay further contends that the injured did not deny that Ajay and Sumit removed him to the hospital. He only stated that he was unconscious. However, this plea is unsubstantiated. X-ray of the skull shows no abnormality nor does the CT scan report.

7. Learned APP for the state on the other hand contends that merely because Mangal Singh is not named in the FIR, he cannot be acquitted for the reason the FIR is not an encyclopaedia of entire prosecution case. Reliance is placed on the decisions reported as 2007 Crl.L.J. 758(1) *Rotash Vs. State of Rajasthan* and 2008 Crl.L.J. 2038(1) *Animireddy Venkata*

Ramana & Ors. Vs. Public Prosecutor, H.C. of A.P. For attracting the provisions of Section 307 IPC, no injury is necessary whereas in the present case, the accused persons were armed with knife, danda and also threw pieces of bricks on the injured which demonstrate their common intention. The injuries are on the vital part of the body. To attract Section 34 IPC it is not necessary that a specific role should be assigned to each and every assailant and in a melee when the person is under attack by number of assailants, he is not expected to give blow by blow account**.** Relying on the decision reported as (2010) 10 SCC 259 *Abdul Sayeed Vs. State of Madhya Pradesh* it is contended that credence must be given to the testimony of an injured witness. The version of the injured is corroborated by the fact that jeans pant of Sunil Paswan and shirts of Ajay and Sumit were stained with blood of the injured. There was no suggestion to the witnesses that there was previous animosity. Bhagwan the meason could not be examined as he was called from the crossing and was not known to the injured prior to the incident.

8. PW-2 Ajay Kumar deposed in sync with the complaint Ex.PW-2/A on the basis of which FIR was registered. He also deposed that accused Sunil Paswan gave 17 knife blows on his head and the others gave danda blows and brick blows on the head and other parts of his body. He also stated that he knew all the accused persons prior to the incident.

9. PW-5 Subhash Gupta, resident of the same locality where the incident took place deposed that on the date of incident at about 11.00 PM he heard the noise coming from the street on which he came out of the house and saw Ajay Kumar in an injured and unconscious condition. He also saw one thin boy hitting Ajay Kumar with brick, who thereafter ran away from the spot.

On this PW-5 made a call to 100 number from his mobile and left the spot. On the next day police came to his house and inquired about the incident. He denied the suggestion of counsels for Mangal Singh, Sumit and Vineet that he was a planted witness by the Investigating Officer. In the cross-examination by learned counsel for appellant Ajay this witness deposed that being a heart patient he left the spot after making a call at 100 number and did not know at what time the police arrived.

10. PW-12 ASI Ashok Kumar deposed that after receiving the copy of the FIR he along with HC Subhash, PW-7 went to DDU hospital and seized the blood stained shirt of injured Ajay vide memo Ex.PW-7/A. Thereafter he reached the spot and inspected the same. He met PW-5 Subhash Chand at whose instance the site plan Ex.PW-5/A was prepared. He also seized blood stained pieces of bricks and stones from the spot vide seizure memo Ex.PW-5/B. Search was made for the accused persons. Thereafter secret informer met him and disclosed that accused Sunil Paswan was present near his house. On the pointing out of secret informer accused Sunil Paswan was arrested vide arrest memo Ex.PW-7/B, his personal search was conducted vide memo PW-7/C and his disclosure statement was recorded vide Ex.PW-7/D. Clothes, that is, pants, shirt and baniyan of accused Sunil Paswan were seized vide seizure memo PW-7/E. Thereafter Sunil Paswan led to the house of Ajay, that is, at House No.B-95, Shiv Vihar. At the instance of accused Sunil Paswan, Ajay was apprehended and interrogated. Accused Ajay produced bloodstained shirt which he was wearing at the time of incident which was seized. Thereafter at the instance of both the accused that is Sunil Paswan and Ajay accused Sumit was arrested. PW-12 seized bloodstained shirt of accused Sumit which he was wearing at the time of

incident. PW-12 also sent six parcels of the above seized articles to FSL Rohini through PW-10 Constable Virender. On 19th June, 2012 at the instance of complainant accused Vineet @ Pawa was apprehended. As per FSL report Ex.PW-12/I blood was detected on brick pieces, jeans pant of Sunil Paswan, shirts of Ajay and Sumit which matched with blood on complaint's shirt.

