



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

% Reserved on: 25th April, 2023
Decided on: 26th June, 2023

+ **CRL.A. 861/2018**

BABLU

..... Appellant

Represented by: Mr.Kanhaiya Singhal, Advocate with
Ms.Prasanna, Mr.Jasmeet Singh,
Mr.Udit Bakshi, Mr.Ujwal Ghai and
Mr.Ajay Kumar, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with Inspector A.Tyagi, P.S.Subzi
Mandi Railway Station.

+ **CRL.A. 860/2018**

SHIV KUMAR

..... Appellant

Represented by: Mr.Kanhaiya Singhal, Advocate with
Ms.Prasanna, Mr.Jasmeet Singh,
Mr.Udit Bakshi, Mr.Ujwal Ghai and
Mr.Ajay Kumar, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with Inspector A.Tyagi, P.S.Subzi
Mandi Railway Station.

+ **CRL.A. 1115/2018**

RAM PADARTH

..... Appellant

Represented by: Ms.Kavita Jha, Advocate with
Mr.Rajeev Jha and Mr.Aditeya Bali,
Advocates.

versus



STATE

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with Inspector A.Tyagi, P.S.Subzi
Mandi Railway Station.

CORAM:**HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE POONAM A. BAMBA****MUKTA GUPTA, J.**

1. By way of these appeals, the appellants challenge the common impugned judgment of the learned Trial Court dated 2nd August, 2018 whereby all the three appellants were held guilty for murder of one Girdhari Mandal (“deceased”); and also the order on sentence dated 4th August, 2018 whereby all the three appellants were directed to undergo rigorous imprisonment for life along with fine of ₹5,000/- each in default whereof simple imprisonment for one year for offence punishable under Sections 302/34 of the Indian Penal Code, 1860 (“IPC”). Appellant Ram Padarth was also held guilty for wrongfully restraining the deceased for which he was directed to undergo simple imprisonment for one month for offence punishable under Sections 341/34 IPC.

2. Brief facts of the prosecution case are that on 13th March, 2017 at about 2:00 PM, Pankaj (PW-1, complainant) was watching the festival of *holi* being celebrated outside his house at F-226, Shahbad Dairy when he heard some noise and saw his uncle/deceased being manhandled by appellant Ram Padarth and one ‘S’ (a juvenile). When Pankaj reached the spot, appellant Ram Padarth said that deceased would not be allowed to go any further. In the meanwhile, other two appellants namely, Shiv Kumar



and Bablu also came at the spot and thereafter, all four of them started beating the deceased with sticks and 'S' gave a blow on deceased's head because of which deceased fell on the ground. Thereafter, the police reached the spot and removed PW-1 and deceased to BSA Hospital and on the complaint of PW-1, *rukka* (Ex. PW-1/A) was recorded on which FIR No.144/2017 dated 14th March, 2017 under Sections 308/341/34 IPC was registered at PS Shahbad Dairy. During the course of treatment, deceased died and, therefore, Section 302 IPC was added and investigation was entrusted to IO/Insp. Avinash Tyagi (PW-15). The body was identified by Sunil (PW-3) and Pankaj (PW-1) and thereafter, was sent for post-mortem examination.

3. Dr. Narayan Dabas (PW-4) conducted the post-mortem examination on the dead body of the deceased on 14th March, 2017 and vide the report (Ex. PW-4/A) opined as under:

"VII. PROBABLE TIME SINCE DEATH

*About within one day, consistent with the hospital records.
Body preserved in cold storage.*

VIII. EXTERNAL EXAMINATION

1. *Sutured wound measuring 6 cm with 6 sutures, opening of sutures revealed split laceration, reddish margins, measuring 5.5 x1 cm x bone deep present over the head in midline over vertex, 8 cm below the glabella associated with bilateral black eye.*
2. *Sutured wound measuring 2 cm with 2 sutures opening revealed split alceration, measuring 1.7x0.2 cm x bone deep present over outer end of right eyebrow associated with abaraded contusion measuring 7x5 cm.*
3. *Contusion, bluish measuring 5x3 cm present over right ear pinna.*



4. *Contusion, bluish, measuring 2x1 cm present over the left side of chest.*
5. *Tramline contusion, bluish measuring 8x2 cm with gap of 1.3 cm present over the outer aspect of left shoulder.*
6. *Abraded contusion, reddish brown, measuring 3x1 cm present over the back of left forearm, 15 cm below the left elbow.*

IX. INTERNAL EXAMINATION

a. Head

On reflection of the Scalp, diffuse effusion of blood was present over the all over. Communicated fracture of bilateral parietal bone and frontal bone present with lacerated duramater underneath the both parietal bones. Brain matter oozing out the parietal bones. Multiple lacerations present over the surface of the bilateral parietal area of brain. Diffuse subdural and subarachnoid hemorrhage present over brain surface. Brain parenchyma was edematous and weighed 1403 grams. Intraventricular hemorrhage present on cut section of brain. Comminuted fracture present over the base of skull in bilateral anterior and middle cranial fossa.

b. Neck

No Extravasation of blood was seen in the soft tissues of neck. The Larynx, pharynx and tracheal mucosa was congested. Tracheal lumen was unremarkable. Muscles, cartilage and Vessels of neck were unremarkable. Hyoid Bone was intact.

c. Chest

Effusion of blood was present on reflection of chest wall over bilateral collar bones. Both side collar bone, ribs and sternum were intact. Pleura and pleural cavities were intact and unremarkable. Both lungs were congested, soft and weighed 455 grams and 439 grams on the right and left side respectively. Cut section was unremarkable congestion.



