

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.A. 822/2002 & CRL.M.A.2996/2003

Reserved on: 22nd March 2018
Decided on: 11th April 2018

MANOJ & ANR.

..... Appellants

Through: Mr. Vikram Singh Panwar and Mr.
Vikas Walia, Advocates.

Versus

STATE (NCT OF DELHI)

..... Respondents

Through: Mr. Amit Chadha, APP for State.

With

+

CRL.A. 836/2002

RAM NIWAS & ORS.

..... Appellants

Through: Mr. Ramesh Gupta, Sr. Advocate with
Mr. Bharat Sharma, Advocates for
appellant no.1

Mr. Manoj Kumar Ohri, Sr. Advocate
with Mr. Varun Tyagi, Mr. Bharat
Gupta, Mr. Nawab Singh Jaglan, Mr.
Rajeev Ranjan Raj, Mr. Abhimanyu
Singh, Mr. Vishesh Chauhan and Mr.
Anuj Kapoor, Advocates for
Appellant Nos. 3 and 4.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Chadha, APP for State.

With

+ **CRL.A. 929/2002**

SURANJAN SINGH

..... Appellant

Through: Mr. Vikram Singh Panwar and Mr.
Vikas Walia, Advocates.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Chadha, APP for State with
Mr. Amarjit Singh (Retired ACP) & SI Karamvir.

And

+ **CRL.A. 937/2002**

MANJEET SINGH

..... Appellant

Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. Bharat Sharma, Advocates.

Versus

STATE (NCT OF DELHI)

..... Respondents

Through: Mr. Amit Chadha, APP for State.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

J U D G M E N T

Dr. S. Muralidhar, J.:

Introduction

1. These four appeals are directed against common judgment dated

26th September 2002 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.36/2000 arising out of FIR No.379/1996 registered at Police Station ('PS') Narela, convicting the Appellants Manjeet Singh (A1), Suranjan Singh (A2), Manoj (A3), Jasbir (A4), Mahesh (A5), Gulab (A6), Ram Niwas (A7) and Satpal (A8) of the offences under Sections 452, 147, 148, and 302/149 IPC. Manjeet Singh (A1) was also held guilty for the offence punishable under Section 25 Arms Act.

2. These appeals are also directed against order dated 28th September 2002 whereby for the offence under Section 302 read with Section 149 IPC, each of the accused was sentenced to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to undergo further RI for 10 months. For each of the offences under Sections 147 and 148 IPC, each of them was sentenced to undergo RI for one year each and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo RI for one month. For the offence under Section 452 IPC, each of the Appellants were sentenced to undergo RI for three years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo RI for two months each. Manjeet Singh (A1) was additionally sentenced under Section 25 Arms Act to undergo RI for two years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo RI for two months. All sentences were directed to run concurrently.

3. It must be mentioned at the outset that apart from the aforementioned eight accused, one more accused, i.e. Ganeshi, the father of Mahesh (A5) and Ram Niwas (A7), was also arrayed as an accused and sent up for trial.

However, he expired during the pendency of the trial. The tenth accused was Ajeet (Juvenile in Conflict with the Law (JCL) at the time of the offence). The trial against Ajeet (JCL) was separated out and took place before the Juvenile Justice Board (JJB). The Court is informed that Ajeet was ultimately acquitted by the JJB.

Charges

4. The charges framed against all the nine accused were that on 16th September 1996 at around 6:30 pm at Village Bawana they formed an unlawful assembly with a view to preventing Vijay (PW-9) and his family members from appearing and pursuing the criminal case which was pending trial in which PW-9 was the injured; that at the time of being members of the unlawful assembly, they were armed with deadly weapons thereby committing offence punishable under Section 147 and 148 IPC. The third charge was that pursuant to the common object of the unlawful assembly, the nine accused committed house trespass at House No.433, Village Bawana thereby committing an offence under Section 149 IPC. The fourth charge was that pursuant to the common object of unlawful assembly, they committed the murder of Sunil @ Pintoo ('the deceased') thereby committing an offence punishable under Section 302 read with Section 149 IPC. A separate charge was framed against A1 for possessing a knife in contravention of the Arms Act thereby committing an offence punishable under Section 25 Arms Act.

5. During the pendency of the present appeals, Mahesh (A5) expired. The present appeals are by seven of the accused i.e. Manoj (A3)

(CrI.A.No.822/2002), Suranjan Singh (A2) (CrI.A.No.929/2002), Manjeet Singh (A1) (CrI.A.937/2002) and Ram Niwas (A7), Satpal (A8), Jasbir (A4) and Gulab (A6) (CrI.A.No.836/2002).

Background

6. The background to the present case was that there was an earlier incident in 1994 in which Manoj (A3), Suranjan (A2), and Mahesh (A5) had a quarrel with Vijay (PW-9), the son of Vidya (PW-3), the wife of Om Prakash (PW-6). Vijay's elder brother was Sunil (the deceased). In the quarrel, Vijay had received injuries and an FIR was registered against A2, A3 and A5 under Section 308 read with Section 34 IPC. A charge sheet had been filed and the trial was in progress in the said case. On account of the said incident, relations between the families of PW-6 and PW-3 on the one hand and all the accused on the other, became strained.

