

Amar @ Bhalla Vs. State

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Court : Delhi

Decided On : Dec-08-2014

Judge : Pradeep Nandrajog

Appellant : Amar @ Bhalla

Respondent : State

Judgement :

\$~6 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: December 08, 2014 + CRL.A. 1130/2014 AMAR @ BHALLA Represented by: Appellant Mr.Ajay Verma, Advocate with Mr.Narsingh Narain Rai and Ms.Neha Singh, Advocates versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP Insp.Sher Singh, SHO PS Burari CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) Crl.M.B.No.10328/2014 Since the appeal is being heard today itself for final hearing, instant application which seeks suspension of sentence pending hearing of the appeal is dismissed as infructuous. Crl.A.No.1130/2014 1. It is the duty of every Trial Judge to carefully read and analyze the entire evidence led at a criminal trial and then find the nugget of truth. At a criminal trial where the accused is charged for the offence of murder which attracts even a capital sentence, the duty of care to appraise the evidence with the eyes of a hawk becomes even more stringent. Unfortunately, in the instant case we find that the appreciation of

evidence is casual.

2. Charged with the offence of having murdered Chetan Pal @ Anu and for the offence of having attempted to murder Rajesh Sharma, Tulsi and Kishan, vide impugned decision dated March 29, 2014, the learned Trial Judge has convicted appellant : Amar @ Bhalla for both the indictments; holding that the prosecution has successfully established that he along with co-accused Sonu (also convicted) and juvenile accused I (sent for trial before the Juvenile Justice Board) as also one Mohammad (who was not arrested), murdered Chetan Pal and attempted to murder Rajesh Sharma, Tulsi and Kishan. Vide order on sentence dated March 31, 2014, for the offence of murder, the appellant has been sentenced to undergo imprisonment for life and pay fine in sum of `10,000/- and in default to undergo simple imprisonment for one year. For the offence of having attempted to murder Rajesh Sharma, Tulsi and Kishan, the appellant has been sentenced to undergo rigorous imprisonment for seven years and pay fine in sum of `5,000/-, in default to undergo simple imprisonment for six months.

3. In returning the verdict of guilt the learned Trial Judge has believed the testimonies of Tulsi Kumar PW-1, Rajesh Sharma PW-5, Amar Singh Bhandari PW-7, Manish PW-8, Kishan PW-9, Pankaj PW-11, Sumit PW-12 and Sunil Singh Rana PW-15; and we wonder as to why the learned Trial Judge has not made a mention to the testimony of Ajay Kumar Rajput PW13, an injured eye witness and Satish Kumar PW-14, another witness of the prosecution.

4. Had the learned Trial Judge read the testimony of all the eye witnesses, truth would have dawned with clarity as to what happened on the day of the incident i.e. at 9:00 PM on May 25, 2010 at the cross road of Gali No.7, Block B-1, Sant Nagar, Burari. Further, the learned Trial Judge has partly looked at the testimony of Satish Kumar PW-14 and Sunil Singh Rana PW-15 as also the testimony of Tulsi Kumar PW-1. Certain critical features from their testimony have been overlooked.

5. Near complete truth has emerged from the testimony of Sunil Singh Rana PW-15 and the backdrop to the incident has been succinctly proved by Satish Kumar PW-14. Had the learned Trial Judge carefully analyzed the testimony of said two eye witnesses, he would have seen the truth told to him by the coloured eyes of

the injured eye witnesses.

6. Traces of the complete truth have been successfully hidden by Tulsi Kumar PW-1, Rajesh Sharma PW-5 as also Amar Singh Bhandari PW-7, Manish PW-8 (whose testimony would corroborate the testimony of PW-14 as to what happened the day previous), as also that of Shri Kishan PW-9 and Pankaj PW-11.

7. Learned counsel for the appellant would concede that on May 25, 2010 an incident did take place involving Tulsi Kumar PW-1, Rajesh PW-5, Manish PW-8, Kishan PW-4 and deceased Chetan @ Anu in which Chetan @ Anu died and Rajesh Sharma, Tulsi and Kishan received injuries.

8. Testimony of Satish Kumar PW-14 would bring out that at 7:30 PM on May 24, 2010 i.e. a day prior to May 25, 2010, he saw two boys tease a girl who was with her younger brother. There was another boy looking on, at which the boys who were teasing the girl objected to he looking at them, to which that boy responded : whether it was a crime to see, and at that one of the two boys who were teasing the girl slapped that boy. The brother of the girl asked the boy who slapped as to why did he slap the onlooker, to which the boy who slapped said that if within a minute he did not disappear, even he would be slapped. One boy called somebody on the phone. Some boys came on a motorcycle and slapped the young boy who was with his sister. The young boy with the sister was Sonu (convicted co-accused), whom he referred to as Sonu-I and the boy who was a bystander as Sonu-II.

9. Pankaj PW-11 and Manish PW-8 were the obvious scoundrels who were teasing the young girl, who was then with her brother on May 24, 2010, and we say so for the reason, Pankaj PW-11 has deposed to the same facts as to what happened on May 24, 2010, but with a twist.

