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Ravi Kumar Vs. State

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SooperKanoon Citation : sooperkanoon.com/1169994

Court : Delhi

Decided On : Oct-16-2014

Judge : Pradeep Nandrajog

Appellant : Ravi Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: October 14, 2014 Judgment Delivered on : October 16, 2014 % + CRL.A.958/2010 AJIT @ BHURE Represented by: ..... Appellant Mr.Vivek Sood, Advocate with Ms.Vandana Bhatnagar, Mr.Jaideep Tandon, Mr.Prem Prakash and Ms.Jhannvi, Advocates versus STATE Represented by: ..... Respondent Ms.Aashaa Tiwari, APP CRL.A. 1051/2010 RAVI KUMAR Represented by: ..... Appellant Mr.Satish Chand Gupta, Advocate versus STATE Represented by: ..... Respondent Ms.Aashaa Tiwari, APP CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. The case of the prosecution is that on January 11, 2009 a quarrel took place between accused Ajit @ Bhure and the deceased Rishi at which Rishi suffered two simple incised wounds on the index and middle finger of his right hand. Next day on January 12, 2009 at around 6:30 PM the deceased Rishi along with Mukesh @ Mukki (PW-1) went to Ajits house at 31/341, Trilok Puri because Ajits parents had

called Rishi to their house (probably to mediate and sort out the issue) and while Rishi was talking to parents of Ajit, co-accused Ravi, Ajit @ Bhure, Ajits brother Kalu (proclaimed offender) and another person (whose identity could not be established) suddenly came to the house. Ajit was having a knife and exhorted the other three to catch hold of Rishi. As the three caught Rishi, Bhure inflicted knife blows on Rishi and then the four dragged Rishi on the road and threw him at the corner thereof and fled.

2. To prove its case the prosecution examined Mukesh PW-1, Sheesh Pal PW-3 (brother of Rishi Pal) and Ram Dulare PW-12 (father of Rishi), who claimed to be eye witnesses and whose testimony has been believed by the learned Trial Judge resulting in the two appellants : Ajit and Ravi Kumar being convicted for having murdered Rishi. The decision is dated May 17, 2010. Aid of Section 34 of the Indian Penal Code has been taken. Vide order on sentence dated May 22, 2010, the two have been sentenced to undergo imprisonment for life and pay fine in sum of `1,000/-; in default to undergo simple imprisonment for six months.

3. It is apparent that arguments in the appeal centred around the testimony and the conduct of PW-1, PW-3 and PW-12, the friend, brother and father respectively of the deceased.

4. The contentions urged were that the testimony of HC Kamleshwar PW- 10 would negate the claim of Ram Dulare PW-12 to be an eye witness. The testimony of HC Kamleshwar PW-10 and SI Naleen Verma PW-24 would negate the claim of Mukesh PW-1 to be an eye witness. The testimony of HC Kamleshwar PW-10 would belie the claim of Sheesh Pal PW-3 to be an eye witness. As an extended limb of the argument it was urged that if all three, as claimed by them were eye witnesses, their conduct of not attempting to rescue the deceased, who was the friend, brother and son respectively of the three persons would evince the three not being present. Apart from the conduct of not attempting to rescue the deceased, their conduct of running away (statedly under fear) and then returning to the scene of the crime is not the conduct of normal human beings for the reason the claim of the three is that of the four assailants, only one was armed with a knife, and thus the argument would be that three able bodied men who were

closely related to the deceased would instinctively challenge the three unarmed and only one armed assailant. They not doing so would belie their claim to be eye witnesses. It was urged that the prosecution not having explained the injuries suffered by appellant Ravi throws a cloud on the claim of the three stated eye witnesses who have obviously suppressed the truth. Lastly it was urged that the viscera report of Rishi Pal shows that he was dead drunk and the testimony of Dr.Manish Kumar PW-5 would establish that even appellant Ravi was drunk and therefore the offence, if at all committed by the appellants, would be culpable homicide not amounting to murder punishable under Section 304-II of the Indian Penal Code.

5. Process of law was set into motion on January 12, 2009 when an informant rang up the police control room, informing the police control room that a quarrel was taking place near House No.31/341, Trilok Puri. Said information was conveyed to PS Mayur Vihar where the duty officer noted the same at 6:45 PM vide DD No.35B, Ex.PW-24/A. Being entrusted with the investigation and handed over a copy of DD No.35B, SI Naleen Verma PW-24 left the police station accompanied by HC Vijender PW-18 and Ct.Raj Kumar PW-7. The three reached the spot and learnt that an injured had been removed in a PCR van to Lal Bahadur Shastri Hospital. Ct.Raj Kumar stood guard at the spot. SI Naleen Verma and HC Vijender went to the hospital.

