

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

% *Decided on: 30th July, 2018*

+ **CRL.A. 729/2017**

RAHUL @ KAKE @ RAJU Appellant

Represented by: Mr.K.Singhal, Advocate

versus

STATE Respondent

Represented by: Ms.Meenakshi Chauhan, APP for the
State with Insp.Balbir Singh, PS
Vijay Vihar

+ **CRL.A. 748/2017**

VINOD KUMAR Appellant

Represented by: Mr.Neeraj Bhardwaj, Advocate

versus

STATE Respondent

Represented by: Ms.Meenakshi Chauhan, APP for the
State with Insp.Balbir Singh, PS
Vijay Vihar

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeals, the appellants challenge the impugned judgment dated 31st May, 2017 convicting them for the offence punishable under Section 304 (Part I) IPC read with Section 34 IPC and the order on sentence dated 9th June, 2017 directing them to undergo rigorous

imprisonment for a period of ten years each and to pay a fine of ₹10,000/- each and in default of payment of fine to undergo simple imprisonment for a period of six months.

2. Learned counsels for the appellants contend that the appellants are liable to be acquitted for the reason the testimony of the so called eye witnesses is unreliable. Their presence at the spot is doubtful. The alleged eye witnesses have not been able to assign the specific roles to the two appellants. No evidence was led by the prosecution to show that Vinod was the driver of the Innova and Rahul, the helper with him. Suman Rani, the purported owner of the Innova car has not been examined as a witness. Thus the conviction of the appellants is based on assumptions and presumptions.

3. Learned APP for the State on the other hand submits that the eye witnesses are natural witnesses who reside in the vicinity of the place of incident having taken place in the midnight thus there was every possibility that the witnesses were present at their home. There are no contradictions or discrepancies in the testimony of the three eye witnesses. Soon after the incident recoveries were made at the instance of the appellants and the same connects the appellants to the offence committed. Fingerprints of the appellant has been found from the car and thus appeals be dismissed.

4. Police machinery was set into motion in the intervening night of 22nd and 23rd March, 2012 at about 1:30 AM on receipt of DD No.3A regarding a quarrel. SI G.R.Tanwar (PW-18) along with Ct.Brijesh and Ct.Suresh (PW-11) reached near Thakur Properties, A Block, Vijay Vihar, Phase-I, where a person was lying in injured condition, bleeding from his head in the south direction of the street near the drain, wearing black coloured shoes, pant and

blue colored shirt with sweater. One TSR bearing number DL-1RG-6588 was found parked at the spot, damaged from the front left side, green paint of the same was wearing off and one Innova car bearing number DL-4C-AE-3404 with key was also found parked at a distance of 30 meters from the spot having dent marks on the rear side bumper and towards the right side. Ct.Naveen and Ct.Vikas Kumar (PW-8), who were on night patrolling duty also reached the spot. Crime team inspected the spot. Name of the deceased was revealed as Rajesh Kumar S/o Guljari Lal. Eye witness Saleem was found at the spot and his statement was recorded vide Ex.PW-1/A.

5. Saleem (PW-1) stated that he works as a driver and is residing along with his family as a tenant at A-281, Vijay Vihar, Phase-I, Delhi. His house was behind Brahmakumari Ashram. On the intervening night of 22nd and 23rd March 2012, he was sleeping along with his children at his house, when around 1:15 AM he heard some noise coming from the street. He woke up, came outside the house and saw that on the street close to Thakur Properties, two boys were beating a man. One boy out of the two said, *“Rahul, isne humari gadi ko takkar mari hai, isse aaj sabak shikhana hai va chodhna nahi hai”* To which, the other boy responded by saying *“Vinod, eent (brick) utha kar mar”*. Both the boys picked up the bricks from the street and started hitting the man with the bricks. He tried to intervene and save but those two boys kept on hitting the man with bricks. On seeing the situation, he raised an alarm and his two sons Chand Babu and Mohd.Babu and 2-3 other people from public came to the spot. Thereafter, one of the two boys said, *“iska kaam ho gaya hai, jaldi se apni Innova gadi ko nikal kar bhag lete hai”*. Thereafter, both of the boys ran on foot towards the Lal Quarters. He stated that both the boys were aged around 20-25 years and were of

medium built. He checked the injured man's body, which was lying in the drain and found out that his breathing had stopped and he was not even moving. At that point of time, there was a three-wheeler bearing No.DL-1RG-6588 standing in the street and on the other end, at about distance of 30 meters, near Petrol Pump, Sector-5, Rohini, there was one Innova vehicle bearing number DL-4C-AE-3404. He stated that the two boys have given beating to the man with an intention to kill and in the process, have killed him.

