



2024:DHC:5942-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date decision: 8th August, 2024*

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CRL.A. 121/2003

STATE

.....Appellant

Through: Mr. Ritesh Kumar Bahri, APP with
Mr. Lalit Luthra and Mr. Manish
Bhojwani, Advs. (M: 9910645959)
with Insp. Sumit Kumar PS Roop
Nagar.

versus

MAHESH SINGH &ORS.

.....Respondents

Through: Respondent Nos. 1 and 3 in person.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant- State under Section 378(1) Cr.PC. seeking to set aside the impugned judgment dated 18th January, 2000 arising out of SC. No. 168/97 in FIR No. 70/96 registered under Sections 302/307/34 IPC and Section 27 of Arms Act at PS: Roop Nagar, wherein the 1d. Trial Court has acquitted the Respondents of the aforesaid offences.
3. A brief background of the case is that an incident had taken place during the *Holi* festival in 1996 in the Roshanara Building, Shastri Nagar, Delhi. A fight had ensued between the two groups which resulted in Mr. Praveen Kumar's death, due to an injury, which proved fatal.

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4. According to the prosecution, the main Accused was Mr. Veer Singh, who had caused the fatal injury to Mr. Praveen Kumar using a sword. The case of the Prosecution is that the other three Accused *i.e.* Respondents in the present case-Mahesh Singh, Yogesh @ Kallu and Yogender @ Gatta shared a common intention to cause the death of the deceased. The deceased Mr. Praveen Kumar, in fact, was brought dead to the hospital on 4th March, 1996.
5. The prosecution examined a total of 26 witnesses. The post-mortem report was produced and the doctor was also examined. The Accused thereafter, led their evidence and the main plank of their defence was that there was no common intention to kill. The entire incident had taken place suddenly and it was a free fight amongst various persons who were present at the time when the *holika dahan* was happening.
6. The Id. Trial Court analysed the evidence in detail and came to the following conclusion:-

"17. While accused Veer Singh is alleged to have caused the fatal wound with sword, the conviction of the other three accused for the murder of Praveen Kumar is sought with the aid of Section 34 IPC. Therefore I will have to find out whether these three accused shared common intention to kill Praveen Kumar. The roles assigned to them suggest that they could not have been privy to the murder. According to the FIR, accused Kallu ran and brought his uncle Veer Singh and father Mahesh Singh. Veer Singh had an open sword in his hand and Mahesh was holding something like a small axe. Kallu had a danda. It is alleged that Mahesh Singh caught hold of Praveen and pulled him aside and said "you take favours too much". Around the same time Veer Singh attacked Praveen with sword saying "Let us see him first". When Raj Kumar Sharma tried to catch hold of Mahesh Singh, Yoginder @ Gattu took out a knife



from his pant and attacked him. Thus it is not alleged in the FIR that Mahesh Singh, Yoginder Singh @ Gattu or Yogesh @ Kallu gave any exhortation or caused any injury to Praveen Kumar. As a matter of fact, accused Yoginder @ Gattu and Yogesh @ Kallu did not touch Praveen at all. Accused Mahesh Singh is alleged to have caught hold of Praveen Kumar but this would not establish a common intention. In 1997 Cr.L.J. 3913, the co-accused caught hold of the deceased while the accused inflicted blows. Their Lordships held that only an intention to cause grievous hurt could be attributed to the person who had caught hold of the deceased. In the present case, I am not even prepared to believe that accused Mahesh Singh had caught hold of Praveen Kumar. There are serious contradictions in evidence on this aspect. While PW 1 Raj Kumar Sharma says that Mahesh Singh had caught the left hand of Praveen with his Left hand, the other witnesses namely PW 3 Narender Kumar, PW 4 Om Prakash, PW 8 Anant Ram, PW 9 Rajesh Kumar and PW 14 Ajay sharma say that Mahesh had taken Praveen Kumar in his grip with both hands from behind. Then PW 9 Rajesh Kumar @ Raju states that Veer Singh was standing behind Mahesh. If Mahesh was standing between Veer Singh and Praveen Kumar, Veer Singh could not have probably caused injury on the pinna of Praveen Kumar from behind. Thus apart from contradictions in evidence regarding the manner of holding, the factum of Mahesh Singh holding Praveen at the time of assault appears to be physically improbable.