7. At this stage, it is necessary to refer to the relationship between the parties as they all have a common ancestor. One Ratan had four sons: Chand, Ganeshi (originally arrayed as the first accused and who died during the pendency of the trial), Surajmal, and Hukmi. Gulab (A6), Ram Niwas (A7), Jasbir (A4), Rajender and Naresh were the five sons of Ganeshi. Satpal (A8) was the son of Gulab Singh (A6). Manjeet (A1) and Ajeet (JCL) were the sons of Rajender. Therefore, Manjeet (A1), Satpal (A8), Gulab (A6), Ram Niwas (A7) and Jasbir (A4) and Ajeet (JCL) belong to the Ganeshi branch of the family.

8. Three of the accused belong to the Hukmi Branch. Rameshwar and Jai Prakash were the sons of Hukmi. Suranjan (A2) and Mahesh (A5) were the

sons of Rameshwar. Manoj (A3) was the son of Jai Prakash. The complainant party in the present case belonged to the Surajmal Branch. Om Prakash (PW-6) and his brother, Shivraj (PW-4), are the sons of Surajmal. Sunil (the deceased) and Vijay (PW-9) are the sons of Om Prakash. The other inter relation is that Om Prakash's wife, Vidya (PW-3), and the mother of Manjeet (A1) (wife of Rajender) are real sisters.

9. It could safely be said, therefore, that while the complainant party belongs to the Surajmal branch, the accused belong to the Ganeshi and Hukmi branches.

The incident

10. The incident is stated to have taken place at 6:30 pm on 16th September 1996. According to the prosecution, all the accused persons arrived at House No.433, Village Bawana, Delhi which was the house of Om Prakash (PW-6). While Manjeet (A1) and Suranjan (A2) were stated to be having knives in their hands, Gulab (A6) and Satpal (A8) had rods. Mahesh (A5) had a *lathi*. Manoj (A3), Ajeet, Jasbir (A4) along with Ganeshi (since deceased) and Ram Niwas (A7) are stated to have entered the house of PW-6. Gulab (A6) purportedly exhorted that they should be killed so that they may not be able to attend the Court proceedings scheduled for the following day.

11. Consequent to this, Manjeet (A1) and Suranjan (A2) are stated to have attacked the deceased with a knife while Mahesh (A5), Gulab (A6), Satpal (A8) attacked him with rods and *lathis* as a result of which the deceased fell to the ground. It is then stated that Manoj (A3) and Jasbir (A4) caught hold

of his feet and stated that Sunil should not remain alive today. Thereafter, all the persons started assaulting the deceased.

12. Upon this, Om Prakash (PW-6), his wife Vidya (PW-3), his son Vijay (PW-9), and his nephew Sanjay tried to save Sunil. Seeing this Ganeshi (since deceased), Ajeet and Ram Niwas (A7) are stated to have caught hold of PW-6, PW-3 and PW-9 and began assaulting them. Ram Niwas (A7) is then stated to have snatched the earrings from the ears of Vidya (PW-3). Ganeshi, Ajeet and Ram Niwas (A7) are stated to have loudly told the other co-accused persons to kill Sunil as he claimed to be a *dada*. In the meanwhile, Anil Rana (PW-13) and certain other persons of the *mohalla* came there and all the assailants ran away from the spot.

13. The Court is informed that of the aforementioned seven accused who are Appellants (with Mahesh (A5) having expired), six of them surrendered of their own accord and only Suranjan was arrested by the police.

14. Shivraj (PW-4), who happened to be the brother of Om Prakash (PW-6) and the uncle of the deceased Sunil and the injured eye witness Vijay (PW-9), was at the relevant time, serving in the Delhi Police as Assistant Sub Inspector ('ASI'). PW-4 received information that the deceased had a quarrel with Manjeet (A1) and Ajeet (who was a juvenile at the time of the occurrence) and had been taken in an injured condition to Jaipur Golden Hospital. When PW-4 reached the hospital, the deceased's body had already been taken to mortuary so he proceeded to the house of PW-6 and found the SHO lifting the blood from the floor of the courtyard. In his presence, the bloodstained earth and earth control was also taken. One brick soaked in

blood was also taken out from the floor along with a plain brick.

15. According to PW-4, there was one *charpai* (cot) which was blood soaked on the right hand side. This was also seized. He further stated that after all the parcels were sealed, the seal was handed over to him. Thereafter, along with the SHO PW-4 reached the mortuary at Jaipur Golden Hospital where he and PW-6 identified the dead body of Sunil. In other words, for all of the seizures, it was PW-4 who was the witness.

Initial information of the occurrence

16. As regards the occurrence, the first information that was given to the Police Control Room ('PCR') (Ex.PX) was to the effect that Sunil had been stabbed by his *chacha* and the sons of his *tau*, who had then fled. The location of the scene of crime is shown as "Bawana Panchayat Ghar Ke Pass" and the information was that "*ladke ko chaku mar diye; serious haalat*". This was recorded at 6.56 pm on 16th September 1996. The information about the name of the deceased and who had stabbed him was recorded at 7.22 pm as reported by the police van which reached the spot. There was no indication at this point in time that the offence took place inside a house. There was no name of any informant.

