

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

% Judgment reserved on : 28th March, 2012
Judgment delivered on : 30th March, 2012

+ **CRL.A.PEALS - 193,301,302,303 & 683/2009.**

CRL.A. 193/2009

SEEMA

CRL.A. 301/2009

RAGHUNATH @ NANHA BACHCHA

CRL.A. 302/2009

SONI @ NATUL

CRL.A. 303/2009

HARI NATH @ BADA BACHCHA

CRL.A. 683/2009

RAGHUNATH @ NANHA BACHCHA

.....Appellants

versus

STATE (NCT) OF DELHI

.....Respondent in all Appeals.

Appearance : Mr.Pramod Kumar Dubey with Mr.Amit Singh Rathore, Advocates for Appellants in Crl.A.193, 302 & 303/2009.
Mr.Ajay Verma with Mr.Gaurav Bhattacharya, Advocate for Appellant in Crl.A.301 & 683/2009.

Ms.Richa Kapoor, APP on behalf of the State in all the Appeals.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellants Raghunath @ Nanha Bachcha (A-1), Hari Nath @ Bada Bachcha (A-2), Soni @ Natul (A-3) and Seema (A-4) have preferred the present appeals against the judgment dated 14.01.2009 and order on sentence dated 16.01.2009 of Ld.ASJ in SC No.37/2006 by which they were convicted for committing the offences punishable under Sections 302/307/34 IPC and sentenced to undergo imprisonment for life with fine.

2. The prosecution alleges that on 17.11.2005 at 9.00 A.M. Daily Diary (DD) Entry No.19-B (Ex.PW-10/A) was recorded by Const.Mukesh Kumar at police station Model Town, on getting information from Const.Jai Singh, PCR that an individual has been stabbed in a quarrel at house No.203, Gur Mandi, G.T.Karnal main road. The investigation was assigned to ASI A.A.Khan, who, with Const.Rakesh Kumar reached the spot. PW-21 Insp.Hira Lal also reached the spot and came to know that the injured had already been taken to Hindu Rao Hospital. On reaching there, PW-21 collected the MLC of Ravi Panchal who had been declared 'brought dead'. Injured Arjun Panchal (PW-3) was declared fit to make a statement and Insp.Hira Lal recorded his statement. PW-3 stated that on 14.11.2005 at about 4/5 P.M. A-1 had teased his wife Durgesh and sister Meenu. On that day i.e. 17.11.2005 at about 8.00 or 8.20 A.M. when A-1 was going in front of their house, his brother Ravi Panchal (since deceased) enquired from him (A-1) why he had teased Durgesh and Meenu. On that, A-1 became furious, slapped his brother Ravi Panchal and went to his house threatening that he would 'return' soon. PW-3 further stated that soon

thereafter, A-1 returned with his elder brother A-2, A-3 and sister A-4, armed with a *churi* in his right hand. A-1 stabbed him with that *churi* on his chest immediately as a result of which he fell down at the spot. Before he could get up, A-3 and A-4 caught-hold of him. In the meantime, when his brother Ravi Panchal rushed to save him, A-2 caught-hold of him and A-1 stabbed him with the *churi*. Ravi Panchal fell down, bleeding profusely. On their raising alarm, A-1 to A-4 started pelting stones at them. The police reached the spot upon hearing the noise and succeeded in apprehending A-1, A-2 and A-4 at the spot. A-3 fled from the spot.

3. Insp.Hira Lal made his endorsement upon the statement and sent the rukka at about 11.30 A.M. for registering the case under Section 302/307/34 IPC. On reaching the spot, Insp.Hira Lal (IO) prepared the site plan at the pointing out of Harish Panchal; seized his blood stained pant; seized the blood sample, earth sample and also prepared the necessary seizure memos. He summoned the crime team and got the crime scene photographed. During the course of investigation, he prepared the inquest papers and sent the dead body for post-mortem. Dr.M.K.Panigrahi conducted the post-mortem of the body. The IO sent the exhibits to CFSL and collected its report. He arrested A-1, A-2 and A-4 at the spot and set out to apprehend A-3 but he could not be traced. Subsequently, A-3 surrendered in the Court and was arrested. After completion of the investigations, A-1 to A-4 were charge-sheeted for committing the aforesaid offences and were duly charged and brought to trial.