11. Detailed MLC of Ajay Sharma was prepared by Dr.Sachin under the supervision of Dr.Neeraj Kumar Garg, PW-6 who proved the handwriting and signatures of Dr.Sachin. PW-6 deposed that PW-2 had sustained 12 injuries. Injuries Nos. 5,6, and 7 were sharp and others were blunt. Dr.Shashi, Senior Resident, PW-8 examined PW-2 the injured from the point of neuro surgery and opined that CT head was normal. On receiving complaint of intermittent headache from PW-2 further investigation was done by MRI in which it was revealed that there was thin sub-dural hematoma causing no mass effect with small haemorrhagic, contusion right temporal lobe, with minimal perilesional edema. Based on MRI finding, PW-2 was admitted for four days. He made his endorsement on the back side of MLC Ex.PW-6/A which is Ex.PW-8/A. On the basis of neurological opinion, the injuries were opined to be grievous in nature. As per the MLC Ex.PW-6/A Ajay Kumar Sharma received the following injuries:-

1. Abrasion over right hand's middle finger over anterior and posterior aspect.
2. CLW of size 3.5 x 0.5 cm over biparital region, another CLW 1.5 back side of this measuring 1.5 x 0.8 cm over biparital region.
3. CLW of size 6 x 0.8 cm over left forehead with traumatic swelling.
4. CLW of (V) shape present over mid tempero parietal

region one side measuring 3 x 0.5 x 0.5 cm and another side 1.5 x 0.5 x 0.5 cm.

5. CLW of size 6 x 0.6 x 0.6 cm over right tempero-parietal region telling toward downward.
6. CLW of size 7 x 0.6 x 0.6 cm over right tempero-occipital region telling toward downward.
7. CLW of size 7 x 0.5 x 0.6 cm over right occipital region telling toward down.
8. CLW of size 1 x 0.5 cm below right eye lid.
9. Swelling with tenderness + over right negometic region.
10. Swelling with tender + over right paratoide region.
11. Swelling + over right periobital region with redness in right eye.
12. Swelling with tenderness over mandible region adv. 0.5 ml 1/m.

12. In the statement of Ajay Kumar Sharma, PW-2 on the basis of which FIR was registered, name of Mangal Singh was not mentioned. In his cross-examination PW-2 admitted that he knew Mangal Singh besides the other accused persons prior to the incident. Thus, there is no reason why the name of Mangal Singh who was known to PW-2 was not mentioned in the FIR. No test identification parade of Mangal Singh was carried out. The FIR in the present case was registered on April 08, 2012 i.e. the date of incident itself. Attention was drawn in cross-examination of the investigating officer to the anticipatory bail application filed by Mangal Singh which came up for hearing on May 16, 2012 wherein it was stated by the police that neither any FIR was registered nor any complaint was pending against Mangal Singh and the explanation of the Investigating Officer ASI Ashok Kumar PW-12 was that ASI Jai Singh might have appeared before the Court on the previous date.

13. I find substance in the argument of learned counsel for the appellant

Mangal Singh that despite having known him prior to the incident, the injured did not name Mangal Singh in the FIR and only after the anticipatory bail application was filed, supplementary statement was recorded and the injured named the appellant Mangal Singh. No doubt, FIR is not a complete encyclopaedia of the prosecution case. However in this case when the statement of injured was recorded, he was in a conscious and fit state of mind, which is evident from the detailed FIR lodged by him. He has named Vineet @ Pawa, Ajay, Sunil Paswan, Sumit brother of Sunil Paswan giving their parentage besides 3-4 boys whom he clearly stated that he did not know and gave their description. In this view of the matter, this Court is of the considered opinion that Mangal Singh is entitled to the benefit of doubt and thus he is acquitted for the offence charged with.

