

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

% *Judgment Reserved On : April 21, 2016*
Judgment Delivered On : April 25, 2016

+ **CRL.A.784/2000**

CHANDER PRAKASH Appellant
Represented by: Mr.M.L.Yadav, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP and
ASI Om Prakash, PS Hauz Khas

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. DD No.24A was recorded at PS Hauz Khas at 11:30 P.M. (in the night) on July 26, 1995, recording information received by the duty officer that at a drain in village Shahpur Jat a man was struggling for life. Insp.Rajender Singh PW-22 was handed over copy of DD No.24 and along with SI Dilip Singh PW-7, SI Ashok Kumar (not examined) and four constables, one of whom was Ct.Ishwar Singh PW-5 he proceeded to the spot. ASI Satya Dev PW-1 also learnt of said fact and on his own proceeded to the spot. Statement Ex.PW-2/A-5 of one Homnath Gautam was recorded by Insp.Rajender Singh at the spot and the tehrir Ex.PW-22/A was dispatched, as recorded therein at 1:40 AM on July 27, 1995, based whereon the FIR Ex.PW-14/A was registered at PS Hauz Khas at

1:42 A.M., for an offence punishable under Section 302 IPC. Since in the statement Ex.PW-2/A5, Homnath Gautam had named the appellant as the assailant, the police arrested the appellant and sent him for trial.

2. No recovery (not even the weapon of offence) was recovered pursuant to the disclosure statement of the appellant, and thus the case of the prosecution rests on ocular evidence.

3. Before dealing with the ocular evidence we need to note that the deceased was named Raj Kumar. His dead body was seized from the spot by Insp.Rajender Singh and sent to the mortuary of All India Institute of Medical Sciences, where Dr.Alpana Sinha PW-2 conducted the post-mortem and wrote the report Ex.PW-2/A. The report notes two stab and five incised wounds inflicted on the deceased. The two stab wounds pierced the heart, lung and intestines being directed towards the chest and the stomach respectively. As per Dr.Alpana Sinha both injuries were individually and collectively sufficient to cause death in the ordinary course of nature.

4. Homnath Gautam could not be traced during trial and thus could not be examined. The prosecution's case thus rested on the testimony of Vinod @ Babli PW-4, the brother of the deceased, who deposed that on the day of the incident at night he was taking a stroll after evening meal and saw a man being assaulted by the appellant near a culvert at village Shahpur Jat and as he reached the culvert he saw that his brother was being assaulted by the appellant with a knife in his hand. 15-20 persons had assembled, one of whom was Homnath Gautam. As he intervened, the appellant ran away and to apprehend him, Homnath Gautam and he chased the appellant but could not succeed in apprehending him.

5. The learned Trial Judge has believed the presence and the testimony of Vinod and therefore has convicted the appellant.

6. The defence of the appellant was, duly taken by him in his statement under Section 313 Cr.P.C., and in respect of which we find even suggestions given to Vinod, that the deceased was a good friend of the appellant and Vinod was a drug addict and peddler of charas and in the past had been admonished by the appellant, and the appellant and the deceased had also given him a beating with the intention to make him mend his ways. Therefore Vinod falsely implicated him.

7. Conduct of a person assumes significant relevance, given the time and place in which a person finds himself, and especially under an adverse situation. Surely, a brother seeing his brother being fatally assaulted would react either in fear or in panic or as a rescuer. As a rescuer he would reach out to his brother being assaulted to save him and if the assailant runs away, finding the brother grievously injured would take steps to rush him to the hospital and at the first available opportunity disclose to the police officer who first meets the person the fact of how his brother was grievously injured. If overcome by fear, the onlooker brother may run for his life to save himself. If overcome by panic, the reaction would be somewhat diffuse and may appear to be contradictory. But, it has to be kept in mind that only such contradictory behaviour/conduct discredits a witness when it destroys the very credibility of the witness. Overcome by circumstances, a reaction in panic would have an element of irrationality in it, but said irrationality is completely explainable by the reason of the person being in a state of panic. Running helter-skelter is a facet of panic.

8. As we have noted in para 1 above, ASI Satya Dev PW-1, Ct.Ishwar Singh PW-5, SI Dalip Singh PW-7 and Insp.Rajender Singh PW-22, the first on his own and the latter three on receiving copy of DD No.-24A had reached the place of the occurrence i.e. the culvert on a drain at village Shahpur Jat.

9. During cross-examination ASI Satya Dev stated that he learnt of the murder because he was on emergency duty at the police station that night and when he reached the spot at around 11.00 P.M. he saw about 50 people at the spot but did not remember whether any relative of the deceased was present at the spot. Ct.Ishwar Singh PW-5 deposed that he accompanied Insp.Rajender Singh, SI Dalip Singh, SI Ashok Kumar and a few other constables to the place of the occurrence and that Homnath and brother of the deceased were present and statement of Homnath was recorded. Confronted with his statement recorded by the investigating officer, Ct.Ishwar Singh admitted that it was not recorded therein that brother of the deceased was present. SI Dalip Singh deposed of having accompanied Insp.Rajender Singh to the spot where Homnath Gautam met them and whose statement was recorded by Insp.Rajender Singh. During cross-examination he said that the brother of the deceased arrived much later. He said that when they reached the spot, 10-15 persons were standing nearby. Insp.Rajender Singh deposed that as he reached the spot, accompanied by SI Dalip Singh, SI Ashok Kumar and 4 constables, Homnath Gautam met him and claimed to be an eye witness and therefore he recorded his statement Ex.PW-2/A-5 at the spot itself and sent Ct.Khursheed Ali for FIR to be registered for an offence punishable under Section 302 IPC. During cross-examination he said that he saw 7-8

persons at the spot, one of whom claimed to be the eye witness and therefore he recorded his statement. He said that one male member of the family of the deceased came at the spot at a later stage.

