

\$~Part-B (R-33)

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

+ CRIMINAL APPEAL No.201/2000

Date of decision: 27th November, 2015

INDER SINGH AND OTHERS

..... Appellants

Through Mr. O.P. Saxena & Ms. Usha Saxena,
Advocates.

versus

STATE OF DELHI

..... Respondent

Through Mr. Varun Goswami, APP along with SI
Roshan Lal, P.S. Nangloi.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J. (ORAL):

By the judgment under challenge dated 28th February, 2000, the appellants Inder Singh, his sons Vijay Kumar and Chain Singh and one Sanjay have been convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short) for having murdered Ranbir Singh at about 8.30 P.M. on 28th July, 1996. By order on sentence dated 29th February, 2000, the appellants have been sentenced to imprisonment for life, pay fine of Rs.2,000/- each and in default of payment of fine, to undergo rigorous imprisonment for two months each.

2. Having heard learned counsel for the parties, we feel and perceive

two questions arise for consideration on the basis of the testimony of the eye witnesses Ranvir Singh (PW-1), Jai Pal Singh (PW-2) and Ram Chander (PW-5) and the deposition of Dr. L.T. Ramani(PW-8) and his post mortem report marked Exhibit PW-8/A. The first question is whether the appellants-Inder Singh, Vijay Kumar and Sanjay had shared common intention under Section 34 IPC for the offence under Section 302/304 IPC and whether the appellant-Chain Singh has been rightly convicted under Section 302 IPC or should have been convicted for a lesser offence.

3. The undisputed position emerging from the depositions is that on 28th July, 1996, the deceased Ranbir Singh first taken to a clinic and then brought to Maharaja Agrasen Hospital, Punjabi Bagh at about 9 P.M. by his brother Rajbir Singh (PW-5). At that time, the deceased Ranbir Singh was unconscious and not responding to even painful stimuli. He was declared dead at 9.05 P.M. The MLC marked Exhibit PW-16/A records that the deceased was assaulted as told by Ranbir Singh (friend) of 4 Nangloi Extension, Delhi.

4. After the death of Ranbir Singh, the post-mortem was conducted by Dr. L.T. Ramani (PW-8), the author of the report Exhibit PW-8/A. Dr. L.T. Ramani (PW-8) in his court deposition has mentioned the following external injuries:-

- “i) An irregular laceration on the right side of forehead above the medial half of left eye brow size 1 ¼ ” x ½ ” with a wide abrasion of

- 1 ½ ” diameter around it.
- ii) An abrasion 1” x ½ ” on the bridge of nose.
 - iii) Abrasion 1 ½ ” x ¼ ” on the tip of the nose.
 - iv) Abrasion ¼ ” x ¼ ” on the right ala of nose.
 - v) Laceration ¾ ” x .8” x ½ ” x ? on the left side frontal region-hair margin.”

Six other abrasions were noticed on the body of the deceased. Possibly, they were small and insignificant to be separately stated.

5. On internal examination, as per post-mortem report Exhibit PW-8/A and the oral deposition of Dr. L.T. Ramani (PW-8), scalp tissues had shown haematoma on the left temporal and right frontal area. There was a long depressed fracture of the left temporal, 1 cm x .8 cm size beneath the injuries above the left ear [injury No. 8 i.e. injury No.(i) above]. The brain had showed subdural haematoma. No foreign material was recovered. All injuries in the opinion of Dr. L.T. Ramani (PW-8) were ante-mortem and caused by some blunt object and force. Injury to the scalp [reference was apparently to injury No. i above], it was observed was sufficient to cause death in ordinary course of nature. PW-8 subsequently on 22nd October, 1996 examined a screw driver produced before him in a sealed parcel and had certified vide Exhibit PW-8/B that the screw driver could have caused injury No.(i). In his cross-examination, PW-8 has accepted that the abrasions were mostly confined to the area of the face, elbow and the thigh and the same could have been caused by friction against hard surface during a fall. PW-8, however, remained

convinced that his earlier opinion given in Exhibit PW-8/B that injury No. 8 [injury No.(i)] was only possible by a screw driver. We have some reservations with regard to the last portion of the deposition of Dr. L. T. Ramani (PW-8), for such infallible certification was not possible.