14. As regards appellants Ajay, Sumit and Vineet @ Pawa, they are all named in the FIR thus there is no improvement in the testimony of PW-2 with regard to their involvement. The common intention of Ajay, Sumit and Vineet is evident from the fact that after the quarrel took place with Vineet, he went back after about ½ hour along with his brother, Ajay, Sunil Paswan, Sumit and 3-4 other boys of which Sunil Paswan was armed with knife and younger brother of Sunil with Danda. The role attributed to appellants i.e. Ajay, Sumit and Vineet in the FIR is that they hit the injured with the pieces of bricks lying on the road. In his deposition before the Court, Ajay stated that Sunil Paswan gave 17 knife blows on his head whereas other accused persons gave danda blows and brick blows on his head as well as other part of the body. Even though 17 knife blows may be an exaggeration but from the MLC of the injured it is clear that he received 12 injuries on the head, eye, hand etc. of which three injuries were by sharp weapon, rest by blunt

object and grievous in nature. When an injured received multiple assaults in quick succession i.e. attack from all sides, it is not possible for him to state which accused assaulted him by which weapon and where.

15. The number of assaults on the vital part of the injured i.e. head proves the common intention of the accused persons to cause injuries which may if death ensued would have amounted to murder. Merely because Sunil Paswan only gave the exhortation would not show that the other accused who accompanied him did not share the common intention for the reason all the accused persons came together with one of them armed with knife and other with danda and in furtherance thereof when Sunil Paswan injured the deceased with knife blows and his brother with danda blows the appellants Ajay, Sumit and Vineet along with others hit the deceased with pieces of bricks lying at the spot.

16. Non-examination of the mason or the brother of Ajay, who took him to the hospital would not discredit otherwise credible version of Ajay Kumar for the reason they were not witnesses to the assault. Further the mason was not known to the injured's family and his whereabouts not being known he could not be produced as a witness to corroborate the version of the injured, to corroborate the genesis of the occurrence. Further even non-recovery of the knife or dandas would not belie the testimony of Ajay Kumar Sharma. Specific role of hitting by pieces of bricks had been attributed to the appellants Ajay, Sumit and Vineet.

17. Learned counsel for the appellants Sumit and Ajay argued that they took the injured to the hospital and in turn they were implicated. Suggestion in this regard was given to the injured who stated that he was unconscious and only public person can tell whether Ajay and Sumit had taken him to the

hospital. It may be noted that shirts of Ajay and Sumit have been found to be stained with blood which matches with the blood of the injured and it appears that for this reason they have sought to take the plea that they removed the injured to the hospital. In case, Ajay and Sumit had removed the injured to Ashirwad Clinic, they would have been in a position to produce the relevant medical record or examine the doctor which they failed to do. Though not required to prove beyond reasonable doubt, Sumit and Ajay were required to probabilize their defense, in which they failed. Merely on the basis of this suggestion that Ajay and Sumit took the injured to the hospital, the specific averment of the injured that Sumit and Ajay also assaulted him cannot be belied. Thus, I find no merit in the contentions raised by learned counsels for Sumit, Vineet and Ajay.

18. The impugned judgment of conviction and order on sentence qua Mangal Singh is set aside, however the same is upheld qua appellants Ajay, Sumit and Vineet. Mangal Singh who is in custody be released forthwith by the Superintendent, Central Jail Tihar if not required in any other case.

19. Consequently, Crl.A. 1316/2015 is disposed of while Crl.A. Nos. 198/2016, 3/2016 and 95/2016 are dismissed.

20. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

21. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 19, 2016
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