6. In the meanwhile, information being received by the incharge of a police patrol jeep : Romeo 38, the incharge thereof HC Kameshwar PW-10 reached the place of the occurrence and found an injured unconscious person on the road whom he removed in his van to Lal Bahadur Shastri Hospital at 5/A dated January 12, 2009 by Dr.Manish Kumar PW-5. On the same day the appellant Ravi was also brought to the hospital who was reeking with the smell of alcohol. Dr.Manish Kumar examined him and authored the medical treatment given in the OPD card Ex.PW-5/C recording thereon that Ravi had two incised wounds of length 1.5 cm and 1 cm on the left forearm, the first near the lower end of the radial side and the other just below the first.

7. Since SI Naleen Verma and HC Vijender did not meet anybody at the hospital who could throw any light on how Rishi Pal suffered the fatal injuries which caused his death, SI Naleen Verma seized the dead body and sent it to the mortuary of LBS Hospital.

8. Returning to the scene of the crime, Mukesh PW-1 met SI Naleen Verma and claimed to be an eye witness. His statement Ex.PW-1/A was recorded by SI Naleen Verma in which he disclosed that on January 11, 2009 a quarrel took place between accused Ajit @ Bhure and the deceased Rishi at which Rishi suffered two simple incised wounds on the index and middle finger of his right hand. Next day on January 12, 2009 at around 6:30 PM the deceased Rishi along with him went to Ajits house 31/341, Trilok Puri because Ajits parents had called Rishi to the house and when Rishi was talking to parents of Ajit, co-accused Ravi, Ajit @ Bhure, Ajits brother Kalu and another person whose identity was not known to him suddenly came to the house. Ajit was having a knife and exhorted the other three to catch hold of Rishi. As the three caught Rishi, Bhure inflicted knife blows on Rishi and then the four dragged Rishi on the road and threw at the corner thereof and fled. Making an endorsement Ex.PW-24/B beneath the statement SI Naleen Verma sent the tehrir for FIR Ex.PW-20/A to be registered for the offence of murder in which Ajit, Ravi and Kalu were named as an accused.

9. The usual proceedings at the spot of calling the crime team and getting the scene of the crime photographed. CRL.A. 958/2010 & 1051/2010 And in respect of which four Page 4 of 16 photographs Ex.PW-14/A-1 to Ex.PW-14/A-4 were taken. Blood control earth and control earth were seized. Site plan without scale Ex.PW-25/A was drawn depicting the spots on the street relevant to establish where the incident took place.

10. Dr.Vinay Kumar PW-4 conducted the post-mortem of the dead body of Rishi the next day and authored the report Ex.PW-4/A recording therein that on the body of the deceased he had found 17 injuries as under:

1. Abrasion, 2 x 2 cm present over left side of forehead 2 cm above lateral end of left eye brow, red in colour.

2. Abrasion, 1 x 1 cm present over middle of bridge of nose, red in colour.

3. Incised wound, 3.5 x 1 cm, bone deep obliquely placed, margin sharp and regular, lower end acute, present over right cheek 2 cm below away from lower end of right ear.

4. Stab wound, 2 x 1 cm and 1.5 cm deep, obliquely placed margin sharp and regular, lower end acute, present over upper part of right side of chest 12 cm below tip of shoulder and 10 cm from midline.

5. Incised wound, 6 x 1.5 cm, muscle deep tailing present lower end acute obliquely placed margin sharp and regular present over right side of chest 23 cm below shoulder tip and 9.5 cm from midline.

6. Stab wound, 2 x 1 cm obliquely placed over right side of chest 27 cm below tip of shoulder and 5 cm from midline margin sharp and regular lower end acute, chest cavity deep on further dissection after penetrating skin, subcutaneous tissue, inter costal chest muscle, pleura and lung was intact.

7. Stab wound, of 2.5 x 1 cm, obliquely placed over epigastrum region 2 cm below xpisternum 3 cm from midline, abdomen cavity deep margin sharp and regular. On dissection it has penetrated skin, subcutaneous tissue muscles peritoneum, dodunum 1 x 0.5 near pyloric junction of stomach, mesentry, 0.5 x 0.5 cm, upper part of stomach, 0.5 x 0.5 cm.