10. As per Pankaj, when he and his friend Manish alighted from a three wheeler at Chetan Bihari Mandir Wali Gali his foot accidentally touched a girl and a boy accompanying the girl entered into a verbal altercation with him. Three or four boys were present, which included Sonu, threatened them. He informed his brother Vicky who came with two boys and gave a thrashing to Sonu. This Sonu

referred to by Pankaj is the co-accused who has been convicted.

11. From the testimony of PW-11 and PW-14 it is apparent that an altercation had taken place involving convicted co-accused Sonu on the one side and Manish PW-8 and Pankaj PW-11 on the other, and we have no reason to disbelieve the testimony of PW-14 that Pankaj and Manish were the scoundrels who are the source of the trouble. They indulged in eve teasing. They teased Sonus sister, who naturally got annoyed. The two summoned extra help to beat Sonu and obviously subdue him, so that in the future they could have a free run to tease Sonus sister whenever they wanted.

12. The learned Trial Judge has just not noted the testimony of PW-11 and PW-14 which laid the genesis for what happened the next day.

13. Further, what happened the next day has again not been captured properly by the learned Trial Judge.

14. Tulsi Kumar PW-1 has deposed that on the day of the incident i.e. May 25, 2010, Manish had told him of what happened the day previous and he told Manish that since everything was over, that should be the end of the matter. But Manish insisted that he wanted to talk to those persons with whom he had a quarrel the previous day. Therefore, Tulsi Kumar took along with him Pankaj, Rajesh, Kishan and Chetan and joining the company of Manish, they went to the same crossing where the incident on the previous day had taken place.

15. Now, the innocent statement of Tulsi Kumar that Manish requested him to accompany him when he would be talking to the boys with whom he had a quarrel, has to be taken, not with a pinch of salt, but with a sack full of salt, for the reason meaningfully read Tulsi Kumar admits that at the asking of Manish, he, Rajesh, Kishan, Chetan and Pankaj went to settle scores and were the ones who instigated the opposite group to test who was stronger. Where was the need for six people to go and have a dialogue with Sonu?.

16. The further testimony of Tulsi Kumar PW-1 is a tainted version that as he, Rajesh, Kishan, Manish and Chetan saw two boys, one more came whose name

later on he learnt was Amar (the appellant) who was having a danda in his hand, and all of a sudden an assault was launched on them by Sonu, Amar, I and Mohammad.

17. We need not note the testimony of the other witnesses who have deposed as per the testimony of Manish PW-8 to the effect that when Pankaj, Tulsi, Manish, Kishan, Rajesh and Chetan were innocently standing at the cross road of Sant Nagar Burari they were assaulted.

18. What happened in the late evening of May 25, 2010 has been deposed to clearly by Sunil Singh Rana PW-15, and regrettably his testimony has been overlooked by the learned Trial Judge. As per him, when he and Sumit PW-12, were sitting near his residence, Sonu and absconding accused Mohammad came to him on a motorcycle, at that time Sonu's clothes were torn. They told them that same boys who had beaten Sonu yesterday had caught I at the crossing. He and Sumit went with Sonu and Mohammad and saw a boy stabbed. He thought that I had been stabbed, but later on learnt that the boy who was stabbed was actually Chetan. Sumit PW-12 has corroborated Sunil Singh Rana PW-15.

19. Let us have a bird eye view of the testimony of Ajay Kumar Rajput PW-13 who has a sweetmeat shop on the road where the incident took place on May 25, 2010. As per him late night Amar and I have left an iron rod and an iron chain in his shop.

20. If we probabilize what could have happened on the date of the incident when we consider the totality of the evidence as above, it clearly emerges that the previous evening Pankaj and Manish had teased the younger sister of co-convicted accused Sonu who had protested and during which incident either Manish and Pankaj had slapped another boy named Sonu who was an innocent bystander, being aggrieved by the fact that that boy had seen them misbehave with a girl. Obviously co-convicted accused Sonu would have sworn revenge and fearing that they would be beaten, Manish and Pankaj solicited help from Tulsi Kumar, who mustered strength by making Rajesh, Kishan and Chetan join him. Thus, six persons : Manish, Pankaj, Tulsi Kumar, Rajesh, Kishan and Chetan went searching for Sonu. They were the predators. The prey was Sonu.

21. When they say their prey Sonu, he was in the company of appellant Amar, juvenile co-accused I and the proclaimed offender Mohammad. Though the predators were six in number, the tables got turned because the six thought that they had to encounter only one (Sonu) and that one turned out to be four. From the fact that Manish, Pankaj, Tulsi Kumar, Rajesh, Kishan and Chetan went unarmed, it is clear that their intention was to overawe Sonu and if need be simply beat him. But keeping in view the incident of last evening, Sonu thought it proper that for the next few days he should keep with him a knife for his safety and at that time his three friends were with him. The assault started. Only fists and kick blows were used. Sonu was injured. He along with Mohammad went to Sunil Singh Rana who was nearby for help. Sunil Singh Rana and Sumit went with Sonu and Mohammad. There is complete blurring of evidence as to what happened thereafter, but one thing is clear, Chetan received a stab blow due to which he died and the one who gave the stab blow was Sonu. Since as per the witnesses of the prosecution only Sonu was armed with a knife, as we would be noting, injuries sustained by Rajesh were with the knife. Thus, the appellant, who statedly was armed with a danda caused the injuries to Tulsi and Kishan. The witnesses of the prosecution who have supported the case of the prosecution have said so. The role alleged against the appellant is of using the danda to cause injuries.