4. During the proceedings before the Trial Court, the prosecution examined twenty-two witnesses. After considering them and the materials placed on record, the Court convicted the appellants.

5. It is argued on behalf of the appellants that the Trial Court did not appreciate the evidence in its true perspective and fell into grave error in relying upon the testimonies of PWs 3,4,6,7 and 8 without corroboration. He further contended that all these witnesses were close relatives of the deceased and were interested witnesses, as against the accused and the Trial Court failed to examine their depositions with due care or caution and blindly relied on them. No independent public witness was associated by the prosecution during the entire investigation though the incident took place in a residential colony. The Trial Court ignored the vital improvements made by the witnesses in their depositions. They contradicted each other about the role played by the accused in the incident and narrated contradictory and inconsistent versions. The arrest of A-1 at the spot was highly doubtful as no weapon allegedly used by him was recovered. The prosecution failed to prove that the accused shared any common intention to commit the crime. A-1 was injured in the attack and the doctor opined that the nature of injuries were 'grievous'. Non-explanation of the said injuries by the prosecution is a material circumstance ignored by the Trial Court and substantiates accused's defence that the complainant was the aggressor and had caused injuries to him. The allegation of teasing A-1's wife and sister are motivated and no complaint was ever lodged by them. A-3 was even not present in Delhi on the date of the incident and had gone to Bala Ji for treatment. The Trial Court did not consider the cogent testimonies of DW-1 and DW-2 on this aspect. The accused had categorically claimed that Ravi Panchal had sustained injuries due to fall on the Aara (Saw). Counsel further argued that even if the prosecution case is taken at its face value, Section 302 IPC

was not attracted. The alleged stabbing incident took place suddenly without pre meditation and A-1 in a fit of rage inflicted a single blow when the deceased scolded him without any rhyme or reason.

6. On the other hand, Ld.APP supported the judgment and urged that it did not call for any interference. The incident was witnessed by PWs. 3, 4, 6, 7, 8; PW-3 himself sustained grievous injuries with a sharp object in the occurrence. He further stated that the rukka recorded soon after the incident, in which the accused were named and specific role was attributed to each ruling out any manipulation. All the accused, urged the counsel, committed Ravi Panchal's murder in furtherance of their common intention. They all actively participated in the crime. They all had come together from their house after due deliberations pursuant to A-1's threat to return soon. A-2 to A-4 were aware that A-1 was armed with a deadly weapon. Intention to murder was apparent, when the accused inflicted forceful blows on a vital part of the body of the deceased and that of PW-3 (Arjun Panchal), causing Ravi's instantaneous death at the spot. It is an error to reject the evidence of eye witnesses on the ground they are related to the deceased. There is no reason to disbelieve them because they are natural eye witnesses and had no ulterior motive to falsely implicate the accused. Relationship is not a factor to affect the credibility of a witness. Ld.APP further contended that where all the witnesses gave a consistent account of the happening which was sufficient in itself to convict, it was immaterial that there were slight discrepancies or improvements in their testimonies. Such discrepancies in matters of detail as to the number of blows or which accused caught-hold of whom could occur, even in the evidence of truthful witnesses. Such variations creep in

because there are always natural differences in the faculties of different individuals in the matter of observation, perception and memorization of such details.

7. We have considered the submissions of the parties and have scrutinised the Trial Court records. Before we enter into the merits of the case, it is desirable to highlight that the homicidal death of Ravi Panchal is not under challenge. It is also not in controversy that A-1, A-2 and A-4 were apprehended at the spot. The accused did not dispute the injuries sustained by A-3. Their only plea is that they were not the perpetrators of the crime.

8. According to the prosecution, PWs. 3, 4, 6, 7 and 8 were material eye witnesses present at the spot when the incident occurred. The Trial Court also heavily relied upon their depositions to base its conviction. The counsel vehemently emphasized that the prosecution did not produce any independent witness for proving its case. PWs. 3, 4, 6, 7 and 8 being relatives of the deceased were interested witnesses and no reliance could be placed on their testimonies without independent corroboration.

9. So far as the legal position for appreciating the evidence of such witnesses is concerned, it will suffice to mention that the law was laid down by the Supreme Court in '*Dilip Singh and others v. State of Punjab*' AIR 1953 SC 364 in which it has been held as under :

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relation 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 generalization. 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.”

