

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : March 02nd, 2017

+ CRL.A. No.736/2000
RAJU SINGH & ANR. Appellants
Through Mr.K.S. Singh, Adv. with Ms.Tripta,
Adv. & Mr.Rahul, Adv.

versus

STATE Respondent
Through Mr.Panna Lal Sharma, APP for the
State with SI Kamal Kumar

WITH

+ CRL.A. No.742/2000
RAJ BAHADUR & ORS. Appellants
Through Mr.K.S. Singh, Adv. with Ms.Tripta,
Adv. & Mr.Rahul, Adv.

versus

STATE Respondent
Through Mr.Ashish Dutta, APP for the
State with SI Kamal Kumar.

AND

+ CRL.A. No.743/2000 & CrI.M.A. No.12786/2013
VIJAY PAL & ORS. Appellants
Through Mr.K.S. Singh, Adv. with Ms.Tripta,
Adv. & Mr.Rahul, Adv.

versus

STATE Respondent

Through Mr.Panna Lal Sharma, APP for the
State with SI Kamal Kumar

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeals have been preferred against a common judgment of conviction dated 17.11.2000 and common order on sentence dated 20.11.2000, therefore, all the appeals are decided together by this common judgment.
2. The appeal bearing CrI.A. No.736/2000 has been filed by appellants, namely, Raju Singh and Shyam Singh, whereas CrI.A. No.742/2000 has been filed by the appellants, namely, Raj Bahadur, Bishambar Singh and Gajender Singh. The appeal bearing CrI.A. No.743/2000 has been filed by the appellants, namely, Vijay Pal, Ashvini Kumar and Durgpal. The present appeals have been preferred being aggrieved by the judgment of conviction dated 17.11.2000 passed by the learned Additional Sessions Judge, Delhi convicting the appellants, namely, Raju Singh, Shyam Singh and Vijay Pal for the offences under Sections 308/34 and 452 IPC, appellants, namely, Ashvini Kumar, Raj Bahadur, Bishamber Singh, Gajender and Durg Pal for the offence under Sections 148, 452 and 323 read with Section 149 IPC and order on sentence dated 20.11.2000 whereby the appellants Raju Singh, Shyam Singh and Vijay Pal have been sentenced to undergo rigorous imprisonment for four years with fine

of Rs.1,000/- each for offence under Sections 308/34 and 452 IPC, whereas appellants Ashvini Kumar, Raj Bahadur, Bishamber Singh, Gajender and Durg Pal have been sentenced to undergo rigorous imprisonment for four years with fine of Rs.1,000/- each for the offence under Section 452 IPC. Appellants Ashvini Kumar, Raj Bahadur, Bishamber Singh, Gajender and Durg Pal have also been awarded rigorous imprisonment for one year with fine of Rs.1,000/- each for the offence under Sections 148 and 323 read with Section 149 IPC. In default of payment of fine, the appellants shall further undergo rigorous imprisonment for 3 months on each count.

3. Factual matrix emerging from the record is that an information received by the police on 07.07.1995 at about 2320 hours to the effect that some thieves were caught in the house of Bishamber at Pul Prahladpur, RZ Block, Gali No.6. Duty Constable Ashok Kumar from AIIMS informed the police station that injured Aswani Kumar, Baby, Guddi and Nasreen were brought to the hospital for treatment. SI Shish Ram recorded the statement of injured Baby. In her statement, complainant Baby stated that on 07-07-1995 at about 11:30 a.m she had a quarrel with Smt.Lalita on the issue of cleaning of a drain. At about 10:30 p.m when the husband of complainant namely, Intezar Hussain was standing at the gate after having his meal, their neighbours namely, Bishamber, Raju, Shyam, Raj Bahadur and one bearded man who was brother of Bishamber, pulled the husband of the complainant. He made to lie on the cot and was beaten with sticks, legs and fists on his stomach and chest. Nanad of the complainant

namely, Guddi also saw the incident and raised an alarm. Husband of the complainant woke up, went inside the house and they bolted the door. Accused Bishamber and his brother Raj Bahadur broke the door, entered the house and gave beatings to Guddi with sticks. When complainant was about to go to her sister's house by climbing the wall, accused Bishamber threw a stone which hit her on her chin and he also gave injuries on her leg with the help of a stick. Husband and children of the complainant hid themselves behind the bed on the roof. When complainant reached the house of her sister namely, Nasreen, Nasreen informed that accused Ashvini, Durg Pal and Vijay Pal entered her house, quarrelled and gave beatings to her. She also informed that accused Ashvini gave a blow with a pointed object on her forehead. She saw that accused Pushpa and other accused persons were throwing stones on the house of the complainant. After sometime, police reached the spot and got the injured persons admitted in the hospital. The complainant found that doors and windows of her house were broken and stones were lying inside the house. She also noticed that gold earrings, cash Rs.2,000/- and a table fan were missing.

4. On the basis of the statement of the complainant Baby and the MLC of the injured persons, FIR of the instant case was registered. All the accused persons were arrested and weapons of offence were recovered. After completion of investigation, charge sheet was filed in the Court.