6. Ranvir Singh (PW-1) and Jai Pal (PW-2) in their depositions have referred to an earlier altercation at about 8 P.M. at *rehri* selling juice at Rohtak Road between the appellant-Inder Singh and the deceased Ranbir Singh. The quarrel was over a trivial matter on who should be served juice first. Appellant-Inder Singh had then left in anger stating that he would see Ranbir Singh later on. Ranvir Singh (PW-1) and Jai Pal (PW-2) have deposed that appellant-Inder Singh returned after about 15/20 minutes with his two sons appellants Vijay Kumar and Chain Singh and helper Sanjay. Chain Singh had a screw driver in his hand. At this stage, we would like to reproduce the deposition of Ranvir Singh (PW-1) in his examination-in-chief, which reads as under:-

“...When we were about to return to our house, accused Inder Singh along with other co-accused his sons present in the court came there. Inder Singh again said that he would now teach a lesson. He had asked other co-accused to beat him. On his saying, the other accused persons grappled with the deceased. Inder Singh caught hold of his legs and accused Chain Singh present in the court took out the screw driver and hit on back of deceased neck and other two blows of the screw driver on the right hand side of the forehead. Accused Billu @ Vijay Kumar caught hold of his one hand and Sanjay accused present in the court also caught hold of another hand of deceased. Myself and

Jai Pal tried to rescue the deceased from the accused persons. Deceased fell down. All the accused persons present in the court run (sic, ran) away from the spot....”

7. In his cross-examination PW-1 has accepted that the deceased Ranvir Singh was a constable in Delhi Police and a number of persons had gathered at the spot at the time of quarrel, which had lasted for about 4-5 minutes. Deposition of Jai Pal (PW-2) is almost in seriatim though not as elaborate. Jai Pal (PW-2) has stated that he knew the appellants, (i.e., the accused present in the court) and there was a grapple between the appellants and the deceased. They had tried to pacify the matter. Appellants Sanjay and Vijay Kumar had caught hold of the hands of the deceased and Inder Singh had caught hold of his legs, at the time when Chain Singh had inflicted the injuries on the back of the neck and the right side of the forehead near the eyebrow. Ram Chander (PW-3) is a third eye witness to the occurrence and has stated that he had seen the appellants, (i.e., the accused before the trial court), who had caught hold of Ranbir Singh and appellant-Chain Singh had inflicted injuries on the left temple of the forehead of the deceased with a screw driver. In his cross-examination, PW-3 testified that the appellant-Chain Singh had given two injuries with the screw driver on the person of the deceased.

8. It is noticeable that the screw driver marked Exhibit P-1 was produced in the court and Ranvir Singh (PW-1) in his deposition had

identified the same in the court. However, PW-1 had also clarified that he was not shown the said screw driver after the incident. Sketch of the screw driver stands drawn on Ex.PW8/B, the second opinion of Dr. L.T. Ramani. It is a normal screw driver, which most of us have at home and is also kept by juice sellers.

9. It is clear from the deposition of Ranvir Singh (PW-1) quoted above and also from the deposition of Jai Pal (PW-2) and Ram Chander (PW-3), gist of which has been referred to above, that there was a grapple and free fight. The appellants herein were four in number, whereas the deceased was all alone. Possibly, PWs-1, 2 and 3 did not come to the aid and save the deceased, even when PW-3 was closely related. PW-1 has not attributed any verbal instigation or threats by the appellants Inder Singh, Vijay Kumar and Sanjay. These three had not prompted or provoked Chain Singh to hit the screw driver on the neck or the forehead of the deceased. Ranvir Singh (PW-1) in his deposition, as noted above, had stated that appellant-Inder Singh had called upon his children and Sanjay to beat Ranbir Singh. No other taunts were attributed to Inder Singh. As far as Vijay Kumar and Sanjay are concerned, they had caught hold of the hands of the deceased and when Ranvir Singh (PW-1) and Jai Pal (PW-2) had tried to rescue Ranbir Singh and the deceased had fallen down. We do perceive and believe that injuries on the body of the deceased Ranbir, were possible and could have been caused by the fall.