Pericardium and Pericardial cavity were unremarkable. Heart weighed 358 grams. Valves were patent and competent. Coronary ostia were patent. Patency present in the various segments of the coronary tree. No congenital anomalies were present. Diaphragm was unremarkable.

d. Abdomen

No effusion of blood present on reflection of abdominal wall. Peritoneal cavity was unremarkable. Visceral organs were congested and showed normal luster. Liver was congested and weighed 1420 grams. Spleen was congested and weighed 90 grams. Cut section was unremarkable except for congestion. Pancreas was unremarkable on cut section.

Stomach contained about 100cc of brownish fluid. No abnormal smell was emanating from the contents. No food particles were identifiable. Mucosa of the stomach was hemorrhagic. Small intestine contained fluids and gases. Large intestine contained fecal matter and gases. Mucosa of small intestine was unremarkable. Mucosa of large intestine was unremarkable.

Both kidneys were congested and weighed 115 grams and 110 grams on the right and left sides respectively. Both adrenals were unremarkable. Abdominal vessels were grossly normal.

e. Pelvis

Pelvic cavity was unremarkable. Pelvic bones were intact. Urinary Bladder was empty. Walls of the bladder were grossly normal. Rectum was empty.

X. OPINION:

Death is due to head injury, secondary to blunt force trauma to the head. All Injuries are ante-mortem in nature, few hours to 24 hours in duration prior to death. All external Injuries to the head along with internal head injuries were sufficient in ordinary course of nature to cause death.”



4. Dr.Manish Mahendra (PW-7) examined Pankaj (PW-1) on 13th March, 2017 at 7.16 PM, prepared the MLC (Ex.PW-7/C) and found the following injuries:

“CNS -Conscious, oriented.

Local Examination

Lacerations over parietal region 6 cm away from sagittal suture.

Abrasion near the right elbow.

From clinical point of view injury is simple in nature from neurosurgical side.”

5. Upon receipt of secret information and identification by the secret informer, appellant Bablu, Shiv Kumar and Ram Padarth were apprehended by the police from near Khera Canal, Sector 28, Rohini. Appellant Bablu was arrested vide memo (Ex. PW-13/D) and his disclosure statement (Ex. PW-13/D-3) was recorded. Appellant Shiv Kumar was arrested vide memo (Ex.PW-13/E-1) and his disclosure statement (Ex. PW-13/E-3) was recorded. Appellant Ram Padarth was arrested vide memo (Ex. PW-13/F-1) and his disclosure statement (Ex. PW-13/F-3) was got recorded. After completion of investigation, charge-sheet was filed against all the three appellants and a separate report was prepared against JCL ‘S’. All the three appellants were charged for offence punishable under Sections 302/34 IPC and a separate charge under Sections 341/34 IPC was framed against appellant Ram Padarth. To prove its case, the prosecution examined 17 witnesses.

6. Learned counsel appearing for appellants Shiv Kumar and Bablu assails the impugned judgment on the ground that the prosecution miserably failed to establish its case beyond reasonable doubt. There are serious



inconsistencies and contradictions in the case of the prosecution for which benefit of doubt must be given to the appellants and the impugned judgment of the learned Trial Court must be set aside. Learned counsel contended that as per the case of the prosecution, the incident took place around 2:00 PM and information to the police was given at about 6:06 PM, however, as per the FIR, information was received at PS Shahbad Dairy at 00:10 hrs. on 14th March, 2017. It was, therefore, pointed out that the FIR was registered after an inordinate delay of ten hours without any plausible explanation and such delay creates a possibility of the witnesses concocting story as per their own convenience to implicate the appellants. In this regard, reliance was placed on the decisions in (1994) 5 SCC 188 Meharaj Singh vs. State of U.P., 2021 SCC OnLine All. 193 Mukesh Tiwari vs. State of U.P., (2007) 12 SCC 641 Dilawar Singh vs. State (NCT of Delhi) and 2019 SCC OnLine Bom 1080 Sachin vs. State of Maharashtra. It was further contended that as per the FSL report (Ex. PW-15/F), DNA profiling and its outcome could not be ascertained or generated from the exhibits deposited at the FSL and, therefore, the case of the prosecution was not supported by the forensic evidence. Further, the post-mortem report (Ex. PW-4/A) records that the cause of death is “secondary to the blunt force, to the head” and not the primary one. Further, the eye-witness account that the deceased were given several *danda* blows on his head is not proved by medical evidence. Even otherwise, the head injuries are not fatal by themselves as the head injuries allegedly inflicted by the appellants were not the “primary factor” of the death of the deceased. Reliance was placed on the decision reported as (2017) 13 SCC 98 Krishnegowda vs. State of Karnataka. Learned counsel



also submitted that there is also a possibility that the incident as alleged took place in the act of ‘self-defence’ and, therefore, it is covered under Section 100 IPC and thus, the appellants would be entitled to protection under the said section and in this regard, reliance was placed on decision in (2010) 2 SCC 333 Darshan Kumar vs. State of Punjab.

