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

+ **CRL.A. 82/2003**

SITA RAM & ANR.

..... Appellants

Through: Mr. K. B. Andley, Sr. Advocate  
with Mr. M. Shamikh and Mr. Anurag  
Andley, Advocates.

versus

STATE OF DELHI

..... Respondent

Through: Mr. Hirein Sharma, APP for State.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE VINOD GOEL**

**JUDGMENT**

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**05.07.2018**

**Dr. S. Muralidhar, J.:**

1. This is an appeal directed against the impugned judgment dated 17<sup>th</sup> January, 2003 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.79/2001 arising out of FIR No.38/1983 registered at Police Station ('PS') Sultanpuri, Delhi, convicting the Appellants herein for the offence punishable under Sections 302/34 and the order on sentence dated 18<sup>th</sup> January, 2003 whereby for the offence under Section 302/34 IPC both of them were sentenced to imprisonment for life with a fine of Rs.5,000/-, and in default of payment of the fine to undergo Rigorous Imprisonment ('RI') for one year. The co accused

were convicted for the offence punishable under Section 307/34 IPC to undergo RI for five years with a fine of Rs.1,000/- and in default of payment of fine to undergo RI for six months.

2. At the outset, it may be noted that Appellant No.1 Sita Ram expired during the pendency of the present appeal. This fact was noted by the Court in its order dated 29<sup>th</sup> May, 2014. Accordingly, the appeal as far as Appellant No.1 Shri Sita Ram is concerned stood abated by the said order. The present appeal is by Attar Singh S/o late Shri Sita Ram, who is Appellant No.2.

### ***Charge***

3. By the order dated 14<sup>th</sup> November, 1983 of the Trial Court, common charge was framed against all the accused including the present appellant Shri Attar Singh. The co-accused were his father late Sita Ram (A-1), Fakira (A-2) (who died during the pendency of the trial), Balbir (A-3) (also died during the pendency of the trial), the present appellant - Attar Singh (A-4), Jogi Ram (A-5), Baljeet Singh (A-6) and Pappi @ Brahm Dev (A-7) (who also died during the pendency of the trial).

4. The common charges against all the accused was that first, on 6<sup>th</sup> March, 1983 at about 9 pm at Qutab Garh, Delhi, they constituted an unlawful assembly with the common object of murdering Prem Chand (deceased), Vijay Kumar (PW-11), Mahender (PW-2), Daya Chand (PW-5) and Suresh (PW-6) and hence committed the offence of

rioting punishable under Section 147 IPC; secondly, that pursuant to the common object A-1 armed with a *jelli*, the present appellant, A-3 and A-7 (armed with *lathis*) committed rioting, the offence punishable under Section 148 IPC; thirdly, that all of them pursuant to the aforementioned common object murdered Prem Chand (deceased) thereby committing the offence punishable under Section 302 read with Section 149 IPC; fourthly, that they caused hurt to Suresh (PW-6) thereby committing an offence punishable under Section 307 read with Section 149 IPC; and lastly, that they caused hurt to Smt. Chandro (PW-13) thereby committing the offence punishable under Section 307 read with Section 149 IPC.

#### ***Version of PW-6***

5. What transpired according to the prosecution at 9 pm on 6<sup>th</sup> March, 1983 was spoken of by some of the injured eye-witnesses, one of whom was Suresh Kumar (PW-6). In his testimony, he stated that he was sitting with six of his brothers in their house in the drawing room when Balbir @ Tunda (A-3) came into the *verandah* adjoining the drawing room and started hurling filthy abuses at them. Raj Singh (PW-4) went to the *verandah* to appease A-3. However, A-3 gave a slap to PW-4. Thereupon, PW-4 and A-3 started scuffling with each other. PW-6 and his brothers came into the *verandah* and started beating A-3.

6. It may be noticed at this stage that A-3 is supposed to have received as many as 11 injuries as per the MLC (Ex.PW-17/D). According to PW-6, thereafter they noticed six persons coming towards them from the side of the main gate. Those six were the other co-accused of A-3 which included the present appellant Attar Singh (A-4). According to PW-6, Sita Ram (A-1) was armed with a *jelli* and the other five, including A-4, were armed with *lathis*. A-3 is supposed to have exhorted the co-accused to kill all the members of the complainant party and that none of them should escape. According to PW-6, thereupon A-5 caught hold of PW-6 and A-6 gave him *lathi* blows on his head.

7. According to PW-6, A-2 caught hold of Prem Chand (deceased) and A-1 gave him a *jelli* blow on his chest. According to PW-6, A-7 and the present Appellant i.e. A-4 gave *lathi* butt blows on the abdomen of Smt. Chandro (PW-13) after she had fallen to the ground. Therefore, the only role attributed by PW-6 to the present Appellant is that he gave a *lathi* blow to PW-13 on her abdomen. Unfortunately for the prosecution, PW-13 herself turned hostile and did not support the case of the prosecution. In effect therefore neither PW-6 nor PW-13 were useful for the prosecution to affix the guilt of the present Appellant.

#### ***Evidence of PW-4***

8. The other witness who had spoken about the role of the Appellant A-4 was Raj Singh (PW-4). According to PW-4, the present

Appellant, on the exhortation of A-3, gave *lathi* blows on the person of deceased Prem Chand. However, the Court finds that in his cross-examination, PW-4 made an admission that “when my statement was recorded by the police although I knew that lathi blows were given to Prem Chand I did not know how many injuries and at what parts had been caused by lathies and by whom. I had not stated before the police that Attar Singh had given a lathi blow on the waist of Prem Chand. Confronted with portion mark B to B in Ex.PW-4/DB where it is so recorded”.

9. Apart from the above admission making PW-4 an unreliable witness, the medical evidence also did not corroborate his testimony. Dr. Bharat Singh (PW-1) who conducted the post-mortem of Prem Chand noticed seven external injuries, two of which were punctured wounds, one was a lacerated wound and the remaining were abrasions. None of the external injuries therefore could be said to be related in particular to the lathi blows said to have been given by A-4 on the deceased.

10. The Court is of the considered view that it would be unsafe to affix the culpability the Appellant for the killing of the deceased only on the basis of the unreliable evidence of PW-4 which does not appear to be corroborated by any other eye witness, much less by the medical evidence on record.

11. With the prosecution evidence not conclusively proving the guilt of the Appellant for the afore-mentioned offences, the Trial Court was in error in convicting him for the said offences with the aid of Section 34 IPC. The Appellant is accordingly entitled to the benefit of doubt. He is acquitted of the offence punishable under Section 302 read with Section 34 IPC. The impugned judgment of the trial Court in so far as it convicts the present Appellant for the afore-mentioned offence and the consequent order on sentence of the trial Court qua the present Appellant are accordingly hereby set aside. The appeal is allowed.

12. The bail bond and surety bond furnished by the Appellant stand discharged. The Appellant will fulfil the requirements of Section 437-A of the Code of Criminal Procedure, 1973 to the satisfaction of the learned Trial Court at the earliest. The Trial Court Record be returned together with a certified copy of this judgment.

**S. MURALIDHAR, J.**

**VINOD GOEL, J.**

**JULY 05, 2018**

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