

(2014) 02 DEL CK 0122

Delhi High Court

Case No: Crl. Appeal No. 803 of 2000

Manjit Singh and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Feb. 6, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 307, 323, 324, 325, 326

Citation: (2014) 1 JCC 865**Hon'ble Judges:** S.P. Garg, J**Bench:** Single Bench**Advocate:** S.S. Das, Advocate for the Appellant; M.N. Dudeja, A.P.P, Advocate for the Respondent

Judgement

S.P. Garg, J.

Manjeet Singh (A-1), Bhupinder Singh (A-2), Parminder Singh (A-3) (since dead) and Harminder Singh (A-4) challenge the legality and correctness of a judgment dated 21.11.2000 in Sessions Case No. 102/97 arising out of FIR No. 679/91 registered at Police Station Patel Nagar by which they were convicted under Sections 307/326/325/323/324/342/34 IPC. By an order dated 30.11.2000, they were given various prison terms with fine. Briefly stated the prosecution case as projected in the charge-sheet was that on 29.11.1991 at about 11.00 P.M. at public street near House No. T-235, A-15, Baljit Nagar, Delhi, the appellants in furtherance of common intention inflicted injuries to Ramesh Kumar @ Maheshi, Bharat Bhushan, Ved Prakash, Suraj Prakash and Smt. Sheela Wanti in an attempt to murder them. The police machinery swung into action when an information regarding the quarrel was conveyed and Daily Dairy (DD) No. 18/A was recorded at Police Station Patel Nagar. The investigation was assigned to S.I. Satya Dev who with Const. Brij Bhushan and other police personnel went to the spot. They came to know that the injured had been taken to D.D.U. hospital in a PCR van. The investigating Officer lodged First

Information Report after recording Ramesh Kumar's statement (Ex. P.W.-1/A). During the course of investigation, statements of witnesses conversant with the facts were recorded. The accused persons were apprehended; arrested and the crime weapon was recovered. Exhibits were sent to Forensic Science Laboratory (FSL) for examination. After completion of investigation, a consolidated charge-sheet was submitted in the court against all of them. The accused persons abjured their guilt and claimed to be tried. The prosecution examined 16 witnesses to substantiate the charges. In 313 statements, the accused persons denied their complicity in the crime and pleaded false implication. They examined D.W.-1 (Mangal Sen) in defence. The trial resulted in conviction of all the appellants as aforesaid. Being aggrieved, they have preferred the appeal. A-3 expired during the pendency of the appeal and the proceedings against him were dropped as "abated".

2. I have heard the learned counsel for the parties and have examined the evidence tendered. Appellants' counsel strenuously urged that the trial court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses without independent corroboration. The trial court without cogent and valid reasons did not give due weightage to the variance between ocular and medical evidence. It fell into error by not considering the defence version. The counsel pointed out that there were number of contradictions and discrepancies to be found in the prosecution case which had remained unexplained. P.W.-2 (Sheela), P.W.-7 (Pankaj) and P.W.-9 (Surender Kumar) did not support the prosecution and turned hostile. "Danda"/"Saria" allegedly used in the crime were not recovered. The witnesses have given divergent and conflicting version about the occurrence. The accused persons were falsely implicated as A-1 had filed a complaint against the complainant and was annoyed on that account. No independent public witness was associated at any stage of the investigation. The recovery of crime weapons is doubtful and suspect. Learned Additional Public Prosecutor supported the judgment and contended that the prosecution had proved the offences to the hilt.

He urged that the victims have supported the prosecution on all material facts and in the absence of material discrepancies, their cogent and reliable testimonies cannot be doubted and disbelieved.

3. The occurrence took place at around 11.00 P.M. Ramesh Kumar, Bharat Bhushan, Sheela Wanti and Suraj Prakash were taken to D.D.U. hospital by PCR officials from the spot in a PCR Van. The M.L.Cs. record their arrival time at about 12.15-12.30/1.10 A.M. The injuries sustained by Sheela was "grievous" in nature. Ramesh, Suraj Prakash and Vijay sustained injuries "simple in nature" in the occurrence. Bharat Bhushan was stabbed on vital organs and the nature of injuries were "dangerous caused by sharp weapon." After recording Ramesh Kumar's statement (Ex. P.W.-1/A), rukka (Ex. P.W.-13/A) was prepared and FIR was lodged without wasting any time at 02.00 A.M. FIR in a criminal case is a vital and valuable piece of evidence