7. Learned counsel for the appellants, in the alternative to the aforesaid contentions, submitted that even if the case of the prosecution is accepted as it is, at best, the appellants can be held liable for offence punishable under Section 304(II) of the IPC. It was pointed out that there was no premeditation of the appellants to commit the alleged offence and whatever happened, was at the spur of the moment without any motive. Even the DD entry No.30A (Ex. PW-10/A) records that there was a “*jhagda*” between the deceased and the appellant. It was also pointed out that the alleged incident took place at about 2:00 PM on 13th March, 2017 while the deceased died on the next morning on 14th March, 2017 which shows that there was no intention to cause injuries which would have resulted in instant death of the deceased. It was further pointed out that the learned Trial Court failed to take into account that even the appellant Shiv Kumar and JCL ‘S’ also received injuries which were of serious nature which establishes that the appellant and the JCL could have only received the injuries in case of scuffle or fight for which Section 302 IPC cannot be attracted. Learned counsel further submitted that initially the FIR was registered under Section 308 IPC which provides for attempt to cause culpable homicide not amounting to murder which shows that even as per the understanding of the IO about the facts of the case, the case was one pertaining to an offence ‘not



amounting to murder’ and, therefore, it is inconceivable how on the death of deceased, the prosecution converted the offence to Section 302 IPC instead of Section 304(II) IPC. Learned counsel placed reliance on a number of decisions wherein the Appellate Court had modified the conviction to an offence punishable under Section 304(II) IPC i.e. 1993 Supp. (3) SCC 141 Dwarka Prasad vs. State of Uttar Pradesh, 1992 Supp. (2) SCC 470 Sukhdev Singh vs. State of Punjab, (1976) 4 SCC 362 Molu vs. State of Haryana, (2018) 16 SCC 525 Gurwinder Singh @ Sonu vs. State of Punjab, ILR (2009) IV Delhi 101 Daulat vs. State (Govt. of NCT of Delhi), 2014 SCC OnLine Del 4615 Krishan Kumar @ Monu vs. State and (2007) 14 SCC 660 Vineet Kumar Chauhan vs. State of Uttar Pradesh. It was submitted that in all these judgments, there were allegations of multiple injuries, absence of *mens rea*, alleged offence committed in heat of the moment and despite use of deadly weapon, the Appellate Court converted conviction under Section 302 IPC to Section 304(II) IPC.

8. Learned counsel appearing on behalf of appellant Ram Padarth assailed the impugned judgment on the ground that the incident in question allegedly took place at 2.00 PM on 13th March, 2017 however, the FIR was registered at 12.10 AM on 14th March, 2017 i.e. after a delay of about ten hours for which no explanation was provided by the prosecution. It was further pointed out that the learned Trial Court in its impugned judgment relied upon the testimony of PW-3 and PW-15 for brushing aside the aspect of delay in registration of FIR. However, there are material discrepancies in the testimonies of PW-3 and PW-15 with respect to the place of arrest of the appellants. Learned counsel also pointed out that the prosecution failed



to examine the person who made the PCR call. To buttress the contentions, learned counsel relied upon the decisions in AIR 2019 SC 2866 P. Rajagopal & Ors. vs. State of Tamil Nadu and (2020) 12 SCC 630 State of M.P. vs. Ratan Singh & Ors. Learned counsel for the appellant further contended that the *lathis* allegedly used in the commission of offence and even the earth control which was lifted from the spot were sent for FSL examination, however, DNA could not be isolated. Further, from one of the three *lathis* (Ex.7), blood could not be detected in the FSL examination and therefore, it was contended that the prosecution was unable to connect the *lathis* and the appellants with the alleged offence in any conclusive manner. It was also pointed out that the *lathi* was recovered from the appellant (Ex.PW-1/F) from his own house from under his bed. It is unnatural for a person to keep the weapon of offence easily available with him for recovery and thus, the appellant was clearly falsely implicated due to personal enmity between the appellant and the deceased due to past incidents. Reliance was placed on the decisions in MANU/SC/0539/2021 Madhav vs. State of Madhya Pradesh, (2020) 10 SCC 733 Chunthuram vs. State of Chhattisgarh, AIR 2019 SC 3714 Balwan Singh & Ors. vs. State of Chhattisgarh and (2008) 3 SCC 210 Sattatiya vs. State of Maharashtra. It was further submitted that the alleged three eye-witnesses in the present case i.e. PW-1, PW-2 and PW-3 are all relatives of the deceased and hence, are interested witnesses and all these witnesses have made material improvements in their statements and they have testified falsely for the sole purpose of falsely implicating the appellant due to personal enmity for which the learned Trial Court was in error to rely upon their testimonies and



consequently, convicting the appellants. Learned counsel also pointed out that the defence evidence in the form of DW-1 was not properly appreciated by the learned Trial Court and facts have been wrongly mentioned in the impugned judgment for which reliance was placed on the decision in (2004) 5 SCC 679 Anil Sharma & Ors. vs. State of Jharkhand.