17. DD No.24 dated 16th September 1996 at Police Post ('PP') Bawana also recorded that at 7.35 pm a message was received that near the Panchayat Ghar at Bawana, one boy had been attacked with the knife. The criminal law process was set in motion on the aforementioned information given to the police.

MLC of the deceased

18. Inspector Amarjit Singh (PW-18) was posted as SHO of PS Narela. On receipt of the information, he went to the spot. He came to know that the deceased had been removed to the Jaipur Golden Hospital and he then proceeded there where he collected the MLC of the deceased. This MLC (Ex.PW-27/A) showed that the deceased had been brought to the hospital at 7.30 pm. It was noted "alleged fight at residence and sustained stab wound in left scapular region". It was further noted that the "patient had been brought dead". The person accompanied was shown as Pawan Kumar Tyagi (PW-8). There was no noting of the injuries on this document.

Post-mortem examination

19. The post-mortem examination of the deceased was conducted by Dr. Ashok Jaiswal (PW-10). He noticed the following external injuries:

"External injuries:

1. Incised stab wound obliquely placed on left side back 4.5 cm below and 1.5 cm lateral to posterior auxiliary-line of size 2.2 cm x 1 cm lower angle being, acutely cut.
 2. Bruise on dorsum of nose ½" x ¼".
 3. Bruise on right shoulder post-lateral aspect 2" x 1".
 4. Abrasion on right ear upper helix ½" x 1/2".
 5. Haematoma 2" x 1½" on right occipito parietal region.
 6. Bruise on right super-scapular region 2" x 1½".
 7. Abrasion on right below post lateral aspect ½" x ½".
- There was no other external injury."

20. The internal examination revealed that there was blood under the scalp tissue on the right occipito parietal region. The scalp bone was intact and the

brain matter pale, otherwise nothing abnormal detected. On exploring injury no.1, it was found to be “communicating with the left chest cavity from behind through sixth space directed downward, inward and medially cutting across soft tissues and entered into left lung lower lobe post-laterally through and through and entered into the heart from behind. The depth from surface was 11”, left chest cavity was full of free blood”.

21. The opinion as to the cause of death given by PW-10 was as under:

- “1. All injuries were ante mortem in nature.
2. Injury no.1 was caused by sharp edged weapon.
3. Injuries No.2,4,5,6 and 7 were caused by blunt object / force/ fall/ friction against hard rough surface.
4. Death was due to haemorrhagic shock consequent to injury no.1.
5. Injury no.1 was sufficient to cause death in ordinary course of nature.”

22. Later, when the weapon recovered at the instance of A-1 was shown to him, PW-10 confirmed that injury no.1 was possible by the said weapon. That the death of Sunil was homicidal was, therefore, clearly established by the prosecution.

Arrests and recovery

23. On 18th September 1996, Ganeshi was arrested. On 21st September 1996, Manjeet (A1) and Suranjan (A2) were arrested. Manjeet is stated to have given a disclosure statement and got recovered a knife from underneath a brick in the bushes opposite the house of Sher Singh at the Harijan Basti at Bawana.

24. In his cross-examination, PW-18 confirmed that the FIR had been

registered only on 17th September 1996 under Section 302/34 IPC. It appears that the FIR had been received by the Magistrate only at 10.30 am on 17th September 1996. PW-18 was unable to explain the delay. He stated, “The special messenger can only explain as to why so much time was taken to deliver the special report but the distance was also about 40 km. We provide motorcycles to such police officials”. He confirmed that Manjeet (A1) had surrendered in the Court and that there was no public witness to his disclosure statement. The knife was recovered only on 21st September 1996.

25. Inspector S.M. Dagger (PW-19) was posted in the District Crime Cell, North West. On 1st October 1996, the investigation of the case was entrusted to him. Two days thereafter, on 3rd October 1996, he arrested Mahesh (A5), Manoj (A3), and Jasbir (A4), all of whom surrendered in the Tis Hazari Court premises. They were produced from judicial custody. Police custody remand was obtained.

26. According to PW-19, A5 offered to get the *lathi* used by him recovered from the plot of A1. It was recovered on 5th October 1996. On 7th October 1996, Ajeet (minor), Gulab (A6), Satpal (A8) and Ram Niwas (A7) surrendered in Tis Hazari Court and were arrested. It is stated that Gulab (A6) and Satpal (A8) got recovered from the roof of their tube-well, the respective iron rods used by them. These were taken into possession.

