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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.306/2003

Reserved on: 26th July, 2018

Decided on: 09 August, 2018

RAJ SINGH & ANR.

.....Appellants

Through: Mr. Sameer Chandra and Mr Brijesh Singh, Advocates.

versus

STATE

....Respondent

Through: Mr Kewal Singh Ahuja, APP for the State.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 17th April, 2003 passed by the learned Additional Sessions Judge, Delhi ('ASJ') in Sessions Case No.61/99 arising out of FIR No.561/98 registered at Police Station ('PS') Narela, Delhi convicting the three Appellants i.e. Raj Singh (Accused No.1: 'A-1'), Raghubir Singh ('A-2') and Om Prakash ('A-5') of the offences under Sections 302/34 and 325/34 of the Indian Penal Code ('IPC') and the order on sentence dated 21st April, 2003 whereby each of them was sentenced to imprisonment for life along with fine of Rs.5,000/- each, and in default of payment of fine, to undergo simple imprisonment ('SI') for three months for the offence under Section 302/34 IPC; and three years rigorous

imprisonment ('RI') along with fine of Rs.5,000/- each, and in default of payment of fine to undergo SI for three months for the offence under Section 325/34 IPC.

2. There were eight accused in all. Apart from A-1, A-2 and A-5 above, Baljit Singh (A-3), Gulab Singh (A-4), Satnarayan (A-6), Surender (A-7) and Sunil Kumar (A-8) were also charged for the same offence. While charges were framed against A-1 to A-4 on 30th July 1999 (with the remaining four accused remaining absconding as of that date), the charges against A-5 and A-6 were framed on 30th April 2001 and against A-7 and A-8 on 21st March 2005 after they surrendered.

3. First, they were all charged with having murdered Ramesh Kumar ('the deceased') on 9th December, 1998 at around 11.30 pm at Gali Petrol Pump Wali, near *Gher* of Raj Singh, Pana Mandiyan, Bawana by assaulting him with *lathis*, as a result of which he died on 10th December, 1998. Secondly, they were charged with causing grievous hurt to Mahavir and Dinesh with a blunt object, pursuant to their common intention, thereby committing an offence under Section 325/34 IPC. Thirdly, they were charged with having voluntarily caused simple hurt to Pradeep Kumar and Sheela by blunt object, thereby committing offences under Section 323/34 IPC.

4. A-7 Sunil and A-8 Surender were absconding during the trial of A-1 to A-6 and, therefore the impugned judgment dated 17th April 2003 does not concern them. A-7 and A-8 were separately dealt with subsequently by another judgment dated 29th April, 2009 of the trial Court whereby they

were acquitted for the offence punishable under Section 302/34 IPC for the murder of Ramesh as well as the offence punishable under Section 325/34 IPC *qua* the injuries sustained by Mahavir. A-7 and A-8 were convicted for the offence punishable under Section 325/34 IPC only *qua* the injuries sustained by Dinesh and for the offence punishable under Section 323/34 IPC for the injuries sustained by Pradeep Kumar and Sheela. A-7 and A-8 were released on probation on good conduct for a period of three years on furnishing a personal bond in the sum of Rs.20,000/- each.

5. Further, Raj Singh (A-1) expired during the pendency of this appeal. Therefore, the present appeal is being pursued by his two sons i.e. Appellant Nos. 2 and 3 (Raghubir Singh (A-2) and Om Prakash (A-5)).

6. A further fact to be noted is that Baljit Singh (A-3) filed a separate appeal, being Crl. Appeal No.399/2003 in this Court against the same impugned judgment dated 17th April, 2003 passed by the learned Additional Sessions Judge, Delhi ('ASJ') in Sessions Case No.61/99 arising out of FIR No.561/98 registered at PS Narela insofar as A-3's conviction under Section 325/34 IPC for assaulting Dinesh (PW-7) and Section 323/34 IPC for causing simple hurt to PW-3 and PW-4 was concerned. That appeal was allowed by this Court by a separate order dated 26th July, 2018, after finding that the injured witnesses did not themselves state that any of them were hit by A-3.

7. Now turning to the present appeal by A-2 and A-5, the injured eye witnesses to the occurrence were Pradeep Kumar (PW-3), Sheela Devi (PW-

4), Mahavir Singh (PW-6) and Dinesh Kumar (PW-7). The case of the prosecution, as spoken to by the above injured witnesses, stemmed from the complaint of Pradeep Kumar (PW-3). In his statement (Ex.PW-3/A) made to Sub Inspector Bhagwan Singh (PW-19), he stated that on 9th December, 1998 at 11.30 pm, he, his brother Ramesh (the deceased) and a friend Mahavir (PW-6) were returning home after attending a marriage at Vijay Colony, Bawana in a Maruti Zen, which PW-3 was driving. He dropped the deceased and PW-6 in front of the house of Raj Singh. He went to his house to park the car.

