

Sunil Vs. State

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Court : Delhi

Decided On : Apr-17-2015

Judge : Ashutoshkumar

Appellant : Sunil

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 634/2014 & Crl.M.B No.1042/2014 Reserved on:

11. 03.2015 Date of decision:

17. 04.2015 % SUNIL Through: Appellant Mr.Riyaz A. Bhat and Mr.Jacob Joseph, Advocates. versus STATE Through: + Respondent Mr.Varun Goswami, APP. Insp.Sunder Singh, Insp/Distt.Investigation Unit/Outer Delhi. CRL.A. 625/2014 & Crl.M.B No.1022/2014 BONZO LASSY Through: Appellant Mr.Divyesh Pratap Singh and Mr.Indresh Kumar, Advocates. versus STATE Through: + Respondent Mr.Varun Goswami, APP. Insp.Sunder Singh, Insp/Distt.Investigation Unit/Outer Delhi. CRL.A. 878/2014 & Crl.M.B No.10121/2014 SACHIN @ KAPIL Through: Appellant Mr.Sunil Tiwari, Advocate. versus STATE CRL.A.634/2014, 625/2014, 878/2014, 111/2015 & 112/2015 Through: + Mr.Varun Goswami, APP. Insp.Sunder Singh, Insp/Distt.Investigation Unit/Outer Delhi. CRL.A. 111/2015 & Crl.M.B No.188/2015

SAURAV @ GOLU Through: Appellant Ms.Nandita Rao, Advocate. versus STATE Through: + Respondent Mr.Varun Goswami, APP. Insp.Sunder Singh, Insp/Distt.Investigation Unit/Outer Delhi. CRL.A. 112/2015 & CrI.M.B No.189/2015
RANJEET SINGH Through: Appellant Ms.Aishwarya Rao, Advocate. versus STATE (GNCT OF DELHI) Through: Respondent Mr.Varun Goswami, APP. Insp.Sunder Singh, Insp/Distt.Investigation Unit/Outer Delhi. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE ASHUTOSH KUMAR ASHUTOSH KUMAR, J.

1. All the above captioned appeals are being disposed of by this common judgment.

2. The appellants namely

1) Sunil Kumar @ Monu;

2) Sachin @ Kapil;

3) Saurab @ Golu;

4) Bonzo Lassy @ Chinu and

5) Ranjeet Singh impugn the judgment of conviction dated 13.1.2014 passed by the Sessions Judge-II, West, Tis Hazari Courts, Delhi (FIR No.214/2009, Police Station Rajouri Garden). They have been convicted under Sections 302/120B and 34 of the Indian Penal Code (IPC for short). Appellant Saurab @ Golu and Ranjeet Singh have additionally been convicted under Sections 404 and 174A of the IPC respectively.

3. By order of sentence dated 7.3.2014, the appellants have been directed to suffer imprisonment for life, fine of Rs.20,000/- and in default of payment of fine undergo imprisonment for six months for the offence under Section 302 read with Section 34 of the IPC. Appellant Saurab has further been directed to suffer imprisonment for two years, a fine of Rs.5000/- and in default of payment of fine, simple imprisonment of one month for the offence under Section 404 of the IPC. Similarly, appellant Ranjeet Singh has been sentenced to undergo imprisonment

for three years, a fine of Rs.5000/- and in default of payment of fine to undergo simple imprisonment for one month for the offence under Section 174A of the IPC.