8. Stab wound, 2.5 x 1 cm obliquely placed over left side of chest wall, placed 35 cm below tip of left shoulder and 13 cm from midline margin sharp and regular, chest cavity deep on dissection after penetrated skin subcutaneous tissue muscles in 8th intercostals space between 8th and 9th rib and 9th rib was incised and pleura and lower lob of left lung 1 x 0.5 cm.

9. Stab wound, 3 x 0.5 cm, obliquely placed over right lower side of abdomen, muscle deep margin sharp and regular, 2 cm above iliac crest and 6 cm from midline, lower end acute.

10. Incised wound (Stab wound) 2.5 x 1 cm present over flexer aspect of right forearm on letral aspect margin sharp and regular, upper and acute, 4 cm deep and placed 37 cm away from tip of index finger.

11. Incised wound 2 x 1.5 present over pulp of thumb beveling present at right side bone deep.

12. Stitched incised wound, with three stitches 1.5 cm long present over middle part of right index finger 3 cm away from tip of finger.

13. Stitched incised wound with 2 stitches, 1 cm long present over right middle finger 6 cm away from tip of finger.

14. Abrasion, 1 x 1 cm red colour present over front of right knee joint, over middle part.

15. Abrasion, 0.5 x 0.5 cm brown colour present over front of left knee joint lower part.

16. Stab wound, 2.5 x 0.5 cm over left lateral side of left forearm, obliquely placed, margin sharp and regular lower end acute, muscle deep, 26 cm away from tip of left middle finger.

17. Stab wound, 1 x 1 cm over medial side left forearm, vertically placed, margin sharp and regular, lower end acute, 30 cm away from tip of left middle finger.

11. A perusal of the injuries noted in the post-mortem report would evidence that the two stitched incised wounds on the middle and the index finger of the right hand noted at serial No.12 and 13 relate to the injuries suffered by Rishi Pal on January 11, 2009. The abrasion injuries noted at serial No.1, 2, 14 and 15 are the result of Rishi Pal being dragged over a hard surface. The incised wounds noted at serial No.3, 5, 10 and 11 have been caused by a sharp edged weapon and so are the stab wounds noted at serial No.4, 6, 7, 8, 9, 16 and 17.

12. Opinion as to cause of death was kept pending till chemical analysis of the viscera was available. He handed over the viscera to the Investigation Officer for further investigation.

13. Statements of Sheesh Pal PW-13 and Ram Dulare PW-12 under Section 161 Cr.P.C. were recorded since the two claimed to be witnesses to the incident.

14. The viscera report Ex.PW-25/E and Ex.PW-25/F were obtained as per which ethyl alcohol 307.6 mg per 100 ml of blood was detected, meaning thereby deceased Rishi was dead drunk when he received the fatal injuries.

15. The viscera report was sent to Dr.Vinay Kumar PW-4 for his opinion regarding cause of death of Rishi Pal, who gave his opinion Ex.PW-4/C that the cause of death of Rishi was haemorrhagic shock consequent upon multiple stab injuries and that injuries No.6, 7, 8 and 9 were individually and collectively sufficient to cause death in the ordinary course of nature.

16. A draughtsman was later on taken to the spot by the Investigating Officer who prepared the site plan to scale Ex.PW-19/A.

17. At the trial the various documents we have referred to above were proved by the authors thereof.

18. Mukesh PW-1 claimed to be an eye witness and deposed in sync with his statement Ex.PW-1/A. During cross-examination, explaining his absence at the scene of the crime and his conduct of not rescuing his friend Rishi, he said that he was chased by the four accused up to a distance of 50 feet. He disclosed what he had seen to his parents. After about 20 minutes he returned to the spot where the police made inquiries from him. He said that his thumb impressions were obtained on some papers in the evening of January 14, 2009.

19. Sheesh Pal PW-3, Rishis younger brother deposed that on January 11, 2009 Rishi told him that Ajit had caused injuries on his fingers. The next day on January 12, 2009 when he returned home from duty he heard shouts from the street and as he went out he saw Ajit inflicting knife blows on his brother. There were four assailants who ran away.

20. Ram Dulare PW-12, Rishis father, deposed that a day prior to the date of the incident a quarrel had taken place between his son Rishi and the accused. On the day of the incident he returned home after work on January 12, 2009 at 4:30 PM at

about 5:30 PM he heard a noise regarding a quarrel taking place on the street and as he came out he saw the accused with Ajit alone having a knife who stabbed Rishi. Somebody informed the police which arrived and took his son to the hospital.