9. On the other hand, learned APP appearing for the State submitted that the impugned judgment of the learned Trial Court was based on proper appreciation of evidences against the appellants and, therefore, the impugned judgment be upheld and the present appeals be dismissed. It was submitted that Pankaj (PW-1), Geeta Rani (PW-2) and Sunil Mandal (PW-3) are the three eye-witnesses to the incident, based on whose testimonies, appellant Ram Padarth along with juvenile 'S' restrained the deceased and when appellants Bablu and Shiv Kumar along with juvenile 'S' were beating the deceased, appellant Ram Padarth caught hold of the hands of the deceased. Appellant Bablu was the one who had brought *dandas* from his house, from which, Bablu and Shiv Kumar beaten the deceased. It was submitted that the act of each of the appellant cumulatively established common intention of the appellant and in this regard, reliance was placed on the decision in (2019) 5 SCC 210 Asif Khan vs. State of Maharashtra. Learned APP further submitted that the prosecution was able to prove its case beyond reasonable doubt and to buttress this submission, he relied upon the following facts:

- (i) That the three eye-witnesses PW-1, PW-2 and PW-3 have corroborated the version of each other as also the role played by each of the appellant along with the manner of commission



of offence. Presence of PW-1 is established by his MLC (Ex. PW-7/C) as he was himself injured during the incident. Presence of PW-1 and PW-3 is established by DD No.30A (Ex. PW-10/A) recorded on 13th March, 2017 on the information received from BSA Hospital. Presence of PW-2 is established by way of MLC of deceased (Ex. PW-7/B) which records that the deceased was brought by PW-2.

- (ii) That non-mentioning of the name of the other eye-witnesses and the role of each of the appellant in the *rukka* (Ex. PW-1/A) by PW-1 does not dent the case of the prosecution as it is settled law that FIR is not an encyclopedia of facts and need not contain entire details of the incident. Reliance was placed on the decision in (2018) 9 SCC 429 Motiram Padu Joshi & others vs. State of Maharashtra.
- (iii) That PW-1 was himself injured during the incident and, therefore, the version put-forth by him becomes reliable. It is settled position of law that version of such injured witness comes within inbuilt guarantee and greater value must be attached to the version put-forth by such witness. Reliance was placed on the decisions in (2010) 10 SCC 259 Abdul Sayeed vs. State of M.P. and 2023 SCC OnLine SC 355 Balu Sudam Khalde & Anr. vs. State of Maharashtra.
- (iv) That merely because all the three eye-witnesses are related to the deceased is not a sufficient ground to disbelieve their



testimonies and, in this regard, reliance was placed on the decision in (2008) 16 SCC 65 Bur Singh vs. State of Punjab.

- (v) That the motive of commission of offence is duly established from the testimonies of PW-2 and PW-3. PW-2 categorically deposed that appellant Bablu was her sister's husband and he was jealous of the deceased as appellant Bablu's daughter had snatched something from the hand of deceased's daughter due to which an altercation ensued between the appellant and the deceased and consequently, relations between the two were strained. She further stated that ever since then, deceased and Bablu were not in talking terms with each other, which was the motive for Bablu to kill the deceased. Even otherwise, motive is irrelevant in cases of direct evidence as was held in the decision reported as (2010) 12 SCC 91 Bipin Kumar Mondal vs. State of West Bengal.
- (vi) All the three appellants were arrested on 14th March, 2017 based on a secret information and pursuant to their disclosure statements, three *dandas* were recovered at their instance.

10. Countering the case put forth on behalf of the appellants, learned APP submitted that the contention of the appellants that death of the deceased took place because of excessive consumption of liquor is unwarranted and falsified by the FSL report (Ex.PW-15/E) which report has remained unchallenged as the FSL expert M.L. Meena (PW-16) was not cross-examined by the defence. Further, the contention on behalf of the appellants that no independent witnesses were examined by the prosecution



would not be of any merit when three eye-witnesses have described the incident in detail and in this regard reliance was placed on the decision in (2008) 13 SCC 271 Mahesh vs. State of Maharashtra. Learned APP further submitted that although the appellants have examined two witnesses to prove their version however, testimony of both these witnesses is vague, generic and unreliable.