4. The prosecution story as per the version of Taj Ali (PW.9), younger brother of the deceased Irshad Ali, who is stated to be the only eye witness of the occurrence, is that on 21.6.2009, Irshad Ali (the deceased) along with the appellants was drinking beer near R Block jhuggis, DDA Flats, Raghubir Nagar. Taj Ali (PW-9) saw them at about 8.30 PM chatting amongst themselves and drinking beer when he had come out of his house. He thereafter went towards park and when he returned at about 9 to 9.30 PM, he saw that appellant Sachin @ Kapil and Bonzo Lassy @ Chinu had caught hold of the hands of Irshad Ali and Saurab @ Golu and Ranjeet Singh were assaulting him with knife and broken beer bottle, respectively. PW.9 also saw appellant Sunil Kumar @ Monu sitting on a motorcycle at some distance. When PW.9 raised alarm, appellant Ranjeet Singh sat on the motorcycle of Sunil Kumar @ Monu and both of them fled away. The other appellants also ran away towards the jhuggis. The injured was bleeding heavily. While PW.9 was in search of a vehicle to carry the injured to the hospital, Rajinder Seth (PW.17) along with Sabina Deol (PW.8, sister of PW.9 and the deceased) came in their vehicle. They were informed by PW.9 that miscreants had assaulted the injured and had run away. The injured was taken to Deen Dayal Upadhyay Hospital by PW.9 with the help and assistance of PW.8 and PW.17. At the hospital the injured was declared brought dead. PW.9 thereafter went to Ghazipur in Uttar Pradesh to inform his parents, who according to him had gone there to meet relatives.

5. Dr.Komal Singh (PW.16) had performed the autopsy on the dead body on 23.6.2009 at 2.30 PM and opined that the death was because of haemorrhagic shock as a result of piercing injuries to the femoral vessels. The post mortem report (Ex.PW.16/A) revealed as many as 11 incised wounds, all of which were ante mortem, of the same duration and sufficient in the ordinary course of nature to cause death. The post mortem injuries and the opinion of the doctor are as follows:1. Superficial clean incised wound present over right eye brow towards the right forehead (lateral side) size 10.0 x 1.5 cm, obliquely placed, ecchymosis present around the wound and wound is also covered by clotted and liquid blood.

Its both angles are acute and margins are regular.

2. Superficial clean incised wound present over the right latero posterior side of the neck, transversely placed size 5.0 x 2.0 cm, ecchymosis present around the wound and wound is also covered by clotted and liquid blood. The wound (sic.) below from the right mastoid. Its both angles are acute and margins are regular.

3. Superficial clean incised wound present over, 2.5 cm above from right angle of mandible, transversely placed, size 2.5 x 1.0 cm, ecchymosis present around the wound, wound is also covered and clotted and liquid blood. Its both angles are acute and margins are regular.

4. Superficial clean incised wound present at the base of chin, transversely place size 2.5 x 0.5cm, ecchymosis present around the wound is also covered and clotted and liquid blood. Its both angles are acute and margins are regular.

5. Superficial clean incised wound present on the left shoulder on the anterior aspect, transversely placed and size 8.0 x 2.5cm, ecchymosis present around the wound and wound is also covered and clotted and liquid blood. Its both angles are acute and margins are regular.

6. Three superficial clean incised wound present transversely just above the upper lip, their size being 4.0 x 0.5cm, left lateral side of lips and size 3.0 x 1.0cm and third one just 2.0 cm lateral to the previous one and size 4.0 x 2.0cm ecchymosis present around the wound and wound is also covered and clotted and liquid blood. Its both angles are acute and margins are regular.

7. Superficial CIW present just lateral to left eye size 1.0 x 0.5cm ecchymosis present, wound is covered with clotted and liquid blood, margins are regular.

8. A pressure abrasion and irregular shape size 4.0 x 3.0cm reddish in colour.

9. Transverse incised cut mark over the middle phalynx of right index, large, right and little finger varying size from 2x1 to 3x1cm, surrounded by the blood clots.

10. Superficial CIW present 6.0 cm above from left knee joint on the lateral aspect size 3.0 x 1.5cm, transversly placed, clotted blood present around it.

