

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

% *Date of decision : February 16, 2016*

+ **Crl.A. 547/2000**

Ram Kishore & Another

..... Appellants

Represented by: Mr.K.B. Andley, Sr. Adv.
instructed by Mr. M.L. Yadav,
Adv.

versus

State

..... Respondent

Represented by: Mr. Varun Goswami, APP for
the State with Inspector Neera
Singh, ATO, Krishna Nagar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Ram Kishore and his son Raju have been convicted for causing the murder of Naresh under Sections 302/34 IPC vide the impugned judgment dated August 24, 2000 and awarded life imprisonment vide the order on sentence dated August 25, 2000.

2. On May 21, 1994 at about 9.45 PM investigation was set into motion on receipt of an information recorded vide DD entry No.16A regarding a quarrel at A-6/8 near Raghunath Mandir, Indra Colony, Krishna Nagar. When ASI Ombir Singh reached the spot along with Ct.Manveer Singh he came to know that a quarrel had taken place amongst Naresh, Vinod, Ram Kishore, Raju and one S, son of Ram Kishore, a juvenile in which Naresh received injuries and had been removed to Swami Dayanand Hospital (SDN Hospital). On reaching the hospital, doctor declared Naresh to be unfit for

statement and thus statement of Vinod, brother of Naresh was recorded vide Ex.PW1/B.

3. Vinod stated that he was residing at A8/103, Indra Colony, Krishna Nagar along with his family and working in Escorts. His brother Rajesh who was residing in Nand Nagri had come to their house and was talking to their maternal uncle's daughter Anju in the Gali when Ram Kishore who was under the influence of liquor asked him as to why he was talking to the girl and started abusing him. His brother Rajesh told Ram Kishore that Anju was his sister and Ram Kishore had no business to intervene in the matter. On this an altercation took place, whereafter his brother went to Nand Nagri. After some time, Ram Kishore came to their house and started abusing them. Some neighbours intervened and sent him to his house. Around 9.30 PM his brother Naresh and his mother were standing in the gali when Ram Kishore and his sons Raju and S came. S was armed with an iron rod. Ram Kishore started abusing him and exhorted his sons to beat them as they were competing with them. On this Raju caught hold of his brother Naresh and S gave a Saria (iron rod) blow on his head. Naresh fell down unconscious. He made a call to the police and ran to save himself. Thereafter PCR came and took his brother, him and his mother to SDN Hospital.

4. On the statement of Vinod, FIR No.192/94 was registered under Sections 308/34 IPC and investigation carried out. On the disclosure of S, an iron rod which had no blood stains was taken into possession. On May 27, 1994, Naresh died at JPN Hospital. His post-mortem was conducted by Dr. D. Harish and the report was exhibited by Dr. P.C. Dikshit PW-21 as Ex.PW20/A. As per post-mortem report the following injuries were found

on the body of the deceased:-

EXTERNAL INJURIES

(1) Scabbed lacerated wound 1.5 x 0.5 cm on left front of head, 9.8 cms above outer 1/3 rd left eye brow.

Skull: Fissured fracture of left temporal bone with sutural separation of left coronal suture. Fissured fracture extending to base of skull at left middle fossa.

5. As per the post mortem report, the cause of death to be due to cranio-cerebral damage consequent upon blunt force impact to head. The injuries were ante mortem in nature, around 5/6 days in duration and injury No.1 was sufficient to cause death in the ordinary course of nature.

6. On the death of Naresh, Section 302/34 IPC was invoked. S, the juvenile was referred to Juvenile Justice Board for enquiry.