11. Having heard the parties at length and perusing the record, the following evidence emerges.

12. Pankaj (PW-1) deposed that on 13th March, 2017 at about 2.00 PM, he was standing on the gate of his house when he saw that Ram Padarth and 'S' were giving beatings to his uncle (*foofa*)/deceased. He intervened to save his uncle/deceased and appellants Bablu and Shiv Kumar also came out of their house and started beating him and the deceased. Appellant Bablu went inside his house and came back to the spot carrying three *lathis* out of which, one was handed over to 'S', one to Shiv Kumar and one *lathi* he kept with himself. All the said four persons assaulted him and deceased. The deceased had put his hands on his head to save himself from the *lathi* blows but the appellant Ram Padarth caught hold of the hands of the deceased and the other three persons gave *lathi* blows on the head of the deceased. While trying to save the deceased, he also sustained *lathi* blows and fell on the ground and thereafter deceased also sustained head injury and fell on the ground. He further stated that his *bua* Smt. Geeta Rani was also present at the spot. Sunil who was also present there intervened and sustained head injury. Thereafter, deceased ran towards Panch Mandir and PW-1 himself along with Geeta and Sunil followed the deceased. The appellants also



chased the deceased and they were able to overpower the deceased near an electric pole situated near Panch Mandir and again gave beatings to the deceased. Thereafter, he along with Geeta and Sunil brought the deceased to home but as the deceased's condition seemed serious, they took him to BSA Hospital. He himself was also medically examined and given treatment. He further stated that the police reached the hospital at about 11.00 PM and recorded his statement (Ex.PW-1/A). Next day morning, police came to his house and he had shown the place of incident to the police. From the spot, police lifted bloodstained earth and earth control which was seized (Ex.PW-1/B). The deceased died at the hospital on 14th March, 2017 and after his identification of the dead body (Ex.PW-1/C), the body was sent for post-mortem examination. At about 5.00-5.30 PM on 14th March, 2017, all the three appellants were brought by the police at the place of incident and thereafter, appellant Bablu got recovered one *lathi* from behind Panch Mandir near wall of the temple which was seized vide memo Ex.PW-1/E. Appellant Ram Padarth got recovered one *danda* from under the bed lying in his house which was seized vide memo Ex.PW-1/F. Appellant Shiv Kumar also got recovered one *danda* from his house from behind the door which was seized vide memo Ex.PW-1/G. In his cross-examination he stated that he has good relations with appellant Bablu till now. He further stated that at the relevant time, he reached outside the house of appellant Bablu when arguments ensued between the appellants and the deceased.

13. Geeta Rani (PW-2) who was the wife of the deceased stated that on the day of Holi on 13th March, 2017 at about 2.00 PM, her



husband/deceased told her that he was going to Pankaj's house and after about 5.00 minutes, she heard some noise from the street. On coming out, she found that appellant Ram Padarth and 'S' had blocked the way of the deceased and were not allowing him to go to house of Pankaj. Thereafter, 'S' and Ram Padarth started beating her husband/deceased and at the same time, Pankaj came there and intervened to save her husband/deceased. 'S' and Ram Padarth started bearing Pankaj as well and thereafter, from appellant Bablu's house, Bablu and Shiv Kumar came out and all these four persons started beating her husband/deceased and Pankaj with fists and kick blows. Thereafter, Bablu went to his house and came back with three *dandas* of which one was given to 'S', one was given to Shiv Kumar and one was kept by Bablu himself. Thereafter, they started beating deceased and Pankaj with those *dandas*. Her husband/deceased had put his hands on his head to save himself from the *danda* blows but appellant Ram Padarth caught hold of her husband/deceased's hands and all the other three persons gave *danda* blows to her husband/deceased due to which he fell down. At that time, Sunil Mandal also reached there. Her husband/deceased got up and started running in order to save his life and all the said four persons chased the deceased and overpowered him near the electric pole near Panch Mandir. She along with Sunil and Pankaj followed the appellants. All the appellants again gave *danda* blows and kick blows to her husband/deceased till he became unconscious. She further stated that some passers-by came to save her husband and, in that process, appellant Shiv Kumar sustained some injury on his head. Thereafter, they took the deceased to his house and as the deceased did not look well, he was taken to BSA Hospital. She further



stated that appellant Bablu was her husband/deceased's *Sadu* (husband of her sister) and he was jealous of her husband/deceased as once daughter of Bablu had snatched something from the hand of her daughter due to which an altercation took place between her husband/deceased and Bablu and the relations between the two got strained, and since then, both of them were not on talking terms with each other because of which, appellant Bablu wanted to kill her husband/deceased. She further stated that her husband/deceased died at the hospital on 14th March, 2017 and the dead body of her husband/deceased was handed over to them after the post-mortem examination. Further, she corroborated the version of Pankaj (PW-1) qua the pointing out of spot by the appellants and recovery of *lathis*.

14. Sunil Mandal (PW-3) corroborated the version put forth by Geeta Rani (PW-2). He stated that he identified the dead body of the deceased at the mortuary of BSA Hospital (Ex.PW-3/A). He also corroborated the version of Pankaj (PW-1) qua the pointing out of spot by the appellants and recovery of *lathis*. In his cross-examination he stated that at the time of incident, many persons were also passing by from the road but nobody stopped there. He stated that there was some *kaha suni* between children of deceased and appellant Bablu and both of them were not in talking terms with each other for many days.