18. **The witnesses do assert that Mahesh Singh was armed with an axe but as Pw1 Raj Kumar Sharma admits, the said axe was not used at all. Pw 3 Narender Kumar and Pw 8 Anant Ram do say that Mahesh had exhorted the assault on Praveen, but their testimony is negated by the FIR and other witnesses who do not attribute any exhortation to Mahesh Singh.**

19. **As regards accused Yogesh @ Kallu, the only**



allegation against him is that when a quarrel erupted between Ajay and Gattu at the time of Holika Dahan, he ran to his house and brought his uncle Veer Singh and father Mahesh Singh. It is also alleged that he was having a danda in hands. There is no allegation that he exhorted anyone or caused injury to anyone. Whatever he did,, was a natural reaction of the quarrel between his brother Gattu and Ajay. He might have gone to call his uncle and father for help. They might have brought weapons by way of caution. **The act of calling the father and uncle for help and the bringing of a danda cannot in any manner suggest that he shared the intention to kill Praveen.**

20. Accused Yoginder @ Gattu also does not appear to have done any covert or overt act to provoke or facilitate the fatal attack on Praveen. No exhortation is attributed to him. All that is alleged against him is that when PW 1 Raj Kumar Sharma tried to catch hold of Mahesh Singh, he took out a knife and caused injuries to Raj Kumar Now Mahesh Singh is not the person who assaulted the deceased. As a matter of fact, he did not assault anyone. When Raj Kumar Sharma tried to catch hold of Mahesh Singh, he was certainly not trying to prevent the attack. If he had intended to prevent the attack, he would have tried to catch hold of veer Singh and in that case if he had been obstructed by accused Yoginder @ Gattu, he could probably say that Yoginder a Gattu had facilitated the attack. Yoginder @ Gattu did not cause any injury to deceased Praveen Kumar. He did not join the assault on Praveen Kumar. Therefore he cannot be held constructively liable for the murder of Praveen Kumar.

7. Ld. Trial Court came to the conclusion that the main Accused, Mr. Veer Singh had acted in a cruel manner and therefore the benefit of doubt cannot be given to him. However, insofar as the three Respondents in this appeal i.e.,



Mahesh and his sons Yogesh and Yogender are concerned, the Id. Trial Court acquitted them. The relevant portion of the judgment of the Id. Trial Court dated 18th January, 2000 is set out below:-

“28. The defence of the accused is that a riot had taken place and some unknown person in the mob caused injury to Praveen. In this context my attention has been drawn to the testimony of PW 1 Raj Kumar PW 9 Rajesh Kumar, PW 3 Narender Kumar and PW 7 Rishi Kumar. PW1 Raj Kumar admits that about hundred persons were present at the spot when Kallu ran to call his uncle. PW 9 Rajesh Kumar also admits that about 150/200 people were present. PW 3 Narender Kumar admits that people from the adjoining locality had also come. PW 7 Rishi Kumar says that he had come out on hearing noise. These admissions, according to Id. defence counsel, corroborate the defence version that there was a riot. I find no merit in the contention. Merely because there is an assembly of hundred or more persons, it does not follow that there is a riot. Moreover as DW 3 Jagdish Prasad Sharma himself says, the atmosphere became vitiated after the arrival of Veer Singh.

29. The accused have examined DW 3 Jagdish Prasad Sharma to show that Veer Singh was not present at the time of assault of Praveen. He states that an exchange of abuses took place between Yoginder and Kallu on one hand and Raj Kumar and Antu's son on the other hand. They began to exchange lathi blows. When accused Mahesh singh intervened, he was also given a lathi blow on his head. At that stage Kallu ran to call his Chacha. Accused Veer Singh arrived there and immediately rushed to the police station along with Mahesh and Yoginder. The testimony would imply that Veer Singh had arrived at the spot just in order to take his injured brother and nephew to the police station. This is something which does not appeal to reason. The



accused has himself suggested to the eyewitnesses that he had an iron pipe in his hand. If his intention was so peaceful, he need not have brought even an iron pipe. Then Jagdish Prasad Sharma does not inspire confidence at all. He was a home guard attached to P.S. Subzi Mandi and yet he did not inform the police. He never approached the police authorities or the court to tell them that accused Veer Singh was innocent. He has surfaced only at the stage of defence evidence. Therefore I am not prepared to believe him.

