

**(2006) 03 DEL CK 0246**

**Delhi High Court**

**Case No:** Criminal Appeal No. 86 of 1984

State

APPELLANT

Vs

Mohd. Akhtar and Others

RESPONDENT

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**Date of Decision:** March 27, 2006

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 322

**Citation:** (2006) CriLJ 2560 : (2006) 131 DLT 234 : (2006) 88 DRJ 627

**Hon'ble Judges:** Manmohan Sarin, J; Manju Goel, J

**Bench:** Division Bench

**Advocate:** Ravinder Chadha and Jagdish Prasad, for the Appellant; Purshottam Kumar and R.P. Sharma for respondents 1, 4-6 and 8-12, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Manju Goel, J.

On 29.5.1981 dead body of a young man was found lying in Gali Mandir Wali in front of house No.459, Katra Dhanpat Rai, Azadpur at a distance of 1-1/2 furlong towards east from the police station Adarsh Nagar. The information regarding this dead body lying there was received at the police station at 10.30 p.m. The FIR was registered on the same day on the statement of Sahira w/o Mirajuddin and on the basis of the statement the case was booked u/s 147/148/149/302/322/324 & 34 IPC. Twelve persons were named in the statement. Incidentally except Khachera the rest of the accused are closely related to each other. In the incident apart from one person being killed two others were seriously injured. 12 persons were sent up for trial. Despite the testimony of the complainant Sahira and that of two injured eye-witnesses the trial court acquitted all the 12 vide the impugned judgment dated 10.10.1983. The state has challenged the judgment of acquittal in the present appeal.

2. Before proceedings further it is necessary to describe the area in which the offence has taken place. We are avoiding to use the expression "place of occurrence" as that is one of the main points to be determined in the present appeal.
3. Katra Dhanpat Rai is described as house No.459. However, Katra is not one house as normally understood and Sahira who is described as resident of house No.459 is not the only resident of that house. Katra, as commonly understood, is a cluster of tenements with narrow passages running between them. Sometimes these tenements are described as rooms and sometimes as houses or quarters. The map of the area is proved on the record as Ex.PW-1/B. The property known as Katra Dhanpat Rai appears to be a square piece of land on which there are nearly 21 rooms or tenements occupied by different tenants. On one corner of this plot stands house of Ram Chand s/o Dhanpat Rai. The whole property bears the number 459. A narrow passage from the side of this house leads to the inner side of the Katra. The rooms/quarters are built alongside the boundary so that they are adjacent to each other and are approachable by that passage. Sahira resides in quarter No.9. As per her statement given to the police the spot where Naseem Ahmad, her brother-in-law, (hereinafter referred to as "deceased") was stabbed was the spot named "A" in the site plan. The spot "D" where the dead body was found may be approximately 100 paces from the spot "A". According to one version of Sahira, deceased chased his assailants to the gali abutting the Katra and fell at point "D". According to the other version given by her he was dragged out of the Katra and killed.
4. The two other injured persons in the case are Mujaffar Ali and Mirajuddin. Mirajuddin is the husband of Sahira and he was also seriously injured in the incident. Mujaffar Ali received minor injuries. As per the statement of Sahira given to the police, Ex.1/C, a quarrel took place between Anis Ahmad resident of quarter No.7 and Abdul Rashid over spreading of a charpoy in the space falling between the quarter of Anis, number 7 and that of Abdul Rashid, number 8. It appears that Anis used to spread his cot in the night in the open during the summer season and the same had been objected to by Abdul Rashid. On that day when Abdul Rashid forbade Anis from spreading his charpoy, the deceased spoke in favor of Anis which angered Abdul Rashid. Sahira stated that in the meanwhile men of Rashid, namely, Sayeed, Nasim, Sadiq, Sadruddin, Khachera, Ramzani, Anwar Ahmad, Ali Hassan and sons of Ali Hassan and Akhtar on being asked came there with sticks and clubs in their hands and thereafter Akhtar and Rashid lifted Naseem from his charpoy and gave him slaps and started dragging him towards the street. A word of caution is added here. The English translation of this statement says that the deceased was dragged out in the gali while the original Hindi version says that Abdul Rashid and others started dragging him towards the street. In the meanwhile, Mujaffar Ali, the elder brothers of the deceased, came out of the house and tried to rescue him but the accused gave lathi and danda blows to the elder brother. She says that Akhtar and Anwar were holding knives in their hands. Those people killed Naseem with