22. Poor Chetan, his only role was to join the company of Tulsi Kumar when Manish and Pankaj solicited help from Tulsi Kumar. He paid for the company he kept.

23. From the totality of the evidence it emerges that the aggressors were Pankaj, Tulsi, Manish, Kishan, Rajesh and Chetan and it appears that outnumbered by six unarmed persons who were unaware that Sonu was armed with a knife, he retaliated and in the process inflicted only one stab injury on the abdomen of Chetan who died as a result of the injury because unfortunately it damaged the vital organs in the abdomen. The post-mortem report Ex.PW-24/A shows that the stab wound was 4 cm deep. After cutting through the muscles of the abdomen the colon was cut and unfortunately it was the cutting of the mesentery artery which caused the death : haemorrhagic shock due to excessive bleeding. As we would be noting, injuries to Rajesh have also been caused by a knife and thus it is clear

that Sonu caused injuries to Rajesh because witnesses of the prosecution have said that he alone was armed with a knife.

24. Unfortunately in the instant case the prosecution has withheld a very relevant evidence : the MLCs of the four accused; for had the prosecution produced them in evidence one would have got some evidence on record as to the physical condition of the four accused. The case diary shows that the accused were taken for medical examination when they were arrested.

25. The MLC Ex.PW-34/A of Rajesh, Ex.PW-36/A of Tulsi and Ex.PW- 25/A of Kishan, would show that Rajesh had a muscle deep sharp cut wound on the left loin, right leg, right lower jaw and over right bicep. Tulsi had two teeth in the upper jaw and three in the lower jaw broken with a lacerated wound on the right side scalp. Kishan had a clean lacerated wound on the left forearm dorsal area and an abrasion in the parieto occipital region.

26. Convicting the two major accused who were sent for trial (third major accused being a proclaimed offender) and the fourth being a juvenile, the learned Trial Judge has taken the help of Section 34 of the Penal Code against the appellant. Thus, though Sonu used the knife to injure Chetan who died, appellant has been convicted for murdering Chetan and being armed with a danda and causing injuries to Tulsi and Kishan with the danda he has been held responsible for said act and for the injuries caused to Rajesh with a knife he has been held vicariously liable.

27. In view of the finding returned by us hereinabove, that as per the evidence, the aggressors were Pankaj, Tulsi, Manish, Kishan, Rajesh and Chetan, but being unarmed, the force in response by way of self defence had to be measured, and treating it to be a case where disproportionate force was used by Sonu, his act cannot make appellant vicariously liable for there is no evidence that appellant shared any common intention with Sonu. The appellant used a danda when six people assaulted Sonu, the appellant, Mohammad and I. Use of the danda by the appellant to hit Kishan and Tulsi cannot be said to be a case of excessive use of force. Injuries caused to Rajesh are by a knife and are attributable to Sonu. The learned Trial Judge has by applying Section 34 of the Penal Code made appellant

liable even for said injury.

28. Assuming it to be a case of a mutual fight, even then as per law, appellant would be liable only for what he did.

29. Thus, at best, the appellant would be liable for the injuries caused to Tulsi and Kishan which are grievous but not life threatening, but since a danda was used, at best the appellant would be liable for having committed an offence punishable under Section 325 IPC. But for the reason we have found that the aggressors were Manish, Pankaj, Tulsi Kumar, Rajesh, Kishan and Chetan, we are constrained to give the benefit of doubt to the appellant for having acted in self defence when he, Sonu, Mohammad and I were way laid by Manish, Pankaj, Tulsi Kumar, Rajesh, Kishan and Chetan. He has not exceeded the right of private defence, which Sonu may have, and we do not expand much on said aspect because we find that till date Sonu has not filed an appeal.

30. A word needs to be spoken of why Sonu has not filed an appeal. We will surely get one very soon. We are noting smartness by convicts in Tihar Jail. We find that at the first instance appeals are filed by those whose case appears to be the strongest and depending upon the result in the appeal, other convicted accused also file appeals.

31. Unfortunately for the appellant he is in custody since May 30, 2010. He has suffered incarceration for more than four years.

32. For the view we have taken, the appeal is allowed. The appellant is acquitted of the charge framed against him. He be set free forthwith unless required in custody in some other case; and actually we find none for the reason, the nominal roll shows that the appellant has no other case pending against him.

33. The Registry would retain the TCR for sometime because we would be soon expecting an appeal filed by Sonu.

34. Two copies of the decision be sent to the Superintendent Central Jail Tihar. One for his record and the other to be supplied to the appellant. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE DECEMBER08 2014 mamta