10. The view has been followed by the Supreme Court in its subsequent judgments namely ‘*Gulichand and others v. State of Rajasthan*’ (AIR 1974 SC 276) and ‘*Kalegura Padma Rao and another v.State of Andhra Pradesh*’ AIR 2007 SC 1299.

11. Coming to the factual aspect, apparently the incident took place at about 8.00 or 8.30 A.M. DD No.19-B (Ex.PW-10/A) was recorded at 9.00 A.M. on the information given by the PCR regarding the stabbing incident and the investigation was assigned to ASI A.A.Khan. Insp.Hira Lal (PW-21) also reached the hospital and prepared the rukka (Ex.PW-21/A) on the statement of PW-3 Arjun Panchal (Ex.PW-3/A) and sent it for registering the case at 11.30 A.M., within 3 hours of the incident. There was no delay in registering the FIR, thus, excluding any possibility of fabrication or concoctation of a false story. In the statement Ex.PW-3/A, PW-3 gave a vivid description of the occurrence and named the accused for inflicting the injuries to him and to his deceased brother. A specific role was assigned to each accused in the commission of the crime. He also narrated the genesis of altercation i.e. altercation on molestation of Durgesh and Meenu by A-1.

12. The presence of PW-3 at the spot is not in controversy. He himself sustained 'grievous' injuries in the incident. Injuries on the person of a witness ensure his presence at the time and place of the occurrence and the evidence has a ring of truth. Being an injured witness, his testimony inspires more confidence. Minor contradictions/improvements on trivial matters cannot render an injured witness's deposition untrustworthy. The law on this aspect has been detailed in the latest judgment *State of Uttar Pradesh vs. Naresh and ors.* (2011) 4 Supreme Court Cases 324 as under :

*“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh v. State of Punjab, Balraje v. State of Maharashtra and Abdul Sayeed v. State of M.P.*)”*

13. Similarly in another case *Abdul Sayed vs. State of Madhya Pradesh* (2010) 10 Supreme Court Cases 259, Supreme Court laid down :

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the

occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide Ramlogan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy.

The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. *The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”*

14. Similarly, presence of PWs. 4, 6, 7 and 8 at the spot was quite natural and probable as they were the residents of the house in front of which the incident took place. The accused did not challenge their presence in their cross-examination. Since all these witnesses are closely related to the injured and deceased, their evidence requires deeper scrutiny to ascertain the role played by each accused in the incident due to tendency of such witnesses to exaggerate or add facts. Where there is a melee, and a large number of assailants are involved and a number of witnesses claim to have seen the occurrence at different stages, and where the evidence is undoubtedly partisan, the distinct possibility of innocent persons being falsely included along with the guilty cannot be easily ruled out. In such scuffles when more than one persons give blows to the

victims at one and the same time, it is impossible to particularise the blows. The evidence of such witnesses cannot be rejected in toto and can be considered if it is otherwise acceptable.

15. In the case of '*State of U.P. vs. Shankar*' AIR 1981 SC 897, Supreme Court observed that appreciation of evidence is a very different and delicate task. A testimony without a fringes or embroidery of untruth is rare. The Court can reject it only when it is tainted to the core, that is, where falsehood and truth are inextricably intertwined. If this is not so the Court must separate the grain from the chaff.

16. To ascertain the culpability of A-1, the prosecution has produced convincing evidence to establish his guilt beyond reasonable doubt. He was named in the statement Ex.PW-3/A which formed the basis of rukka (Ex.PW-21/A) and FIR. PW-3 in his earliest version given to the police assigned specific role to A-1 in inflicting injuries to him with a *churi* soon on reaching the spot. He further stated that when his brother Ravi Panchal came to rescue him, A-1 also stabbed him with the said *churi*. Since the FIR was registered promptly within three hours without any delay, there was no possibility of manipulation of a false story. While appearing as PW-3 he proved the version given by him to the police without variation and deposed that A-1 brought A-2 to A-4 and was armed with a knife meant for slaughtering purposes. He further stated that A-1 gave a blow with knife on his chest and when his brother Ravi Panchal came to save him, he also gave a knife blow on his chest. His brother Ravi Panchal fell down on the ground on receiving the stab injuries. Despite lengthy cross-examination, A-1 failed to elicit any contradiction or discrepancy regarding the role assigned to him. All the material facts

spoken in examination-in-chief remained unshaken. A-1 did not deny his presence at the spot in the cross-examination. No ulterior motive was attributed to PW-3 for falsely implicating him in the incident.

