

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : January 06, 2017

+ Crl. A. No. 581/2001
RAJBIR AND OTHERS Appellants
Through: Mr. Ranjit Sharma, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

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

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 28.03.2001 passed by the learned Additional Sessions Judge, Delhi convicting the appellants for the offence punishable under Section 304 Part II read with Section 34 of Indian Penal Code (hereinafter referred to as I.P.C.), and order on sentence dated 31.07.2001, whereby the appellants have been sentenced to undergo rigorous imprisonment for a period of four years each and fine of Rs.3,000/- each and in default of payment of fine the appellants were directed to undergo simple imprisonment for a period of three months, the present appeal has been filed.

2. The factual matrix that emerges from the record is that on 24.03.1997, at about 2 PM, one Dil Bahadur alongwith Shri Hom Bahadur went to Sulabh Souchalaya near Fire Station for taking a bath after playing holi. The appellant – Hallu told Dhan Bahadur and Dil

Bahadur to allow him to take bath upon which a quarrel took place between the appellants – Hallu and Satbir @ Billu on one side and Dil Bahadur and Dhan Bahadur on the other side. The appellants– Hallu and Billu gave beatings. Thereafter, Dil Bahadur and Dhan Bahadur ran away from the spot and took refuge in Jhuggi of Hom Bahadur and narrated the incident of beating to him. Thereafter, Hom Bahadur alongwith Dil Bahadur, Dhand Bahadur and One Paramjit Thapa came to the spot where all the four accused persons were present. When Hom Bahadur started talking to the accused person, accused Rajbir Singh and Bhanwar caught hold of him and the appellants – Billu and Hallu started beating Hom Bahadur with kicks and fists blows on his chest and head. Paramjit Thapa tried to rescue Hom Bahadur but he was also given beatings by the appellants. Consequent to beatings extended by the appellants, Hom Bahadur fell unconscious and Dil Bahadur, Dhan Bahadur and Paramjit Thapa ran away from the spot. The injured Hom Bahadur was taken to AIIMS by the police, where he succumbed to the injuries. Thereafter, upon statement of the eye-witnesses PW-1 and PW-3, a case under Section 304 read with Section 34 of IPC was registered against the appellants.

3. Charge under Section 304/34 IPC was framed against the appellants. In support of its case, prosecution examined 18 witnesses. They are, Dhan Bahadur (PW-1), Paramjit Thapa (PW-2), Dil Bahadur (PW-3), Constable Arjun (PW-4), Head Constable Balwan Singh (PW-5), Head Constable Jaipal Singh (PW-6), Constable Mahesh Chand (PW-7), ASI Narender Kumar (PW-8), Hari Narain Jha (PW-

9), Constable Kavar Pal (PW-10), Constable Shyam Lal (PW-11), Constable Narmdeshwar (PW-12), Dr. Krishan Kumar (PW-13), Dr. Kalyan, Senior resident Surgery AIIMS (PW-14), Constable Rajbir (PW-15), Dr. Chander Kant (PW-16), Constable Om Prakash (PW-17), and Sub-Inspector Barjender Singh (PW-18).

4. After conclusion of prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C. The appellants pleaded not guilty and claimed innocence.

5. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellants guilty for an offence punishable under Section 304 Part II read with Section 34 of IPC and convicted them thereunder.

6. The appellants have filed the instant appeal challenging the aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeal, the sentence imposed upon the appellants was suspended vide order dated 05.04.2002. During the course of arguments, learned counsel for the appellants has contended that there are many contradictions and inconsistencies in the prosecution evidence.

7. The main contention on behalf of the appellant is that PW-2 Paramjit Thapa and the only independent eye-witness - Hari Narayan did not support the case of the prosecution. Arrest of the appellants by the police is doubtful. It was further argued that even if it is assumed that the prosecution case is true, in the light of the depositions of the

doctor, the appellants should not have been convicted for the offence under Section 304 Part II IPC. Contradictions in the prosecution evidence have also been alleged. The further contention raised on behalf of the appellant is that there is no proof of motive in the present case. Even the medical evidence does not support the ocular evidence in the present case.

8. On quantum of sentence, it is argued that the learned Additional Sessions Judge was not justified in rejecting the plea of the appellants to release them on probation despite the fact that the appellants did not have any criminal antecedents.

9. Per contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellants and submitted that the judgment and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegality and is passed with a reasoned order, therefore, the same is not liable to be interfered with.

10. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on record.