for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. In the instant case, there was no delay in registration of the FIR on the statement of victim Ramesh Kumar. He disclosed the police at the first available opportunity as to how and under what circumstances, a quarrel took place with the appellants and how injuries were inflicted to all of them with various arms. Assailants were specifically named and definite role was assigned to each of them. Since the FIR was lodged in promptitude, there was least possibility of fabricating a false story in such a short interval. The FIR gave a detailed account of incident. No deficiency in terms of the omission of the names or the role played by the accused was pointed out. While appearing as P.W.-1, the complainant proved the version given to the police at the first instance without major variation. He deposed that at about 11.00 P.M. on 29.11.1991 when he was present outside his house in a gali for urinal, A-4 abused him and threatened to teach him a lesson due to a previous quarrel, when he requested A-4 not to abuse him, they (A-1 and A-4) grappled with him. In the meantime, A-2 and A-3 with knives arrived there, on, his raising alarm, his brother Bharat Bhushan came to rescue him. The witness further deposed that A-1 and A-4 caught hold of Bharat Bhushan and A-2 gave blows with knife on his chest and stomach. Thereafter, A-3 gave a knife blow on his hip. A-3 also gave knife blow to hit him (P.W.-1) on his shoulder and A-4 stabbed him on his forehead, in the meanwhile, Vijay, Suraj Prakash and his mother Sheela Wanti arrived at the spot and intervened to rescue them. They were also given beatings by the accused persons. Vijay was dragged inside the house and was given beatings. He identified Shirt (Ex. P-1) which he was wearing at the time of incident and was bloodstained and had a cut mark on left shoulder. He also identified knives (Ex. P-2 and Ex. P-3) in possession of A-4 and A-2 respectively, in the cross-examination, he revealed that they all lived together in house No. T-235, A-15 Baljeet Nagar. On the day of occurrence, he had gone to attend the marriage of one Anita in Patel Nagar and a quarrel had taken place with A-4 there. He denied the suggestion that the (P.W.-1) was drunk when he had gone to the said marriage. He volunteered to add that A-4 was drunk and was misbehaving, when he complained about his conduct to his father (A-1), he (A-1) told him that A4 had not taken liquor. The said incident occurred at 10.00 P.M. He further revealed that he returned to his house from the marriage at about 10.15 P.M. when he came outside at about 10.30 or 11.00 P.M. for urinal, the incident took place. Surender Mohan, Ashok Kakkar, Pankaj Kohli and other members of the locality gathered at the time of occurrence. He denied the suggestion that he and his brother had raided the house of the accused persons. He was not aware if any case was filed against him or his brother.

4. On scanning the entire statement of the witness it transpires that despite searching cross-examination, nothing material could be extracted or elicited to

discard the version given by him. Presence of the witness along with his family members at the spot was not challenged. The accused persons did not deny their presence at the spot. No ulterior motive was assigned to the witness to falsely implicate the accused, who were residing in his neighbourhood since long and to shield the actual assailants. Vital facts deposed in examination-in-chief regarding the incident remained unchallenged in the cross-examination. P.W.-3 (Bharat Bhushan) who arrived at the spot on hearing the cries of his brother Ramesh to rescue him was also assaulted. In his Court statement, he deposed that at about 11.15 P.M. when he was sleeping in his house, he heard noise coming from outside his house and he woke up. When he came outside, he saw A-1 to A-4 quarrelling with his brother Ramesh Kumar (P.W.-1). When he tried to intervene, he was caught hold of by A-1 and A-4. A-2 and A-3 gave knife blows to him. A-2 hit him on his chest and abdomen whereas A-3 gave knife blow on his back, Surrender, Pankaj, his neighbours also reached along with others. His brothers Vijay Prakash and Suraj Prakash also came there. The accused persons dragged Vijay towards their house. Thereafter, he became unconscious. He identified his shirt (Ex. P-1) and knives (Ex. P-2 and Ex. P-3) used in the crime. In the cross-examination, he admitted that relations with the accused persons before the incident were cordial. He fairly admitted that he did not see as to who gave beatings to his brother Ramesh. He elaborated that when he came out, he was caught hold of by A-1 and A-4. He regained consciousness the next day in the afternoon. He denied the suggestion that he and his brother had raided the house of the accused to beat them. Again the testimony of the injured witness remained unshattered in the cross-examination. The injuries sustained by him were not challenged. No extraneous motive was attributed to the witness to Falsely implicate them. P.W.-6 (Vijay Kumar) implicated the accused persons for dragging him to their house and giving him beatings with fists and blows. He was also given a knife blow on throat near chin. P.W.-8 (Suraj Prakash) who arrived at the spot assigned specific role to A-1 and his three sons A-2 to A-4 to have caught hold of Bharat Bhushan. He implicated A-2 for giving Bharat Bhushan knife blow on the abdomen, when his brother Ramesh intervened, he was also stabbed on his forehead and shoulder by A-2. When he tried to rescue his brothers, he was stabbed by A-4. Pankaj and Surrender rescued him from the accused persons. His mother was given beatings by A-1 with a danda. In the cross-examination, he admitted that A-1's mother received minor injuries due to fall. Ramesh Kumar and his wife had gone to attend the marriage of Anita. He was not aware if any quarrel had taken place in the said marriage. He denied the suggestion that he and his brother had caused injuries to A-1's mother.