17. PW-8 Harish Panchal, a child witness aged 13 years (son of the deceased Ravi Panchal) fully corroborated PW-3, and named A-1 to have caused stab injuries to his father and uncle Arjun Panchal. The entire testimony of this witness on this aspect remained unchallenged and nothing emerged to doubt his presence and credibility.

18. On similar lines, PW-4 Seema , PW-6 Krishna Devi (wife of the deceased), PW-7 Ms.Durgesh (PW-3's wife) all accused A-1 for inflicting stab injuries to PW-3, and deceased Ravi Panchal. There are no discrepancies in their statements about the role assigned to A-1. They all spoke in one voice that it was A-1 who was armed with the weapon of offence and he inflicted fatal blows to Ravi Panchal and attempted to murder PW-3 (Arjun Panchal) by causing grievous injuries on the vital part of his body. In the absence of any prior enmity, all these witnesses are not expected to tell a lie to screen the actual culprit. Nothing was suggested to these witnesses if they were not present at the spot and had not witnessed the occurrence.

19. Ocular testimonies of all these eye witnesses are in consonance with medical evidence and there is no conflict whatsoever between the two. The Trial Court was fully justified to put reliance on the testimony of these witnesses to convict A-1 for the commission of offence under Section 302/307 IPC and we find no infirmity in the findings of the Trial Court in this regard.

20. As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance. We find the ocular evidence led in support of the prosecution case is wholly reliable and see no reason to discard it. The submission, therefore, that the A-1 had no motive for the commission of crime is not of any significance.

21. The prosecution proved that on 14.11.2005 A-1 had teased Ms.Durgesh (PW-7) which was resented by her family members. On the fateful day, when A-1 was going that way, Ravi Panchal challenged him for teasing his sister and sister-in-law. Exchange of abuses triggered the altercation. It was immediate impelling motive on the part of the accused to commit the crime. Instead of mending his ways or feeling remorse, A-1 got enraged and brought his family members to execute the threat held out earlier. It is highly unbelievable that PW-7 Ms.Durgesh would falsely allege the teasing.

22. So far as A-2, A-3 and A-4 are concerned, their presence with A-1 at the place of occurrence is not under doubt. All the material prosecution witnesses have spoken their presence as they accompanied A-1 after the initial altercation between A-1 and the deceased. But the prosecution witnesses have contradicted each other about the role played by each of them in the incident. There are material discrepancies and contradictions which go to the root of the case and make their testimony, to that extent, unreliable. Since all these witnesses have given different versions regarding their participation in the crime, the Court is unable to ascertain the exact role played by each of them to infer their complicity in

the crime. In the statement (Ex.PW-3/A), PW-3 Arjun Panchal named only A-1 who stabbed him with a *churi* soon after reaching the spot. He further stated that before he could manage or control himself, he was caught-hold by A-3 and A-4 and when his brother Ravi Panchal came out to save him, A-2 caught-hold of him and A-1 stabbed him with a knife. In the examination-in-chief before Court PW-3 proved the version given to the police but added that he could not rescue his brother Ravi as A-3 and A-4 had caught-hold of him. In the cross-examination, he reiterated that he had stated in his statement recorded under Section 161 Cr.P.C. to the police, that he could not rescue his brother as A-3 and A-4 had caught-hold of him. He was confronted with the statement Ex.PW-3/A where this fact was not find mention. The witness, thus made improvements to his deposition before the Court that due to A-3 and A-4 (having caught-hold of him) he could not save his brother Ravi Panchal. This improvement, in our view, cannot be considered to ascertain the complicity of A-3 and A-4 in the stabbing incident. A-3 and A-4 had no occasion to catch-hold of PW-3 Arjun Panchal as, according to the prosecution itself, A-1 had already stabbed him before the arrival of Ravi Panchal and he (PW-3) had fallen down on the ground.