30. *Ld. counsel for the accused has also raised questions about the authenticity of FIR. As PW 10 H.C. Chander Mohan, the duty officer, admits, the preceding FIR was registered on 1.3. 9 at about 4.50 p.m. ed the succeeding FIR was registered on 8. 3. 96 at 10.05 p.m. There was thus sufficient space for manipulation. Ld counsel argues that this space was actually utilised by the police to ante-timed the FIR in question. In this context my attention has been drawn to the statement of Pu 23 SI Bachhu Singh and PW 26 Inspt. H.S.P. Singh who both state on cross-examination that Inspt. H.S.P. Singh went to Hindu Rao Hospital at 0. 45 a.m. and the statement of Raj Kumar was being recorded at that time. The MLC Ex. PW 15/A, however, shows that Raj Kumar was declared fit for statement at 1.00 am. This means that his statement was recorded after 1.00 am. and 90 the testimony of SI Bachhu Singh and Inspt. H.S.P. Singh is rendered false. Then PW 10 H.C. Chander Mohan says that he sent the special report at 2.25 a.m., PW 20 Const. Brijbir Singh says that he delivered the special report to the magistrate at 8.00 am. and Sh. Ramesh Kumar (DW 4) states that he received the special report at 10.00 a.m. Relying on these discrepancies ld. counsel submits that the FIR was prepared after the cool contemplation and then it was ante timed. This argument is answered by the accused themselves. Accused Mahesh Singh states in reply to*



question No. 15 U/s 313 Cr.p.c. that the statement of PW 1 Raj Kumar was recorded in the hospital in his presence. He further states that he had heard some parts of the statement. So there can be no doubt that the statement of Raj Kumar, on the basis of which FIR was registered, was recorded in the hospital itself and the question of manipulation does not arise.

31. *Lastly it has been argued that there was no premeditation and there was a sudden and free fight. The case would, therefore Fall under Exception 4 of Section 300. To my mind, the benefit of Exception 4 cannot be given to accused Veer Singh, because he acted in a cruel manner. The postmortem report Ex. PW 22/A shows that depth of the fatal injury was 10.5 c.m. from body surface. A person who caused such deep injury with a sharp weapon on a vital organ of the body, cannot claim the benefit of Exception 4.*

32. *Even though I have disbelieved the evidence of recovery of sword, it is obvious that veer Singh had used a sharp weapon like knife or sword. The mere fact that the recovery of such weapon has not been proved, cannot exonerate him.*

33. **In view of the above discussion accused Mahesh Singh, Yoginder @ Gattu and Yogesh @ Kallu are acquitted.** *Accused Veer Singh is held guilty U/s 302 IPC and also U/s 27 of Arms Act."*

8. In the present appeal, *vide* order dated 17th February, 2003, the Respondents were directed to furnish surety bonds.

9. The appeal was taken up for hearing on 16th May, 2024 and notice was issued to the Respondents.

10. Respondent Nos. 1 and 3 are present today. Respondent No. 1-Mahesh Singh is the father and Respondent Nos. 2-Yogesh @ Kallu and 3-Yogender @ Gatta are his two sons. Respondent no.2 has already passed away.



Respondent No. 1 himself is 75 years of age.

11. The Court has also come across the decision of the Id. Co-ordinate Bench of this Court in **CRL. A. No 124/2000** titled **Veer Singh v. State**, where insofar as the main Accused is concerned, the Co-ordinate Bench of this Court had disposed of the appeal by converting the conviction of the main Accused from one under Section 300/302 IPC to Section 304, Part 1 IPC. The observations in the said judgement dated 9th October, 2015 are relevant and are set out below:-

