

**Ram Kumar @ Bhangar Vs. the State**

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**Court :** Delhi

**Decided On :** Oct-09-2013

**Judge :** S. P. Garg

**Appellant :** Ram Kumar @ Bhangar

**Respondent :** The State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

7. h OCTOBER, 2013 DECIDED ON :

9. h OCTOBER, 2013 + CRL.A. 642/2000 RAM KUMAR @ BHANGAR Through :  
..... Appellant Mr.Aranyak Pathak, Advocate. versus THE STATE Through : .....  
Respondent Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR. JUSTICE  
S.P.GARG S.P.GARG, J.

1. Ram Kumar @ Bhangar (the appellant) and Sanjay Kumar (since expired) were arrested in case FIR No.270/99 PS Timar Pur and sent for Trial under Sections 307/34 IPC on the allegations that on 23.05.1999 at about 08.00 P.M. at jhuggi, Shiv Basti, Mall Road, Timar Pur, they in furtherance of common intention caused injuries to Munna with knife in an attempt to murder him. Daily Diary (DD) No.14A (Mark A) was recorded at PS Timar Pur at 08.45 P.M. on getting information of a quarrel at Shiv Basti. SI Inderjeet Singh and Const. Mohan Lal went to the spot and came to know that the victim had already been taken to Trauma Centre by

PCR. Investigating Officer recorded Mahesh's statement (Ex.PW-3/A) and lodged First Information Report. During the course of investigation, Ram Kumar @ Bhangar and Sanjay Kumar were arrested. Pursuant to Sanjay Kumar's disclosure statement, crime weapon was recovered. Statements of the witnesses conversant with the facts were recorded. The prosecution examined ten witnesses to establish the charges. In their 313 statements, the accused persons pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted both under Sections 307/34 IPC. By an order dated 22.09.2000, both were sentenced to undergo RI for four years with fine ` 500/- each. Being aggrieved, they preferred the appeals. Crl.A. No.630/2000 preferred by Sanjay Kumar stood abated on his death.

2. It is alleged that prior to the incident, a quarrel had taken place between Sanjay Kumar and Mahesh. PW-3 (Mahesh @ Kalia), in statement (Ex.PW-3/A), disclosed to the police that when he was present outside his jhuggi at about 08.00 P.M. Sanjay Kumar, Prakash and Darshan Lal, who had consumed liquor had an altercation with him. In the scuffle, there were beatings and abuses. Sanjay Kumar threatened him to see and went back to his jhuggi. However, no report about the quarrel was lodged with the police. Statements of Prakash and Darshan Lal were not recorded. It is unclear as to what was the genesis of the quarrel and who caused beatings to whom. In Court statement, PW-3 (Mahesh @ Kalia) did not clarify as to what led Sanjay Kumar and his associates to quarrel with him and to give abuses. In the cross-examination, he admitted that in the said altercation, he had also hurled abuses. PW-1 (Munna) did not depose the time of altercation, however, in the cross-examination, he disclosed that it took place at 07.00 P.M. in front of his jhuggi and he was informed by his son Mahesh @ Kalia as he was inside the jhuggi that time. Apparently, Ram Kumar @ Bhangar was not participant in the said quarrel and had not extended any threat to Mahesh or his father. There is divergent version as to when and in what manner, stabbing incident occurred. The complainant - Mahesh @ Kalia in the police statement (Ex.PW-3/A) disclosed that after some time both Sanjay Kumar and his father Ram Kumar @ Bhangar came at the spot. Sanjay had a knife in his hand and both started giving beatings to him and when his father Munna intervened to save him, Ram Kumar caught

hold of him and Sanjay Kumar stabbed on his chest and fled the spot. PW-1 (Munna) in his Court statement gave inconsistent version and deposed that Ram Kumar caught hold of his son and Sanjay Kumar gave a knife blow on his chest. When he intervened to save his son, Ram Kumar left him and caught hold of him and Sanjay Kumar stabbed on his chest. PW-3 (Mahesh @ Kalia) did not talk of any stab injuries to him at the hands of Sanjay Kumar. He merely deposed that when Sanjay Kumar and his father came, they wanted to beat him but his father intervened. He did not testify if any beatings or stab injury was caused to him by any of the accused persons. He admitted that he did not sustain injuries and was not medically examined. PW-1 (Munna) and PW-3 (Mahesh @ Kalia) have given contradictory statements on other facts as to who else was present at the spot at the time of occurrence; whether there was darkness or not at the spot; whether PW1 (Munna) was conscious after sustaining injuries etc. The Investigating Officer did not explain as to why statements of independent public witnesses were not recorded at any stage of the investigation. The whole case of the prosecution is based upon the testimonies of PW-1 (Munna) and PW-3 (Mahesh @ Kalia) who are father and son and nurtured grievance for the quarrel earlier taken place between Sanjay and Mahesh. Ram Kumar was not armed with any weapon and he did not anticipate Munnas presence there. Ram Kumar had not extended any threat to Mahesh. Sanjay who inflicted injuries had a vegetable knife and no repeated stab blows were given. Mahesh was not injured at all. Presence of Ram Kumar at the spot to lodge complaint with Maheshs father for the abuses / beatings earlier given by Mahesh cannot be ruled out. But definite conclusion cannot be arrived that Ram Kumar @ Bhangar shared common intention with Sanjay - his son (who has since expired) to inflict fatal injuries with knife to Munna. The quarrel had taken place with Mahesh and possibly he could be the target at the hands of Sanjay. There is no cogent and reliable evidence on record to infer that Ram Kumar @ Bhangar, in a pre-plan, had shared common intention with Sanjay and was aware that he was having a vegetable knife in his hand. There is no positive material to indicate that there was pre-arranged plan to murder or attempt to murder of any person who might intercede to save Mahesh. No specific role was attributed to Ram Kumar to cause beating or injury to Mahesh and Munna. Only role attributed to him by PW-1 (Munna) and PW-3 (Mahesh @ Kalia)

is of catching hold of first Mahesh and thereafter, Munna. In the absence of independent witnesses including Darshan Lal and Prakash, the testimonies of both these witnesses who were having inimical terms cannot be trusted and believed to base conviction with the aid of Section 34 IPC. No weapon was recovered from him or at his instance. There is no evidence to infer that Ram Kumar was aware about the place where the knife was allegedly concealed. For the injuries caused by Sanjay to Munna with a sharp object, the appellant who was his father cannot be held vicariously liable. PW-10 (SI Inderjeet Singh), Investigating Officer admitted that when he went to the spot there were public persons but he did not record statement of any of them. Mere presence of the appellant at the spot is not enough to establish the guilt.

3. In the light of above discussion, the prosecution has failed to establish the case against the present appellant beyond reasonable doubt and he is acquitted. The appeal is allowed; the conviction and sentence are set aside. Bail bond and surety bond stand discharged. The Trial Court record be sent back forthwith. (S.P.GARG)  
JUDGE OCTOBER09 2013/tr

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