

**Sunil @ Babu Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/1171849](http://sooperkanoon.com/1171849)

**Court :** Delhi

**Decided On :** Nov-10-2014

**Judge :** Mukta Gupta

**Appellant :** Sunil @ Babu

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: November 03, 2014 Judgment Delivered on: November10, 2014 % + CRL.A. 804/2014 SUNIL @ BABU Represented by: ..... Appellant Mr.P.S.Pradhan, Advocate. versus STATE Represented by: + ..... Respondent Mr.Lovkesh Sawhney, APP for the State with Inspector Yashpal Singh, Crime Branch and SI Gorav. Mr.Rajeev Nanda, Advocate for deceaseds father. CRL.A. 854/2014 VINOD @ VINODI Represented by: ..... Appellant Ms.Nandita Rao, Advocate. versus STATE Represented by: ..... Respondent Mr.Lovkesh Sawhney, APP for the State with Inspector Yashpal Singh, Crime Branch and SI Gorav. Mr.Rajeev Nanda, Advocate for deceaseds father. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Sunil @ Babu and Vinod @ Vinodi have been convicted for the offence of murder of Jitender vide impugned judgment dated March 26, 2014 and directed to undergo imprisonment for life.

2. Learned counsels for the appellants assail the judgement on the ground that the presence of the alleged eye witness Vikas Chauhan at the place of incident is highly doubtful. Though he claims that he had taken the deceased to the hospital however, the MLC does not note his name. Even Mohd.Jalal PW-6 who had taken the deceased to the hospital and made a PCR call does not state about the presence of Vikas Chauhan. The claim of Vikas Chauhan that he was a very good friend and a relative of the deceased is also not borne out from the record. SI Sewa Singh PW-12 who first of all reached the spot and the hospital stated that there was no eye witness in the hospital. The knife allegedly recovered is not connected with the offence committed because as per the FSL report no blood was detected on it. The alleged motive to commit the offence is also flimsy. Despite the area being thickly populated no public person was examined. Mohd.Jalal PW-6 who actually took the deceased to the hospital and was the deceased's worker does not support the prosecution case that he witnessed the incident. In the absence of reliable and cogent evidence, the conviction of the appellants for the offence of murder of Jitender is bad in law and be set aside. Reliance is placed on the decisions reported as 2001 (3) SCC147 *The State of Rajasthan vs. Shri Teja Singh & Ors.*, 2012 III AD (Delhi) 154 *Johnson vs. State* and 2012 (4) JCC2777 *Maheshwari Prashad & Anr. vs. State*.

3. Process of law was set into motion on a PCR call made vide Ex.PW- 19/A at 7.14 PM on April 29, 2011 informing that two boys had ran away after giving knife blows. This information was recorded at PS Jahangir Puri vide DD No.35A at 7.40 PM. The injured was admitted to BJRM hospital when an information was sent to PS Jahangir Puri vide DD No.37A at 7.40 PM about the admission of Jitender S/o Jwala Prashad resident of Jahangir Puri whose phone number was 8750576934.

4. SI Sewa Singh PW-12 reached the spot where he saw blood and one pair of black colour chappal smeared with blood lying in the gali opposite K1/19. He did not find any eye witness and came to know that the injured was taken to BJRM Hospital. He reached the hospital and collected the MLC of injured who was declared brought dead. In the meantime, SHO Inspector Yashpal Singh had also arrived, who recorded the statement of Vikas Chauhan who claimed himself to be the eye-witness vide Ex.PW-13/A on the basis of which FIR No.137/2011 was

registered.

5. Vikas Chauhan stated that he was residing at House No.WP-397, Wazir Pur Gaon, Ashok Vihar with his family. Jitender who used to make dentures in R Block DDA Market, Jahangir Puri and was related to him as a brother-in-law and was a good friend had to go with his friends to Balaji and had asked him `1,000/- for the expenses. On that day at 6.30 PM he went to the office of Jitender to give him the money. Office of Jitender was on the first floor and when both of them were climbing the stairs they found two boys sitting on the stairs of the office and smoking. Jitender scolded and slapped both the boys and made them run away from there. During talks Jitender informed him that those two boys were named Vinod and Babu and were loater and were staying nearby and that every day he was making them run away from there. After giving Jitender `1,000/- he came out from the shop at 7.00 PM and was going to his house. As he was reaching towards his motorcycle he heard Jitender shouting. He turned back and saw that out of those two boys one had caught hold of Jitender near his office and the other who was taller had a knife in his hand and gave a stab blow on the left side of his chest. He ran after the boys to catch them however, both of them fled away from the spot. He with the help of the other persons brought Jitender to BJRM Hospital where the doctor declared him brought dead. Vikas Chauhan in his deposition before the Court deposed in sync with his statement on the basis of which rukka was recorded.