5. Charges under Sections 148/149/307/427/452 IPC were framed

against all the accused persons including the appellants to which they pleaded not guilty.

6. In support of its case, prosecution examined 15 witnesses i.e. Smt.Baby (PW-1); Nasreen (PW-2); Intzaar Hussain (PW-3); Guddi (PW-4); Khub Ram (PW-5), Head Constable Itwari Singh (PW-6); Head Constable Kanwar Singh (PW-7); Head Constable Karamvir Singh (PW-8), Lady Constable Chandra Kanta (PW-9), Constable Kehri Singh (PW-10), Constable Sant Raj (PW11), R.S. Khera (PW12), Kirti Ram (PW13), SI Sish Ram (PW14) and Dr.Rakesh Bhasin (PW15).

7. After conclusion of prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C. in which they denied the entire case of prosecution and claimed innocence. No evidence was adduced by the appellants in their defence.

8. All the appellants were held guilty and convicted, whereas accused Smt.Pushpa was acquitted by the trial court. The appellants have filed the instant appeals challenging the aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeals, the sentence imposed upon the appellants was suspended.

9. Argument advanced by the learned counsel for the appellants is that the testimony of PW1 to PW4 cannot be relied upon to base the conviction of the appellants as their testimony is full of contradictions with regard to injuries caused to the injured persons. It is further

argued that the appellants cannot be convicted twice for the same offence as, on one hand they were booked in a Kalandara under Section 107/151 Cr.P.C. and on the other, they were convicted by the trial court. It is further submitted that the recovery of danda i.e. sticks has not been proved beyond reasonable doubt by the prosecution and in the absence of same, the same cannot be connected with the offence of the present case. It is further submitted that the opinion of the doctor with regard to nature of injuries sustained by the injured is without any basis.

10. Per contra, learned Additional Public Prosecutor for the State has vehemently argued that the injured witnesses have duly supported the case of the prosecution. The weapons of offence were recovered at the instance of the accused persons which has duly been proved on record. The testimony of injured witnesses has duly been corroborated by medical evidence. There is enough and sufficient evidence on record to hold the appellants guilty. It is further submitted that there is no illegality or infirmity in the judgment passed by the trial court.

11. Arguments advanced by the learned counsel for the appellants as well as learned APP for the State were heard.

12. PW1 Baby is the complainant in the present case. She had deposed that on the day of incident, she had a quarrel with Lalita at about 11.30 a.m. which was patched up. At about 10.30 p.m., when her husband Intzar was washing hands at the tap outside her house,

accused Bishambar, Raju, Shyam, Raj Bahadur and Gianender came there and dragged him from the door and made him fall on a cot and gave him leg and fist blows and also with wooden sticks on his stomach and chest. She further deposed that her sister-in-law raised an alarm and her husband and they closed the door, but accused Bishambar and Raj Bahadur broke it open, entered inside and beat Guddi with wooden sticks. When she tried to cross over the wall so as to enter the house of her sister, accused Bishambar threw pebbles which caused injuries to her chin. Accused Bishambar also gave wooden stick blows on her feet. She further deposed that when she reached the house of Nasreen, she was informed by Nasreen that accused Ashvini, Durg Pal and Vijay Pal had entered her house and caused injuries to her. Nasreen had sustained injuries on her forehead caused by accused Ashvini. She further deposed that accused Pushpa had been pelting stones from roof top with some others. After discharge from hospital, she found the windows and doors of her house broken, pebbles lying around and one pair of gold earring, cash Rs.2,000/- and table fan missing. She also stated that the occurrence was seen by her sister-in-law Guddi also.

13. PW2 Nasreen had deposed that on 07.07.1995 at about 10.30 p.m., she was watching TV. Her husband was on the roof of her house. At that time, accused Vijay Pal, Durg Pal and Ashvini entered her house and accused Ashvini caused injury on her head with some pointed weapon and in her self defence, she pushed the accused. Accused Durg Pal and Vijay Pal gave danda blows on her back and

feet. Accused Vijay Pal, Durg Pal and Ashvini pulled the gold chain, pendal, ear rings and one Titan watch which she was wearing. She fell down and was bleeding from her injury. The accused persons fled away. In the meantime, her sister Baby came to her and asked about the assailants. PW2 narrated the entire incident to her. She further deposed that accused Pushpa along with 30-35 persons were throwing bricks at her house.

14. PW3 Intzar is another injured in the present case. He had deposed that Guddi had gone out of the house and he was having his meal when accused Ashvini came bleeding from his nose. PW3 asked for the same on which Ashvini informed that he received injuries in a quarrel. He further deposed that accused Bishambar, Raju Singh, Shyam, Durg Pal and Vijay Pal entered his house. PW3 fell on a cot and accused Bishambar, Shyam, Gyaninder, Vijay Pal and Durg Pal armed with lathis attacked him and gave beatings of leg and fist blows. He went inside the house but the accused persons broke open the door, entered the house, started beating his wife and children and broke the glass of the windows. Accused Pushpa was throwing stones and brick pieces from the roof of her house. Due to the injury sustained, he became unconscious and regained consciousness in the hospital.