23. PW-4 Meenu, deceased's sister introduced another version in this regard. The Trial Court records contains her statement recorded under Section 161 Cr.P.C. where she had stated that A-1 stabbed her brother Arjun Panchal (PW-3) as a result of which he fell down and started raising alarm. On that, A-2, A-3 and A-4 started giving kicks and fist blows to him (PW-3) and when her elder brother Ravi Panchal came out of the house, A-2 and A-3 caught-hold him and A-1 stabbed him with a *churi*. In

her deposition before the Court, she deviated from her earlier version recorded under Section 161 Cr.P.C. and deposed that A-1 attacked her brother Arjun Panchal (PW-3) who was standing outside. On hearing his cries, they all went out and when her brother Ravi Panchal went to rescue him (PW-3), A-2, A-3 and A-4 caught-hold of PW-3 and A-1 gave a *churi* blow on his person. In response to a Court question, she replied that A-2, A-3 and A-4 had also given blows to her brother Arjun with fists and legs. She is silent if any of these accused caught-hold of Ravi Panchal when A-1 inflicted fatal blow to him.

24. Another version was given by PW-6 Ms.Krishna Devi (wife of the deceased). She merely named A-1 as having stabbed Arjun and Ravi Panchal. She did not assign any role to A-2, A-3 or A-4 as facilitators of the crime. She did not attribute any overt act to them. Ld.APP cross-examined her after seeking permission of the Court as she turned hostile. In the cross-examination by APP, she admitted that A-2 had caught-hold of her husband and A-1 had given a dagger blow on his chest. Nothing was asked from the witness by APP if A-3 and A-4 had caught-hold of PW-3 Arjun Panchal to restrain from rescuing his brother, from A-1. No clarification was sought from her in the cross-examination why she did not assign this role to A-2 earlier in her examination-in-chief. PW-6 did not assign any role whatsoever to A-3 and A-4 in the incident, though in her statement recorded under Section 161 Cr.P.C. she had accused them of having caught-hold of PW-3 while A-1 was stabbing the deceased.

25. PW-7, PW-3's wife Ms.Durgesh in her statement recorded under section 161 Cr.P.C. Ex.PW-7/DA had assigned no role to A-3 and

A-4 and had accused A-2 as having caught-hold the deceased while being stabbed by A-1. However, before the Court she did not support the version recorded under Section 161 Cr.P.C. and narrated a different story stating that A-2, A-3 and A-4 had caught-hold of her husband (PW-3) and A-1 gave a *churi* blow on his chest. She further stated that when her brother-in-law (Ravi Panchal) tried to save PW-3 (Arjun Panchal), A-1 gave *churi* blow on his chest. She did not assign any role to A-2 that he had caught-hold the deceased when was being stabbed by A-1.

26. A close scrutiny of the testimonies of all these crucial eye witnesses reveal that they made improvements in their statements before the Court and the versions stated by them did not find mention in their statements recorded under Section 161 Cr.P.C. They have contradicted each other and have assigned different role or no role whatsoever to A-2 to A-4 in the crime. The Court is in a dilemma as to which of the statement is to be considered to find out the exact role of these accused. For the appreciation of evidence in such a complex case cast a duty on the Court to sift the testimonies carefully and decide which part of it is reliable and which is not to be assured of the role attributed to an individual offender. Where eye witnesses do not give accurate versions their evidence becomes seriously discrepant in material points. Undoubtedly, none of these accused was armed with any weapon whatsoever. There are no allegations if any of them exhorted A-1 to inflict fatal blows to the deceased or to PW-3. The medical evidence does not depict any such injuries on the deceased or PW-3, allegedly given to them due to kicks and fists blows or pelting of stones. No such stone was recovered from the place of occurrence. The mere presence of A-2 to A-4

at the spot with A-1 without any overt act is insufficient to hold that they shared common intention with A-1 to cause fatal injuries to the deceased or to PW-3.

27. It is well settled that although a man may be present when a crime is committed, if he takes no part in it and does not act in concert with those who commit it, he will not be held liable merely because he did not endeavour to prevent it, or to apprehend the offender. All those present do not necessarily assist or participate by their presence in every act which is done in their presence, nor are they consequently liable to be punished as offenders. There must be community of design to make the person present liable. The facts that the accused were together at the time of the incident and ran away together is not conclusive evidence of common intention in the absence of any more positive evidence. The mere circumstance of a person being present on an unlawful occasion does not, therefore, raise a presumption of that person's complicity in an offence then committed.