knife and lathi blows by taking him out in the gali AKHTAR KE VA ANWAAR KE HAATH MEIN CHAAKU THE. MERE DEVAR NASEEM KO IN LOGON NE CHAKU AUR LATHION SE VAAR KARKE BAHAR GALI MEIN LAKAR JAAN SE KHATAM KAR DIYA . She then says that her husband Mirajuddin came out of the house hearing the noise and as he tried to rescue the deceased he was also attacked with a knife blow by Anwar on his abdomen and as he was falling down the accused gave lathi blows to him as well as to the other brother, Mujaffar Ali. Mujaffar Ali sustained serious injuries on shoulder and other part of his body. Mirajuddin and Mujaffar Ali were removed to the hospital. All the aforesaid accused persons, she said, killed her brother-in-law Naseem with common intention and they also caused injuries to her husband and her other brother-in-law, Mujaffar Ali.

5. The two injured persons, Mujaffar Ali and Mirajuddin as well as Sahira came in the witness box. The police allegedly recovered a knife at the instance of Mohd. Akhtar. The usual investigation including the post mortem examination and collection of incriminating evidence were done by the police and they were exhibited during trial. The post mortem report as well as the medico legal certificates in respect of injuries of Mirajuddin and Mujaffar Ali were also proved. The trial court acquitted the accused by giving them benefit of doubt on the following grounds:

i) there was a long delay between the discovery of the dead body by the police and the delivery of the special report to the Ilaqa Magistrate giving ample scope to manipulate with the facts and raising doubts on the truth of Sahira's statement.

ii) the medical certificates as well as the post mortem report do not show any injury by lathis and dandas/clubs raising a doubt about the prosecution case of all the 12 being involved in the offence, some inflicting knife blows and others inflicting blows with dandas and lathis.

iii) the investigation did not collect any blood from the spot falling in front of quarter of Sahira suggesting that the incident of stabbing did not take place in front of her house but actually took place at the spot at which the dead body was found from where blood was lifted by the investigating officer. This led the trial court to presume that Sahira did not see the actual incident of stabbing as point 'D' was not visible from her quarter.

iv) Mujaffar Ali and Mirajuddin, the two injured witnesses, being the brothers of the deceased were interested witnesses and their version could not be taken without due caution.

6. We, Therefore, proceed to examine whether the trial court was right in arriving at the conclusion of acquittal.

7. The most important evidence in this case, as stated above, is the testimony of Sahira and that of the two brothers, Mirajuddin and Mujaffar Ali. The substance of the statement given by Sahira in the witness box is as under:

She was talking to her husband inside her house at around 10/10.15 p.m. when she heard Abdul Rashid, Anis Ahmed, Mohd. Akhtar and Haider Ali talking loudly. On coming out of the house she found Anis Ahmed and Haider Ali standing on one side and Abdul Rashid and Mohd. Akhtar standing on the other side. While Abdul Rashid was saying that the cot should be removed from the lane. Haider Ali retorted that the same would not be removed. Anis Ahmed also said that the cot would not be removed. There was a heated exchange of words between them. Naseem Ahmed said that there should not be any fighting and asked Abdul Rashid and others to permit him to spread his cot as it was summer season. Abdul Rashid and Mohd. Akhtar said that they should first deal with SIFARSEE . He then asked his associate to proceed ahead and deal with Naseem first. Abdul Rashid and Mohd. Akhtar pulled up Naseem by his collar. Khachera brought two lathis from his house and handed those over to Ali Hassan and Ali Ahmed. Nasim accused was already having a lathi in his hand. Anwar and Mohd. Akhtar had knives in their hands. The other accused were armed with dandas while Nisar"s hands were empty. Abdul Rashid and Mohd. Sadiq secured Naseem while Akhtar gave a stab blow with a knife in the stomach of Naseem. As her husband proceeded to save his younger brother, accused Ramjani and Ali Hassan exhorted others to belabour Naseem and Mirajuddin. Anwar aimed a knife blow towards Naseem which hit Mirajuddin on his stomach and thereafter Sadruddin and Sayeed Ahmed caught hold of Mirajuddin. Mirajuddin fell down on the ground. Anwar gave another knife blow to Mirajuddin while he was on the ground. Ali Hassan gave a lathi blow to Mirajuddin while he was lying on the ground. When Mujaffar Ali proceeded to save Mirajuddin, accused Sayeed Ahmed and Nisar Ahmed secured Mujaffar Ali while the other accused persons who had lathis and dandas started belabouring Mujaffar Ali. At that time she heard the voice of Naseem pleading with the accused to release his brothers. As her attention was diverted she saw Mohd. Akhtar running away from there after having stabbed Naseem. Naseem tried to chase Mohd. Akhtar. As he was injured he fell after proceeding only a short distance. She raised hue and cry and all the remaining accused ran away from the spot. Haider Ali lifted her husband and removed him to the hospital. Thereafter police reached and Mujaffar Ali was sent to the hospital. By the time police arrived Naseem was already dead.