11. Penetrating clean incised wound present on left anterior aspect of the thigh, placed obliquely, one angle is acute and other obtuse, 18.0 cm above from left knee joint. Size being 2.9 x 1.5cm, ecchymosis and clotted and liquid blood present around wound. On further exploration: It was found to be 12.0 cm deep, all the muscles, etc. were cut and femoral vessels were cut through and through. All the tissues surrounding the wounds are stained clotted and liquid blood. Opinion regarding cause of death Haemorrhagic shock, subsequent to the piercing injury to the femoral vessels. This injury was sufficient to cause death in ordinary course of nature. Manner of injuries are homicidal. All injuries are ante mortem in nature and same in duration. The blood and viscera is sent to rule out any concomitant intoxication. Finger clipping are sent to analysis to know, presence of any tissue of the accused which may have embedded in the finger during the struggle.

6. From the medical testimony, it is apparent that the deceased died a homicidal death.

7. Taj Ali (PW.9), in his court deposition has fully supported and categorically stated what he had spoken before the police during the course of investigation. Factual narration is identical and affirms the version set out in paragraph 4 above. After the death of the deceased, PW.9 left for Ghazipur to inform his parents. He joined the investigations only on 23.6.2009 when he disclosed the specific roles played by each of the appellants. However, what is noticeable is that he did not know the parentage and the address of appellant Sunil Kumar @ Monu and only referred to him as Monu. He has admitted that Monu was not arrested in his presence. PW.9 has further stated that there were monetary transactions between the deceased and appellants Saurab @ Golu and Ranjeet Singh. He claimed to know the appellants from before as they often visited his brother. About 10-15 days prior to the incident, the deceased had told him that he had to make payment to Saurab @ Golu.

8. After having returned from Ghazipur in the morning of 23.6.2009, PW.9 gave his blood stained T-shirt and trousers to the SHO, Sunder Singh, PW.21. He has further deposed that the place where the occurrence took place was hardly two blocks away from his residential house.

9. Thus from the statement of PW.9, it is clear that he saw the actual assault and after the death of Irshad Ali, he had left for Ghazipur to inform his parents.

10. Rajinder Seth (PW.17) has stated that he along with Sabina Deol (PW.8), while on way to the house of the parents of Sabina Deol, came at the place of occurrence, namely at the road near DDA colony and saw that a crowd had gathered there. PW.9, who was crying came and told them that miscreants had killed his brother. The injured was lifted and taken to Deen Dayal Upadhyay hospital for treatment. The injured was declared brought dead. The statement of PW.17 (Ex.PW.17/A) was recorded by the police at 2.30 AM at the place of occurrence in the presence of the SHO.

11. Similarly, Sabina Deol (PW.8) supported the prosecution version as she has narrated the factum of her having reached the place of occurrence along with PW.17, where her brother PW.9 told her about the occurrence. She along with her brother PW.9 and her relative PW.17 took the injured to the Deen Dayal Upadhyay hospital where the deceased was declared dead. She has stated that she became unconscious in the hospital and regained her consciousness only at about 12 in the midnight when she found herself in her house. She did not ask about the assailants from PW.9 in the car while travelling to the hospital. She has also testified to the fact that PW.9 had gone to Ghazipur to call his parents.

12. The learned counsels for the appellants, in unison, raised doubts about the correctness of the testimonies of the aforementioned prosecution witnesses namely PWs.8, 9 and 17. The major thrust of challenge and the reason for doubting their statements is the silence and failure of PW.9 in naming the assailants before his sister (PW.8) and Rajender Seth, (PW.17). It is urged that if PW.9 had seen the occurrence and the act of the appellants, he ought to have stated this fact to PW.17 and PW.8, while on way to the hospital or in the hospital. Not having done so, it was argued, casts a serious doubt over the truthfulness and identification of the appellants by PW.9. Further, the conduct of PW.9 of having gone to Ghazipur from the hospital, it is contended, is abnormal. The normal conduct of a younger brother of the deceased would have been to lodge the first information report, name the assailants of the deceased before the police

immediately, if possible, ensure their arrest and arrange for and perform the last rites. Suspicion arises on the ground that if at all PW.9 had left for Ghazipur in the night intervening between 21st and 22nd of June, 2009, it would not have been possible for him to come back to Delhi in the morning of 23rd June, 2009, when it is stated, he joined investigation and named the appellants. Cumulatively, it is submitted that these facts only point that PW.9 was not an eyewitness to the occurrence.

