

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRIMINAL APPEAL NO. 128/2000

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records. An intimation dated 17th August, 1998 was sent from Tihar Jail in which the cause of death of Davender has been stated to be asphyxiation due to hanging. This is suggestive of the fact that he had committed suicide.

3. The deceased was one Rajesh @ Mintu, who was taken to Guru Teg Bahadur Hospital by his father Bhagmal, who had appeared and deposed as PW-4. The MLC (Exhibit PW-1/B) was recorded on 7th March, 1998 at 9 P.M. and it records that the patient was brought dead to the casualty. The aforesaid MLC was proved by Dr. R.K. Nagar (PW-1).

4. The post-mortem on the dead body was undertaken by Dr. N.K. Aggarwal (PW-21). He has opined that the dead body was of a young male having cut marks on his back. An incise wound, 2.8 cm x 1.4 cm was present over the middle inner back of the right side of the chest, 2 cm away from the midline, at the level of the 6th rib. The injury was obtuse, then right and had entered the right side of the pleural cavity through the 6th intercostal space in the opera vertebral line. The total length of the track was 7.2 cm. The cause of death was shock as a result of haemorrhage from ante-mortem injury to the lung and pericardium, produced by a sharp edged weapon. The injury was sufficient to cause death in the ordinary course of nature. The post-mortem report was marked Exhibit PW-21/A. Dr. N.K. Aggarwal (PW-21) was not cross-examined.

5. In view of the aforesaid position, we find that the medical evidence clearly proves and establishes that the deceased Rajesh @ Mintu had died a homicidal death as a result of stab injury on his back.

6. The prosecution version relies upon two eye witnesses Bhagmal (PW-4) and Vijay Singh (PW-2) in addition to circumstantial evidence in the form of motive as well as the factum that all the three perpetrators i.e.

the two appellants and late Davender were detained at the spot and even beaten up by the public. Subsequently, they were handed over to the police officers and arrested. Bhagmal (PW-4) has testified that on 7th March, 1998, at about 8 P.M., he was present in front of his dairy with Vijay Singh (PW-2). He saw his son, Rajesh @ Mintu, coming to the dairy from their house. At this point, the two appellants i.e. Vijender and Shyam Sunder, rushed towards him, as he reached near Har Gian Public School. In the meanwhile, the third accused, Davender (since deceased), took out a *kattar* like knife and gave a blow on the back of Rajesh @ Mintu. Seeing his son being thus besieged and attacked by the three assailants, Bhagmal (PW-4) alongwith Vijay Singh (PW-2), rushed towards the deceased Rajesh @ Mintu, who lay prostrate on the ground. They caught hold of Davender (since deceased). In the meanwhile, public had also assembled and the appellants- Shyam Sunder and Vijender, were overpowered. Bhagmal (PW-4) and Vijay Singh (PW-2) then handed over Davender (since deceased) to the public. Bhagmal (PW-4) has deposed that he had taken his son to the hospital, but unfortunately he succumbed to the injury before reaching the hospital. Bhagmal (PW-4) in a state of frenzy and anguish, had wrongly given the name of his son as Rajinder instead of Rajesh @ Mintu. Bhagmal (PW-4) made statement Exhibit PW-4/A, which was signed by him and later on was recorded as an FIR. On the question as to why the occurrence had taken place, Bhagmal (PW-4) has testified that appellant-Vijender had a halwai shop near his dairy and on 6th March, 1998, i.e., one day before the occurrence, a quarrel had ensued between the deceased and appellant Vijender. A saree of a tenant had dropped/fallen on the shop of appellant Vijender and he refused to return the same. This was objected to by the deceased-Rajesh @ Mintu and one Ajab Singh, PW-13. A verbal duel followed, as the appellant-Vijender was asked to return the

saree. Bhagmal (PW-4) had also deposed as regards the lifting of earth control and blood from the spot and had identified the clothes worn by the deceased-Rajesh @ Mintu. He admitted the factum that the dead body was released to him after the post- mortem. In the cross-examination, Bhagmal (PW-4) affirmed that Rajesh @ Mintu, was murdered at a distance of 7-8 paces from his dairy. We shall be referring to his statement subsequently also when we examine whether the conviction of the appellants under Section 302 read with Section 34, IPC should be upheld or whether the conviction should be converted into one under Section 304 Part I read with Section 34, IPC.

7. Vijay Singh (PW-2) has given an identical version of the occurrence and of his presence in front of the dairy of Bhagmal (PW-4) on 7th March, 1998 at 8 P.M. While Vijay Singh (PW-2) and Bhagmal (PW-4), were talking to each other, they had seen the deceased Rajesh @ Mintu coming from his house. At that time, appellants-Vijender and Shyam Sunder along with Davender (since deceased) had stopped Rajesh @ Mintu near the electricity pole at a distance of 15 to 20 yards from the dairy of Bhagmal (PW-4). There was exchange of words between the appellants and deceased-Rajesh @ Mintu. Davender (since deceased) had attacked Rajesh @ Mintu with a *kattar* like weapon, by giving a blow on the backside of Rajesh @ Mintu, who fell down. They rushed to help Rajesh @ Mintu. Davender (since deceased), who was trying to flee from the scene of crime, was overpowered by Bhagmal (PW-4) by holding him from behind. The two appellants were cornered and overpowered by the public. Thereafter, they had taken Rajesh @ Mintu to the hospital in a private car. In a state of frenzy, someone from the public had inadvertently given the name of the deceased Rajesh as Rajinder, to the hospital authorities.