21. HC Kameshwar PW-10, incharge of the PCR van Romeo 38 deposed that at about 6:45 PM on January 12, 2009 he received information of a quarrel at Block-31, Trilok Puri. He reached within three minutes at the spot and saw an unconscious injured in the corner of the street whom he removed to LBS Hospital within five minutes where the doctor declared the injured dead. Thereafter father of Rishi Pal came to the hospital and on inquiry by him expressed his ignorance of how his son had suffered the injuries.

22. SI Naleen Verma PW-24 deposed that nobody met him at the scene of the crime when he reached there at the instant nor at the hospital and that when he returned back to the scene of the crime Mukesh PW-1 met him whose statement Ex.PW-1/A was recorded by him.

23. This then is the only evidence which we need to capture for indeed the fate of the appellants would be decided with reference to said evidence.

24. The rough site plan Ex.PW-25/A and the site plan to scale Ex.PW-19/A, the latter being more graphic would evince that Ajits House No.31/341 is at a distance of about 32.16 meters from the spot where HC Kameshwar lifted injured Rishi. The photographs Ex.PW-14/A-1 to Ex.PW-14/A-4 would evince a trail of blood along the said distance on the street.

25. Rishis MLC Ex.PW-4/A drawn up on January 11, 2009 at Lal Bahadur Shastri Hospital corroborates the claim of PW-1, PW-3 and PW-12 that a day prior to the date of the incident Rishi had suffered incised cut injuries on the fingers of his right hand. There is no reason to disbelieve the claim of the three witnesses that Rishi told them that accused Ajit had a quarrel with him during which he had received the injuries.

26. The time of the incident next day i.e. January 12, 2009 is around 6:45 PM, it is a time when people return home after work. The claim of PW-3 and PW-12, the brother and father respectively of Rishi that they returned home and were present in their house is thus natural and the two have to be believed as regards said claim of theirs. Additionally for the reason this aspect of their testimony has not been questioned.

27. Ajits House No.341 is in Block-31. Ram Dulare PW-12 lives in the same block in House No.454. Sheesh Pal PW-3 resides in the same block in House No.494. They claim to have reached the place of the incident when they heard noise of a quarrel on the street; which they could not have because their houses were not on the street. They lived nearby. Obviously they reached the scene of the crime when somebody told them. By then the drama was over and the curtains were down. It is thus apparent that when the incident took place Ram Dulare and Sheesh Pal were not at the scene of the crime, but were at a minutes distance therefrom.

28. In slums information is conveyed faster than through a telecommunication system and thus a greater probability is that Ram Dulare and Sheesh Pal rushed to the street on which Ajit lived with his parents on hearing that Rishi was being assaulted. HC Kameshwars testimony establishes that within 8 to 10 minutes of the incident he reached the street and removed Rishi. Apparently by said time neither Ram Dulare nor Sheesh Pal reached the spot. As per HC Kameshwar the injured victim was unconscious. But we find that the MLC Ex.PW-5/A which notes that Rishi has been brought dead records the name of the injured : Rishi Pal. It records his parentage : S/o Ram Dulare. It records his address :

31. 454, Trilok Puri. Now, HC Kameshwar Singh has not been given a suggestion that he was an expert at transcendental meditation and therefore using said expertise - being in mental touch with a person far away he could ascertain the name, parentage and address of Rishi Pal. The MLC Ex.PW-5/A is a strong piece of evidence to establish that somebody who knew the deceased Rishi Pal had reached the hospital soon after HC Kameshwar removed Rishi Pal to the hospital. HC Kameshwar has said that at the hospital father of Rishi Pal had met him but had no clue as to how his son was injured.

29. The evidence above noted in the preceding paragraph strongly probablizes that Ram Dulare was not an eye witness, nor was Sheesh Pal, because if they were as claimed by him, the father and son would have reached the hospital together. The evidence strongly probablizes that Ram Dulare rushed to the spot when he was given information that his son Rishi Pal was being assaulted by the time he reached the scene of the crime HC Kameshwar had removed his son to the hospital. Ram Dulare rushed to the hospital where he met HC Kameshwar. Since he knew nothing about the incident he told HC Kameshwar that he had no clue. So is the situation qua Sheesh Pal.