“16. In view of the aforesaid evidence, it is submitted that during the free for all, it is possible that Mahesh Singh (acquitted) may have used the axe or the weapon in his hand. This contention may not appear to be acceptable in view of the ocular version of the eye-witnesses, but there is merit in the contention that was a free fight and jostling, which is apparent. Further, in view of the nature of injury there could be some debate or doubt on whether the injury in fact was caused by the sword or by the axe. Raj Kumar (PW1), Bal Kishan (PW2), Narender Kumar (PW3), Om Parkash (PW4), Rajesh Kumar (PW9) and Ajay Sharma (PW14) in their ocular testimonies have stated that the appellant - Veer Singh had used a sword. We do not doubt that the sword itself or something similar was used but none of the witnesses had deposed that the sword was used vertically to have caused the injury at the pinna and, thus, the deep vertical wound was caused. Normally, one would use the sword horizontally and cause a longer and not a deep vertical piercing wound. As per the death report of Praveen Kumar marked Ex.PW26/B, he was a tall man of about 5'10 of height. It would be rather unusual for a person to use a sword vertically to cause the said injury on a tall person like deceased, though we notice that the appellant himself who was present in person in the court is equally tall.



17. *Intention to commit murder under clause 1 or bodily injury which the offender is likely to cause death under Clause 2 of section 300 IPC it can be said with a fair degree of certainty is missing. For invoking clause 3 of the section 300 IPC intention and actus for causing the injury suffered by the victim should be proved and established. In this connection we note that deceased Praveen Kumar was, in a way, a third party as he was not the person who had grappled or quarrelled with Yogesh (acquitted) or any of the accused. In fact, it was Ajay (PW14) son of Anant Ram (PW8) who was involved in the said quarrel. Deceased Praveen Kumar had tried to pacify the parties as was done on the earlier occasion by Yogender (acquitted). There is, therefore, merit in the contention of the appellant Veer Singh that the injury suffered would not have been the injury intended to have been caused by the appellant. Our observations in this regard have to be read with the observations in paragraph 16 above.*

18. In view of the aforesaid facts and circumstances, we are inclined to convert the conviction of the appellant from one under Section 300/302 IPC to Section 304, Part I IPC.

19. *The last issue pertains to quantum of sentence which should be awarded. It is noticeable that the appellant has already suffered incarceration of about four years and six months and possibly would have earned remission, which on calculation, it is pointed out would be slightly more than one year. In normal circumstances, we would have asked the appellant to surrender and undergo rigorous imprisonment for a period of 8 years and not less. However, the offence was committed way back in 1996 and the appellant was released on bail after filing of the present appeal sometime in the month of September, 2000 i.e. almost 15 years back. It is not the case of the prosecution that the appellant Veer Singh is involved in any other case or offence. Veer Singh is more than 60 years of age and we*



notice that he has reformed and repented the occurrence.

20. In these circumstances, we accept the prayer of the appellant Veer Singh that he should not be sent back to the prison to undergo further rigorous imprisonment. The punishment already undergone would be treated as adequate and the punishment awarded. However, the appellant must pay fine/compensation of Rs.50,000/-, which shall be paid within a period of 3 months from the date of pronouncement of judgment, failing which, the appellant will undergo simple imprisonment of six months. The fine if and once realised would be paid to the legal heirs of Praveen Kumar as compensation.

21. With the aforesaid modification, the appeal is disposed of.

22. Copy of this judgment will be sent to the trial court for compliance.”

12. A perusal of the above decision would show that the allegation made against Respondent No. 1-Mahesh Singh that he may have used the weapon *i.e.* axe which was in his hand was not accepted by the Court. The Court had come to the conclusion that there was a free fight and jostling which was apparent. The Court gave the benefit of doubt to Mr. Veer Singh in regard to the manner of use of the sword. The deceased was admittedly a third party who was trying to pacify the parties. It was an unfortunate incident which had taken place resulting in the death of the deceased who was, in fact, not involved in the quarrel at all.

13. Even in the present appeal, the Id. Trial Court clearly records that there is no evidence to establish that the Respondents had been involved in the blow which was given to the deceased resulting in his death. There was no evidence of any pre-meditation as the fight was a sudden fight. The Accused *i.e.*, the



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three Respondents were accordingly, acquitted by the Id. Trial Court.

14. In view of the findings of the Id. Trial Court as also the decision in ***CRL. A. No 124/2000*** titled ***Veer Singh (supra)*** against the main convicted person, the Court is of the opinion that the acquittal of Respondent Nos. 1 and 3 does not warrant any interference.

15. Respondent No. 2 having passed away, the appeal *qua* him would abate.

16. The appeal is, accordingly, dismissed and disposed of. The sureties are, accordingly, discharged.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

AUGUST 08, 2024
MR/RKS/PR

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