10. The argument advanced by learned counsel for the appellant was that the testimony of the five police officers clearly suggests that Vinod @ Babli PW-4 was not present at the spot and therefore he could not be an eye witness. The argument taken forward was that Homnath Gautam, the maker of the statement on which FIR was registered, being not examined by the prosecution, disbelieving the testimony of Vinod @ Babli, no incriminating evidence remains.

11. If a person claims to be an eye witness to an incident, the task of the Judge is to decide whether the claim of the person being an eye witness is correct and whether there are blemishes in his version. If the person is found to be an eye witness and sans any blemish in his version, the Court has to do no further but to proceed on the eye witness account rendered before the Court by the witness.

12. Apart from the testimony of the five police officers the argument was that even if the testimony of Vinod is to be seen, it brings out a conduct which destroys his claim to the credit of having seen his brother being brutally stabbed by the appellant.

13. On being cross-examined Vinod admitted that the distance between the culvert where his brother was assaulted and P.S.Hauz Khas was about 50-60 yards and that he did not inform the police about the incident. The argument was that this conduct of Vinod, of neither rushing to the police station nor rushing his brother to a hospital clearly belies his claim to be present at the spot, for the reason the natural reaction of a

brother seeing his brother being fatally assaulted would be to either rush to the police station and especially when the police station was at a handy distance or to rush the brother to a hospital.

14. HC Ram Chander PW-14 was the duty officer at P.S.Hauz Khas when FIR No.336/1995, Ex.PW-14/A was registered. He had received the rukka. The FIR records the time of its registration. It is 1.42 A.M. on July 27, 1995. DD No.24A has been registered at the police station at 11.30 P.M. on July 26, 1995. Neither HC Ram Chander nor Insp.Rajender Singh have been questioned regarding the time when the statement of Homnath was recorded by Insp.Rajender Singh and the time when the FIR was registered. It is in this connection that it assumes importance that in Homnath's statement Ex.PW-2/A-5, on the basis of which the FIR was registered, he has mentioned that Babli was also present. This Babli is Vinod Kumar @ Babli PW-4.

15. ASI Satya Dev may have said that he did not remember whether any relative of the deceased was present at the spot when he reached, but that does not mean that he said that no relative was present. A positive statement that no relative was present is different than a statement of not remembering. Ct.Ishwar Singh has said that not only Homnath but brother of the deceased was present at the spot when he reached there. The fact that in his statement recorded by Insp.Rajender Singh this fact was not mentioned is irrelevant because the purpose of recording Ishwar Singh's statement was to satisfy the requirement of Section 161 Cr.P.C. i.e. it was enough for Ishwar Singh to state that he accompanied the Insp.Rajender Singh to the place of occurrence and disclosed what he saw. He was a witness to Insp.Rajender Singh recording Homnath's

statement and sending the tehrir for FIR to be registered. At best it would be a case of omission for him not to have said that he saw a relative of the deceased in the company of Homnath. SI Dalip Singh and Insp.Rajender Singh have said that Vinod @ Babli met them after some time of they reaching the spot. In his testimony Vinod @ Babli has said that he chased the appellant but could not manage to apprehend him. Therefore, it is obvious that there was a temporary separation of distance between the deceased and Vinod. Appellant himself has given suggestions to Vinod that the police station was nearby and Vinod admitted that the police station was 50-60 yards away. From the fact that DD No.24A was recorded at 11.30 P.M. and by 1.40 A.M. i.e. within 2 hours and 10 minutes the tehrir was dispatched from the spot, we have proof of the fact that the police reached the place of the crime within minutes of the crime. In such a scene, the police officers not noticing Vinod because they did not see him as they reached the spot would not discredit Vinod's testimony of being an eye witness. As Vinod chased the appellant, the distance increased from the scene of the crime and where Vinod was. By the time Vinod returned, the police had already arrived, and Homnath had told the investigating officer of being a witness. Under the circumstances, nothing much turns on the fact that Vinod neither went to the police station nor rushed his brother to the hospital, because the time lag was short. Events were overlapping and occurring simultaneously. As Vinod chased the assailant, somebody informed the police station and after DD No.24A was recorded, the police team headed by Insp.Rajender Singh reached the spot which was hardly 50-60 yards away from the police station and met Homnath. Thereafter Vinod returned. It was all over.

The police took charge. The police removed the injured, who had unfortunately died an instant death, to the mortuary.

16. We concur with the view taken by the learned Trial Judge that Vinod @ Babli has to be believed.

17. The appeal is accordingly dismissed. Conviction of the appellant for the offence of murder and sentence to undergo imprisonment for life is upheld.

18. Being admitted to bail, the appellant is directed to surrender and undergo the remaining sentence. The bail bond and the surety bond are cancelled.

19. Trial Court Record be returned and copy of the present decision be sent to the Superintendent, Central Jail Tihar for record.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 25, 2016
Mamta/skb