

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

% *Date of decision : April 27, 2016*

+ **CRL.A. 843/2001**

RAM KISHAN @ BABBU Appellant
Represented by: Mr.R.D.Rana and Mr.Kunwar
Mohd.Asad, Advocates.

versus

THE STATE (NCT OF DELHI) Respondent
Represented by: Mr.Varun Goswami, APP for
the State with SI Karan Pal, PS
Kotla Mubarakpur.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Convicted for murdering Naresh on the strength of the testimony of three eye-witnesses and recovery of weapon of offence Ram Kishan, the appellant herein challenges the impugned judgment dated October 27, 2001 convicting him for the offence punishable under Section 302 IPC and the order on sentence dated November 05, 2001 directing him to suffer imprisonment for life and to pay a fine of ₹100 and in default to undergo RI for one day.

2. Process of law was set into motion on receipt of DD No.61-B at 9.15 PM on April 08, 1996 at PS Kotla Mubarakpur from AIIMS informing that Naresh Kumar, S/o Shiv Pal R/o F-521, Village Khairpur, Kotla Mubarakpur had been admitted in an injured condition after quarrel. HC

Surender Singh PW-4 reached the hospital and collected the MLC of Naresh which declared him dead at 9.40 PM despite having made efforts for incubation and ventilation since 9.20 PM when he was brought to the hospital. In the meantime SI Om Prakash PW-14 along with other Police officers reached the hospital, met Puran Chand and recorded his statement Ex.PW-14/A on which FIR was registered.

3. Puran Chand, resident of C-177, Nanakchand Basti, Kotla Mubarakpur stated that he was running a general merchant store` on the ground floor of his house. He knew Naresh Kumar S/o Shiv Lal R/o F-521 village Kotla Mubarakpur who often came to his house. On April 08, 1998 at about 8.15 PM after closing his shop, when he was sitting at the stairs of house, Naresh was passing bye. Seeing Puran Chand sitting on the stairs, Naresh also sat with him. While chatting Naresh informed that he was posted on election duty. While the two of them were talking to each other at about 8.30 PM Ram Kishan @ Babbu S/o Ganga Ram R/o C-115 Krishna Gali, Nanakchand Basti, Kotla Mubarakpur aged 20-22 years whom he knew earlier came and halted 15/16 steps away from his house near the light pole. Ram Kishan called out Naresh, on which he went towards Ram Kishan. In the meantime Subhash S/o Dayaram, Jai Chand S/o Shiv Lal and Suresh S/o Shiv Lal R/o of village khairpur also reached there. When Naresh reached near Ram Kishan @ Babbu, he stated that Naresh had been posing big earlier, but he did not know who Babbu was. Ram Kishan further stated that he would teach Naresh a lesson and immediately after taking out a pointed object from the right pocket of his pant stabbed Naresh on the neck. Thereafter Ram Kishan @ Babbu ran away from the place. Though they tried to catch hold of Ram Kishan, however he succeeded in

running away. Naresh fell down due to the injury on the neck and they brought him to the hospital in the TSR, where the Doctor declared him dead. Puran Chand stated that Jai Chand and his shirts were blood stained. On the basis of the statement of Puran Chand FIR Ex.PW-9/A was registered. SI Om Prakash also recorded the statement of witnesses Subhash and Jai Chand. The spot was photographed and blood samples were lifted and seized. Shirts of Subhash and Puran Chand were also seized vide memos Ex.PW-1/B and PW-1/C.

4. Post-mortem on the body of the deceased was conducted by Dr.Alpana Sinha PW-16 who found a stab wound placed obliquely over front of the neck on right side. The wound was spindle shaped with acute angles and clean cut margins. The cause of death was opined to be haemorrhagic shock due to injury to carotid artery, consequent to injury No.1 which was sufficient to cause death in the ordinary course of nature. It was opined that the injury was caused by a sharp cutting weapon.

