

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

% *Date of decision : February 02, 2016*

+ **CRL.A. 442/2000**

LALLAN AHMED

..... Appellant

Represented by: Mr.R.D.Rana, Adv. with Lallan
in person.

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP for
State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Vide the impugned judgment of conviction dated July 14, 2000 Lallan Ahmed stands convicted for offence punishable under Section 302 IPC for the murder of Jaivir and attempting to cause murder of Lala Ram and Mahavir under Section 307 IPC and for causing injuries on the person of Satpal under Section 323/34 IPC. Besides Lallan, Usman Khan, Shamshad and Mohd.Matin were held guilty for offences punishable under Section 326/34 IPC for causing injuries on the person of Jaivir, Mahavir and Lala Ram and under Section 323/34 IPC for causing injuries on the person of Satpal. The present appeal relates to Lallan Ahmed only.

2. A brief exposition of facts are that on December 16, 1993 about 10.15 PM a wireless message was received at PS Dabri informing that a person has been given knife blow near shop No.6, Solanki Property Dealer at Sitapuri

("Chaku maar diya"). On this report noted as DD No.26A, SI Gurmeet Singh accompanied by Constables went to the shop No.6 Sitapuri where he found blood at two places and a blood stained knife. At the spot he got to know that the injured had been removed to Deen Dayal Upadhyay hospital. On reaching the hospital he found three injured Mahavir, Lala Ram and Jaivir. The three were declared unfit to make statement, thus SI Gurmeet Singh recorded statement of Raja Ram an eye-witness of the incident.

3. Raja Ram stated that he was residing at Pankha Road with his family since 1984 and running a dairy. On that date i.e. December 16, 1993 he was coming back with his maternal uncle Mahender, Mahavir and Lala Ram from Matiyala village at around 9.30 PM when they reached near the shop of Solanki Property Dealer. At the Pan Kiosk his maternal uncle Mahavir asked for 4 cigarettes from the shopkeeper, when a person named Lallan whom he knew, while abusing his uncle stated that he should first give the money, on which his maternal uncle stated why was he abusing. On this exchange of words took place. Lallan asked his friend Usman to go to the factory and get more person. On this Usman brought from the factory of Lallan more people when Lallan took out a knife and injured his maternal uncle Jaivir, Mahavir and Lala Ram while Usman, Shamshad and Mohd.Matin injured them with their lathies. His maternal uncle Satpal also received injuries. On seeing the scuffle one Ashok Chhabra and other people staying in the mohalla came, when Lallan threw the knife and ran away along with his associates.

4. The MLCs of the various injured persons noted the following injuries:

"Mahavir son of Gissu Ram

No history of unconscious, vomiting, bleeding ENT.

INJURIES

1. CLW 1" over right occipital, region, surrounded by swelling.
2. Incised wound over lower abdomen and left side (1.5 cm. long).

The injuries were held to be caused by sharp object and also dangerous.

Lala Ram son of Rattiya

No history of unconsciousness/vomiting/bleed ENT.

INJURIES

1. Incised wound 3" long below ant axillary lobe right side.
2. Stab wound 1½" long depth lower abdomen with intestinal loop exposed out of abdomen.
3. Incised wound 1" long over left lateral aspect of left thigh.

Injuries were held to be dangerous caused by sharp object

Satpal son of Ratti Ram

No history of unconsciousness/vomiting/bleed ENT.

INJURIES

1. Linear abrasion 1" X 3½" long along with lateral aspect of left thigh.
2. Abrasion over right parietal bone area.

The injuries were held to be simple caused by blunt object."

5. From the side of Lallan, Usman and Shamshad also received injuries and as noted in the MLC were:

"Usman Khan son of Pattu Khan

*No history of unconsciousness, vomiting, bleeding ENT
(smell of Alcohol)*

INJURIES

1. *Clean lacerated wound over frontal region 6 cm. long.*

The injury was held to be simple caused by blunt object.

Shamshad son of Ahmed

No history of unconsciousness/vomiting/bleeding ENT. (Alcohol smell from mouth).

INJURIES

1. *CLW 2½” long over parietal occipital area.*
2. *Incised wound 1½” long over lateral aspect of right upper area above elbow.*

The injuries were held to be simple caused by blunt and sharp object.”

6. Dr.L.K.Barua PW-18 who conducted the post-mortem of deceased Jaivir found the following injuries on his body:

“EXTERNAL INJURIES

- (i) Bruise size 2.5 c.m. x 0.5 c.m. on left eyebrow placed horizontally.
- (ii) Bruise superadded abrasions on the left upper eyelid.

Injuries (i) and (ii) were caused by same blow.