13. The learned APP, however, contended that PW.9 is a reliable witness and not naming the assailants before PW.17 and PW.8 does not make him untrustworthy. PW.9, on seeing the brutal assault on his elder brother at the hands of the accused persons leading to his death, would not be in a balanced state of mind for stating the names of each one of the assailants who were not known to PW.8 and PW.17 or to the police. In fact the most natural conduct of any brother would be to rescue and save the injured. It was submitted that there is nothing on record to suggest that the names of the appellants (assailants) were known to either PW.17 or PW.8. Their testimony does not reflect or indicate that PW.9 had not seen the occurrence and did not know the assailants.

14. In support of his argument, learned APP has placed reliance on *Ramesh vs. State*, AIR 2014 SC2852 where the question came up for consideration, whether the absence of name of the accused in the FIR points towards the innocence of the accused and entitles him for acquittal. In that case, the father of the deceased child had suspected one of his relatives but initially did not take his name. Later on, investigations revealed that the relative only had committed the act which fact was further corroborated by the recovery of a wearing apparel of the deceased, pursuant to the confession of the said accused. The Supreme Court concurred with the view of the High Court that non mentioning of name in the FIR, in all cases would not be fatal.

15. In *Jitender Kumar vs. State of Haryana*, (2012) 6 SCC204 it has been held by the Court in paras 16 and 18 as under:

16. As already noticed, the FIR (Ext.P-2) had been registered by ASI Hans Raj, PW13 on the statement of Ishwar Singh, PW11. It is correct that the name of

accused Jitender, son of Sajjan Singh, was not mentioned by PW11 in the FIR. However, the law is well settled that merely because an accused has not been named in the FIR would not necessarily result in his acquittal. An accused who has not been named in the FIR, but to whom a definite role has been attributed in the commission of the crime and when such role is established by cogent and reliable evidence and the prosecution is also able to prove its case beyond reasonable doubt, such an accused can be punished in accordance with law, if found guilty. Every omission in the FIR may not be so material so as to unexceptionally be fatal to the case of the prosecution. Various factors are required to be examined by the court, including the physical and mental condition of the informant, the normal behaviour of a man of reasonable prudence and possibility of an attempt on the part of the informant to falsely implicate an accused. The court has to examine these aspects with caution. Further, the court is required to examine such challenges in the light of the settled principles while keeping in mind as to whether the name of the accused was brought to light as an afterthought or on the very first possible opportunity.

17. xxxxx 18. The court has also to consider the fact that the main purpose of the FIR is to satisfy the police officer as to the commission of a cognizable offence for him to conduct further investigation in accordance with law. The primary object is to set the criminal law into motion and it may not be possible to give every minute detail with unmistakable precision in the FIR. The FIR itself is not the proof of a case, but is a piece of evidence which could be used for corroborating the case of the prosecution. The FIR need not be an encyclopaedia of all the facts and circumstances on which the prosecution relies. It only has to state the basic case. The attending circumstances of each case would further have considerable bearing on application of such principles to a given situation. Reference in this regard can be made to State of U.P. vs. Krishna Master and Ranjit Singh vs. State of M.P.

16. In response to the comment on the conduct of PW.9, the state has relied upon the Supreme Court in Lahu Kamlakar Patil and Anr. Vs. State of Maharashtra, (2013) 6 SCC417 which has noted that witnesses may behave differently. Some may run away from the scene because of fear. Some due to shock become

perplexed, immediately after the occurrence, and are unfit to make any statement. Others could muster up courage to come forward to narrate about the incident. The behavioural pattern differs from person to person and it would not be proper to expect uniformity in human reaction. What is to be borne in mind is that if the conduct of a witness is so unnatural being totally discordant with the acceptable human behaviour, then his testimony definitely becomes questionable and could be discarded.