15. ASI Anil Kumar (PW-13) deposed that on 13th March, 2017, he received DD No.30A (Ex.PW-10/A) regarding admission of the deceased and Pankaj at BSA Hospital. He along with Ct.Pramod went to *jhuggi* F-Block at Shahbad Dairy and no eye-witness was found at the spot. Thereafter, he went to BSA Hospital where he found that the deceased and



Pankaj were admitted in the hospital. He recorded the statement of Pankaj (Ex.PW-1/A) and prepared the *rukka* (Ex.PW-13/A) on which FIR was got registered. Crime team inspected the area and photographs were taken. Bloodstained earth and earth control were lifted from the scene of crime near electric pole near Panch Mandir and were seized. He prepared the site plan (Ex.PW-13/B). On receipt of information regarding death of the deceased, Section 302 IPC was added and further investigation was conducted by Insp. Avinash Tyagi.

16. Insp. Avinash Tyagi (PW-15) stated that on 14th March, 2017, investigation of the case was marked to him. He prepared the inquest papers and sent the body for post-mortem examination. He received a secret information that the appellants could be arrested near the nehar Khera Khurd. On pointing and identification by the secret informer, the three appellants were apprehended near Khera Canal, Sector-28, Rohini. All the three appellants were formally arrested and their disclosure statements were recorded. Appellant Bablu led the police team towards the wall where there were bushes and pond from where he produced a *lathi* which was seized (Ex.PW-1/E). Appellant Shiv Kumar led the police to his house and produced one *lathi* which was seized (PW-1/G). Appellant Ram Padarth also led the police party to his house and produced one *lathi* which was also seized (Ex.PW-1/F). After completion of investigation, he filed the charge-sheet and also prepared a final report against JCL 'S'.

17. As per the FSL report (Ex.PW-15/E), alcohol could not be detected from the exhibits taken from the body of the deceased. Further, as per FSL



(Biology) report (Ex.PW-15/F), blood was detected on two of the three *dandas* i.e. Ex.6 and Ex.8.

18. In their respective statements under Section 313 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”), appellants Bablu, Shiv Kumar and Ram Padarth stated that they were innocent and were falsely implicated in the present case. All the witnesses are relatives of the deceased and are interested and have deposed at the instance of the IO. They also stated that they were arrested from their houses. Further they led two defence witnesses.

19. Ram Gopal (DW-1) deposed that on 13th March, 2017 at about 2.00 PM, he went to the house of appellant Ram Padarth and celebrated holi with all the family members of Ram Padarth. He stated that there was no quarrel of Ram Padarth with any person.

20. Laxmi Devi (DW-2) stated that she had called appellant Bablu at her house for lunch and denied knowing any other thing.

न्यायमेव जयते



21. The case of the prosecution is that the deceased was beaten by the three appellants along with JCL 'S' by *lathis* pursuant to which, the deceased fell unconscious and later died at the hospital. This incident was witnessed by PW-1, PW-2 and PW-3 and on the statement of PW-1, the FIR was registered.

22. It was contended on behalf of the appellants that there was delay of about ten hours in registration of the FIR i.e. the incident took place at about 2.00 PM on 13th March, 2017; however, the FIR was recorded at 12.10 AM on 14th March, 2017. It was also pointed out that the person who called at number 100 was never examined by the prosecution. It is settled position of law that the purpose and object of getting the FIR registered at the earliest instance is that the said information would be free from embellishment and the spontaneity of information would obliterate the scope of manipulation and concoction of the facts regarding the incident. Further, delay in registration of FIR would not be a ground for discarding the entire case of the prosecution and it is for the court to examine and satisfy itself about the manipulation in the version of the prosecution as a result of delay in lodging the FIR.

23. In the present case, the deceased was got admitted at the hospital soon after the incident and was being treated at the hospital till his death on the next day at about 7.50 AM. The incident took place at around 2.00 PM, whereafter, the deceased was first taken to his house and when the family found his condition deteriorating, he was got admitted at BSA Hospital at 2.36 PM as recorded in the MLC of the deceased (Ex.PW-7/B) and the



deceased was referred to Dr.Manish Mahendra (PW-7) at about 3.10 PM. One of the eye-witnesses to the incident i.e. Pankaj was himself injured and the other two eye-witnesses got the deceased and Pankaj admitted at the hospital. DD No.30A (Ex.PW-10/A) was recorded at 6.06 PM on the information given by ASI Chand Prakash at BSA Hospital that the deceased and Pankaj were admitted at BSA Hospital. The said DD was marked to ASI Anil Kumar (PW-13) who first reached the spot and thereafter went to the hospital where he recorded the statement of Pankaj (PW-1) and at about 11.00 PM, he prepared the *rukka* on which FIR was got registered. In view of the facts noted hereinbefore, this Court finds that the delay in registration of the FIR has been properly explained as the eye witnesses immediately took the two injured to the hospital. Thus the delay in registration of FIR is not fatal to the case of the prosecution.

