

**Sunder Singh and Anr Vs. State (Govt. of Nct)**

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**Court :** Delhi

**Decided On :** Nov-27-2014

**Judge :** S. Muralidhar

**Appellant :** Sunder Singh and Anr

**Respondent :** State (Govt. of Nct)

**Judgement :**

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 1097 of 2014 & CRL.M.A. Nos. 10282, 10283 of 2014 (for suspension of sentences) Reserved on: November 24, 2014 Delivered on: November 27, 2014 SUNDER SINGH & ANR ..... Appellants Through: Mr. Sundeshwar Lal with Mr. Rahul Tyagi, Advocates. versus STATE (GOVT. OF NCT) ..... Respondent Through: Mr. Rajat Katyal, APP. CORAM: JUSTICE S. MURALIDHAR

**JUDGMENT**

2711.2014 1. This appeal is directed against the impugned judgment dated 3rd June 2014 passed by the learned Additional Sessions Judge (ASJ) in Session Case No.18 of 2011 arising out of FIR No.304 of 2010 registered at Police Station (PS) Geeta Colony, Delhi convicting the Appellants, Sunder Singh and Vinod, for the offence under Sections 304 (Part-II), 323 and 34 Indian Penal Code, 1860 (IPC) and the order on sentence dated 7th June 2014 whereby both of them were sentenced to undergo rigorous imprisonment (RI) of five years with fine of Rs.10,000 each and in default, to undergo six months SI for the offence under

Section 304 (Part-II)/34 IPC and for the offence under Section 323/34 IPC both of them were sentenced to undergo six months RI. Both the sentenced were directed to run concurrently. It was also directed that the fine amount, if realized, was to be paid as compensation to the kin of the deceased.

2. The case of the prosecution is that DD entry No.4A was recorded at 0010 hours on 13th November 2010 to the effect that in the jhuggis near a school at A-43, Rani Garden a quarrel was going on. On receipt of the said information Head Constable (HC) Ishwar Singh (PW-13) and Constable Deepak (PW-14) reached the spot, where they were met by Sub Inspector (SI) R.N. Pathak (PW-19), all of whom were attached to PS Geeta Colony. The spot was described as Ambedkar Park, Rani Garden near Banta Ki Factory. Upon enquiry, they were informed that Raju, the deceased had been taken to Dr. Hedgewar Hospital by his brother, Sanjay (PW-9). Leaving PW-14 at the spot, PW-13 and PW-19 proceeded to the said hospital where PW-19 collected the MLC of Raju (Ex.PW-18/A) which showed that Raju had been brought by his brother Sanjay (PW-9) at the hospital at 12.25 am on 13th November 2010 with the alleged history of assault. The injury was described as lacerated wound about 4 cm x .5 cm over right temporo parietal region. Thereafter at 2.20 am on the same date, the doctor stated on the MLC that the deceased Raju was unfit for statement.

3. By the time PW-19 reached Dr. Hedgewar Hospital, Raju had been moved to Guru Teg Bahadur (GTB) Hospital at Shahdara. There Raju succumbed to the injuries. The post-mortem conducted revealed the cause of death to be the head injury. In the application for request for post-mortem (Ex.PW-17/A) the summary of the case was set out. It was stated that on 13th November 2010 a case was registered on the complaint of Dhanpal that his son Raju had been beaten by two persons. The case was initially registered under Section 307/323/34 IPC, on 14th November 2010. After the death of Raju, Section 302 IPC was added.

4. In his evidence, PW-19 stated that he went to the Swamy Dayanand Hospital (SDN) where he collected the MLCs of Dhanpal (Ex.PW7/B) and Monu (Ex.PW-7/A). Both MLCs stated that the injuries suffered by them were simple.

5. In his testimony before the Court, PW-8 Dhanpal, father of the deceased Raju, stated that at about 11.45 pm on 12th November 2010 while he was present at his house, one neighbour came and told him that a quarrel was going on between his son Surender (PW-5) and accused Sunder (A-1) and Vinod (A-2) in front of the factory of Banta Singh. He saw that both the accused had caught hold of his elder son Raju and were beating him with wooden phatties (sticks). When he tried to intervene, he was attacked by the accused as a result of which he sustained injuries on his head and left foot. Meanwhile, the other son Sanjay (PW-9) reached there and took Raju to Dr. Hedgewar Hospital.

6. Since PW-8 was not sticking to the version given by him to the police in the first instance he was cross-examined by the learned Additional Public Prosecutor (APP). PW-8 now clarified that on reaching the spot he saw that both the accused were beating Monu (PW-4) who was his neighbour. He also noted that his other son, Surender, (PW-5) was beating the accused to defend PW-4. In the meanwhile, Raju reached there and questioned them. Thereupon A-1 caught hold of Raju and exhorted A-2 stating that maar saale ko jyada bada neta banta hai.

A-2 then assaulted Raju on his head with a danda with intention to kill him.