Preparation of site plans

27. The initial rough site plan (without scale) (Ex.PW-18/D) was prepared by PW-18. The rough site plan depicts the common street of Village Bawana with House No.433, the house of Naresh, son of Ganeshi, and the house of

Ramey, son of Dhanwa, on one side of the street and the house of Arjun, son of Prithvi, and the house of Sabey Jat on the other. There were six alphabets pointing out different spots inside House No.433. 'A' was the spot where Sunil was killed. 'B' was the spot where Om Prakash (PW-6) was stopped. 'C' was the spot where Vidya (PW-3) was stopped. 'D' was the spot where Sanjay (PW-14) was stopped. 'E' was the spot where Vijay (PW-9) was stopped and 'F' was the spot where Rakhi (PW-5), the wife of the deceased Sunil, was shown to be standing. However, when this is compared with the scaled site plan, certain other features which were not present in the rough site plan emerged.

28. On 8th November 1996, PW-19 took the draftsman to the spot and, at the instance of Om Prakash (PW-6), he took rough notes and measurements. On 15th November 1996, the scaled site plan (Ex.PW-1/A) was prepared. The scaled site plan has seven spots marked from 'A' to 'G'. 'A' shows the place on the cot where the accused persons attacked Sunil with knives, iron rods and *lathis* and where blood was lying. 'B' was the place beneath the cot where the blood was lying and from where the blood/bloodstained earth and brick were taken by the IO. 'C' was the place where PW-6 was stopped from rescuing the deceased. 'D' was the place where PW-3 was stopped. 'E' was the spot where PW-9 was stopped. 'F' was where PW-14 was stopped. 'G' was the place where PW-5 witnessed the occurrence. The presence of two cots is shown in the scaled site plan although it was absent in the rough site plan.

The trial

29. Upon the conclusion of the investigation, the charge-sheet was filed and by an order dated 21st January 1998, the charges as noted above were framed against the accused by the learned trial Court.

30. Twenty-eight witnesses were examined for the prosecution. In their respective statements under Section 313 Code of Criminal Procedure ('Cr PC'), each of the accused denied the circumstances put to them and claimed to have been falsely implicated. No defence evidence was led.

The impugned judgment

31. In the impugned judgment dated 26th September 2002, the learned trial Court came to the following conclusions:

- (i) The eye witness testimony of PW-3 was truthful and reliable and was corroborated by Rakhi (PW-5); Om Prakash (PW-6) and Vijay (PW-9). Nothing could be elicited in their respective cross-examinations which could impeach their credibility.
- (ii) The occurrence took place inside the house of deceased Sunil. All the above witnesses, although closely related to the deceased, were natural witnesses. Their evidence is corroborated by the medical evidence.
- (iii) The death of Sunil was homicidal and the fatal injury was an incised wound which could be caused by the knife recovered at the instance of A1.
- (iv) On 17th September 1996, the case in which A2, A5 and A3 were facing trial for causing injuries to Vijay (PW-9) was listed. The

enmity between the parties which was as a result of this case provided the motive for the commission of the crime.

- (v) The recovery of weapon of offence at the instance of A1 was proved by the prosecution. PW-10 confirmed that the fatal injury could have been caused by that knife. The police witnesses, i.e. SI Dhan Singh (PW-12) and Inspector Amarjit Singh (PW-18), have proved the recovery of the knife and there was nothing in their cross-examination which could impeach their credibility.
- (vi) The FSL report confirmed the presence of human blood on the knife.
- (vii) The recovery of *lathis* and iron rods used in the commission of the offence was also proved.
- (viii) The FIR was recorded at the earliest opportunity and was free of embellishments.
- (ix) The ocular evidence in the present case was corroborated by the medical evidence.

32. For all of the aforementioned reasons, it was held that the prosecution had proved its case against the accused beyond reasonable doubt.

33. This is a case based on direct evidence and, therefore, the version of the eye witnesses becomes critical. As already noticed, the parties are all closely related and have a common ancestor. The complainant party belongs to the Surajmal Branch where as the accused parties belong to both the Ganeshi and Hukmi Branches. Undoubtedly, since the parties are related also and there is a previous enmity, the eye witnesses from the complainant branch have to be treated as interested witnesses.

Lack of 'common object'

34. The principal charge against the accused persons is for coming together in unlawful assembly for an unlawful common object punishable under Sections 147, 148 and 149 IPC. In ***Charan Singh v. State of U.P., (2004) 4 SCC 205***, the Supreme Court laid down what constitutes a common object for the purposes of Section 149 IPC:

“The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter.”

35. Later, in ***Bhanwar Singh v. State of Madhya Pradesh (2008) 16 SCC***

657, it was explained as under:

“Hence, the common object of the unlawful assembly in question depends firstly on whether such object can be classified as one of those described in Section 141 of the IPC. Secondly, such common object need not be the product of prior concert but, as per established law, may form on the spur of the moment (see also *Sukha v. State of Rajasthan AIR 1956 SC 513*). Finally, the nature of this common object is a question of fact to be determined by considering nature of arms, nature of the assembly, behaviour of the members etc. (see also *Rachamreddi Chenna Reddy v. State of Andhra Pradesh (1999) 3 SCC 97*).”