24. It was next argued that the three eye-witnesses are not reliable as they were related to the deceased and hence, are interested witnesses. The facts that PW-1 himself sustained injuries is evident from his MLC (Ex.PW-7/C), Geeta Rani (PW-2) got the deceased admitted at the hospital which is evident from the MLC of the deceased (Ex.PW-7/B) and presence of PW-3 is established from DD No.30A (Ex.PW-10/A) which records that Sunil got the injured admitted at the hospital. Thus one of the eye witnesses being injured himself and the other two witnesses having taken the two injured to the hospital, prove beyond reasonable doubt that these three witnesses were eye witnesses to the incident. Merely because these witnesses were related to the deceased, their testimonies cannot be discarded on the ground that they are interested witnesses. Even though a relation witness would be



interested in the outcome of the case, it is also common prudence that a relative of the deceased would not want an innocent to be punished while letting the actual offender go scot-free. Therefore, the mere fact that a witness is related to the deceased would not make such person an “interested witness”. Even otherwise, there is no reason brought on record by the defence as to why these witnesses would falsely implicate the appellants.

25. It is also well settled that the testimony of an injured witness stands at a higher footing because his/her presence during the course of occurrence stands proved. In the decision reported as (2010) 10 259 Abdul Sayeed Vs. State of Madhya Pradesh the Hon’ble Supreme Court held:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of



Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29)

“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that 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, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2013] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it



should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. 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 inbuilt 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.

26. It was also argued on behalf of the appellants that the *lathis* could not be conclusively connected with the appellants as also the alleged incident as during FSL examination, blood could not be detected from one of the three *lathis* and even though blood was found on other two *lathis*, DNA profile could not be generated. That the three *lathis* were recovered at the instance of the appellants soon after their arrest on 14th March, 2017 itself, was proved by ASI Anil Kumar (PW-13) and Insp. Avinash Tyagi (PW-15). The said three *dandas* were also identified by the three eye-witnesses during their testimony in Court. Thus, the contention on behalf of the appellants that since no DNA or blood group of the deceased could be found on the three lathies, hence they are not connected to the offence committed is liable to be rejected in view of the identification of the lathies by the eye witnesses.



27. Learned counsel appearing for appellants Shiv Kumar and Bablu also contended that there is a possibility that the present incident took place in 'self-defence' by the appellants as the appellants had also sustained injuries as is also evident from their own MLCs. A perusal of the trial court record reveals that after application under Section 91 Cr.P.C. was filed, the MLCs of three appellants dated 14th March, 2017 were produced which reveal that appellant Bablu had no fresh visible external injury, whereas appellant Shiv Kumar had a wound on right side of the vertex with pus and sutures which could be one or two days old and thus the injury to Shiv Kumar was also not accountable for the scuffle on 14th March, 2017. Further, MLC of Ram Padarth also showed two abrasions which were also opined to be one or two days old.

28. Learned counsel for the appellants have also argued that from the post-mortem report which opines that death was due to head injury, secondary to blunt force trauma to the head, hence death not being the proximate cause to the blunt force, the appellants cannot be convicted for causing death of the deceased Girdhari Mandal. This Court is not able to agree with the contentions raised as due to the blunt force impact on the head, there were two sutured wounds noted as injury No.1 and 2 in External Examination, which resulted in effusion of blood all over the scalp and communicated fracture of bilateral parietal bone and frontal bone with lacerated duramater underneath both the parietal bones. The brainmatter was found oozing out from the parietal bone and there were multiple lacerations present over the surface of the bilateral parietal area of brain. The internal injuries to the brain and scalp being due to the blunt force



impact, it cannot be held that the injuries on the head were not the proximate cause of death of Girdhari Mandal.

29. This brings the Court to the alternate submission raised by learned counsel for the appellants that even if accepting the prosecution case as it is, the same would at best amount to an offence punishable under Section 304 IPC, which submission merits consideration.

30. Hon'ble Supreme Court in the decision reported as (2020) 9 SCC 520 Jugut Ram Vs. State of Chhattisgarh dealing with the similar situation of injury on the head by lathi blows, reiterating the law laid down in Virsa Singh vs. State of Punjab (AIR 1958 SC 465) held that the offence fell under Section 304 Part II IPC and not under Section 302 IPC. It was held as under:-

“4. We have heard the learned counsel for the parties at length. There existed a civil land dispute between the parties. The occurrence is stated to have taken place on 23-11-2001 at about 2.00 p.m. while the deceased was harvesting crops. The appellant assaulted him with a lathi on the head. The deceased expired in the hospital the next day at about 7.45 p.m. The post-mortem report proved by the doctor, PW 13 found two contusions on the left and right parietal portion and fracture on the left parietal bone opening it to be dangerous to life. Other injured witnesses have confirmed that the appellant also suffered injuries in the occurrence.