11. The case of the prosecution mainly rests upon the deposition of Dhan Bahadur (PW-1) and Dil Bahadur (PW-3) who are the eye-witnesses to the occurrence and the deposition of Paramjit Thapa (PW-2), who was injured in the occurrence. The public witness Hari Narain Jha (PW-9) has had deposed that he was posted at Sulabh

Souchalaya and corroborated the presence of some Nepali boys and the factum of quarrel at sulab souchalaya. But he had denied the knowledge of any persons involved in the quarrelling, removal of Hom Bahadur in unconscious condition from the spot to the hospital. This court further observes that the testimony of these witnesses have remain unrebutted and unchallenged on all material points.

12. Dhan Bahadur (PW-1) had deposed in his statement recorded before the trial court that on 24.03.1997 at 2 PM he was present at the toilets of Nehru Place 'Sulabh Shauchalaya'. His friend Dil Bahadur had gone for taking bath after playing holi. While he was taking bath, appellant – Hallu came there and asked him for soap. He gave him his cake of soap. Thereafter appellant - Billu @ Satbir came there and asked him and Dil Bahadur to allow him to take a bath. Though they allowed Billu to take bath, still he started giving beating to him and Dil Bahadur. Thereafter, he ran away in their underwear toward the house of Hom Bahadur. Thereafter, Hom Bahadur told them that he would accompany them and make the persons concerned see reason. Paramjeet Thapa (PW-2) was also present in the house of Hom Bahadur and also accompanied them. Upon reaching to the place of occurrence, when Hom Bahadur started talking to appellants, appellants – Rajbir and Bhanwar caught hold of him and appellants – Hallu and Billu gave beating to him with their hands and gave him blows on his chest and face. Thereafter, Hom Bahadur became unconscious. Paramjit tried to save Hom Bahadur, but all the appellants started beating him as well. Thereafter, all the appellants

ran away from the spot.

13. Paramjit Thapa, (PW-2) who also received injuries when he was trying to save Hom Bahadur, has also corroborated the deposition of PW-1. He deposed in his evidence that on the date of incident, when he had gone to the house of Hom Bahadur, Dhan Bahadur and Dil Bahadur came to the house of Hom Bahadur in their respective underwear. They told Hom Bahadur that 'Maar peet' had taken place and the appellants have given beating to them. Hom Bahadur offered to talk to the miscreants and alongwith Dil Bahadur and Dhan Bahadur, he also accompanied them. When they reached at 'Sulabh Shauchalaya' all the four appellants were present there. Hom Bahadur inquired from them about the matter and thereafter, the appellants started beating Hom Bahadur. He had further stated that Rajbir and Bhanwar had caught hold of Hom Bahadur while Hallu and Billu gave him beatings with fists and legs on his chest. He tried to intervene in order to save him, but they started beating him as well. Hom Bahadur fell unconscious on the ground. Thereafter, all the appellants ran away from the spot.

14. Dil Bahadur, (PW-3) also deposed in the same line of witness PW-1. He admitted in his deposition that Dhan Bahadur (PW-1) was with him at Sulabh Shauchalaya at the place of incident. Appellant – Hallu asked for soap from Dhan Bahadur. Dhan Bahadur gave him his soap. Appellant – Billu came in the meanwhile and when Dhan Bahadur asked the appellant – Hallu for his soap then a quarrel took place between Dhan Bahadur and appellants – Hallu and Billu. Billu

and Hallu gave beatings to Dhan Bahadur. Thereafter, he alongwith Dhan Bahadur ran away and took refuge in the jhuggi of Hom Bahadur. Paramjeet (PW-2) was also present in the jhuggi. When they informed them about the incident, Paramjeet and Hom Bahadur stated that they would help in sorting out the matter and all four of them went to the place of occurrence. Appellants – Rajbir and Bhanvar who were standing in front of toilets, caught hold of Hom Bahadur by his arms and on giving signal by Hallu and Billu they gave beatings with their hands, fists and kicks on his chest. When Paramjeet tried to rescue Hom Bahadur, all the four appellants gave beatings to Paramjeet with fists on his head. Thereafter, Hom Bahadur rendered unconscious and thereafter, he ran away from the spot. After sometime, when he returned to the spot, he came to know that Hom Bahadur had been admitted by the police to AIIMS Hospital. He went to AIIMS from where Hom Bahadur was shifted to Safdarjang Hospital. The police informed him from Safdarjang Hospital that Hom Bahadur had died. Thereafter, police interrogated Dhan Bahadur and came to the spot, where the police had recorded his statement.

15. The aforesaid depositions of PW-1 to PW-3, have been corroborated by the evidence of Hari Narain Jha (PW-9). He had deposed in his evidence that he was on duty at Sulabh Souchalaya, in front of Fire Brigade Office, Nehru Place. He further stated that some Nepali boys started quarrelling who were sent outside by him. He did not know the names of any of the persons involved in the quarrelling.