36. In the present case, the common object as projected by the prosecution in the charge sheet, and as purportedly shared by the accused, was to prevent Vijay (PW-9) from deposing in the trial arising out of the incident in 1994 where Manjeet, Manoj and Mahesh were named as accused and Vijay (PW-9) was the injured eye witness. If this was indeed the common object, then the question arises as to whether the acts performed by the accused did, in fact, serve this common object. It must be remembered that it is Sunil, the elder brother of Vijay, who was killed. As regards Sunil, there was a single knife blow on his back which happened to pierce his lungs. Although Vijay was purportedly attacked by A2, A3 and A5, Vijay was not even injured. If indeed the common object was to prevent Vijay from deposing in the Court, it is strange that Vijay was not injured at all in the incident. This aspect of the matter has been lost sight of by the trial Court.

37. It has been argued on behalf of the Appellants that the story of the prosecution that the case arising out of the incident of 1994 was listed on the following day, i.e. 17th September 1996, was not even established by the

prosecution. In reply, it is pointed out by learned Senior Counsel appearing for the complainants that at least one of the eye witnesses, i.e. Rakhi (PW-5), spoke about the case being scheduled for hearing on the following day. In any event, as far as IOs (PWs 18 and 19) are concerned, they do not appear to have even probed this aspect of the matter. In other words, there was no verification of whether the trial of the previous case was slated for the following day, i.e. 17th September 1996, and whether Vijay had to depose in the trial on that day. The common object, therefore, cannot be said to have been established by the prosecution.

Evidence of PW-5

38. According to PW-5 the case in which Vijay was injured was pending in the Court and the date of that case was 17th September 1996. She began by saying that at around 6:15 pm on 16th September 1996, Sanjay (PW-14) and Vijay (PW-9) came to the house of Sunil (the deceased) and informed her father-in-law, PW-6, that they had been threatened by Manjeet (A1) and Ajeet (JCL) that that they would not permit Vijay to go and depose in the trial the following day and that they would test his courage in the *akhara* (wrestling ring). She goes on to state that at around 6:30 pm, Manjeet (A1) and Suranjan (A2) who were both carrying knives, Satpal (A8) and Gulab (A6) who were carrying iron rods and Mahesh (A5) who was carrying a *lathi* entered her house. Gulab (A6) exhorted that the complainant party should be killed. Thereafter, Jasbir (A4), Manoj (A3), Ram Niwas (A7), Ganeshi (since deceased), Ajeet and the others totalling 10 of them were present. She herself was on the terrace and on hearing the noise, came down. First Suranjan (A2) attacked her husband Sunil with a knife but Sunil

managed to avoid it. Thereafter, Manjeet (A1) attacked him on the left side from the back below the shoulder. Satpal (A8) and Gulab (A6) hit him with iron rods. Manjeet (A1) then hit him with the *lathi*. Sunil then fell on the ground at which point Jasbir (A4) and Manoj (A3) caught him by the legs and said that he should be finished off and they will not let him rise. Ram Niwas (A7), Ajeet (JCL) and Ganeshi (since deceased) attacked PWs- 3, 6, and 9 and prevented them from coming forward to try and save Sunil. Sanjay (PW-14) was also present but did not do anything.

39. There was a young child on her lap and, therefore, PW-5 continued standing near the staircase. However, on listening to the noise of the persons gathered outside, the ten of them, after having murdered her husband due to past enmity, ran away from there. After they fled, Pawan Tyagi (PW-8) and PW-13 arrived there. PW-6 then called the police. Thereafter, PWs- 6, 8, 13, 9 and 14 took Sunil to the hospital where he was declared to have been brought dead. She was able to identify all the accused except Ajeet (JCL).

40. In her cross examination, PW-5 stated that she was not aware whether any of the victims was to be examined at the hearing on 17th September 1996. She only was aware that summons had been received and there was a date of listing.

41. The other eye witnesses for the prosecution viz., Vidya (PW-3), her husband Om Prakash (PW-6); her son Vijay (PW-9); and Sanjay (PW-14) have spoken more or less on the same lines as PW-5. However, since they are interested witnesses and there is previous enmity between the parties, their evidence although seemingly consistent, has to be examined with some

caution.

Law relating to evidence of interested eye witnesses

42. At this stage, it is important to recapitulate the law relating to appreciation of eye witness who may be related witnesses or interested witnesses.

43. In ***Dalip Singh v. State of Punjab 1954 SCR 145***, the Supreme Court explained:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

44. In ***State of Bihar v. Basawan Singh AIR 1958 SC 500***, the Constitution Bench of the Supreme Court held:

“The correct Rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are

partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person.”

45. In *Darya Singh v. State of Punjab (1964) 3 SCR 397*, it was observed by the Supreme Court as under:

“There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it... [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a

relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.”

46. In *Sarwan Singh v. State of Punjab (1976) 4 SCC 369*, the Supreme Court explained:

“The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth such evidence could be relied upon even without corroboration.”

47. In *Jayabalan v. UT of Pondicherry (2010) 1 SCC 199*, the Supreme Court held as under:

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency.”

48. In *Waman v. State of Maharashtra (2011) 7 SCC 295*, the law was summarized as under:

“It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

49. The legal position was succinctly encapsulated in *Raju v. State of Tamil Nadu AIR 2013 SC 983*:

“.....we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.”