17. That PW.9 is an eye witness to the occurrence is indubitable. That his statement is consistent with the medical evidence, further lends credence to the prosecution version that he was at the spot and saw the occurrence taking place. He may not have named the appellants before PW.17 and PW.8 or left for Ghazipur without joining the investigation or lodging the first information report, would not render him an unreliable witness and make his testimony suspicious and doubtful. The rule of prudence does require that names of the accused persons be disclosed without any delay and that too in the first instance by any eye witness, nonetheless no fetish could be made out of such a rule and a witness who is otherwise reliable cannot be ignored merely because of such non disclosure by him at an early point of time.

18. One Ishrar Ahmed has been examined as a defence witness (DW-1) who has deposed that there was no night bus service of roadways in the month of June, 2009 from Delhi to Ghazipur. The last bus, according to him, was scheduled at 12.30 at noon. He has also spoken about the approximate distance between Delhi and Gazipur being 860 kms and that it would take approximately 24 hours to travel from Delhi to Ghazipur by a roadways bus. We have examined his statement. He does not say that one could travel to Ghazipur from Delhi in the night. All that he has stated is that there was no direct bus service from Delhi to Ghazipur at night. PW.9, therefore, had sufficient time go to Ghazipur and come back to join the investigations on 23.6.2009.

19. We are thus of the opinion that PW.9 is wholly reliable and his testimony could not be jettisoned or discarded.

20. It has been argued on behalf of the defence that as per the deposition of witnesses, the situs of occurrence could not be established. Three places are shown to be the place of occurrence namely Vishal Enclave, Janta Flats (as per DD No.38A, Ex.PW.11/A); gas godown (as per rukka Ex.PW.17/A) and R block jhuggis, DDA flats, Raghubir Nagar (as per testimony of PW.9).

21. The place of occurrence was visited by the crime team. SI Gulshan Kumar (PW.12) has stated that he inspected the spot and got the site photographs. He prepared the crime report (Ex.PW.12/A). He was at the place of occurrence on 22.6.2009 between 1.30 AM to 2.30 AM and had found blood at three places. One chain, broken bottles and plastic glasses were also found at the spot. Similarly, Sanjay Kumar (PW.18) who was posted as Sub Inspector at Rajouri Garden police station, had gone to the situs at about 2.30 to 3 AM in the night intervening between 21.6.2009 and 22.6.2009. In his presence, the SHO (PW.21) also reached the spot. He has testified to the fact that PW.21 carried out further inspection and seized blood, blood stained earth, earth control and broken pieces of beer bottle. Locks of hair and a piece of golden chain was also seized vide separate seizure memo (Ex.PW.3/A) which was signed by PW.18. The pieces of beer bottles etc and broken chain were also seized (Ex.PW.3/B and PW.3/C respectively).

22. On analysis it will appear that all the documents on which the prosecution has relied upon and the testimonies of the witnesses point towards the occurrence taking place at R Block jhuggis near DDA flats of Raghubir Nagar. Gas godown and Vishal Enclave (Janta flats) are only the benchmarks for identification of the place of occurrence. The Trial Court has rightly observed at para 57 of the judgment that the contention of the defence that the place of occurrence is unidentifiable is not sustainable. Para 57 of the said judgment is as under:

57. The contentions of Id. counsel for the accused persons that place of incident is not identifiable, is not sustainable precisely for the reasons that as per deposition of PW13SI Mahesh Kumar (Draftsman) the place of incident which he had visited was road near Gas Godown in front of DDA Flats, Shivaji Enclave; as per the disclosure statement Ex.PW15/A of accused Bonzo Lassy @ Chinnu and his

pointing out memo Ex.PW15/A the place of occurrence has been shown as Gas Godown Road in front of Gas Godown, Shivaji Enclave, Delhi and these memos have duly been authenticated and signed by two witnesses namely SI Samay Kumar and HC Kapil Kumar, which was prepared by Insp. Sunder Singh, SHO PS Rajouri Garden. Thus, on perusal of the depositions of PW9Taj Ali; PW13SI Mahesh Kumar, PW15HC Kapil Kumar and PW17Rajender Seth and exhibits i.e. PW13A (scaled site plan); PW15E (pointing out memo); and PW18A (Rukka) proves beyond reasonable doubt that the place of incident was road near Gas Godown, DDA Flats, Shivaji Enclave. Therefore, the contentions of Id. counsel for the accused persons that place of incident is unidentifiable, is not sustainable.

23. On behalf of the appellants it was contended that there is discrepancy qua the time and place of arrest of one of the appellants namely Bonzo Lassy @ Chinu. Assuming that there is some discrepancy with respect to the ocular testimony about the time and place of arrest of one of the accused persons, that by itself would not make the entire case doubtful. Such discrepancies when in the nature of shortfalls in the investigation would not bend or affect the credibility of the substantial and primary evidence proved and established.

24. The appellants contend that the knife used by Saurav @ Golu, has not been recovered. Such non recovery of the weapon of assault, it is argued, has weakened the prosecution case. The law with regard to the recovery/non recovery of the weapon of assault is well established. In Lakshmi & Ors. vs. State of U.P, 2002 (7) SCC198 the Supreme Court has held as hereunder:

17. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury could be inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder.

In Lakhan Sao vs. State of Bihar and Anr, 2000 Vol.9 SCC page 82, the Supreme Court at page 87 para 18 has held as under:

18. The non-recovery of the pistol or spent cartridge does not detract from the case of the prosecution where the direct evidence is acceptable.

Similar views have been taken by the Supreme Court in State of Rajasthan vs. Arjun Singh, (2011) 9 SCC115 and Mritunjoy Biswas vs. Pranab Alias Kutti Biswas and Anr, (2013) 12 SCC796. Thus where there is clear, unimpeachable and trustworthy ocular evidence available which is fully corroborated by the medical testimony, non recovery of weapon would not, in any manner affect the prosecution case.

25. On going through the records of the case, we do not deem it appropriate to take notice of the recoveries. The crime team report of PW-12 (Ex.PW.12/A) does not mention any gold chain or gold coloured chain rather it speaks of a cream coloured chain. What has been recovered on the disclosure of appellant Saurav @ Golu is a part of the same chain (Ex.PW.15/X) which purportedly belonged to the deceased. Recovery of broken part of the chain does not appear to be very material and is also questionable whether it was part of that gold chain, of which one part was seized by the crime team. The recovery at the instance of appellant Ranjeet Singh has also been effected after a long time and it is difficult to believe that an accused would have kept incriminating materials with him for such a long time. However, what is noticeable here is that there is no recovery from Sunil @ Monu.

26. The element of motive namely some money being due as against the deceased, has not been established by the prosecution. PW.9 has stated that about 10-15 days prior to the occurrence, the deceased had confided in him that he owed some money to appellant Saurav @ Golu and Ranjeet Singh which was to be paid in due course of time. What amount was due and in which connection money was taken has not been stated by PW.9. Presence of the appellants with the deceased and the fact that they were having beer, indicates that the relationship had not soured or had become antagonistic. We also do not intend to deal with the sufficiency of the motive for the reason that there is direct evidence

which is clear and cogent, regarding the participation of the appellants in the crime. There could be myriad reasons for committing the crime. Only the perpetrators of the crime can know about the motive which impelled them to behave in the said manner.

27. The other surrounding circumstance, on which the prosecution relies is the evidence of PW.20 Dr.Kumar Narender Mohan, Medical Officer of DDU Hospital. He had identified the handwriting of Dr.Kritya Dubey who had treated appellant Bonzo Lassy. The MLC of appellant Bonzo Lassy (Ex.PW.20/A) discloses that he had suffered some minor injuries on his person. This corroborates involvement of Bonzo Lassy at the place of occurrence and his participation.