- (iii) Bruise bluish size 2 cm x 1.8 cm. placed horizontally on the upper part of bridge of the nose.
- (iv) Incised wound size 3.5 cm x 2 cm? depth on the right side front of the chest 4 cm. below and slightly lateral to the right nipple.
- (v) Incised wound size 2 cm. x 1 cm? depth of the right angle of the chest 6 cm. below right axillary pit.
- (vi) Incised wound size 3.2 cm. x 1.2 cm. ? depth on the right umbilical area 3 cm. right to the umbilicus.
- (vii) Incised wound size 3.3 cm. x 1.5 cm. ? depth 2 cm. below umbilicus.

- (viii) Bruise size 8 cm. x 1.5 c.m. on the upper part of left arm with pale central area with raised margins.
- (ix) Bruise size 8 cm. x 1.5 c.m. on the left shoulder blade with pale central area with raised margins.
- (x) Bruise size 8 c.m. x 1.5 c.m. on the middle of back of left side chest 5 c.m. below injury No.9.”

7. On internal examination the scalp underneath injury No.(i) showed effusion of blood, on the left frontal bone there was a small fracture lying whereas the nasal bone under the injury No.3 showed black dot and nasal cartridge was found to be fractured. He opined the cause of death to be haemorrhagic shock resulting from injuries and all injuries were individually sufficient to cause death in the ordinary course of nature. Dr.Barua further opined that the injuries were possible from the knife (recovered from spot itself)

8. Lallan was arrested on December 17, 1993 from Chanakya place and there were injuries on his forehead and his medical examination conducted on December 18, 1993 revealed the following injuries:

“INJURIES

1. *History of unconscious (Positive)*
2. *Spitting of blood in sputum positive.*
3. *Injuries over head, back of chest.*

Tenderness positive over back of chest on right side.

Abrasion over left side spine area.

CLW over head (about 2”) already stitched.

No opinion was expressed about the injuries and X-ray of chest and skull was called for. No bone injury in the X-ray was noted.”

9. Before Court PW-8 Raja Ram, the maker of the FIR supported the

prosecution case, however he clarified that when they reached the pan shop his maternal uncle Mahavir asked for four cigarettes and stated that he would give the money on the next day on which Lallan asked him to first give the money and then take the cigarette when verbal altercation started between the two of them. The version of Raja Ram is duly corroborated by Mahavir PW-3, Lala Ram PW-4 and Satpal PW-4A.

10. A perusal of the statements of these witnesses i.e. Raja Ram PW-8, Mahavir PW-3, Lala Ram PW-4 and Satpal PW-4A would show that they have rendered no explanation whatsoever of the injuries caused to Usman Khan and Shamshad. Shamshad had received an incised wounds thus the injury was caused by a sharp object. According to the prosecution witnesses neither the deceased nor the injured nor any person from their side were armed with any weapon. Admittedly the scuffle took place when Mahavir demanded cigarettes and stated that he would give the money next day where after Lallan asked him to give the money first. In cross-examination Mahavir denied that Lallan Ahmed or his associates were injured or that he or any of his friends were armed which fact is belied by the MLC of Usman and Shamshad got conducted immediately after the incident on admission in the hospital. It is thus evident that the eye-witness and the injured witnesses have not come out clear with a truthful version of the incident, thus this Court is required to separate the grain from the chaff.

11. The incident was not pre-planned and occurred on the spur of the moment when verbal altercation took place pursuant to Mahavir stating that he would pay for the cigarettes, the next day and Lallan asking him to pay first. Both the sides received injuries including incised wounds by sharp weapons. Thus though Lallan and his associates may have exceeded,

however the offence of causing injury to Jaivir cannot be said to be a pre-meditated offence caused with the intention to cause murder of Jaivir.

12. The Hon'ble Supreme Court in the decision reported as (2004) 11 SCC 381 Parkash Chand Vs. State of H.P. held:

“7. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of provocation not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the

fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”. These aspects have been highlighted in Dhirajbhai Gorakhbhai Nayak v. State of Gujarat [(2003) 9 SCC 322 : 2003 SCC (Cri) 1809 : (2003) 5 Supreme 223] . When the factual scenario is considered in the light of legal principles indicated above, the inevitable conclusion is that Exception 4 to Section 300 IPC is clearly applicable.”

13. It is evident that the incident took place unpremeditated on a verbal altercation for payment for cigarette, the weapon of offence knife was already available with Lallan and both the sides received injuries. The conviction of Lallan Ahmed is thus converted to one under Section 304 (Part-I) IPC. He has already undergone more than 7 years and two months of rigorous imprisonment. Thus he is released on the period already undergone.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.
15. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

FEBRUARY 02, 2016
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