5. On scrutinizing the testimony of all the victims, it reveals that they have implicated A-1 to A-4 for inflicting multiple injuries to them with knives/dandas. It is true that there are some inconsistencies as to the exact role played by each of the assailants and use of specific weapon by them. However, these inconsistencies do not affect the core of the prosecution case. The evidence of injured eye-witnesses

cannot be discarded in toto on the ground of inimical disposition towards accused or improbability of narrating the details of actual attack. The occurrence had taken place at about midnight in which successive blows were inflicted to various victims in quick succession. It was not humanly possible for the witnesses to remember minute details as to which of the assailants was armed with a particular weapon and which of them inflict particular number of injuries on specific body part/parts of the victims. P.W.-2 (Sheela Wanti), mother of the victims Ramesh and Bharat Bhushan, who sustained grievous hurt was aged about 75 years and was unable to implicate any assailant for causing injuries to her. P.W.-6 (Vijay Kumar) fairly did not implicate the accused persons for the injuries inflicted to Ramesh Kumar and Bharat Bhushan. He was categorical to say that he did not see Bharat Bhushan, Ramesh Kumar and Sheela being beaten by the accused persons. It is also true that P.W.-7 (Pankaj) did not opt to support the prosecution and resiled from the previous statement mark Ex. P.W.-7/A recorded u/s 161 Cr.P.C. He, however, deposed that at about 11.00 P.M. he heard a noise and came out of his house. He saw Ramesh and Bharat Bhushan in injured condition. Surender Mohan was also present there. He, however, was not aware as to who had caused injuries to them. P.W.-9 (Surender Kumar) also deposed that on hearing noise at about 11.00 or 11.15 P.M. he came outside his house and saw a large crowd to have collected there. A quarrel had taken place between the two parties, one party was of Ramesh Kumar and other was of accused Manjit Singh (A-1). Ramesh's party had sustained injuries, Bharat Bhushan and Sheela Wanti and Vijay Kumar had also sustained injuries. Manjit Singh, Bhupender Singh and Harvinder were also so injured. Police arrived there and took both the parties to the hospital. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof, in the instant case, the victims categorically asserted the presence of P.W.-7 (Pankaj) and P.W.-9 (Surender Kumar). They also talked about a quarrel between the two groups. For the reasons unknown, they did not present true facts as to who was the aggressor, in view of the categorical direct testimony of the injured witnesses, their resiling from the previous statements would not dislodge their version.

6. Ocular version narrated by the prosecution witnesses is in consonance with medical evidence and there is no major variance. Minor variations between the two is not relevant. There is no ground to hold that medical evidence totally improbabilises ocular evidence. Some discrepancies in the narration of the details of the incident are bound to be there. The corroboration of testimony of the witnesses by medical evidence cannot be expected with mathematical accuracy. P.W.-14 (Dr. Chaman Prakash) medically examined Ramesh Kumar vide M.L.C. (Ex. P.W.-14/A) and opined the nature of injuries suffered by him as "simple caused v sharp object." He also medically examined Bharat Bhushan vide M.L.C. (Ex. P.W.-14/B) and noted the

following injuries:

- (i) 1 cm. sharp incise wound It. iliac fossa.
- (ii) 1 cm. sharp incise wound on It. upper hypochondrium.
- (iii) 1 cm. sharp incise wound on it. Gluteal on buttock.

On medical examination of Suraj Prakash vide M.L.C. (Ex. P.W.-14/C) the injuries were opined as "simple caused by sharp as well as blunt object. P.W.-15 (Sant Ram) Record Clerk, D.D.U. hospital, proved the M.L.C. of Sheela Wanti (Ex. P.W.-15/A) prepared by Dr. Ashish where the nature of injuries were "grievous". P.W.-16 (Dr. Lalit Kumar) appeared and proved the opinion as "grievous" on M.L.C. (Ex. P.W.-15/A) of Sheela Wanti and "dangerous" on M.L.C. (Ex. P.W.-14/B) of Bharat Bhushan. He further stated that injuries Nos. 1 and 2 in M.L.C. (Ex. P.W.14/B) were "dangerous" in nature as they were inflicted on the abdomen. The opinion was not challenged in the cross-examination.