5. The High Court on appreciation of evidence has come to the conclusion [Jugut Ram v. State of Chhattisgarh, CRA No. 446 of 2004, order dated 25-8-2010 (Chh)] that the assault was not premeditated but had taken place in a heat of passion due to a land dispute. If the appellant had the intention, nothing prevented him from further assaulting the deceased. Nonetheless it



maintained the sentence of the appellant under Section 302 IPC because death had taken place pursuant to the assault by him.

6. A lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault simpliciter. In a case like the present, of an assault on the head with a lathi, it is always a question of fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. The circumstances, manner of assault, nature and number of injuries will all have to be considered cumulatively to decipher the intention or knowledge as the case may be. We do not consider it necessary to dilate on the first principles laid down in this regard in Virsa Singh v. State of Punjab [Virsa Singh v. State of Punjab, 1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818], which stand well established. Suffice it to notice from precedents that in Joseph v. State of Kerala [Joseph v. State of Kerala, 1995 SCC (Cri) 165] , the appellant dealt two blows on the head of the deceased. The deceased died two days later. The post-mortem report found lacerated injury on the head and internal examination revealed fracture to the occipital bone extended up to the temporal bone. The High Court convicted the appellant under Section 302 IPC holding that the injury caused by the lathi was sufficient to cause death of the deceased. This Court observed as follows: (Joseph case [Joseph v. State of Kerala, 1995 SCC (Cri) 165] , SCC p. 167, para 3)

“3. ... The weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a trivial incident and in those circumstances the accused dealt two blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient (sic). At the most it can be said that by inflicting such injuries he had knowledge that he was likely to cause the death. In which case the offence committed by him would be culpable



homicide not amounting to murder. We accordingly set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict the appellant under Section 304 Part II IPC and sentence him to five years RI.”

7. In *Chamru v. State of M.P.* [*Chamru v. State of M.P.*, AIR 1954 SC 652 : 1954 Cri LJ 1676], the appellant dealt a blow on the head of the deceased with a lathi and which proved fatal. The injury was, medically opined, sufficient in the ordinary course to cause death. Conviction under Section 302 IPC followed. This Court observed as follows: (AIR p. 653, paras 5-6)

“5. It now remains to consider whether the offence which he committed falls within the first part or the second part of Section 304 of the Penal Code. When the fatal injury was inflicted by the appellant on the head of the deceased by only one blow given in the manner alleged by the prosecution it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death within the meaning of Part II of Section 304 of the Penal Code.

6. We accordingly allow the appeal to this extent that the conviction of the appellant under Section 302 of the Penal Code and the sentence of transportation for life awarded to him will be set aside, but the appellant will be convicted of having committed the offence under Section 304 Part II of the Penal Code and will be sentenced to seven years rigorous imprisonment.”



8. In *Gurmukh Singh v. State of Haryana* [*Gurmukh Singh v. State of Haryana*, (2009) 15 SCC 635 : (2010) 2 SCC (Cri) 711], the deceased died three days later after an assault on the head with a lathi opined to be sufficient in the ordinary course of nature to cause death. Holding that the assault was made on the spur of the moment without premeditation, the conviction was altered from one under Section 302 to Section 304 Part II and a sentence of seven years was handed. Similarly, in *Mohd. Shakeel v. State of A.P.* [*Mohd. Shakeel v. State of A.P.*, (2007) 3 SCC 119 : (2007) 2 SCC (Cri) 44], the appellant had caused only one injury and had suffered injury himself also. Altering the conviction from under Sections 302 to 304 Part II IPC, the appellant was sentenced to the period undergone since 1999.

x x x

10. We, accordingly, alter the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC. The appellant is in custody since 2004. He has already undergone the maximum period of sentence prescribed under the same. The appellant is, therefore, directed to be set at liberty forthwith unless wanted in any other case."

31. As noted above, in the present case, a quarrel was going on between the deceased on one hand and Ram Padarth and the juvenile on the other hand. It is at that stage when Shiv Kumar and Bablu seeing the quarrel got dandas with which blows were given on the head of the deceased. Thus, the offence was not committed with pre-meditation but in the heat of passion when a quarrel was going between two groups and the weapon of offence used were lathies easily available. Hence, the offence committed by the appellants would be one punishable under Section 304 Part II IPC and not Section 302 IPC. Consequently, the conviction of the appellants is modified



to one for offence punishable under Section 304 Part II read with Section 34 IPC instead of Section 302 read with Section 34 IPC.

32. As regards the quantum of sentence is concerned, as on date, the appellants Bablu and Shiv Kumar have undergone nearly 7 years and 6 months imprisonment including remissions, whereas appellant Ram Padarth has undergone nearly 6 years imprisonment including remissions. Appellant Ram Padarth is aged about 67 years as on today. Thus, the sentence of the appellants is modified to the period already undergone.

33. Consequently, the three appeals are disposed of modifying the conviction of the appellants to offence punishable under Section 304-II/34 IPC and the sentence to the period already undergone.

34. The Superintendent, Central Jail Tihar is directed to release the appellants forthwith, if not required in any other case.

35. Copy of the judgment be uploaded on the website of this Court and be also communicated to the Superintendent Tihar Jail for updation of records, intimation to the appellants and compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023

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