

\$~R-1A/1B.

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

+ **CRL.A. 915/2002**

LALIT SINGH Petitioner
Through: Mr.M.L.Yadav, Advocate.
versus

THE STATE OF NCT OF DELHI Respondent
Through: Mr.Hirein Sharma, APP

+ **CRL.A. 517/2003**

BALBIR SINGH Petitioner
Through: Mr.Ajay Verma, Ms.Sudha Reddy,
Ms.Katyayini, Advocates.
versus

THE STATE OF NCT OF DELHI Respondent
Through: Mr.Hirein Sharma, APP

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

JUDGMENT

% **26.07.2018**

Dr. S. Muralidhar, J.:

1. These two appeals are directed against the impugned judgment dated 9th September 2002 passed by the learned Additional Sessions Judge, Delhi in Sessions case No.69/1998 arising out of FIR No.210/1999 registered at Police Station (PS) Patel Nagar convicting both the Appellants under Section 302 read with Section 34 of the Indian Penal Code ('IPC') and additionally the Appellant Balbir Singh (Appellant in Crl.A.517/2003) of the offence under Section 324 read with Section 34 IPC and the order on

sentence dated 27th September 2002 whereby for the offence under Section 302 read with Section 34 IPC both accused were sentenced to undergo rigorous imprisonment (RI) for life with a fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment for three months and for the offence under Section 324 read with Section 34 IPC to RI for 1 year each. Both sentences were directed to run concurrently.

Appeal by Lalit Singh

2. As far as the appeal filed by Lalit Singh (Accused No.1-A-1) is concerned, it is seen that the trial Court in the order on sentence dated 27th September 2002 noticed that an inquiry had been conducted into the age of the said accused. After considering the medical evidence (ossification test) as well as the school record, the trial Court concluded that the date of birth of accused Balbir Singh (A-2) was 27th November 1978 and that of the accused Lalit Singh (A-1) was 18th March 1983. The date of the offence being 24th March 1999, the trial Court concluded that the A-2 was about 21 years of age whereas A-1 was less than 18 years at the time of commission of the offence. He was, in fact, just 16 years of age.

3. The trial Court, however, declined the grant the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000 ('JJ Act') which defined, with effect from 1st April 2001, anyone who has not attained 18 years of age to be a juvenile. This was only because A-1 was above 18 years as on 1st April 2001 when the JJ Act came into force.

4. The Supreme Court has in ***Abdul Razzaq v. State of U.P. AIR 2015 SC***

1770 clarified as the well settled legal position that a person below 18 years at the time of incident can claim the benefit of JJ Act at any time. In coming to the said conclusion, the Supreme Court discussed Section 7-A and 20 of the JJ Act and Juvenile Justice (Care and Protection of Children) Rules, 2007 ('JJ Rules') and concluded as under:

“10. The above provisions clearly show that even if a person was not entitled to the benefit of juvenilities under the 1986 Act or the present Act prior to its amendment in 2006, such benefit is available to a person undergoing sentence if he was below 18 on the date of the occurrence. Such relief can be claimed even if a matter has been finally decided, as in the present case”

5. The Supreme Court *inter alia* referred to its earlier decisions in ***Abuzar Hossain @ Gulam Hossain v. State of West Bengal (2012) 10 SCC 489*** and ***Jitendra Singh @ Babboo Singh v. State of Uttar Pradesh (2013) 11 SCC 193***.

6. In that view of the matter, the trial Court, in the present case, was in error in not extending to A-1 the benefit of JJ Act which came into force with effect from 1st April 2001. A-1 could not have been tried in the regular criminal Court but should have been sent for trial before the Juvenile Justice Board ('JJB').

7. It is not in dispute that pursuant to the judgment of the trial Court and the order on sentence, A-1 has already served over 8 years of judicial custody. Accordingly, there would be no purpose in now sending A-1 before the JJB as he has already served well over the maximum sentence that could have been awarded to him even if he would have been found guilty by the JJB.

The impugned judgment dated 9th September 2002 qua Lalit Singh, A-1 is accordingly set aside. Crl.A.915/2002 is allowed. The bail bond and the surety bond furnished by A-1 is hereby discharged.

Appeal by Balbir Singh

8. Now coming to the appeal of Balbir Singh, the case against him is that on 23rd March 1999 when Deepak (PW-3) along with Surjit (PW-7) were going to Kali Mata Mandir in West Patel Nagar at about 8:15 pm, A-2 and Mahavir, both brothers, met them. They were known to easily cause commotion and there had even earlier been an exchange of words. Both A-2 and Mahavir started abusing PW-3 and PW-7 and they also gave them slaps. However, they went their respective ways after this and PW-3 also did not think of giving any police complaint in this regard.