16. This court is conscious of the fact that the main witness in the

present case is an injured – Paramjit Thapa (PW-2) on the basis of which the appellants have been convicted. In ***Abdul Sayeed vs State Of M.P.***, (2010) 10 SCC 259, the Hon’ble Apex Court, while dealing with the reliability of testimony of injured witness, has held as under:

“The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

17. The question arises here as to whether the appellants have been rightly convicted under Section 304 Part II of IPC or not. In ***Jagriti Devi v. State of Himachal Pradesh*** (2009) 14 SCC 771; wherein the Hon’ble Supreme Court held that it is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

18. After careful scrutiny of the evidence of main witnesses and the material placed on record, this court observes that initially the FIR was registered under Section 304/323/34 of IPC, however, no charge under Section 323 IPC was framed against any of the appellants.

19. In the facts of the present case, what this court observes is that the quarrel took place twice and the second quarrel proved fatal to the deceased Hom Bahadur. First the quarrel took place, when Billu asked Dhan Bahadur to take bath in sulabh souchalaya and though allowing him, he started beating Dil Bahadur and Dhan Bahadur. Thereafter, both Dil Bahadur and Dhan Bahadur ran away from the spot and after 15 minutes came back with Hom Bahadur and Paramjeet Thapa. When Hom Bahadur asked the appellants Rajbir and Bhanwar about the incident, they started beating him and the quarrel took place. In that quarrel, Hom Bahadur fell on the ground losing consciousness.

20. Thus, looking to the matter from all angles, this court is of the opinion that there was common intention of all the appellants in causing culpable homicide of the deceased. It has come in the evidence that all the accused persons have acted in a common intention while giving beatings to the deceased. Their specific role has been attributed by the public witnesses. PW1 Paramjit Thapa had testified that on the day of incident when he along with others reached Sulabh Shauchalaya, all the four appellants were present there. PW1 had seen that appellants were giving beatings to deceased Hom Bahadur. He specifically narrated the role of each and every appellant in causing death of the deceased. He had stated that appellants Rajbir and Bhanwar had caught hold of Hom Bahadur, while appellants Hallu and Billu gave beatings to the deceased with fists and legs on his chest due to which he fell on the ground.

21. Another eye witness Dil Bahadur (PW3) has duly corroborated

the testimony of PW1. PW3 had testified that a quarrel between the deceased and appellants had taken place on the day of incident. He had seen that appellants Rajbir and Bhanwar caught hold of Hom Bahadur by his arms and on giving signal by appellants Hallu and Billu, they gave beatings to the deceased with hands, fist and kicks on his chest due to which he became unconscious. Paramjit Thapa (PW2) is another eye witness of the incident. He has duly corroborated the testimony of PW1 and PW3. He had also testified that he had seen the appellants giving beatings to the deceased. Apart from this, he had also stated that he was also given beatings by the appellants.

22. As per the testimony of the above eye witnesses (PW1, PW2 and PW3), all the appellants with their common intention gave beatings to the deceased which resulted into his death. Accordingly, narration of the facts of the present case clearly depict that the appellants had a common intention to cause injuries to deceased Hom Bahadur, due to which he had died and as per the post mortem report the same were found to be sufficient to cause death in the ordinary course of nature. There is no justification in saying that there was no common intention of the appellants in causing injuries to the deceased and that the act done by them is covered only of having knowledge of causing the death of the deceased.

23. A cumulative consideration of the overall evidence on the facts of the present case, this Court finds that the act done by the appellants squarely covers the case of the prosecution within the four corners of offence punishable under Section 304 Part I read with Section 34 of

the IPC.

24. Consequently, the judgment of conviction and order on sentence passed by the trial court are set aside. The appellants are convicted under Section 304 Part I read with Section 34 of the IPC as it has been duly established that they with their common intention caused culpable homicide not amounting to murder of the deceased.

25. On the quantum of sentence, the appellants are awarded sentence of rigorous imprisonment for a period of four years with fine of Rs.3,000/- each for the offence punishable under Section 304 Part I read with Section 34 of the IPC. In default of payment of fine, the appellants shall further undergo simple imprisonment for a period of three months.

26. Appellants are on bail. Their bail bonds and surety bonds are forfeited. They are directed to surrender before the trial court within fifteen days to serve out remainder of their sentence.

27. A copy of this order be sent to the Trial Court for information and necessary steps.

28. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

JANUARY 06, 2017
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