50. The law in relation to interested witnesses, as explained in the above decisions, is that their evidence is not to be looked upon with suspicion only because of their relationship with the deceased. However, as in the present case, the complainant and the accused share a common ancestor and two whole branches are sought to be arraigned as accused, the Court has to be careful to ascertain if there are embellishments and whether the other attendant circumstances give room for suspicion as to the truth of their version.

Analysis of eye witness testimonies

51. In the present case the eye witnesses, viz., Vidya (PW-3); her husband Om Prakash (PW-6); her daughter-in-law Rakhi (PW-5); her son Vijay (PW-9); and Sanjay (PW-14) were both interested and related witnesses.

'Interested' because on account of their past enmity, it is possible that the complainants sought to implicate the other branches inimical to them. The complainants belonged to the same branch, namely the Surajmal branch, whereas the accused belonged to the Ganeshi and Hukmi branches.

52. The incident took place at around 6:15 pm and the first DD entry was the first information submitted to the PCR at 6:56 pm. That information did not give the location of the scene of crime as the house of PW-6, but “near the *panchayat ghar*”. This assumes significance since according to both the rough site plan and the scaled site plan, the dimensions of the house of PW-6 are such that for ten persons to enter and start attacking a family of five would not really be practical or serve the purpose. The scaled site plan makes the situation even worse with there being two cots shown in the room. Whether ten persons would be able to even fit in with five others in the same room and then go on attacking all of them requires to be appreciated in this context.

53. Understandably, therefore, learned counsel for the Appellants harped upon the definition of ‘proof’ in terms of Section 3 Indian Evidence Act (‘IEA’). It is emphasized that the proof has to be that which a prudent man would understand as probably happening in the circumstances. As rightly pointed out, there was perhaps not even enough room if indeed fifteen persons were present in such a small cramped place, as shown in the rough site plan, for the attackers even to swing their rods and *lathis* and attack the party of the complainant. The discrepancies already noticed in the rough and scaled site plans have not been adequately explained by the prosecution.

54. One of the serious problems with the eye witness testimonies in this case has to do with the common object for which all the accused purportedly came together. This was supposedly to prevent Vijay (PW-9) from deposing in the Court on the following day. Yet, the attackers did not even touch Vijay (PW-9) but straightaway started attacking Sunil who admittedly was not the injured eye witness in the earlier case and, therefore, was not required to depose in the earlier case. It is a mystery therefore why the attackers would stop with attacking Sunil and leave Vijay (PW-9) alone. This lacuna has not been explained by the prosecution. It is for the prosecution to prove the case according to its version.

55. Before examining the evidence of PW-6, it requires to be noted that there was no previous statement recorded of PWs 3 and 5. These were the two women who were present at the residence when the police officials from the PCR van came there. There was no reason why their statements were not recorded. The second strange aspect is that the police officials who came first to the spot in the PCR van were not named as prosecution witnesses. In fact, the delay in registering the FIR and waiting for PW-6 to make a statement has given rise to the grave doubts.

Delay in registering the FIR

56. It is in this context that the delay in registering the FIR assumes great significance. The incident took place at 6.30 pm on 16th September 1996 and the FIR was finally registered only on 11:25 pm on 16th September 1996, i.e. several hours after the occurrence. The question that arises is whether this delay gave sufficient time to distort the truth of the events. As

explained in *Meharaj Singh v. State of U.P. (1994) 5 SCC 188* "delay in lodging an FIR often results in embellishment which is a creature of an afterthought."

57. It was important for the prosecution to explain how in the PCR, the initial reports received talked of the incident happening at the Panchayat Ghar and not in the house of PW-6 and why the PCR van did not reach the Panchayat Ghar. The explanation given by PW-18 that on his way to the Panchayat Ghar, he somehow came to know that the incident happened in the house of PW-6 is not convincing at all.

58. It is also strange that the Panchayat Ghar is not indicated in the rough site plan. With all the named assailants being from within the family, it should not have been difficult for them to be named even in the first call made to the police. If indeed PW-6 had given first information to the police, it is strange how he would indicate that the incident had happened near the Panchayat Ghar and not inside his own house. The other aspect of the matter is that the original of the PCR form was not exhibited. It was simply marked as a document and not proved. There was a delay also in sending the FIR to the *Illaka* Magistrate. It was sent only at 10:30 am on the following morning. This delay has not been satisfactorily explained.

59. When the above delay is seen in the context of the fact that PW-6 first preferred to talk to PW-4 and not call the police, this delay assumes significance. The question really is whether all the members of the family of the two branches, i.e. Ganeshi and Hukmi, were in fact involved in this incident or have they simply been roped in. Given the past enmity, the Court

has to be extremely careful in approaching their evidence. Moreover, except the deceased, no other person even from the victim's families suffered any injuries whatsoever. No MLC for any of them is available, particularly, when PW-3 says that the earrings were snatched from her ears by Ram Niwas, there had to be some mark of injury. There was in fact none. This gives rise to grave doubts over whether the so-called eye witnesses are truthful and can be relied upon. Therefore, although *prima facie* it appears that there are several eye witnesses who have spoken consistently about what happened, their evidence does not inspire confidence.