7. During the course of trial, Vinod Kumar the complainant was examined as PW-1 on September 18, 1995. In his examination-in-chief he deposed in sync with his statement on the basis of which FIR was registered. However when he was recalled for cross-examination on July 13, 1999 he did not support the prosecution case and stated that he had not seen the incident when Naresh received injuries. He however admitted that his statement was recorded on that very night by the police and was read over to him though he did not remember the same. Even Smt. Kamla PW-4 mother of Vinod and deceased Naresh on April 25, 1996 deposed in sync with her statement under Section 161 Cr.PC however in cross-examination on November 18, 1998 she did not support the prosecution case. Mahesh

Kumar neighbour who was examined as PW-5 on April 25, 1996 also deposed in sync with his statement supporting the prosecution case however while being cross-examined on March 06, 1999 he did not support the prosecution case. It is thus evident that the three eye-witnesses including the maker of the FIR though supported the prosecution case in their examination-in-chief but due to delayed cross-examination were won over and did not support the prosecution case.

8. Learned Additional Sessions Judge vide the impugned judgment relying upon the testimony of the three witnesses i.e. Vinod Kumar, Kamla and Mahesh Kumar convicted the appellants as noted above returning a finding that the common intention could be deciphered from the exhortation given by Ram Kishore whereafter the two sons executed the offence.

9. Learned counsel for the appellants assailing the judgment contends that since the three eye-witnesses had turned hostile and did not support the prosecution case in their cross-examination, no reliance can be placed on their testimonies. The weapon of offence recovered was only a 15 inch iron rod, thus from the weapon of offence used, the common intention to cause murder cannot be gathered. Even as per the prosecution case only one blow was given to the deceased. The evidence of defence witnesses has not been considered by the learned Trial Court. The appellants are thus entitled to be acquitted. In the alternative, it is contended that even accepting the version of prosecution witnesses, no common intention to murder the deceased Naresh can be inferred and at best the offence would fall under Section 304 Part-II IPC and the appellants be released on the period already undergone.

10. In the case reported as (1991) 3 SCC 627 *Khujji @ Surendra Tiwari*

Vs. State of Madhya Pradesh while dealing with the evidence of hostile witnesses, the Supreme Court held that the evidence of a hostile witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such a witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

11. The place of incident in the present case was the gali outside the house of Naresh in the evening at about 9.30 PM. The mother and brother of the deceased were natural witnesses who would be present there. Soon after the incident, statements of eye-witnesses were recorded which the witnesses supported in their examination-in-chief. Supreme Court deprecating the defence taking unnecessary adjournments in the decision reported as (2015) 3 SCC 220 Vinod Kumar Vs. State of Punjab held-

“57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.”

12. The weapon of offence recovered at the instance of S is connected with the injury caused for the reason PW-4 Kamla identified it to be the same rod from which injury was caused. Since the evidence of the three witnesses as noted above is not required to be discarded in view of the fact

that there is no improvement or contradictions in their statements and Smt. Kamla and Mukesh Kumar have corroborated the version of Vinod, it is to be now seen whether the offence committed by Ram Kishore and Raju fall under Section 302/34 IPC or 304/34 IPC.

13. Even as per the prosecution case, Ram Kishore was intoxicated and the altercation took place with Rajesh who was talking to Anju. Anju has also been examined as PW-12, who also supported the prosecution case on this count. After Rajesh left for his house, Ram Kishore came to the house of Naresh when the matter was pacified. Ram Kishore again came back accompanied by his two sons and exhorted his sons to attack saying that they had the temerity to face them. The weapon of offence was 15 inch long iron rod and only one blow was inflicted.

14. It is trite law that in all cases a single blow of injury cannot be held to be bringing the offence under Section 304 Part II however to ascertain whether the offence committed amounts to murder or culpable homicide not amounting to murder, the nature of the weapon used, the intention/knowledge with which the injury is inflicted, gravity, dimension and nature of injury, whether the death ensued instantaneously or the victim died after several days etc. are required to be seen.

15. Considering the facts as noted above, the conviction of appellants is modified from one under Section 302/34 IPC to one under Section 304 Part II/34 IPC and they are directed to be released on the period already undergone.

16. Appeal is accordingly disposed of.

17. Copy of this order be sent to Superintendent Central Jail Tihar for

update of the Jail record.

18. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

FEBRUARY 16, 2016
'v mittal'