6. Mohd.Jalal PW-6 who had made the PCR call after taking the injured to BJRM Hospital and as per the MLC Ex.PW-2/B-3 had got him admitted deposed that he was working as teeth moulder in the factory of Jitender situated in the K-Block Market for the last 8-10 years from the date of incident. On April 29, 2011 at about 7.00 PM while he was working he heard the noise Bachao Bachao. He came out in the gali and saw Jitender lying in the gali in injured condition smeared in blood and found two boys running in the gali one of whom was holding a knife. However, he could not see their faces and made a call to 100 number. With the help of one or two persons he took Jitender to BJRM Hospital. On examination by the APP he further stated that Vikas Chauhan was also present at the place of the incident before Jitender was taken to the hospital.

7. As per the case of the prosecution Mohd.Jalal is not an eye witness and had only seen the assailants running after the incident whose faces he could not see. But two things which are proved by the testimony of these witnesses are that the assailants were two in number and that Vikas Chauhan was present at the spot at the time when the incident took place. The version of Vikas Chauhan that he heard the shrieks of Jitender and turned back and saw one boy catching hold of Jitender and the other giving stab blow is corroborated by the version of Dr.Bhim Singh PW-2 who conducted the post-mortem of Jitender and authored the report Ex.PW-2/A. He noticed the following external injuries on the body of Jitender:

i. Stab wound 6.5 cm x 2.5 cm x cavity deep left side of chest, longitudinally placed (on the PM report the shape of the wound is shown by figure), 1.5 cm medial to left nipple, margins clean cut, upper angle obtuse, lower angle acute. ii. Incised stab wound 2 cm x 0.5 cm x 2.1 cm horizontally placed right side abdomen, at lower end, near public symphysis, margins clean cut, outer angle obtuse, inner angle acute. iii. Incised stab wound 2 x 0.5 cm x 2.2 cm left side of thigh outer aspect upper part, outer angle obtuse, inter angle acute.

8. On internal examination Dr.Bhim Singh noticed stab wound on the chest cutting skin, muscles and 4th and 5th ribs, measuring 5 cm in length, entering into chest cavity cutting lower middle portion of lung through and through and entering in left ventricle of heart via cutting pericardium. In his opinion the death was due to haemorrhagic shock consequent upon excessive blood loss via injury No.1 and all injuries were ante mortem in nature, fresh in duration and caused by single edged sharp weapon like knife.

9. Pursuant to the arrest of the appellants at the instance of Vinod a knife was recovered from Lakhi Park, behind the Jhuggi of K-Block, Jahangir Puri. Dr.Bhim Singh on being shown the knife vide his subsequent opinion Ex.PW-2/B opined that the injury Nos.1, 2 and 3 mentioned in the postmortem report could be possible by the said weapon. Further as per the FSL report there were three cut marks on the clothes of the deceased i.e. the blood stained shirt, Baniyan, Jeans and underwear. Three cut marks on the clothes corresponded to the injuries present on the body of the deceased.

10. The main plank of argument of learned counsel for the appellants is that Vikas Chauhan was not an eye-witness as he neither admitted the deceased in the hospital nor made the PCR call. As per the evidence on record though Vikas Chauhan claims that he had taken the injured to the hospital however, the MLC noticed the presence of Mohd.Jalal. Mohd.Jalal has deposed about the presence of Vikas Chauhan when the incident took place. It is the case of the prosecution that SHO Inspector Yashpal Singh reached the spot immediately on receipt of information regarding Jitender being brought dead at the BJRM Hospital as investigation being a murder case was to be conducted by an Inspector. Insp.Yashpal Singh deposed that he asked Sewa Singh to collect the MLC. The fact that no eye-witness met Sewa Singh at the hospital is not relevant in view of the testimony of Inspector Yashpal Singh who stated that he met Vikas Chauhan at the hospital and recorded his statement Ex.PW-13/A.