8. According to PW-3, as soon as he alighted from the car, he heard the cries of the deceased and PW-6. Thereupon, PW-3 accompanied by his brother Dinesh Kumar (PW-7) and his *bhabhi* Sheela (PW-4) rushed to the spot in front of the house of Raj Singh (A-1). There he saw that A-1, Sunil (A-7), Raghubir (A-2) and Om Prakash (A-5) were assaulting the deceased and PW-6. A-1 was armed with a bamboo stick, A-2 was having a *sheru* of a cot in his hand, A-5 was armed with an iron rod and A-7 had an iron pipe. According to him, Gulab Singh (A-4), his son Baljit Singh (A-3), Satnarayan (A-6) and Surender (A-8) were also standing there. PW-3 stated that A-1, A-3 and A-4 exhorted their companions to finish them all and by the time PW-3 had reached the spot, the deceased had already fallen to the ground; 'them' meaning PW-3 and the others who came to rescue the deceased who were also attacked and received injuries. The deceased expired on 11th December, 1998 in the hospital.

9. In PW-3's cross-examination, when he was confronted with his previous

statement, it transpired that he had not stated earlier that A-1 was armed with a bamboo stick, A-5 with an iron rod and A-2 with a *sheru* of a cot. He also admitted that “I did not state to the police that Raj Singh was having a lathi. Satnarayan was having an iron rod, Surrender had jelly and Baljit had danda. Vol. the police did not ask me as to which individual had what weapon.” As regards Ramesh being assaulted by Om Prakash (A-5), PW-3 was confronted with his previous statement where it was not specifically stated. There is no specific role attributed to either Raghubir Singh or Om Prakash i.e. A-2 or A-5 by PW-3, particularly for the attack on Ramesh. As regards the assault on Dinesh, PW-3 stated that Dinesh was assaulted by Baljit (A-3) and Surrender (A-8) and that PW-3 himself was assaulted by Raj Singh (A-1) and Satnarayan (A-6) while Gulab (A-4) hit Sheela (PW-4). Therefore, this witness cannot be said to be reliable as regards the role of A-2 and A-5.

10. Turning next to Sheela Devi (PW-4), in her deposition *qua* the present two Appellants i.e. A-2 and A-5, she states that she saw Ramesh being assaulted by the present two Appellants as well as A-1 and Baljit Singh (A-3). According to her, while A-2 had a *sheru* of a cot, A-5 had an iron rod. In her cross-examination, she stated how she was hit by Gulab (A-4) and Satnarayan (A-6) although she had not told that to the police. She maintained that “Ramesh was hit by Raj Singh and Raghubir, Om Prakash and Baljit with lathies on his head.” However, the learned APP conceded that there was no signed statement of the said witness. She admitted as being correct that A-1 had got stopped the payment of a cheque of Rs.43 lacs to her father-in-law by filing objections in the office of the Land Acquisition

Collector.

11. When she was again examined on 25th August, 2001, after Om Prakash (A-5) and Satnarayan (A-6) had surrendered, PW-4 again maintained that she saw A-1, A-2 and A-3 along with A-5 assaulting Ramesh. In her cross-examination, she stated that the house of A-1 was just opposite to her house and that there were 4/5 houses between the *Gher* and house of Raj Singh and that “there are 7/8 houses between our *Gher* and the *Gher* of Raj Singh.” She stated that the *Gher* of Raj Singh was not visible from her *Gher* while it was visible from her house. While PW-4 did not mention being assaulted by A-3 Baljit as a result of which this Court acquitted A-3 as noted earlier, as far as the assault on Ramesh was concerned, PW-4 was consistent in her cross-examination about Ramesh having been assaulted by the present two Appellants i.e. A-2 and A-5.

12. Then we turn to the evidence of Mahavir Singh (PW-6), who is another injured witness. He too states how A-1, A-2 and A-5 accompanied by Baljit Singh (A-3) came from their *Gher* and started assaulting Ramesh. He mentioned how A-1 had a bamboo *lathi*, A-2 had a *sheru* and A-5 an iron rod. In his cross-examination nothing emerged and in fact he reiterated that during the fight of seven minutes, he remained at the spot and A-1, A-2, A-5 and Baljit Singh (A-3) kept assaulting the deceased. He too denied knowing if A-1 and Baljit had received any injuries. Therefore, on the material aspects concerning the assault on the deceased by the present Appellants A-2 and A-5, PW-6 has fully corroborated PW-4.

13. We now turn to the evidence of Dinesh Kumar (PW-7) who is another injured eye witness. He too clearly talked of A-2 and A-5 assaulting the deceased along with A-1 and Baljit (A-3). He too mentioned that A-2 was armed with a *sheru* and A-5 with an iron rod. Even in his cross-examination, on the material aspects with regard to the present Appellants assaulting Ramesh, PW-7 could not be shaken. Therefore, we have the third injured eye witness who corroborates PWs 4 and 6, as far as the assault on the deceased Ramesh by A-2 and A-5 is concerned. Mukhtyar Singh (PW-13), the father of Ramesh also saw the accused persons, including the present two Appellants, surround the deceased and beat him up.

14. At this juncture, the law relating to interested and/or related witnesses may be briefly recapitulated. In *Dalip Singh v. State of Punjab AIR 1953 SC 364* it was held as follows:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.

