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

% *Date of Decision: December 12, 2014*

+ **CRL.A. 1317/2014**

RANJEET KUMAR ..... Appellant  
Represented by: Mr.Ajay Verma and Ms.Neha  
Singh, Advocates.  
versus

STATE ..... Respondent  
Represented by: Mr.Varun Goswami, APP for  
the State with Inspector  
K.K.Tiwari, PS Tughlak Road.

+ **CRL.A. 1440/2014**

STATE ..... Appellant  
Represented by: Mr.Varun Goswami, APP for  
the State with Inspector  
K.K.Tiwari, PS Tughlak Road.  
versus

RANJEET KUMAR & ORS ..... Respondents  
Represented by: Mr.Ajay Verma and Ms.Neha  
Singh, Advocates.

+ **CRL.A. 1487/2014**

KANHAIYA & ANR ..... Appellants  
Represented by: Mr.Ajay Verma and Ms.Neha  
Singh, Advocates.  
versus

STATE ..... Respondent  
Represented by: Mr.Lovkesh Sawhney, APP for  
the State with Inspector  
K.K.Tiwari, PS Tughlak Road.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**PRADEEP NANDRAJOG, J. (Oral)**

CrI.M.B.10565/2014 in CrI.A.1317/2014  
CrI.M.B.10849-50/2014 in CrI.A.1487/2014

Since it has been agreed that the three captioned appeals could be head on merits today itself, the above three applications which seeks suspension of sentence are dismissed.

CRL.A.1317/2014, CRL.A.1440/2014, CRL.A.1487/2014

1. Ranjeet Kumar, Kanhaiya and Anmol are brothers. Their father's name is Jaleshwar. The three were charged for having, in furtherance of their common intention, murdered Ramesh in the intervening night of May 28 and May 29, 2011 at 3:00 hrs. on the roof of the servant quarter of Bunglow No.4, Janpath, New Delhi, within the jurisdiction of PS Tuglak Road.
2. Believing the testimony of Mahesh Kumar PW-1, Rahmat Khan PW-15, Jitender Kumar PW-16 and Babloo PW-17, the learned Trial Judge has convicted Ranjeet Kumar for the offence of having murdered Ramesh. The other two brothers : Kanhaiya and Anmol have been convicted for the offence punishable under Section 304 Part-I/34 IPC.
3. The decision holding the three guilty as aforesaid is dated May 28, 2014.
4. Vide order on sentence dated June 07, 2014, whereas Ranjeet has been sentenced to undergo imprisonment for life and pay fine in sum of

₹10,000/- (Rupees Ten Thousand only), in default to undergo imprisonment for one year, Kanhaiya and Anmol have been sentenced to undergo RI for five years and pay fine in sum of ₹5000/- (Rupees Five Thousand only), in default to undergo imprisonment for six months.

5. In holding Kanhaiya and Anmol guilty for offence punishable under Section 304 Part-I IPC and Ranjeet Kumar for having committed an offence punishable under Section 302 IPC, the learned Trial Judge has held that the testimony of the witnesses would establish that when Kanhaiya and Anmol exhorted Ranjeet to hit the deceased, their intention was that Ranjeet should cause injuries to the deceased and in light of the injuries caused, knowledge had to be attributed to the two that injuries caused were likely to cause death of the deceased, a reasoning which we find to be not sound in law. As regards Ranjeet he has been held guilty for his act of hitting the deceased Ramesh on his head with a 2½ ft. wooden stick.

6. Having heard learned counsel for the parties we find that the learned Trial Judge has overlooked some critical aspects of the testimony of the witnesses and the backdrop of the offence. A Court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. The broader probabilities of each case have to be considered. Minor contradictions and insignificant discrepancies in the testimony of the witnesses which are not of a substantial character have to be ignored and at the same time what has been said by a witness has to be considered by looking at each fact deposed to by a witness with the eyes of a hawk.

7. The testimony of the eye witnesses brings out that on May 28, 2011, the drama was enacted in two stages, which we may call Part-I and Part-II.

At Part-I, Ramesh the deceased injured Anmol and Kanhaiya. The testimony of the witnesses would bring out that Ranjeet, Kanhaiya and Anmol (three brothers) were good friends of Ramesh. They had a common friend named Jitender. All used to work for a contractor making jaffri (curtains on gate or walls made from half cut bamboo sticks). Bunglow No.4, Janpath, New Delhi was vacant. The labour of the contractor used to sleep in the servant quarters. At 8:00 PM, when Anmol, Kanhaiya, Ramesh and Jitender were consuming alcohol, Anmol demanded ₹100/- from Jitender who refused to pay. Anmol slapped Jitender. Ramesh objected and hit Anmol and Kanhiya. Anmol and Kanhiya were taken to RML hospital where Dr.Narender Arya PW-13 examined the two at around 10:00 P.M. Anmol had the following injuries:-

- (i) Lacerated wound over right knee approximately 2/.5 cm.
- (ii) Lacerated wound over left shin approximately 1.5/.5 cm
- (iii) Lacerated wound over upper lip approximately 1.5/.5 cm.
- (iv) Cut wound over right thigh just above knee approximately 1.5/.5 cm.
- (v) There was swelling and bleeding over left maxilla.

This was recorded in the MLC Ex.PW-13/A.

8. Dr.Narendra Arya also examined Kanhiya and noted the following injuries on him in the MLC Ex.PW-13/B:-

- (i) Lacerated wound in the occipital region 2.5/.5 cm
- (ii) Abrasion over right elbow approximately 1.5/1.5 cm

9. The two brothers came back after availing medical aid at RML hospital. Ranjeet was with them. Obviously the two had received stimuli injuries which were painful. Injuries were not dangerous but certainly hurt the two. Part-II of the drama was enacted thereafter when the three brothers

reached back at around 2.30 in the middle of the night.