15. PW4 Guddi is also one of the injured persons in the present case. She had deposed that at the time of incident, she was present in the house of her brother. She heard Baby raising a noise. She had seen all the accused persons giving beating to her brother Intzar. She

further deposed that accused Shyam Singh and Bishambar were armed with lathis which they used to cause injuries to Intzar while accused Raj Bahadur, Raju Singh and Gyanender gave fist and kick blows. She had raised alarm for help. She further deposed that she was hit by accused Bishambar with a lathi on her right shoulder. She lost her gold chain which fell on the spot. She further deposed that accused persons had broken the door of her house after she along with others entered the house.

16. From a careful perusal of the evidence led by prosecution, PW1 Baby corroborated the testimony of PW2 Nasreen that after her husband and she had been attacked by the accused persons, she had gone to the house of Nasreen and found her bleeding from her forehead. It has also come in the evidence that Nasreen told that she was hit by accused Vijay, Durg Pal with wooden sticks and by accused Ashvini with some pointed object. From the testimony of the eye witnesses who are injured too, it has been established that accused Vijay Pal, Ashvini and Durg Pal had entered the house of Nasreen and caused injuries to her by beating her with wooden sticks and some pointed object. It has also been established that accused Raju, Shyam, Raj Bahadur, Bishambar and Gianender (Gajender) assaulted the injured Intzar. He was laid on a cot and was given beating with sticks, leg and fist blows. When Intzar, his wife Baby and Guddi closed the door, the accused persons came inside after breaking the door and gave beatings to them.

17. The testimony of the above referred public witnesses has duly

been corroborated by medical evidence. MLC Ex.PW12/A of injured Nasreen shows that she had received incised wound at her scalp and lacerated wound over her right forehead. MLC Ex.PW12/B of injured Guddi shows that she received bruises on her right hand, right elbow and forearms. MLC Ex.PW12/C of injured Baby shows that she was having a contusion on the right side of lower lip, lacerated wound at stillaet, abrasion over the right wrist and contusion over right upper arm. As per opinion of the doctor, injuries sustained by the injured Nasreen, Guddi and Baby were simple in nature. MLC Ex.PW12/D of injured Intzar Hussain shows that he had tenderness in abdomen, shoulders, left pelvis and chest. As per opinion of the doctor, nature of injuries sustained by him was grievous. The medical record of the injured persons shows that the opinion of the doctor with regard to nature of injuries is based upon the injuries, so there is no force in the contention of the appellants that opinion given by the doctor was without any basis.

18. From the testimony of injured witnesses coupled with the medical evidence and other material that has come on record, the prosecution has successfully established its case against them.

19. So far as the contention of the appellants that there are contradictions in the testimony of witnesses is concerned, this Court is not convinced with the arguments advanced inasmuch as, firstly, the contradictions so alleged do not go to the root of the matter and neither discredit the case set up by the prosecution. Secondly, in *State of U.P. Vs. M.K. Anthony*, AIR 1985 SC 48 ; *State of Rajasthan Vs.*

Om Prakash, AIR 2007 SC 2257 ; *State Vs. Saravanan and Others*, AIR 2009 SC 152 and *Prithu @ Prithvi Chand and Another Vs. State of Himachal Pradesh*, (2009) 11 SCC 588, it has been settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor details, which do not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from the untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses.

20. From the totality of the evidence adduced by the prosecution and the discussion made above, there is sufficient material on record to hold the appellants guilty. Consequently, the judgment of conviction of the appellants is hereby upheld.

21. Now, coming to the quantum of sentence. Learned counsel for the appellants has submitted that the incident in the present case pertains to 07.07.1995 and the judgment of conviction was passed on 17.11.2000 and now we are in the year 2017. It is submitted that the appellants have faced the protracted trial for more than 21 years and it has been prayed that a lenient view may be taken while considering the question of quantum of sentence.

22. It is apparent from the record that the incident of the instant case is dated 07.07.1995. The charge was framed against the appellants on 10.02.1997. The judgment of conviction was passed on 17.11.2000 and the order on sentence was passed on 20.11.2000. The present appeals were filed in the year 2000. It is further apparent from the record that the appellants have already faced the agony of trial for more than 21 years and it would be in the interest of justice to take a lenient view while awarding sentence to them.

23. In view of the above discussion and the facts and circumstances of the present case, the sentence of imprisonment awarded to the appellants is reduced to the period already undergone by them. However, the amount of fine is enhanced from Rs.1,000/- to Rs.10,000/- for each of the offence for which they have been convicted. In default of payment of fine, the appellants shall further undergo simple imprisonment for three months.

24. The appellants are directed to deposit the amount of fine before the trial court concerned within a period of 15 days failing which, they

shall serve the sentence of imprisonment in default of payment of fine.

25. With the above modification in the order on sentence, the present appeals stand disposed of.

26. Pending application, if any, is also disposed of.

(P.S.TEJI)
JUDGE

MARCH 02, 2017
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