8. The relevant part of her cross-examination reveals that the place where Naseem fell was at a distance of 100 paces from the house of Abdul Rashid, i.e., the place where the quarrel initially took place. She conceded that the place where Naseem had fallen was not visible from her house. She says that both Mujaffar Ali and her husband had fallen in front of her house.

9. She could not recollect if apart from accused Akhtar and Rashid any of the remaining accused inflicted any blows on the person of Naseem. She claims to have gone up to Naseem Ahmed after he had fallen and says that she found blood coming out of his head and falling on his face and that the injury on the head is beside the injury on his stomach. She also says that the stab blow in his stomach

was inflicted inside the katra opposite her quarter but Naseem did not fall there as he attempted to chase Akhtar who had run away. She further admitted that she did not see any of the accused dragging Naseem in the gali before he actually received the stab blow in his stomach. Nor did she see anyone giving him lathi blows.

10. It is interesting to note that the post mortem report, Exh. PW-6/A, says that Naseem had only one injury on his body. The relevant part of the report reads

External One incised stab injury over the Rt. side front of chest 1 Rt. to lower end of sternum placed vertically with tail end downwards size 1-1/2 x1 x9. Wound is wedge shaped. Margins regular and clearcut. No other injury on body.

Internal Scalp normal....

11. The post mortem shows that the deceased had not been injured at any place on his body excepting his chest. Obviously no one had hit him with a lathi on any part of his body. Sahira could not have seen blood flowing from the head of Naseem. At least to this extent Sahira's testimony cannot be correct.

12. So far as the place of occurrence is concerned Sahira says that the men took him out in the gali and killed. In her words NASEEM KO IN LOGON NE CHAKU AUR LATHION SE VAAR KARKE BAHAR GALI MEIN LAKAR JAAN SE KHATAM KAR DIYA . Obviously `Bahar Gali Main" means outside the katra and not in the narrow passage in front of her house. The contradictions between the FIR and the deposition are clear. In the first place in the FIR she alleged that the assailants dragged the deceased out in the gali and killed him with `chaku" & `danda" but in her deposition she says that she did not see anyone either dragging the deceased or anyone giving him lathi blows. This contradiction leads to the presumption that the actual killing and assaults took place outside the katra and could not be witnessed by Sahira.

13. In order to assert that she had actually seen the incident from her own house she said that Naseem was injured in front of her house. To reinforce her claim to have seen the stabbings he says that she had seen Naseem bleeding from his head. The post mortem proves that her statement about Naseem being belaboured by lathis is incorrect. Similarly, she certainly did not see Naseem bleeding from his head and, Therefore, her testimony cannot be the proof of the alleged fact that Naseem was belaboured by lathis by accused other than the one who may have inflicted a knife blow to him.

14. If the incident had taken place at the spot mentioned by Sahira as well as by the two brothers of the deceased named Mirajuddin and Mujaffar Ali, there would have been blood spots at that place. Sahira says that blood had fallen at that place and that police had also seen the same. Unfortunately the investigation does not reveal that any blood was found at that spot . The Investigating Officer PW-21 himself says that he found blood only at the spot where the dead body was recovered and that he found no blood at the alleged spot of incident namely the place outside the room

of Sahira. The Investigating Officer further says that blood would have been lifted by him from that spot if he had seen any blood there. The site plan of the spot does not indicate any sign of blood. The Investigating Officer PW-21 says that if such blood stains were there, the same would have been photographed and would also have been indicated in the sketch plan. The Investigating Officer duly lifted blood and control earth from the spot from where the dead body was recovered. He knew the importance of collecting the blood of the deceased from the ground. He would certainly have lifted control earth from outside the house of Sahira had there been any blood there. If, as suggested by Sahira, Naseem had chased Anwar or Akhtar after being stabbed in his chest there would have been blood not only at that spot where the cot was being spread but also at other parts of the gali leading to the gate of outer entry of katra. Thus, there is a grave doubt in the veracity of Sahira about the place where the incident took place. It does appear that the incident did not take place outside the room of Sahira. If that is so, Sahira certainly did not witness the actual incident of stabbing involving either Naseem or Mirajuddin.