6. SI G.R.Tanwar prepared the rukka (Ex.PW-18/A) and handed it over to Ct.Vikas to get the case registered. FIR No.96/2012 was registered at PS Vijay Vihar for offence punishable under Section 302/34 IPC. Further investigation was assigned to Insp.Sunil Kumar (PW-20) who took the search of deceased Rajesh and found one black leather purse containing passport size color photo and five keys in one dori, which were seized vide seizure memo Ex.PW-18/B.

7. Crime Team Incharge SI Prem Singh inspected the scene of crime and prepared the Crime Team Report. HC Shiv Om (PW-5), Finger Print Expert took the chance prints and Ct.Kamal, photographer, took the photographs. Insp.Sunil Kumar prepared the site plan (Ex.PW-1/B) at the instance of Saleem and recorded the statement of Saleem, Chand Babu and Mohd.Babu. Insp.Sunil Kumar lifted the exhibits from the spot i.e. blood stained concrete cement and earth control and kept them in separated plastic containers, sealed them and took them into possession vide seizure memo Ex.PW-18/C. TSR bearing No.DL-1RG-6588 and Innova bearing number DL-4C-AE-3404 along with key were also taken into possession vide seizure memos Ex.PW-18/B and Ex.PW-18/E respectively. The empty liquor bottle found

inside the Innova car from which the chance prints were lifted by Crime Team was also seized vide seizure memo Ex.PW-18/F.

8. SI G.R.Tanwar on the instructions from Insp.Sunil Kumar (PW-20), got postmortem examination of deceased Rajesh Kumar conducted vide request Ex.PW-18/G. He recorded the identification statements of Aman Kumar, Jai Pal and Sangita vide Ex.PW-2/A. Clothes of the deceased were taken into possession vide seizure memo Ex.PW-18/K.

9. On 23rd March, 2012, Insp.Sunil Kumar along with Ct.Vikas and Ct.Suresh went in search of accused persons. Appellant Rahul @ Kake was apprehended at the instance of the secret informer at about 3:20 PM from Metro Station, Rithala, Delhi and was arrested vide arrest memo Ex.PW-8/A and his personal search was conducted vide memo Ex.PW-8/B. Rahul @ Kake disclosed in his disclosure statement (Ex.PW-8/C) that he had kept his blood stained clothes, which he was wearing at the time of incident, at his house. Thereafter, Rahul @ Kake led them to the place of incident i.e. A-Block, Vijay Vihar, near Thakur Properties and pointed out the place of incident vide pointing out memo Ex.PW-8/C. Rahul @ Kake also led them to his house i.e. R-1/21, Lal Quarter, Vijay Vihar, Phase-I and got recovered blood stained blue colored jeans and white colored shirt which he was wearing at the time of the incident. They were seized vide seizure memo Ex.PW-8/D.

10. During the course of investigation, notice under Section 133 Motor Vehicles Act was issued to Suman Rani, owner of Innova car No.DL-4C-AE-3404 to which Suman Rani replied vide Ex.PW-20/B stating that Vinod was in custody of her aforesaid vehicle at the time of the incident. Her statement was recorded.