28. We now proceed to examine whether at the time of the occurrence all the appellants had common intention of killing the deceased. We have noticed the fact that PW.9, an eye witness, has specifically stated that while the deceased was caught by the appellants Sachin @ Kapil and Bonzo Lassy @ Chinu, and Saurab @ Golu had inflicted knife blows. Simultaneously appellant Ranjeet Singh assaulted the deceased with a broken beer bottle.

29. It has been argued on behalf of the appellant Bonzo Lassy and Sachin @ Kapil that the allegations against them are vague and of general nature. The accusations are of a very weak type. There was no occasion for the appellants Sachin and Bonzo Lassy to have caught the deceased. The deceased was alone and in all its eventuality, even if attacked, would not have been in a position to resist. The said contention of the learned defence counsel is not worthy of acceptance. Appellant Sachin and Bonzo Lassy, by their conduct and overt act of catching the deceased, facilitated infliction of blows by knife and broken bottle. The fact that the said appellants and the deceased were, about an hour before the assault, talking to each other and drinking beer would be no ground to believe that later the assault could not have taken place.

30. It has, in the alternative, been argued that assuming that the deceased was inflicted injuries by means of knife and beer bottle, the injuries being on non vital part of the body reflect lack of intention to kill the deceased.

31. A bare look at the number of injuries on the person of the deceased would belie this contention. It is not the case of a single injury at the spur of the moment. From the nature of injuries, it is apparent that the deceased was completely immobilized, making it difficult for him to escape the place of occurrence and was assaulted by the appellants leading to his immediate death. In fact the deceased did not even survive for preliminary treatment at the hospital. We have noticed that he was declared brought dead.

32. There could be no doubt about the fact that the aforesaid four persons had the intention to cause the injuries participated in the occurrence and ultimately killed the deceased. The injuries were sufficient to cause death in ordinary course of nature.

33. However, so far as Sunil Kumar @ Monu is concerned, there is consistency in the pre-trial and durante trial statement of PW-9 that he was sitting on a motorcycle at some distance. It has been alleged by PW-9 that after he raised an alarm, co-accused Ranjeet Singh sat on the motorcycle of appellant Sunil Kumar @ Monu and escaped from the place of occurrence. The other appellants ran towards the jhuggis. Assuming the fact that one of the assailants left the place of occurrence along with the appellant Sunil Kumar @ Monu then also in the absence of any other incriminating material it would be difficult for us to hold that he shared the common intention.

34. Section 34 of the IPC, so far as appellant Sunil Kumar @ Monu is concerned cannot be invoked as there is no evidence of the fact that he acted or demonstrated common intention with the other appellants. Merely because he was seen by PW-9 sitting at some distance on a motorcycle, by itself would not lead us to the conclusion or inference that he was aware of the intentions of the other persons. True it is that one of the appellants namely Ranjeet Singh left the place of occurrence along with him but other appellants also ran towards the jhuggis. Even then, common intention cannot be assumed. It is not the case of the prosecution that appellant Sunil Kumar @ Monu was standing or guarding the scene of crime or was standing ready to effect the escape of one of the accused. Common intention of Sunil Kumar @ Manu in participation in the crime, therefore, is not

established.

35. Thus on the basis of the aforementioned discussion, the conviction of the appellants Saurab @ Golu, Bonzo Lassy @ Chinu, Sachin @ Kapil and Ranjeet Singh is sustained. They shall serve out the remainder sentence.

36. Since the participation of appellant Sunil Kumar @ Monu in the crime could not be established, his conviction is set aside. He be released forthwith if not detained in any other case.

37. The appeal is partly allowed.

38. The records of the case be sent back. (ASHUTOSH KUMAR) Judge (SANJIV KHANNA) Judge APRIL17 2015 k

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