15. We can now turn to the injuries to Mirajuddin and Mujaffar Ali and their testimonies in respect of the incident. The MLC from Hindu Rao Hospital regarding the injuries on Mirajuddin is Exh.PW-2/A. PW-2, Dr. G.K. Tandon, has proved the MLC. On local examination he found the following injuries:

- 1) Incised wound on left side of the abdomen near sub-coastal region 1 x1/2 with haemotoma.
- 2) Incised wound back right side 1/4 x1/4 supra spinous region.
- 3) Abrasion on left eye inferior orbit 1/4 x1/4 .

16. Both the injuries Nos. 1 & 2 were caused by sharp-edged weapon while injury No.3 was caused by blunt object. The blunt injury in the eye could have been caused by a fall or by a fist, as is said by the doctor in his cross-examination.

17. Mujaffar Ali was examined by PW-20, Dr. R.P. Saraswat, of Police Hospital, Delhi. He has noticed 7 superficial injuries like bruises, swelling, etc. In cross-examination he says that all the injuries were superficial in nature and these injuries could have been possible by falling on a rough surface twice or could even have been caused by nails.

18. These two MLCs as well as post mortem of the deceased showed that there was no injuries caused by a powerful blow of any object like lathi or danda. Sahira says that accused Ali Hassan gave lathi blows to her husband while he was lying on the ground. Then she says that when Mujaffar Ali proceeded to save Mirajuddin, accused Sayeed Ahmed and Nisar Ahmed secured Mujaffar Ali and other accused persons who were having lathis and dandas with them have started belabouring Mujaffar Ali. The two MLCs do not indicate anything to corroborate the version of Sahira regarding the brutal lathi blows after the victims had fallen on the ground.

Similarly, she stated before the police that Naseem was killed with the blows of lathis and knives. The post mortem of Naseem also does not reveal any injury other than one knife blow. Obviously he did not receive any injury by a lathi either on his head or any other part of his body. Thus, two things appear to be probable. The first thing is that Sahira did not see the incident with her own eyes and had narrated to the police whatever she may have gathered or presumed to have happened after the incident was over. Secondly, the version of Sahira that all the 12 accused persons were armed with lathis and dandas whereas Akhtar and Anwar also had knives in their hands is very unsafe to rely upon. There being no medical evidence of any danda blows having been given on any of the victims of the incident, the accused other than Akhtar and Anwar who have been implicated by virtue of Sections 149 & 34 cannot be convicted for a serious offence like murder or causing grievous hurt punishable under Sections 302 or 324 IPC.

19. Now Mujaffar Ali and Mirajuddin being two injured witnesses, their version is of great importance. Mujaffar Ali, as mentioned above, received only simple injuries like bruises. There is a contradiction between Mirajuddin and Mujaffar Ali about the time when Mujaffar Ali came out of his room to see the incident. Mirajuddin says that when he came out of the house he noticed Anis Ahmed and Haider Ali standing on one side and Akhtar and Rashid standing on the other side with other 10 accused persons standing behind Akhtar and Rashid and his brother Naseem Ahmad lying on the cot outside his room. Thus, he claims to have seen the entire incident from the very beginning. He thereafter narrates about the altercation which developed into an armed attack. He says that Abdul Rashid and Mohd. Sadiq had secured his brother while Akhtar inflicted churi injuries to him in his abdomen. Akhtar & Anwar wanted to inflict another churi injury to his brother. When he raised the alarm and moved ahead Anwar gave the injury in his (Mirajuddin's) abdomen. He was then secured by Sadruddin and Sayeed Ahmed. It was at that time that he saw his elder brother to be present there.

20. Mujaffar Ali appearing as PW-4 gave the same version as Mirajuddin, namely, that when he came out of the house he found Anis Ahmed and Haider Ali standing on one side of a cot in front of his house and Mohd. Akhtar and Abdul Rashid forbidding Anis Ahmed from spreading his cot. Thus, Mujaffar Ali also claims to have seen the entire incident from the very beginning instead of coming only after Mirajuddin got injured. The testimony of Mujaffar Ali, Therefore, has to be taken with some caution.

21. Mirajuddin received stab injuries. But it has to be noticed that he also received injury on his eye. There is no evidence as to whether he received the injury in the eye earlier to the other injuries. He himself does not say how the injury in his eye was caused. As stated earlier, according to the doctor, this could have been caused by a fall or by a fist. Now, although the injury in the eye was superficial, the same must have caused discomfort in his eyes and loss of clear vision at least

momentarily. Although the injury was not dangerous or grievous the same would certainly have affected his ability to visualise as to what was happening around him. In the eventuality of his eye being affected first it would not be safe to rely upon his testimony to prove who gave stab injury to him. Although the two brothers are injured in the incident and thus can be believed to have been present at the spot, the trial court has disbelieved their version. Let us see whether the finding of the trial court is perverse.