7. In 313 statements, the accused persons did not give plausible explanation to the incriminating circumstances appearing against them, it was alleged that complaint case was filed by A-1 against P.W.-1 (Ramesh) and he was not favourably disposed towards them and has falsely implicated them. This defence does not appeal to mind as the complaint case filed by A-1 was admittedly dismissed for non-prosecution. Nothing has come on record to infer if the Court had summoned any of the victims in the said complaint case. It is also unclear as to when the complaint case was filed and when it was dismissed for non-prosecution. For the serious injuries sustained by the victims, they are not expected to let the real culprits go scot free and to falsely rope in the accused persons at around 11.00 P.M. The court can assume that a related witness would not ordinarily shield the real offender. Defence witness D.W.-1 (Mangal Sen) is of no help to the accused person. He merely deposed that the accused persons were his neighbours and were of good character. He never saw any dispute between Ramesh and accused persons in the mohalla. He was conspicuously silent about the occurrence and was not aware as to who were the culprits to inflict injuries. Suggestion has been put to the victim in the cross-examination that they had raided the house of the accused persons and had inflicted injuries to their mother. However, no complaint, whatsoever, was lodged by the accused persons against any one. M.L.C. of the injured mother has not been brought on record to ascertain its nature. On scanning the appeal file, it reveals that a complaint case (Annexure-E) was filed by A-1 against Ramesh Kumar @ Mashi, Bharat Bhushan @ Pappi, Ashok, Vijay, Suraj Prakash @ Pashi, Surinder Kumar, Pankaj in February, 1992 for taking action against them for inflicting injuries to him and his family members with deadly weapons. However, appellants counsel during arguments did not disclose as to what had happened to the said complaint case or if any of the victims was summoned in the said proceedings. The appellants did not bring on record the medical examination reports to infer if any of them had

sustained any injuries and if so what was its nature. There is nothing on record to infer that the victims were aggressors. Neither the appellants nor any injured from their side in the said incident appeared in defence.

8. The trial court has elaborately examined the grievances raised by the appellants with cogent reasons. The findings based upon fair appraisal of the evidence require no intervention. All the accused persons were present together at the spot and had participated in the crime. Apparently, they shared common intention, it is well-settled that common intention may develop at the spur of the moment. The prosecution was able to establish that all the accused persons in furtherance of their common intention inflicted various injuries to the victims. The findings on conviction are affirmed.

9. The accused persons were convicted u/s 307 IPC for inflicting injuries to P.W.-1 (Ramesh). It has come on record that there was no history of hostile relations between the two parties prior to the altercation that took place at about 10.00 P.M. on the said date between the complainant-Ramesh and A-4 in the marriage of Anita. The said confrontation annoyed A-4 and prompted him to abuse the complainant when he was present outside his house at 11.00 P.M. This brought the family members of both the parties at the spot and the accused persons in the said quarrel inflicted injuries to the victims. It has further come on record that injuries inflicted to P.W.-1 (Ramesh Kumar) were on his shoulder and forehead which were not vital organ of the body. No repeated life threatening injuries were caused with deadly weapons to him. He went to D.D.U. hospital on his own at 01.10 A.M. and M.L.C. (Ex. P.W.-14/A) was prepared. He was conscious and oriented at that time. The nature of injuries was "simple caused by sharp object." Needless to state that injuries were not inflicted to Ramesh with the avowed object or intention to cause his death, it was a case of quarrel in which accused persons sharing common intention voluntarily caused simple hurt with sharp object and the offence falls within the ambit of section 324 IPC. The conviction of the appellants u/s 307/34 IPC is altered to section 324/34 IPC. Conviction under other offences warrants no interference.

10. A-1 is stated to be aged 75 years old. He remained in custody for some duration at the initial stage of investigation before release on bail. He has clean antecedents and is not involved in any criminal case. He has lost his son (A-3) during the pendency of the appeal. Considering his clean antecedents, age and the role played by him in the occurrence, the period already undergone by him in this case is taken as substantive sentence. However, he shall pay compensation of Rs. 50,000/- and shall deposit it within 15 days before the trial Court. The amount shall be released to victim Bharat Bhushan who got serious injuries.

11. A-3 is already dead and proceedings against him have been dropped.

12. A-2 and A-4 are brothers and have suffered ordeal of trial/appeal for about 20 years. They have clean antecedents and are not facing any other criminal proceedings, sentence order is modified to the extent that the substantive sentence u/s 326 IPC shall be R1 for two years. Offence u/s 307 has been altered to section 324 IPC. The substantive sentence u/s 324 IPC will be R1 for one year, other terms and condition of the sentence order are left undisturbed qua A-2 and A-4. The appeal stands disposed of in the above terms. A-2 and A-4 are directed to surrender before the trial court on 12th February, 2014 to serve the remaining period of sentence. A-1, A-2 and A-4 shall pay the unpaid fine (if any) on the aforesaid date before the trial court or else shall suffer default sentence. The Registry shall transmit the Trial Court records forthwith.