5. On April 10, 1996 Ram Kishan @ Babbu was arrested at 1.00 PM by SI Om Prakash PW-14 and Constable Baljinder Singh PW-8 who made a disclosure statement Ex.PW-8/B. Pursuant to the disclosure statement Ram Kishan got recovered a pair of scissors from under Sewa Nagar Flyover which was taken in possession vide memo Ex.PW-8/C. As per the FSL report Ex.PW-15/1 human blood of 'B' group origin was detected on the shirts of Subhash and Puran and the scissors which belonged to that of the deceased.

6. Learned counsel for the appellant contends that the appellant has been falsely implicated and was not present at the time when the alleged incident took place. The appellant in his statement under Section 313 Cr.P.C.

rendered the explanation that he was innocent and has been implicated at the behest of Puran Chand PW-1 who had taken a sum of ₹20,000/- and was avoiding to return back and nothing was recovered at the instance of the appellant. However, the said explanation has not been considered by the learned Trial Court. There are contradictions in the testimony of the three witnesses of the alleged incident produced by the prosecution and thus they cannot be relied upon. The weapon of offence is not connected with the injuries received by the deceased for the reason there is no opinion of the doctor that the injuries were possible by the said weapon. In the alternative it is submitted that even accepting the case of the prosecution, a quarrel took place on the spur of the moment and it is alleged that the appellant inflicted single blow. Thus the offence if any committed by the appellant would fall under Section 304 IPC and not 302 IPC. The appellant having undergone sentence for a period of six years two months he be released on the period already undergone.

7. Learned APP contesting the contentions above-noted states that there are no contradictions in the testimonies of the three eye-witnesses. The pair of scissors recovered at the instance of appellant was found to be stained with blood of the deceased. Since the appellant came with a determined mind no case for modifying the conviction to one under Section 304 IPC is made out.

8. Puran Chand PW-1 the maker of the FIR deposed in sync with his statement on the basis of which FIR was registered. Two other eye-witnesses Subhash Chand PW-2 and Jai Chand PW-3 have also deposed on the same lines. Subhash Chand stated about the quarrel between Naresh and Ram Kishan at 8.30 PM on April 08, 1996 when Ram Kishan inflicted a

scissor blow on the neck of Naresh as they picked up heated arguments. The presence of Subhash at the spot is fortified by the MLC Ex.PW-5/DA which notes that Naresh was got admitted in the hospital by Subhash. Presence of Puran and Subhash is further fortified by the fact that their shirt got blood stained on removing Naresh to the hospital, which shirts were seized and as per the FSL report were found to have stains of blood of human origin 'B' group, that of the deceased. Further Jai Chand PW-3 also deposed in sync with Puran Chand and Subhash. Nothing has been elicited in the cross-examination of the three eye-witnesses and their version is corroborated from other circumstantial evidence.

9. The explanation of Ram Kishan in his statement under Section 313 Cr.P.C. is that he was innocent, had participated in a "Committee" with Puran Chand PW-1 and when he sought return of a sum of ₹20,000/- Puran avoided to make the payment and falsely implicated him. However we note that no such suggestion has been given to Puran when he was cross-examined by Ram Kishan. Thus this plea is clearly an afterthought.

10. As regards the contention of learned counsel for the appellant that the pair of scissors recovered at the instance of Ram Kishan is not connected with the injuries for the reason no opinion has been rendered by the doctor that injuries on the deceased were possible by the said weapon of offence, we note that blood was detected on the pair of scissors recovered at the instance of Ram Kishan and when sent to FSL vide Ex.PW-15/1, the expert opined that human blood of 'B' group was present on the scissors which was the blood group of the deceased.

11. From the facts as noted above it is apparent that Puran and Naresh were sitting and chatting when Ram Kishan came to the spot, and on calling

Naresh near him, an altercation ensued between the two of them, culminating in infliction of one stab injury on the neck of Naresh. The injury being inflicted on a sudden quarrel, the offence committed by Ram Kishan would fall under Section 304 IPC and not 302 IPC. Thus we modify the conviction of Ram Kishan from 302 IPC to the offence punishable under Section 304 IPC. Ram Kishan has already undergone 6 years 2 months of imprisonment before his sentence was suspended by this Court pending hearing of the present appeal. Thus his sentence is modified to the period already undergone. Bail bond and surety bond are discharged.

12. The appeal is disposed of.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

APRIL 27, 2016
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