22. In the first place the two brothers claim like Sahira that the offence took place in front of the room in which she lived. Now Sahira's version has already been found to be doubtful. Absence of any blood at the spot is one reason to believe that the offence did not take place there and she did not witness the same. The two brothers who come out with the same version as Sahira cannot be given more credence in this respect. Secondly, they also say that they were belaboured with lathis stands negated by medical evidence. Their version that all the twelve accused were present with lathis and dandas and their participation in the riot is also thus tainted. The trial court has also found that there was a long gap between the time of the incident and the time of delivery of special report giving sufficient time to manipulate with the FIR and recording a pre-timed FIR. We have also noticed the contradiction between their testimonies.

23. Thus, we find that the statements of the injured witnesses have certain inherent contradictions and weaknesses making it unsafe to convict the accused entirely on the basis of their statements.

24. The investigation has recovered a knife at the instance of Akhtar from inside his house. The investigation, however, has made no effort to connect the knife with the offence. Knife was not shown to the doctors for their opinion as to whether any of the three stab injuries, one given to the deceased and two given to Mirajuddin, could have been caused by the knife. The knife was not sent to CFSL. There is no evidence that there was any blood on the knife. Thus, the recovery of the knife is totally inconsequential and does not advance the case of the prosecution. It is clear that the investigation itself did not consider the knife to have any connection with the offence. Same is the case with recovery of lathis at the instance of Khachera and of danda at the instance of accused Naseem Ahmad.

25. The learned trial court has found that there was a delay in sending the special report to the Magistrate of the area whereas the FIR was allegedly registered on the night of the date of occurrence itself at about 11.50 p.m. The special report was delivered to the Magistrate only on the following day at 9.40 a.m. The prosecution has not explained this delay. The trial court says that there is possibility of the FIR being recorded much later and there was sufficient time with the police to introduce improvements and other embellishments and to set up a distorted version of the occurrence. The trial court has diligently noted the various documents like the inquest report, application for post mortem examination and the testimonies of



investigation witnesses in this regard. It is not necessary for us to reproduce the same in this judgment.

26. In addition to above, the trial court has also found that there was possibility of the deceased and Mirajuddin as well as Mujaffar Ali being injured in some incident outside Katra Dhanpat Rai. The trial court has also examined the plea of 'alibi' of certain accused persons. The trial court has also gone into the question of possibility of reasons to falsely implicate the accused persons. It is not necessary to burden this judgment with all those factors. Suffice it to say that the prosecution case is full of infirmities. To recall the infirmities in the case we can list the following:

(a) The FIR is registered on the statement of Sahira who claims to be an eye-witness to the offence but the evidence clearly indicates that the incident actually took place outside the katra where complainant Sahira was not present at all.

(b) Sahira contradicts herself by giving a version in the witness box different from the version given in the FIR.

(c) The two injured brothers of the deceased, namely, Mujaffar Ali and Mirajuddin, reiterate that the incident took place in front of Sahira's house and, Therefore, they cannot be taken to be truthful witnesses.

(d) The evidence also indicates that the allegation of the presence of the 12 accused with lathis and dandas and all of the 12 accused having given lathi and danda blows on the three brothers is false. The medical evidence contradicts the evidence of the eye-witnesses in respect of the allegation of assault by lathis and dandas as no injury other than the injury by knife and another injury in the eye which could have been possible by fall has been proved.

(e) There was considerable lapse of time between the incident and the time when the special report was sent to the Magistrate providing sufficient opportunity for concoction of the complaint.

(f) The two injured witnesses have contradicted each other in respect of their arrival at the alleged spot of the incident.

(g) The knife allegedly recovered has not been connected with the offence since the knife has not been shown to the doctors examining the deceased. Nor has the knife been sent to forensic laboratory for examining if it had any trace of human blood on it.

27. The trial court has given benefit of doubt to the accused. It cannot be said that the view taken by the trial court was unreasonable or in any way perverse. In this circumstances, interference by the appellate court is not called for.

28. The Supreme Court in the case of [Shailendra Pratap and Another Vs. State of Uttar Pradesh](#), has laid down the law in respect of situation in which a judgment of acquittal can be interfered with. It said that the appellate court would not be

justified in interfering with the order of acquittal unless the same is found to be perverse. As discussed above, the findings of the trial court are neither perverse nor unreasonable and, Therefore, do not call for any interference. The appeal has no force. The same is accordingly dismissed.