7. It appears that A-1 and A-2 also received injuries and they were taken to SDN hospital. Their respective MLCs (Ex.DW-1/B and Ex.DW-1/A) show the nature of injuries of both of them to be simple.

8. The other witnesses who had spoken about the presence of both the Appellants on the spot and their attacking Raju are PW-4, Monu and PW-5, Surender. PW-6, Suraj and PW-9, Sanjay reached the spot and noticed Raju lying in the injured condition. They also noted PW-8 was in an injured condition. They spoke about Raju being taken to Dr. Hedgewar Hospital.

9. The trial Court on relying upon the above eye-witnesses held that the case against the Appellants had been proved beyond reasonable doubt. The trial Court convicted and sentenced the Appellant in the manner indicated hereinabove.

10. Learned counsel for the Appellants has taken the Court through the entire evidence. It was submitted that there were several inconsistencies in the versions of the prosecution witnesses. He focused on the place of occurrence and tried to develop the alternate theory that there were two places of occurrence in the prosecution case which vitiated the conclusion of the trial Court. He referred to the computerized site plan (Ex.PW-10/A) in support of his submission. He referred to the deposition of the prosecution witnesses who at various points had described the place of occurrence as either at the jhuggis near the school at Rani Garden or Rani Garden Chowk or the area opposite Banta ki factory.

11. The site plan Ex.PW-10/A gives the precise location of where the Appellants were beating PW-4 (marked A), where PW-5 and Raju had intervened (marked B), where A-1 caught hold of and A-2 attacked Raju with danda (marked C) and where PW-8 had intervened and got beaten by A-2 and A-1 (marked D). These four positions are outside the jhuggis near Rani Garden Chowk opposite Banta Singhs factory. This is more or less consistent with the place described by the prosecution witnesses. The Court is, therefore, not prepared to accept the submission of learned counsel for the Appellants that there is any reasonable doubt or confusion created as regards the area and place of occurrence.

12. An alternate theory sought to be developed by learned counsel for the Appellants was that Raju was not present at the place of occurrence and that he was run over by a car and had suffered injuries as a result thereof. In support of this submission, reliance is placed on the death summary (Ex.PW-20/A) issued by GTB Hospital which noted that patient allegedly had a history of RTA on 13 th November 2010 following which he got unconscious.

13. The report of the post-mortem (Ex.PW-3/A) conducted at GTB Hospital mentions the fact that the deceased suffered injuries after physical assault with sticks. As already noticed, even in the application of request for post-mortem (Ex.PW-17/A), the summary of the case was mentioned that PW-8 and Raju was beaten by the accused persons. The death report (Ex.PW-17/B) also noted that the injury on the head was caused by a wooden stick. Therefore, as rightly pointed out by learned APP, the above quoted line in the death summary (Ex.PW-20/A)

appears to be a mistake.

14. A reference has also been made to the answer given by Dr. Thejaswi, Senior Demonstrator, AIIMS, Delhi (PW-3) that the injuries suffered by Raju are possible with if hit with moving vehicle.

The above answer again cannot be read out of the context. When she was asked if it is possible to receive such an injury if the head of the deceased rammed against a stationery vehicle, she answered the negative and then gave the above answer which has been quoted. This cannot override the categorical written opinion and the description of the manner of the occurrence in the records of the case. PW-3 also opined that the wooden stick recovered by the police could have been used to cause injuries as a result of which Raju died.

15. It was submitted that there were no blood stains on the wooden stick despite the fact that Raju had died on account of head injury and even PW-8 had suffered head injury from the stick. It was further submitted that there was no mention in the MLCs as to all the accused causing injuries to the deceased.

16. The MLC need not set out all the details with regard to the offence. In the considered view of this Court, merely because the danda did not contain blood stains, the evidence of the injured eye-witnesses about the manner in which the occurrence took place does not get diluted. In the present case, the evidence of the injured eye-witnesses PWs 4, 5 and 8 is trustworthy and truthful.

17. The alternate theory that all the injured eye witnesses and the deceased suffered injuries as a result of being hit by car has not been substantiated by the defence. Only suggestions to that effect were given to some of the prosecution witnesses in their cross-examination, which of course were promptly denied.

18. Learned counsel for the Appellants tried to show inconsistencies in the evidence of the prosecution witnesses as regards who took deceased Raju to the hospital. While some witnesses deposed that he was taken by the PCR van, certain others stated that PW-9 took the deceased to the hospital. In the considered view of the Court, this is not a material inconsistency that affects the

case of the prosecution.

19. The MLC of the accused (Ex.DW-1/B and Ex.DW-1/A) reveals the presence of alcohol in both of them. This further lends credence to the version of the injured eye-witnesses.

20. The Court is unable to find any error having been committed by the trial Court in convicting the Appellants for the offence under Section 304 (Part-II), 323 and 34 IPC. Also considering the nature of the injuries and the manner of occurrence, sentence awarded to each of them cannot be said to be disproportionate.

21. The appeal is dismissed.

22. The trial Court record along with a certified copy of this judgment be sent back forthwith. S. MURALIDHAR, J.

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