10. Jai Pal (PW-2)'s deposition states that appellants-Vijay Kumar and Sanjay had caught hold of the hands of the deceased while appellant-Inder Singh had caught hold of his legs. PW-2 did not attribute any specific words to appellants-Inder Singh, Vijay Kumar or Sanjay at the time of the occurrence. Ram Chander (PW-3)'s deposition is equally silent on the said aspect, for he has stated that while appellants-Inder Singh, Vijay Kumar and Sanjay had caught hold of Ranbir Singh and Chain Singh had inflicted wounds on the left temple and the forehead with the screw driver.

11. In view of the aforesaid factual position, as far as appellants-Inder Singh, Vijay Kumar and Sanjay are concerned, they certainly shared common intention so as to cause injuries by beating him or even with the screw driver used by Chain Singh on the body of the deceased. They had caught hold of Ranbir Singh and had also given him beatings. However, we do not think the three appellants, namely, Inder Singh, Vijay Kumar and Sanjay had shared common intention to the extent that Chain Singh would inflict injuries with the screw driver on any vital or sensitive part of the body of the deceased, i.e., the forehead. Common intention to this extent was missing, as these three appellants had not visualised or perceived that Chain Singh would inflict injury in the said manner. They were unarmed and were silent. What is also perceptible and clear from the deposition of Ranvir Singh (PW-1) is that the deceased had fallen down and had hurt himself. We have referred to and noted the injuries

mentioned in the post-mortem Exhibit PW-8/A and the deposition of Dr. L.T. Ramani (PW-8), who had testified that it was injury No. 8 [i.e. injury No.(i)], which had led and caused the death. The reference was made by PW8 is to one or single injury. Other injuries, it is apparent, were not fatal and rather on the surface and not serious. The fatal injury we perceive and believe could have been possible even when the deceased had fallen and possibly stuck his head on the road or on any object lying on the road. We have also examined the drawing/sketch of the screw driver recorded in Exhibit PW-8/B. It is a normal size screw driver, which is available in a house as a common tool. Appellant-Chain Singh had not brought with him knife or a sharp edged weapon. The said screw driver in fact can be also seen in juice shops. Keeping in view the aforesaid facts, we are inclined to convert the conviction of the appellant-Chain Singh from Section 302 IPC to Section 304, Part I IPC. Conviction of appellants-Inder Singh, Vijay Kumar and Sanjay is converted from Section 302 to Section 326 read with Section 34 IPC.

12. On the question of punishment, we notice that the appellants including appellants Inder Singh, Vijay Kumar and Sanjay have suffered incarceration of about six years. The appellants- Inder Singh, Vijay Kumar and Sanjay are sentenced to rigorous imprisonment already suffered, in addition they shall be liable to pay fine of Rs.10,000/- each which shall be paid as compensation to the legal heirs of the deceased. The aforesaid fine

will be paid within four weeks from today before the trial court. On failure to pay the fine, the appellants-Inder Singh, Vijay Kumar and Sanjay will undergo simple imprisonment for a period of six months each.

13. Appellant- Chain Singh, who has been convicted under Section 304 Part-I IPC, should suffer and undergo a longer sentence. However, the offence in question was committed in the year 1996 and the appellant – Chain Singh was released on suspension of sentence vide order dated 4th February, 2003. He has been on bail for more than twelve years. The order dated 4th February, 2003 noted that the appellant Chain Singh had undergone incarceration of more than six years.

14. In view of the aforesaid peculiar facts, appellant – Chain Singh is also sentenced to the period of detention already undergone, but will pay a fine of Rs.20,000/- within a period of two months. The said fine will be deposited with the trial court and will be paid as compensation to the legal heirs of the deceased. In case appellant-Chain Singh does not pay the said fine, he shall undergo simple imprisonment for a period of one year in default.

Copy of this judgment will be sent to the trial court, who shall ensure compliance of the aforesaid directions. The appeal is accordingly disposed of.

(SANJIV KHANNA)
JUDGE

(R.K. GAUBA)
JUDGE

NOVEMBER 27, 2015
VKR