30. Thus, as regards Sheesh Pal PW-3 and Ram Dulare PW-12, we agree with the argument of learned counsel for the appellants that the learned Trial Judge has wrongly held that said two persons were eye witnesses.

31. But what about Mukesh PW-1?.

32. If we peruse the testimony of Mukesh we find he being corroborated by Rishi Pals MLC Ex.PW-4/A of the date January 11, 2009. Mukesh has deposed that a day prior to when Rishi Pal was fatally stabbed, Rishi Pal had an altercation with Ajit during which Ajit had inflicted on Rishi Pals right hand injuries with a knife. The photographs Ex.PW-14/A-1 to Ex.PW-14/A-4, showing a trail of blood on the street corroborate Mukeshs testimony that after stabbing Rishi Pal the four accused dragged him till the corner of the street and dumped his body. The abrasions noted at serial No.1, 2, 14 and 15 on the post-mortem report of Rishi Pal would corroborate his version of Rishi Pal being dragged on the street. It assumes importance that this description was given by Mukesh in his statement Ex.PW-1/A on basis whereof the FIR was registered before Rishi Pals post-mortem report was obtained. The fact that Mukesh had not seen Rishi Pals body on the day of the incident other than in the manner in which Mukesh has deposed and the description of the assault finding a reflection in the post-mortem of the dead body of Rishi Pal inspires confidence in the claim of Mukesh that he had accompanied Rishi Pal to Ajits house and had witnessed the assault.

33. Mukeshs conduct of running away, when chased by four accused, is not unnatural and certainly not of a kind to discredit his claim to be an eye witness.

34. The argument that if PW-1, PW-3 and PW-12, as claimed by them being eye witnesses and in said context their conduct being unnatural obviously needs no discussion because we have already held that PW-3 and PW-12 are not eye witnesses. They reached the scene of the crime soon after the crime was over and learnt from third persons of what had happened and this information which was obviously hearsay was converted by the two as if it was their percipient information. Thus PW-1 was alone. He ran for his life when four assailants chased him.

35. The viscera report of Rishi Pal shows that he was dead drunk. It is not uncommon for people in slum to find comfort in alcohol. A normal person who is a connoisseur of alcoholic beverages does not drink at 6:30 PM and certainly not in such quantities which knock off a person, after all the purpose of a drink is to soothe ones nerves. But life in the slums is tough. The brutal assault and the manner in which the injured body of Rishi Pal was dragged is not only an indication of the brutality of the assault but is also an indication of the brutalized souls of the assailants; and probably even they were dead drunk. An intentional assault with a knife to kill would satisfy the intention of the assailant by inflicting, at the most four stab wounds on the vital part of the body, because of the knowledge of even a lay man that a person stabbed three to four times either in the chest or the stomach would surely die. But, a continued assault :

10. stab and incised wounds evinces the madness or the mind of a feral beast. The act is mindless.

36. Learned counsel for Ajit @ Bhure relied upon the decisions reported as 2005(32) AIC343Sainath Naik Vs. State and 2012 Cri LJ2122 Man Bahadur Subba Vs. State of Sikkim to argue that where a person is drunk and assaults the victim causing the death of the victim the offence is one punishable under Section 304-II IPC.

37. The two decisions would show that where a drunk person, upon a sudden quarrel, causes the fatal injuries, courts have held that the offence is one punishable under Section 304-II IPC.

38. In the instant case there is no evidence of a sudden quarrel preceding the assault. On the contrary the evidence is that when Rishi Pal and Mukesh reached Ajits house on Rishi Pal being summoned by Ajits parents to discuss the issue which had resulted in Rishi Pal being assaulted by Ajit the previous day, without any provocation or a cause Ajit accompanied by Ravi and his brother Kalu as also a fourth unknown person assaulted Rishi Pal.

39. Learned counsel relied upon the decision reported as 2000(1) SCC621Padam Singh Vs. State of U.P. to urge that the prosecution had to explain the injury on the accused Ravi.

40. The injuries on the accused Ravi Kumar, as per Ex.PW-5/C, are a superficial incised wound of 1.5 cm length and a superficial incised wound of 1 cm length.