28. It was only A-1 who nurtured a grudge and had motive to retaliate, and to accomplish that, he inflicted the fatal injuries. A-2 to A-4 being A-1's close relative accompanied him due to the earlier altercation in which A-1 was rebuked for teasing the ladies of the complainant party. The incident in question had taken place within 5 or 7 minutes of the first altercation. There was least possibility of A-2 to A-4 to plan the crime during this short period. The evidence and circumstances, discussed above unmistakably lead to the conclusion that there was no union of minds of the accused (A-2 to A-4) to commit the offences to hold them liable jointly for the criminal act committed by A-1. Benefit of doubt deserves to

universal application that whenever one blow is given Section 302 IPC is rules out. It would depend upon the facts of each case. The weapon used, size of weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given are some of the factors to be considered.”

30. In another case ‘*State of Rajasthan vs. Dhool Singh*’ (2004) 12 SCC 546, Supreme Court observed :

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13. In regard to the finding of the High Court that the prosecution has not even established that the respondent herein had acted with an intention of causing death of the deceased, we must note that the same is based on the fact that the respondent had dealt a single blow which according to the High Court took the act of the respondent totally outside the scope of Exception I to Section 300 IPC. Here again we cannot agree with the finding of the High Court. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft in length on a vital part of the body, namely, the neck. This act of the respondent though solitary in number had severed sternocleidal muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than

causing the death of the victim. The reasoning of the High Court as to the intention and knowledge of the respondent in attacking and causing death of the victim, therefore, is wholly erroneous and cannot be sustained.”

31. In the present case, as per post-mortem report Ex.PW-5/A external injury No.1 i.e. “*stab wound size 3 cm X 1.7 cm, vertically placed over the left side of the chest 6 cm below and 1 cm lateral to the left nipple and 123 cm above the left heel with lower end acute angle. A portion of the left lung is protruded out through the wound*” was described ante-mortem, recent in nature, caused by thrusting of the sharp pointed end of a weapon and sufficient to cause death in ordinary course of nature. PW-5 (Dr.M.K.Panigrahi) further noted in the post-mortem report that :

“On dissection of the external injury No.1- The stab wound after piercing the skin and subcutaneous tissues, vertically cut the 6th rib (left) into two pieces at the level of 11 cm away from the xyphisternum. Then it enters into the left plural cavity and cut the anterior edge of the lower border of the upper lobe of left lung measuring about 1.5 cm long. Then it pierces through the left side of the pericardium to enter into the pericardial sac and then pierces the post lateral wall of the left ventricle at the level of 2 cm above the apex of the heart to end in the left ventricle. The cut on the heart measuring about 5 cm long and cleanly cut,”

These observations of the doctor reflect the force with which the deceased was stabbed.

32. The failure to recover the weapon of offence in the present case is of no consequence as all the prosecution witnesses categorically deposed that both PW-3 and deceased Ravi Panchal were stabbed with a sharp object used for slaughtering pigs. The prosecution has explained

that A-1 managed to hand over the weapon of offence to A-3 who fled the spot; this possibility in our view cannot be ruled out.

33. In the light of above discussion, we are of the opinion that so far as A-1 (Raghunath @ Nanha Bachcha) is concerned; no interference in the impugned judgment by which he was convicted under Section 302/307 IPC is called for. The findings of the Trial Court against A-1 are therefore confirmed.

34. The prosecution has failed to establish the guilt of the accused A-2 (Hari Nath @ Bada Bachcha), A-3 (Soni @ Natul) and A-4 Seema in the crime beyond reasonable doubt. In our view, the impugned judgment whereby they were convicted with the aid of Section 34 IPC cannot be sustained. They deserve benefit of doubt and are acquitted. Their bail bonds and surety bonds stand discharged.

35. Accordingly Criminal Appeal Nos. 193/2009, 302/2009, 303/2009 are allowed and Criminal Appeal Nos. 301/2009 and 683/2009 are dismissed in the above terms.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

MARCH 30, 2012

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