11. The first PCR call made immediately after the incident was received in PCR Control Room at 7.14 PM. The deceased was admitted in the hospital at 7.12 PM on April 29, 2011. The rukka was dispatched at 9.15 PM and the FIR was registered at 10.30 PM wherein the name of both Vinod and Babu i.e. appellants herein have been duly mentioned. HC Nanhe Lal Mishra, the Duty Officer PW-1 who registered the FIR has not been crossexamined on the aspect that the rukka was not received at the time stated therein and that the FIR was ante-time.

12. The presence of Vikas Chauhan at the time of the incident stands proved. Name of Vikas Chauhan was not mentioned in the MLC because of the reason that only one person i.e. Mohd.Jalal was permitted to enter in the hospital as explained by the witnesses. Both Vikas Chauhan and Mohd.Jalal have stated in the cross-examination that Mohd.Jalal went inside the room whereas Vikas Chauhan remained outside. Suggestions have also been given to Vikas Chauhan that he was an interested witness as he would inherit the property of the deceased. In cross-examination Vikas Chauhan has explained that Jitender was the son of his wifes uncle i.e. his wifes first cousin. In view thereof no motive can be attributed to Vikas Chauhan for committing the murder of the deceased as he or his wife were not legal heirs either in Class-I or Class-II on whom the property would have devolved.

13. Further no seizure of the blood stained clothes of either Mohd.Jalal or Vikas Chauhan would not discredit their otherwise credible version. The contention that the recovery was made from open place is incorrect. As per the disclosure statement, the pointing out memo and the deposition of the witness, the knife was recovered from the DDA Park which was an abandoned place from the bushes which were one feet in height.

14. Even though the FSL report Ex.PW-20/D opined that no blood was found upon the knife, the weapon of offence is still connected with the offence committed in view of the subsequent opinion of the post-mortem doctor PW-2 given vide Ex.PW-2/B opining that the injuries on the deceased were possible by the said weapon of offence.

15. The Division Bench of this Court in the decision reported as 2005 Cri.L.J1870 Razab Ali vs. State held that blood not being detected on the blade of the knife cannot be made the basis for disbelieving the prosecution version.

16. The reliance of learned counsel for the appellants on the decision in Teja Singhs case (supra) is misconceived. In the said case the Court came to the conclusion that one of the eye witness was very old having problems in his eyes and thus it was difficult to believe that he was really in a position to identify the accused persons. The evidence of the other witness was discarded for the reason that his statement under Section 161 Cr.P.C was recorded after five days of the offence and no satisfactory explanation was given by the Investigating Officer for the delay in recording the statement. The presence of the third eye witness was discarded for the reason that though she stated that she lifted the body of the deceased who was bleeding however, her blood stained clothes were not seized. It was further held that these alleged eye witnesses did not mention the name of the accused to the Sarpanch to whom they told about the incident. In Johnsons case (supra) this Court discarded the testimony of PW-5 Ct. Subhash Chand who stated that the victim had narrated him the names of the assailants on the ground that the other witness who was with them did not claim that any conversation took place between Ct. Subhash Chand and the victim and that the victims mental and physical condition was not that he could make a statement. In Maheshwari

Prashads case (Supra) this Court rejected the testimony of the only witness primarily on the ground that there were material contradictions and omissions in this testimony of the prosecution witness coupled with the fact that the recovery of the knife on the basis of a so called disclosure statement was suspicious as when they went on the first day they could not recover the knife and it was recovered later on the next day.

17. In the present case Mohd.Jalal stated that with the help of one or two public witnesses he took Jitender to BJRM Hospital in a TSR and that besides the said public person one family member of Jitender i.e. Vikas Chauhan was also at the spot. This witness has stated that his clothes were not stained by blood when he took deceased to the hospital. Thus, there was no occasion to seize the clothes of Mohd.Jalal.

18. In view of the above discussion we find no ground to interfere with the impugned judgment and thus the appeals are dismissed. The appellants will suffer the remaining sentence.

19. T.C.R. be returned.

20. Copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellants. (MUKTA GUPTA)  
JUDGE (PRADEEP NANDRAJOG) JUDGE NOVEMBER10 2014 vn

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