Other peculiar features

60. There are certain other peculiar features which again give rise to doubts about the prosecution witnesses speaking the entire truth. A view of the rough site plan as well as the scaled site plan reveals that the room in which the incident purportedly took place was not big enough to accommodate two cots, ten attackers and five people from the victim's family at the same time. Even to swing the *lathi* there has to be some space.

61. Further the iron rods seized were not sent to the FSL. They were not even shown to the doctor or to any of the witnesses. The seized belongings were sent to the FSL after two months. Another aspect of the matter is that although several people accompanied Sunil to the hospital, it is only Om Prakash (PW-6) who had blood stains on his clothes. The car of Anil (PW-13) was used to carry Sunil to the hospital. Anil was not a stranger. In fact his cross-examination reveals that he was perhaps a stock witness of the police. With several cases against him, he was not an unknown figure. Yet,

his statement under Section 161 Cr PC was recorded 25 days after the incident.

62. The car in which Sunil was carried to the hospital was not examined. Particularly, if there were blood stains in the car, they were not lifted. With all these lacunae when one examines the evidence of PW-6, there are further questions that arise as regards the truthfulness of his version.

63. Even from the evidence of PW-6 it appears that the alleged object of the unlawful assembly was to prevent Vijay from deposing in the Court and yet Vijay was left untouched. It was argued by Mr. Hariharan, the learned Senior counsel for the complainants, on the strength of the decision in *Lalji v. State of U.P. AIR 1989 SC 754* that the object could be developed at the spot. The observations of the Supreme Court in the aforementioned decision read as under:

“8. Section 149 I.P.C. provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person, who at the time of committing of that offence is a member of the same assembly, is guilty of that offence. As has been defined in Section 141 I.P.C., an assembly of five or more persons is designated an 'Unlawful Assembly', if the common object of the persons composing that assembly is to do any act or acts stated in clauses 'First', 'Second', 'Third', 'Fourth', and 'Fifth' of that section. An assembly, as the explanation to the section says, which was not unlawful when it assembled, may subsequently become an unlawful assembly. Whoever being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. Thus, when- ever so many as five or more persons meet

together to support each other, even against opposition, in carrying out the common object which is likely to involve violence or to produce in the minds of rational and firm men any reasonable apprehension of violence, then even though they ultimately depart without doing anything whatever towards carrying out their common object, the mere fact of their having thus met will constitute an offence. Of course, the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm person of reasonable firmness and courage. The two essentials of the section are the commission of an offence by any member of an unlawful assembly and that such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Not every person is necessarily guilty but only those who share in the common object. The common object of the assembly must be one of the five objects mentioned in Section 141 I.P.C. Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.”

64. In the present case, all Sunil did was ask them why they suddenly entered the house. This could not be a reason to alter the purported original object which was to attack Vijay. The Court is not able to appreciate the submission on the basis of the above decision that in the present case, the common object of attacking Sunil instead of Vijay was developed “on the spot”. From the narration of the PWs, it only appears that Ajeet first tried to attack Sunil followed by Manjeet. It, therefore, cannot be said that all the others shared the common object of Sunil being attacked. While according to the PWs, Sunil started getting attacked with iron rod and *lathi*, the iron rod was never shown to the doctor to confirm that the other injuries to Sunil

could have been caused by such iron rods. It is, therefore, not possible to gather the common object from the nature of the arms used by the assailants. The doctor who performed the post-mortem examination conceded that the other injuries on Sunil barring the fatal knife blow could have been caused as a result of the fall. Therefore it must be held that the prosecution has not been able to prove beyond reasonable doubt that the other injuries were caused to Sunil as a result of the iron rod and *lathi* blows.

No basis for change in 'common object'

65. It was then argued on the basis of the decision in ***Ramachandran v. State of Kerala AIR 2011 SC 351*** that for a common object, it is not necessary that there should be a prior concert in the sense of the meeting of mind of the members of the unlawful assembly but it could be formed “on spur of the moment”.

66. In the present case, according to the prosecution the earlier case in which PW-9 was injured was listed for hearing on 17th September 1996 and it was to prevent Vijay from deposing in that hearing that all the assailants came together with a common object. The prosecution has not been able to show that having come to attack with that common object the assailants “at the spur of the moment” decided to change their common object and attacked Sunil instead. It has to be shown that Sunil was a witness in the trial which was going to take place on the next day. That, however, was not the prosecution’s case.

67. In any event, although spoken to by PWs 3 and 5, the IO does not appear to have made any effort to even collect copies of the summons purportedly

received by PWs- 3 and 5 about hearing on the next day. Importantly, the IO had to find out whether Sunil at all was a witness in that case and whether Sunil was going to be examined the next day in the trial. In the absence of investigation of this important aspect, it is not possible to agree with Mr. Hariharan's submission that the common object was generally to prevent "Vijay and his family members" from proceeding with the earlier case. The prosecution evidence does not establish this aspect at all. The Court is, therefore, not satisfied that offence under Section 149 of the IPC can be said to have been made out by the prosecution in the present case. Whether all of the accused in fact participated with their respective weapons is not clear from the evidence of the prosecution.