8. Ajab Singh (PW-13) has deposed about the occurrence of 6th March, 1998, which according to the prosecution version acted as a motive for the offence under consideration. He testified that saree of one Veena Devi, which was hung out to dry, had fallen from the upper floor in the shop of the appellant-Vijender. Appellant-Vijender had lifted the saree and kept it with himself. On this, there was exchange of words between Veena Devi and the appellant-Vijender. At that time, Ajab Singh (PW-13) and deceased Rajesh @ Mintu were passing by and they had asked the appellant-Vijender to return the saree. The appellant-Vijender had then abused them and harsh words were exchanged. However, they succeeded in compelling the appellant-Vijender to return the saree to Veena Devi. Public had also gathered and the matter was settled.

9. We have examined the testimonies of Bhagmal (PW-4) and Vijay Singh (PW-2) and accept the versions given by them to the effect that they were eye witnesses and had seen Davender (since deceased) stabbing the deceased-Rajesh @ Mintu. We are also inclined to accept their version that the two appellants-Vijender and Shyam Sunder were present on the scene of occurrence along with Davender (since deceased). The testimony of Ajab Singh (PW-13) indicates and proves that a verbal duel had ensued between the appellant-Vijender and deceased Rajesh @ Mintu and Ajab Singh (PW-13) on account of a very trivial matter, a day earlier i.e. on 6th March, 1998.

10. In addition, there is considerable evidence to show that the appellants were detained at the spot itself, as deposed to by Bhagmal (PW-4) and Vijay Singh (PW-2). On the said aspect, we have the testimony of ASI Krishan Pal (PW-16), who had reached the spot and had taken into custody the two appellants and Davender (since deceased). He has deposed that the three were beaten up by the public. Head Constable

Sahab Singh (PW-17) has given an identical description about the arrest and the factum that the two appellants and Davender (since deceased) were made to sit in the Police Control Room van and were brought to Police Station Bhajanpura. Their custody was handed over to the duty officer. He has further deposed that the appellants had been beaten up by the public. SI Sanjiv Sharma (PW-19) has deposed on similar lines. He proved the FIR marked Exhibit PW-5/B. In addition to the aforesaid police witnesses, we also have the testimony of Harmesh Kumar (PW-9), who upon learning that Rajesh @ Mintu had received stab injuries, had rushed to the spot. He found that the deceased Rajesh @ Mintu was lying on the ground and bleeding. Davender (since deceased) had been caught hold by Bhagmal (PW-4). The two appellants had been overpowered by the public and detained. Harmesh Kumar (PW-9) deposed that thereafter he returned to his house and called the police from his telephone to intimate them about the incident.

11. Dr. R.K. Nagar (PW-1) has testified that Davender (since deceased) was examined by him on 7th March, 1998. Davender (since deceased) was conscious and well-oriented, but had a lacerated wound of 1.25 cm x 0.5 cm on the left parietal region of the skull. Depth of the wound could not be ascertained. In addition, he had pain, tenderness as well as swelling bruise around the right eye. Davender (since deceased) was complaining of diminishing vision. There was pain and tenderness over nose, though no bleeding could be seen. He had abrasion over right and left leg. His MLC was marked Exhibit PW-1/A. It is apparent that though the two appellants had also been detained by the public and beaten up by the public, but they didn't suffer serious or multiple injuries, unlike those inflicted on Davender (since deceased).

12. Bhagmal (PW-4) and Vijay Singh (PW-2) have attributed the actual act of stabbing to Davender (since deceased). Harmesh Kumar (PW-9) was declared hostile and was cross-examined by the Addl. Public Prosecutor. In his cross-examination, Harmesh Kumar (PW-9) had stated that a sheath was present in the hands of Davender (since deceased). The same was snatched by someone and handed over to the beat constable in his presence. However, the version given by SI Sanjiv Sharma (PW-19) on the said aspect is somewhat different. He has deposed that he had searched for the knife with Harmesh Kumar (PW-9), Vijay Singh (PW-2), Bhagmal (PW-4) and others. They had recovered a sheath, which was lying in the north-west corner of Ticona park and the same was taken into possession vide Exhibit PW-4/B. SI Sanjiv Sharma (PW-19) had interrogated the accused, i.e., the appellants and Davender (since deceased) and they had disclosed that they can get the knife recovered. The disclosure statement of appellant-Vijender marked Exhibit PW-19/E, however, was not taken on record as the assertions were beyond the purview of Section 27 of the Evidence Act, 1872. Disclosure statement of Davender (since deceased), marked Exhibit PW-19/F, as per the prosecution version, had led to the recovery of a blood stained handle, which was taken into possession vide Exhibit PW- 6/A. The aforesaid factual matrix does cast a shadow of doubt, as to whether a big kitchen knife used in a *halwai's* shop or a small sword called *kattar*, had been used as a weapon of offence by Davender (since deceased). The police has relied upon the sheath and the wooden handle. However, the blade could not be recovered by the investigating agency. This is somewhat surprising as the two appellants and Davender (since deceased) had been apprehended at the spot. In view of these facts, we are inclined to accept the contention of the counsel for the appellants that possibly only a knife was used and it is not a case where a small sword