41. The two could be self-inflicted injuries. Besides, the mere inability on the part of the prosecution witnesses to explain the injuries suffered by the accused does not result in the testimony of the prosecution witnesses to be outrightly rejected. If the court finds it probable that the accused might have acted in exercise of right of self-defence, the Court ought to proceed to consider whether they have exceeded the same. [(1994) 2 SCC191State of U.P. v. Mukunde Singh & Ors.].. Similarly in the decision reported as 2001 Cri LJ2602 Thakhaji Hiraji v. Thakore Kubersing Chamansing & Ors. it was held as under:

The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajendra Singh & Ors. Vs State of Bihar, 2000 Cri LJ2199 Ram Sunder Yadav & Ors. Vs State of Bihar, 1998 Cri LJ4558and Vijayee Singh & Ors. V. State of U.P. :

1990. Cri LJ1510 all 3-Judges Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before nonexplanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions : (i) that the injury

on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear cogent and credit worthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

42. The court after taking by the prosecution witnesses into and account having the evidence regard to the rendered nature of the injuries sustained by the accused need to ascertain whether the absence of any explanation on the part of the prosecution with respect to the injuries suffered by the accused would affect the core of the charges levelled against the accused or not. [(2013) 2 SCC71Ram Vishwambar & Ors. v. State of U.P.].. The same view was summarized by the Allahabad High Court in the decision reported as 2001 Cri LJ2838(All) Gajey Singh v. State of U.P. wherein it was held:

It is well settled that before an adverse inference is drawn against the prosecution for its suppression or failure to explain the injuries on the person of an accused, it must be reasonably shown that, in all probability, the injuries were caused to him in the same occurrence or as a part of same transaction in which the victim on the side of prosecution was injured. It is not the law that prosecution is obliged to explain injuries of accused in all cases and in all circumstances. How far the prosecution case will be affected for its failure to explain injuries on the accused, the question will have to be answered on the basis of facts and circumstances of each case. Non-explanation of injuries of accused is certainly a factor which is to be taken into account in judging the veracity of the prosecution case and in such a situation the Court is under a duty to scrutinize the evidence of witnesses with great care and caution.

43. The omission on the part of the prosecution to explain the injuries on the person of the accused assumes greater importance where the evidence consists

of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. In the decision reported as (2006) 9 SCC57Nagarathinam & Ors vs. State, the Supreme Court held:

20. The genesis of the occurrence is, therefore, shrouded in mystery. This occurrence, admittedly, took place, but who were thus initial aggressors i.e. the prosecution witnesses or the appellants, is difficult to say. The High Court has found that the prosecution had not been able to prove the charge of rioting. The appellants and others did not have any common object to cause death of the accused of (sic) the prosecution witnesses. We have noticed hereinbefore the nature of injuries on the persons of the appellants. The first appellant received two stab wounds and also an incised wound over the scalp at frontal region. Appellant 2 received deep-cut wound and an incised wound over the scalp left side parietal region. Appellant 3 also received an incised scalp wound over frontal parietal region. It is not denied and disputed that they were in the hospital as indoor patients for a few days. We have furthermore noticed hereinbefore that they were also arrested after a few days.

44. Thus, consequences of failure on part of the prosecution to explain injuries on the accused will vary according to the facts and circumstances of each case. In cases where the genesis of an incident is dubious, if the prosecution witnesses fully explain as to how the accused sustained injuries then the prosecution need not to probe further into the matter. However, no strait jacket formula can be laid down and each case has to be considered on its own facts and circumstances. [2013 Cri LJ2426(Del) Radhey Shyam v. State of NCT of Delhi]..

45. Believing Mukesh PW-1 to be a truthful eye witness and there being no evidence that the assault was preceded by a quarrel, and as a matter of fact, as told by Mukesh, Rishi Pal and he had gone to Ajits house on being summoned by Ajits parents in connection with the quarrel between Ajit and Rishi Pal the day previous. When the two reached Ajits house, all of a sudden Ajit along with his brother Kalu and friend Ravi and a fourth unknown person surfaced. At the asking of Ajit, Kalu, Ravi and the fourth unknown person caught hold of Rishi Pal to facilitate Ajit stabbing Rishi Pal. Thereafter the four dragged Rishi Pal over a

distance of about 33 meters on the street and dumped Rishi Pals body before fleeing. The 10 incised and stab wounds leave no scope other than to hold that the acts of the accused constitute the offence of murder.

46. The two appeals are dismissed. The conviction and the sentence imposed upon Ajit @ Bhure and Ravi Kumar are confirmed.

47. Three copies of the decision are directed to be sent to the Superintendent Central Jail Tihar, one for his record and the other two to be supplied one each to Ajit and Ravi Kumar.

48. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE OCTOBER16 2014 mamta

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