Death of Sunil

68. What we are left with, therefore, is the fact that the death of Sunil was homicidal. There was one fatal injury on the back of his chest which was a knife blow. The prosecution has been able to prove with reasonable certainty that the person who attacked Sunil with the knife was Manjeet (A1). The other person who attacked was Ajeet (JCL) but he, the Court is told, has been acquitted by the JJB and his acquittal has become final. A2, who also wielded a knife, was unable to give any knife blow to Sunil.

69. With the eye witnesses speaking of Manjeet giving the knife blow, the question which then arises is, what is the nature of the offence? Is it a pre-meditated murder or a culpable homicide not amounting to murder? It is argued by Mr. Hariharan on the basis of the decision in ***Virsa Singh v. State of Punjab AIR 1958 SC 465*** that to bring home the charge of murder all that

the prosecution has to show is that there was a fatal wound with the deadly weapon and that this was not a free fight. It would lead to the inference that the intention was, in fact, only to kill the deceased and nothing else.

70. However, when one carefully examines the exceptions to Section 300 IPC, Exception 4 is perhaps attracted in the present case. Provocation was given by Sunil when he had asked Manjeet why they had come to his house. The response of Manjeet who had perhaps come there to attack Vijay was to instead attack Sunil. There was, therefore, no pre-meditation on the part of Manjeet to attack Sunil. It was a crime committed on the spur of the moment in the heat of passion. Also, the reaction was not disproportionate in the sense that it was a single knife blow on the back. Although this was the fatal blow and punctured the lung, it cannot be said that Manjeet, in fact, came there with the intention of killing Sunil. He certainly would have had the knowledge that the knife blow was likely to cause the death of Sunil but clearly the intention was not to cause such fatal knife blow. The attack was from behind and as a result of some scuffle with Sunil avoiding the knife blow of Suranjan Singh (A-2) and then getting the knife blow from Manjeet (A-1).

71. The interested eye witnesses talk of the exhortations of Gulab that no one should be spared. This somehow does not square with the other part of the prosecution case whereby none of the other members of the victim family were even touched. Further, even according to the prosecution, when Sunil fell down, all the members of the assailant party fled.

72. As far as Manjeet is concerned, therefore, it cannot be said that the

intention was dictated by the exhortation of Gulab at the spot. According to the prosecution, Manjeet and Ajeet met Sanjay and Vijay in the fields just prior to the incident and Manjeet and Ajeet are said to have taunted Vijay and Sanjay. This is spoken to by both PWs- 9 and 13. It is thereafter that the attack took place, again not on Vijay but on Sunil although it is possible that Manjeet may have to come there to attack Vijay. Therefore, as far as Sunil is concerned, the prosecution has not been able to prove that Manjeet, in fact, attacked Sunil and killed him. What it has been able to prove is that in the scuffle that took place, Sunil did receive a knife blow from Manjeet on the back of his chest and it turned out to be a fatal blow.

73. Even going by the law explained by *Virsa Singh (supra)*, the Court is satisfied that the offence for which Manjeet can be punished is that of culpable homicide not amounting to murder punishable under Section 304 Part-II IPC.

74. Mr. Hariharan sought to rely on the decision in *Jai Prakash v. State (Delhi Administration) (1991) 2 SCC 32* to argue that it is enough for the prosecution to show that there was a bodily injury which was sufficient in the ordinary course of nature to cause death. However, the third element spoken to in the above judgment is absent viz., that “the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury is inflicted”.

75. In the present case, as already noticed, A2 was the first one who lunged at Sunil who avoided his knife blow and then got a knife blow on the back of his chest from Manjeet. It is, therefore, not clear that the third element

mentioned in the above decision stands fulfilled.

Conclusion

76. Consequently, as far as Manjeet (A-1) is concerned, the Court converts his conviction from one punishable under Section 302 IPC to one punishable under Section 304 Part-II IPC.

77. The Court is informed that Manjeet has already served nine years of imprisonment. His sentence for the aforementioned offence is, therefore, confined to the period already undergone.

78. As far as the other co-accused are concerned, the Court is not satisfied that the prosecution has been able to prove that all of them came together to form an unlawful assembly and further that the said unlawful assembly was with a common object of killing Sunil. With none of the other persons in the victim's family receiving any injury whatsoever and with medical evidence not corroborating the version of the eye witnesses in this regard and given the fact that there being previous enmity between the parties may give rise to a tendency to make embellishments, the Court acquits all of the other accused of the offences with which they were charged.

79. The impugned judgment and order on sentence of the trial Court stands modified in the above terms. The bail bonds and surety bonds furnished by the Appellants stand discharged. A-2, A-3, A-4, A-6 and A-7 shall fulfil the requirements of Section 437 A Cr PC to the satisfaction of the trial Court at the earliest.

80. The appeals and pending application are disposed of in the above terms

with no order as to costs. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 11, 2018/ 'anb' /rd