10. Obviously, the fresh wounds of Anmol and Kanhaiya started hurting more when they saw Ramesh sleeping peacefully. The testimony of the eye witnesses is not that the three brothers came armed with a wooden stick. The witnesses also do not say that Ranjeet was armed with a wooden stick. The witnesses say that when the three brothers came back and saw Ranjeet sleeping, Anmol and Kanhaiya exhorted Ranjeet to hit Ramesh. At that, Ranjeet picked up a wooden stick lying nearby and hit Ramesh on the head.

11. We note that the witnesses have said that the exhortation by Anmol and Kanhaiya was: '*Ranjeet Aaj Isko Khatam Karna Hai*'. But we would take the exhortation i.e. the words spoken with a pinch of salt for the reason there is a tendency to exaggerate. Further, it would be difficult to accept that the two brothers spoke two identical sentences to exhort their brother. If the intention of the three brothers was to come back and take revenge, they would have been armed with wooden sticks, which were lying a plenty around, inasmuch as the three brothers and the deceased used to make jaffries which means that bamboo sawed into half is nailed on two wood pieces so as to form a wooden curtain. There were enough bamboo poles lying around. The three brothers did not pick up any. What had happened is obvious. Anmol and Kanhaiya, who were injured, were obviously angry on seeing Ramesh sleeping peacefully. The pain of the fresh wounds was still tormenting the two. It was natural for the two to utter as to how come Ramesh would have a peaceful sleep and they were to sleep in pain. They must have exhorted their brother Ranjeet to hit their tormentor. The intention obviously was to teach Ramesh a lesson for what he had done a few hours earlier to them. If the intention was to kill Ramesh, nothing

prevented Kanhaiya and Anmol to pin Ramesh on to the bed where he was sleeping so as to facilitate their brother Ranjeet hitting him mercilessly. No witness has said that Kanhaiya and Anmol caught hold of Ramesh when Ranjeet started hitting him with the wooden stick.

12. The injuries caused to Kanhaiya by Ramesh a few hours earlier were on the head and thus obviously, retaliation had to be on the same part of the body. The post-mortem report of Ramesh Ex.PW-18/A shows that he was repeatedly hit over the parietal and occipital region with a wooden stick resulting in fractures in the parieto occipital region with subdural haemorrhage in the underlying tissue. Dr.Rajeev Sharma PW-18 who conducted the post-mortem and who had authored the report Ex.PW-18/A has opined that the wooden stick Ex.P-1 was capable of causing the injuries and that the injuries on the head were sufficient in the ordinary course to cause death.

13. What the learned Trial Judge has overlooked is that the antagonist of Part-I of the drama was the deceased who had injured Kanhaiya and Anmol. Kanhaiya had been injured in the occipital area. The learned Trial Judge has overlooked the fact that the three brothers returned unarmed. The learned Trial Judge has overlooked the fact that on seeing Ramesh sleeping peacefully, Kanhaiya and Anmol, whom he had injured reacted in anguish. The anguish was as to why should they be writhing in pain and their tormentor sleeping peacefully. They exhorted their brother Ranjeet to take revenge. Revenge being to injure Ramesh. However, overcome by emotions Ranjeet acted beyond what was expected of him by his brothers. The two brothers could never think that Ranjeet would launch such a brutal attack. As regards Ranjeet, he acted on the spur of the moment when, exhorted by

his two brothers to injure Ramesh, he picked up the wooden stick lying nearby. Intention to be attributed to him is to simply injure the deceased. But unfortunately for him he used excessive force and thus knowledge which has to be attributed to him is not the one contemplated by Section 300 Fourthly of the IPC. Knowledge which has to be attributed to him is of the kind contemplated by the last limb of Section 299 IPC.

14. Thus, the offence committed by Ranjeet is culpable homicide not amounting to murder, punishable under Section 304 Part-II IPC.

15. By their act of exhortation, the common intention attributable to Kanhaiya and Anmol would be to cause hurt to the deceased. What were they to know that Ranjeet would pick up a 2½ ft. wooden stick. But they ought to have been aware that plenty of wooden sticks were lying nearby and their exhortation would probably influence Ranjeet to pick up a wooden stick, and thus the two would be liable for voluntary causing grievous hurt (with the aid of Section 34 IPC for the act of their brother). 2½ ft. long wooden stick by no means can be classified as a dangerous weapon and thus the offence committed by the two would be an offence punishable under Section 325/34 IPC.

16. In the three above captioned appeals, Ranjeet seeks his acquitted. So do Kanhaiya and Anmol. The State seeks enhancement of the conviction and the sentence qua Ranjeet and Kanhaiya.

17. Thus, CrI.A.1440/2014 filed by the State is dismissed.

18. CrI.A.1487/2014 filed by Kanhaiya and Anmol are partly allowed. Their conviction is altered to having committed an offence punishable under Section 325 IPC and noting that the two have suffered imprisonment for a little over two years, we sentence them to undergo imprisonment for the

period already undergone by them.

19. CrI.A.1317/2014 filed by Ranjeet Kumar is partly allowed. He is convicted for the offence punishable under Section 304 Part-II IPC and for which we sentence him to undergo imprisonment for a period of five years and pay fine in sum of ₹1000/- (Rupees One Thousand only), in default of payment of fine to undergo simple imprisonment for one month.

20. Kanhaiya and Anmol shall be released forthwith if not required in any other case.

21. Ranjeet shall suffer the remaining sentence.

22. TCR be returned.

23. Two copies of the present decision shall be sent to the Superintendent Central Jail Tihar. One for his record and the other to be supplied to Ranjeet.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**DECEMBER 12, 2014**  
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