It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

15. In *Piara Singh v. State of Punjab AIR 1977 SC 2274* the Supreme Court held:

"It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

16. In *Hari Obula Reddy v. The State of Andhra Pradesh (1981) 3 SCC 675* the Supreme Court observed:

".. it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence.

All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

17. Again in *Ramashish Rai v. Jagdish Singh (2005) 10 SCC 498*, it was held:

"The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

18. In *Yogesh Singh v. Mahabir Singh AIR 2016 SC 5160*, the Supreme Court explained that the evidence of a related witness:

“.....cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.”

19. In the present case, apart from the fact that PWs 4, 6 and 7 have corroborated each other on the material particulars, the medical evidence also fully corroborates their versions. As far as the injuries on the person of Ramesh are concerned, they were present on the left parieto-occipital region. There was a bruise on the left side of forehead. Dr Komal Singh (PW-5), who conducted the post-mortem examination of the deceased, apart from noticing the three head injuries, also observed on the internal examination, the following injuries:

“Sub-scapular generalised clotted blood present, left temporal bone was removed for about 4 c. m. x 3 c. m. in size Brain tissue of the temporal lob was oozing out of the gap. There was fracture of the right to the left parietal bone which was 16 cm in size extradural haemorrhage was present on front to parietal region and massive subdural haemorrhage was there on base of the skull at the anterior cranial fosses The tracheal mucus was congested and about 3 ml. blood was present in its lumen. Further there were fractures of the right 7th and 8th rib and contusion of the right lung was present at its lower lob 3 cm x 5 ml. Contusion over left lung at its upper lob 3 cm. x 1 cm in size liver laceration at posterior lower surface for about 4.2 cm x 1cm in size was there, clotted blood was present around the wound.”

20. The opinion as regards the cause of death was:

“coma in association of haemorrhagic shock due to injury to the head, lung, liver subsequent to blunt impacts sustained during the fight.

Injuries were sufficient to cause death in the ordinary course of nature all injuries were ante-mortem and were of same duration.”

21. The weapons of offence namely the *lathis* were shown to PW-5 and she confirmed that those *lathis* and *sheru* could have caused the injuries that were fatal. PW-5 was subjected to extensive cross-examination, but nothing material emerged that could help the accused. Therefore, the medical evidence fully corroborates the version of the injured eye witnesses PWs 4, 6 and 7.

22. The trial Court took note of the fact that there was a cross FIR being FIR No.562/98 registered at the instance of the accused Om Prakash (A-5 in the present case) stating that while A-1 was sleeping, Dinesh (PW-7) and Pradeep (PW-3) had broken open the door of his *gher* and had run away after giving lathi blows to him. The trial Court discussed the evidence gathered during the investigation of the said FIR as well and noted that there was ample corroboration of the fact that the incident took place in front of the *gher* of Raj Singh and not inside it, as suggested by the accused. Their contention that the place of occurrence had been changed by the Investigating Officer (‘IO’) was rejected. On the other hand, it was held that the statements of the PWs were clear and consistent and did not leave any doubt about the manner in which the incident took place.

23. The trial Court also dealt with the issue of the delay in registration of the FIR in the present case. The information was received about the incident at around 12.10 am on 10th December, 1998. When the police reached the spot, they learnt that the injured had already been removed to Hindu Rao Hospital

in PCR vans. SI Bhagwan Singh then went to the hospital and recorded the statement of PW-3. The *rukka* was sent at 4.05 am and the FIR was registered at 5.10 am on 10th December, 1998 itself. The trial Court rightly concluded that there was no scope of any false implication and that the delay was not inordinate in the circumstances of the case.

24. As regards the role of the eight accused persons, the trial Court concluded that the first four who assaulted Ramesh were alone to be held responsible for his death and this included the present two Appellants. Those that attacked Ramesh in the first place also attacked Mahavir (PW-6).

25. This Court, having heard the learned counsel for the Appellants and having examined the trial Court record, is not persuaded to hold that the findings of the trial Court as regards the guilt of the two Appellants for the murder of Ramesh or for causing injuries to PW-6 suffer from any legal infirmity.

26. The learned counsel for the Appellants submitted that as far as the killing of Ramesh was concerned, it was a sudden fight at the spur of the moment attracting Exception-4 to Section 300 IPC. This Court is not persuaded by this argument given the nature of injuries on the deceased Ramesh. There are at least three injuries on the head and the injury on the chest is so severe that it caused the fracture found in the ribs. Even the liver of the deceased got damaged in the process. There is, therefore, absolutely no scope for concluding that the offence is not one of murder punishable under Section 302 read with Section 34 IPC.

27. For all of the aforementioned reasons, the Court is not satisfied that grounds have been made out that call for any interference with the impugned judgment of the trial Court, both as regards conviction as well as sentence.

28. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

29. The bail bonds and surety bonds furnished by the Appellant Nos.2 and 3 i.e. Raghubir Singh and Om Prakash are hereby cancelled. Both of them now will surrender before the trial Court on or before 16th August, 2018, failing which the IO concerned will immediately take steps to have them arrested and sent to custody for serving out the remainder of sentence awarded to them. The trial Court record be returned together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL J.

AUGUST 09, 2018
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