9. The further case of the prosecution, as spoken by PW-3, is that on 24th March 1999, PW-3 along with Surjit (PW-7) started from their place for the Kali Mata Mandir. At 7:30 pm., when they reached Patel Park A-2 and Mahavir as well as A-1 were also present there. On seeing them, Mahavir pointed out towards PW-3 and told A-1 that PW-3 had quarrelled with them the previous day. Mahavir then started grappling PW-3 and started abusing them.

10. In the meanwhile, Kuldeep (the deceased), younger brother of PW-3 who was playing in the park tried to intervene in the quarrel, he asked A-1 and A2 why they were quarrelling over nothing. On this A-1 is supposed to have told A-2 '*Isko Pale Maja Chakhate hain*'. A-2 is stated to have taken a knife from the right side pocket of the pant worn by him and A-1 caught

hold the deceased and A-2 stated '*Aaj iska kaam tamam kar dete hain*'. A-2 gave a knife blow on the left side of the chest of the deceased. He has also stated to have given a second blow. Mahesh (PW-4) tried to save him on which A-2 gave him knife blow in the thigh. PWs 3, 4 and 7 ran to save the deceased and PW-4 and in the meanwhile A-1 , A-2 and Mahavir fled the spot.

11. A-1 and A-2 were arrested but the weapon of offence was not recovered. Mahavir could not be arrested. Charges were framed against A-1 and A-2 in the manner indicated hereinbefore. On behalf of the prosecution 24 witnesses were examined. PWs 3, 4 and 7 and one Kuldip Pal (PW-6) were relied upon by the prosecution as eye witnesses.

12. At the outset, it requires to be noticed that the post mortem of the deceased was conducted by Dr. K. Goel (PW-2) and he noticed the following external injuries:

- “1. Abrasion 1.75 cm. x 1.25 cm over right cheek.
2. Incised penetrating wound 3 cm x 1 cm x ? over left side chest placed obliquely about 2.5 cm medial and 1.5 cm below the left nipple and about 5 cm left to the mid line. Upper angle of the wound was acute while lower angle is relatively less acute and shows slight bruising.
3. Incised penetrating wound 1.9 x 1 cm muscle deep over left side of chest about 3.5 cm. lateral and half cm below left nipple placed transversely.
4. Partial skin deep wedge shaped incised wound 1.5 cm long at left mid axillary line about 4 cm below the horizontal line of nipple.”

13. The opinion rendered by PW-2 was as under:

“Cause of death was hemothorax and haemorrhagic shock consequent to injury to the heart. All injuries were antemortem in nature. Injury No.1 is caused by blunt force. Injury No.2 to 4 were caused by sharp cutting penetrating weapon. Injury No.2 was sufficient to cause death in the ordinary course of nature. Time since death was about 17 hours.”

14. Consequently, of the above injuries, Injury No.2 which was said to be the fatal injury.

15. This Court on hearing the submissions of learned counsel for the Appellant and learned APP is of the view that the eye witnesses in the present case have spoken clearly and cogently and explained that the deceased died as a result of the knife injuries given by the accused which included A-2. The only question that remains to be considered is the nature of the offence.

16. From the description of the evidence of the eye witnesses, it is plain that the target of the attack by the accused was PW-3 and not his younger brother, the deceased, who happened to be playing in the park nearby. Therefore, *qua* the deceased, the attack on him was clearly not premeditated. It was on the spur of the moment. Only because the deceased decided to intervene to save PW-3, he was attacked. It was clearly in the heat of passion with the attention of the accused being suddenly diverted from their main target, i.e., PW-3.

17. The Court is, therefore, satisfied that as far as killing of deceased by the

Appellant A-2 is concerned, the offence is one of culpable homicide not amounting to murder punishable under Part-II of Section 304 IPC. The Court further notes in this regard that the fatal injury was a single injury on the left side of the chest.

18. This Court noted in the order dated 8th September 2006 at the time of suspending the sentence of A-2 that he had undergone 8 years of incarceration by then. Consequently, the sentence awarded to A-2 for the offence punishable under Section 304 Part II IPC is confined to the period already undergone. The bail bonds and surety bonds furnished by A-2 Balbir Singh stand discharged.

19. The appeals are disposed of in the above terms. The trial Court records be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 26, 2018
'*anb*'