or a dagger had been used. As per the prosecution version, the handle was recovered on 8th March, 1998, i.e., on the next day of the incident. Learned Additional Public Prosecutor has drawn our attention to the CFSL report dated 31st October, 1998, which was not exhibited. The said report mentions the presence of blood of Group 'O' on the handle, which matches with the blood group of the deceased. Be that as it may, the handle could well be of a knife, which is used in a *halwai* shop.

13. As per the prosecution version, there was a verbal altercation between the appellant-Vijender and the deceased Rajesh @ Mintu on 6th March, 1998. Ajab Singh (PW-13) has affirmatively deposed on the said aspect. This would be true and the same can be accepted. Bhagmal (PW-4) and Vijay Singh (PW-2) have not deposed as to the presence of any weapon of offence, not even a lathi, in the hands of appellant-Vijender, with whom the deceased had a spat on the eve of the murderous assault on him. The same appears to be the case with the appellant-Shyam Sunder. Bhagmal (PW-4) in his testimony has not narrated and deposed regarding any conversation between the accused and the deceased Rajesh @ Mintu prior to the attack. No words are attributed to the two appellants. Bhagmal (PW-4) has however stated that appellants-Vijender and Shyam Sunder had caught hold of Rajesh @ Mintu. In contrast, Vijay Singh (PW-2), has stated that prior to the murderous attack, there was an exchange of words between the accused, i.e. the two appellants and Davender (since deceased) with deceased Rajesh @ Mintu. Thus, he has referred to the quarrel, which had transpired immediately before the stab injury was inflicted. Vijay Singh (PW-2), has stated that after this altercation, the two appellants had caught hold of Rajesh @ Mintu. According to Vijay Singh, PW-2, Davender (since deceased), had then attacked Rajesh @ Mintu with a weapon, giving him a blow on the backside. As per the unscaled site plan,

Exhibit PW-19/A, and the scaled site plan, Exhibit PW-15/A, the shop of appellant-Vijender was located a few feet away from the place of occurrence. We, cannot therefore, rule out the possibility that Davender (since deceased) may have picked up a knife from the shop itself and inflicted the said injuries on the deceased, in the spur of the moment, when his temper was frayed. The deceased, it is apparent was not beaten up by the appellants and the appellants were not even armed. The incident, which had taken place on 6th March, 1998, as discussed above, was a very minor one. That incident was too trivial to constitute sufficient motive for the murderous assault on the deceased Rajesh @ Mintu on 8th March, 1998. It seems more probable that the verbal altercation immediately preceding the stab injury being inflicted, was the prime reason for the attack.

14. Keeping in view the aforesaid facts, we feel that the present case would rightly fall under Exception 4 to Section 300, IPC. Accordingly, we are inclined to convert the conviction of the appellants to Section 304 Part I, IPC.

15. The next question we need to advert to is regarding the quantum of sentence to be awarded. It's tragic that a young boy, aged 16 years has lost his life. This fact alone may persuade the court to award a heavier punishment. But, we cannot lose sight of several other factors, which also deserve due consideration of the court. Firstly, the occurrence had taken place in March, 1998 and the appellants have since then suffered incarceration for about 4 years and 6 months. They have also earned remission of nearly 6 to 7 months. If the remission period is also taken into account, the appellants have undergone incarceration for more than 5 years. Secondly, the appellants have been out on bail since October, 2002. Normally, we would have awarded a harsher and more stringent punishment to the appellants, but in view of the aforesaid facts, which call

for mitigation of the quantum of sentence, we are inclined to release the appellants on the sentence already undergone. However, we enhance the fine of Rs.2,000/- awarded by the trial court to Rs.20,000/- each. The amount will be paid to the legal representatives of the deceased as compensation, in accord with the provisions of Section 357, CrPC. We have fixed the quantum of fine, after taking into account the fact that the appellant-Shyam Sunder is a driver of a three- wheeler scooter and appellant-Vijender is now a farmer residing in his native village. The aforesaid amount will be deposited with the trial court, within a period of one month. In case the amounts are not deposited, the appellants will undergo Simple Imprisonment for a period of six months each. The trial court will release the amount to the legal representatives of the deceased Rajesh @ Mintu. The appeal is accordingly disposed of. Trial court records will be sent back.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

MARCH 4, 2015
VKR