11. ASI Pradeep Kumar (PW-12), on instructions of Insp.Sunil Kumar along with HC Parminder (PW-14), Ct.Ravinder, Ct.Parwinder reached Shankar Garden, Gali No.7, Bahadurgarh, Haryana in search of Vinod where they met Vinod at the house of his brother Sher Singh. They brought Vinod from Bahadurgarh, Haryana to PS Vijay Vihar where Rahul @ Kake identified him as his associate. Insp.Sunil Kumar interrogated Vinod and arrested him vide arrest memo Ex.PW-12/A. Personal search of Vinod was carried out vide memo Ex.PW-12/B and his disclosure statement was recorded vide Ex.PW-12/C. Thereafter, Vinod led them to the place of incident i.e. A-Block, Vijay Vihar, near Thakur Properties, Public Lane and pointing out vide memo Ex.PW-12/D was prepared. Thereafter, he pointed out at the vacant plot in front of H.No.322, Vijay Vihar and produced half a piece of blood stained brick with 'UJA' written on it, which was kept in a white polythene. The same was seized vide seizure memo Ex.PW-12/E. Vinod, thereafter, led them to Shamshan, Vijay Vihar, Phase-II and from the bushes, one blue jeans and one shirt, which were bloodstained, were recovered and taken into possession vide memo Ex.PW-12/F.

12. On 24th March 2012, both the appellants were produced before Learned Metropolitan Magistrate and sent to judicial custody. Application (Ex.PW-20/C) for conducting TIP proceedings for both the appellants was filed.

13. On 26th March 2012, Insp. Sunil Kumar (PW-20) got Innova and TSR mechanically inspected from FSL expert on which reports Ex.PM and Ex.PN were rendered. On the direction of FSL expert, he lifted rubber bearing the piece of paint, the green color paint from the front left side of TSR and took them into possession vide seizure memo Ex.PW-19/A and

were deposited with MHC(M).

14. On 27th March 2012, both the appellants refused to participate in test identification proceedings. On 29th March 2012, half brick piece seized was taken from MHC(M) to hospital and subsequent opinion Ex. EG of the Autopsy Surgeon Dr.J.V.Kiran was sought. On the pointing out of Saleem, draftsman SI Manohar Lal (PW-6) inspected the spot on 2nd April, 2012 and prepared the scaled site plan vide Ex.PW-6/A. On 4th April 2012, the exhibits of the case were sent to FSL, Rohini through Ct.Rakesh Kumar (PW-13).

15. The chance prints which were lifted from liquor bottle kept in the Innova car and the fingerprints of the appellants were sent to Finger Print Bureau on 4th May 2012. On the request of expert at Bureau, palm prints of the appellants were also obtained and sent to Finger Print Bureau.

16. In Court Saleem (PW-1) deposed in sync with his statement made before the police. He identified Rahul @ Kake and Vinod in Court. He identified the clothes worn by both the appellants. In his cross-examination, he stated that quarrel had taken place at a distance of about 35-40 yards from his house and he was sleeping outside his house. He stated that it was not dark in the street, as there was big yellow streetlight installed by the Corporation. He stated that one of the appellant had caught the deceased and the other was giving brick blow, but he could not specifically tell the role of the appellants and state who caught hold and who inflicted the injuries.

17. Chand Babu (PW-3) stated that on the intervening night of 22nd and 23rd March, 2012, at about 1:15 AM, when he heard the sound of his father (Saleem), he along with his brother Mohd.Babu (PW-4) came outside the house and saw that two boys were giving beating to a person and his father

was trying to save him. He corroborated the statement of Saleem (PW-1). He correctly identified both the appellants in Court. During his cross-examination he denied the suggestion that he could not see the faces of the appellants.

18. Mohd.Babu (PW-4) corroborated the version of Saleem and Chand Babu.

19. Rambir (PW-10) stated that he is the owner of TSR bearing number DL 1RG 6588 and had given the TSR on rent to one Rajesh.

20. Insp.Ravinder Kumar (PW-15), Finger Print Expert stated that he examined the chance prints and specimen finger prints and observed that the chance prints marked Q-2 and Q-4 were identical with right thumb and right middle finger impression marked S-1 and S-2 respectively on the finger impression slip of appellant Vinod. He also examined the chance print marked Q-1 and the right hand palm portion marked S-3 of the palm impression slip of appellant Vinod and found them to be identical. Detailed report was proved vide Ex.PW-15/A-12.

21. Rajender Kumar Vajpayee (PW-16), Director, Finger Print Bureau proved the report of chance print examination vide Ex.PW-15/A-12 and memorandum vide Ex.PW-16/A.

22. L.Babyto Devi (PW-17), Sr.Scientific Officer (Biology and DNA), FSL Rohini proved the detailed biological report in respect of the case exhibits and as per the report Ex.PW-17/B, blood group 'AB' found on the clothes of the appellants matched with the blood group found on the clothes of the deceased.

23. Rahul @ Kake in his statement recorded under Section 313 Cr.P.C. stated that he had no role to play in the alleged incident. He was kept in

wrongful confinement by the police officials wherein he was shown to public persons, his photographs were also clicked and subsequently he was produced in court. He stated that he was present at the spot but was not involved in the occurrence of the incident. He had seen that the deceased met with an accident with one auto, then public collected and he left the spot. He had not given any disclosure statement. His signatures were obtained on various blank papers and forms which were subsequently converted into incriminating documents to falsely implicate him in the present case. Nothing incriminating was recovered in his presence or at his instance.

24. Vinod in his statement recorded under Section 313 Cr.P.C. also took plea as taken by Rahul @ Kake.

25. As per the post-mortem report, Ex.PL cause of death has been opined to be due to the combined effect of cerebral damage and asphyxia consequent to blunt force trauma to the head and obstruction of airways by foreign material. All injuries were opined to be ante-mortem in nature, fresh in duration, injuries No.1 and 2 were caused by a blunt object and were sufficient to cause death. External injuries noted as per the post-mortem report are:-

“1. Laceration 2cm x 0.5cm x scalp layers deep was present over posterior aspect of left parietal region of scalp.

2. Laceration 5cm x 1cm x scalp layers deep was present over posterior aspect of left parietal region of scalp.

3. Abrasion 2cm x 1cm present on right side of forehead placed 1cm above outer end of right eyebrow.

4. Abrasion 1cm x 1cm present over the glabellar

prominence.”

26. As noted from the evidence of Rajender Kumar Vajpayee (PW-16) and as per the opinion Ex.PW-15/A-12 and memorandum Ex.PW-16/A chance print Q-1 and the right hand palm portion marked S-3 on the palm impression slip of appellant Vinod were found identical besides chance prints Q-2 and Q-4 which were found identical to S-1 and S-2, the right thumb and right middle finger impression of appellant Vinod. Thus even if the prosecution has not examined Suman Rani, the owner of Innova car to prove that the custody of the car at the relevant time was with Vinod, the fact that Vinod was having the car is established by the presence of his finger prints and palm print. The eye witness of the incident namely Saleem is a natural witness who was residing in the vicinity and on hearing the noise in the midnight came to witness the incident. Plea of the appellants for non-joining of the TIP proceedings was that they were shown to the witnesses and their photographs were taken on the mobile phone which is not substantiated from the cross-examination of the eye witnesses. No suggestion has been given to the witnesses that either they or their photographs were shown to the witnesses and the suggestion to the witnesses is that the witnesses have identified the appellants at the instance of the police. The witnesses have clarified in their cross-examination that at the place of incident there was sufficient light for them to have identified the appellants. Though Mohd.Babu in his testimony admitted that he had not seen the face of the two boys as by the time he reached they had started running away and he had only seen the clothes but Saleem (PW-1) had categorically seen the two appellants and confronted them on injuring

deceased. Version of Saleem is further corroborated by the evidence of Chand Babu who reached at the spot immediately thereafter followed by Mohd.Babu who narrated the subsequent events. The post-mortem report which opines the injuries to be by blunt object also corroborate the version of Saleem. Further blood stains found on the clothes of the appellants tallied with the blood group of the deceased. As per the FSL report, the sample paint flakes taken from the Innova tallied with that of the TSR driven by the deceased. Considering the evidence led by the prosecution and the plea of the appellants that they have been falsely implicated being not probablized as also the explanation of Rahul admitting his presence at the spot not explaining the said presence in odd hours of midnight, this Court finds no error in the impugned judgment of conviction or order on sentence.

27. The appeals are accordingly dismissed.

28. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellants.

29. TCR be returned.

(MUKTA GUPTA)
JUDGE

JULY 30, 2018
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