

Robil Shah @ Kale and ors. Vs. State

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Court : Delhi

Decided On : Jan-04-2005

Reported in : 2005CriLJ2630; 117(2005)DLT106; 2005(79)DRJ661

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code (IPC) - Sections 148, 149, 307 and 308; Code of Criminal Procedure (CrPC) - Sections 100 and 161

Appeal No. : Crl. A. No. 441/1999

Appellant : Robil Shah @ Kale and ors.

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : B.T. Singh,; A.S. Anand and; M.K. Jha, Adv.

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. Appellant Sultan Singh, Jai Kumar and Rajender are brothers. Appellant Robin Shah @ Kale is the son of Sultan Singh. Appellant Deepak is the son of Rajender. All of them were charged of having committed an offence under Section 148 IPC

and Section 307 read with Section 149 IPC. As per the charge framed against the appellants on 23.4.1998, appellants were charged of having formed an unlawful assembly with a common object, being armed with lathi and knife at about 2.30 AM on 16.3.1997 at House No. D-674, Nathupura, for purposes of rioting. Further, appellants were charged that on the said date, time and place, while forming an unlawful assembly with common object, they caused injury on the person of Jagdish (PW.3) with intention to commit his murder or with the knowledge that if death had been caused due to injury, appellants would have been guilty of committing his murder.

2. At the end of the trial, vide judgment dated 27.7.1999 in Sessions Case No. 52/1998, appellants were held guilty of both the charges. Vide order dated 29.7.1999, sentence of 6 months RI was imposed upon the appellants for offence under Section 148 IPC. For offence under Section 307 read with Section 149 IPC they were sentenced to undergo RI for 3 years and fine of Rs. 500/- each. In default of payment of fine, it was ordered that the appellants shall undergo RI for 3 months.

3. While imposing a lighter sentence, learned Additional Sessions Judge has been influenced by the fact that some of the appellants are students and that the injured was related to the appellants. If lenient view was taken it will be a factor for improving relations between the parties. Learned Additional Sessions Judge was further influenced by the fact that the appellants do not have any unfavorable past record.

4. Criminal investigation was set into motion when PW.9 Ct. Satish Kumar posted at P.S. Timar Pur was on patrol duty in the night of 15-16/3/1997 and heard quarrelsome noise at 2.30 A.M. at Village Nathupura. He reached the spot. A PCR van also arrived. Injured was taken to hospital in a PCR van. Wireless message was flashed pursuant where to D.D. entry 34 was recorded at Police Post Burari at 2.45 AM in the night, recording that at House No. D/670, Nathupura a person has been stabbed. On receipt of information aforesaid, ASI Mahipal PW.10, accompanied by HC Randhir (PW.8) reached the spot and learnt that the injured named Jagdish (PW.3) was removed to hospital. PW.10 reached Hindu Rao

Hospital and found injured admitted. Doctor declared him fit for statement which was recorded, being Ex. PW. 2/B.

5. Statement of the injured, Jagdish (PW-3), recorded at 2.30 A.M. on 16.3.1997 was to the effect that he was a resident of House No: D-674, Nathupura. They were 8 brothers and sisters. Ranjit, Suresh, Jai Kumar (accused), Krishan and Om Kumar were residents of village Nathupura and their houses were adjoining to his house. His 2 other brothers Rajender (accused) and Sultan (accused) reside in J.J. Colony Wazirpur and Mangolpuri respectively. Pradhan of Village Nathupura had gifted a 500 sq. yards plot, No. D-685, to his late mother Smt. Umrao Wati who use to reside with him. Before her death she gifted the said plot to him and his two brothers Ranjit and Suresh. Said plot was in possession of the three brothers. He was sleeping in his house when at about 2.30 AM he heard barking of dogs as a result of which he awoke. On coming out of house he saw his brothers Jai Kumar, Sultan, Rajender and their sons Robin @ Kaley S/o Sultan and Deepak S/o Rajender accompanied by 1-2 persons whom he can recognise if shown to him. These persons wanted to dispossess him from the said 500 sq. yards plot. He challenged them to prevent the trespass. They attacked him. On hearing noise, his brothers Ranjit and Suresh reached the spot. Rajender, Jai Kumar, Sultan and Deepak assaulted him with lathis which they were carrying in their hands and the persons accompanying them threw stones at him. Deepak s/o. Rajender and Robin @ Kaley S/o Sultan pinned him to the ground. Kaley stabbed him in the stomach and buttocks. All these persons attempted to take possession of his plot while being fully armed. He has been injured with sticks, knife and stones with the intention to kill him.

6. Pursuant to statement aforesaid, PW-2, HC Babu Lal recorded the FIR, Ex. PW-2/A, at 5.10 AM on 16.03.1997.

7. M.L.C. of the injured, Ex. PW-1/A, recorded following injuries:

(i) Stab wound, 1 inch on left lumbar region of anterior abdomen wall with fat protruding from wound.

(ii) 2 incised wounds, 1 inch each on left gluteal region.

(iii) CLW 2 inch on right parietal region of scalp.

(iv) CLW 3 inch on left parietal region of scalp.

8. Stomach, left buttock and scalp of the injured were recorded as bleeding.

9. Appellants were arrested. Weapon of offence being the knife and lathi's were not recovered.

10. Dr. D.K. Dass, G.D. M.O. Hindu Rao Hospital, PW.1, who had examined the injured proved the M.L.C. Ex. PW-1/A. Dr. B.R. Choudhary Sr. Resident Hindu Rao Hospital to whom the injured was referred by PW-1 proved his opinion recorded on the MLC. Opinion being Ex. PW-4/A. He deposed that injuries were dangerous. He opined that weapon used was sharp object.

11. PW-1 was not subjected to any cross-examination. In cross-examination, PW-2, on basis of operation record started he had opined the injuries to be dangerous as stab injury on stomach required major surgery. He stated that patient was discharged on 29.3.1997.

12. In his deposition, Jagdish PW-3, stated that on 16.3.1997 when he was sleeping in his room he heard barking of dog and came out. Accused who were armed with lathis started beating him. He cried out 'Mar diya Mardiya'. Nathu, Pradhan of village Nathupura had gifted a 500 yard plot to his mother Smt. Umrao Wati. Said plot was gifted by his mother to him, Ranjit and Suresh. Accused Deepak fell him on the ground and Robin @ Kale attacked him on his stomach and left hip. Other accused attacked him with lathis and stones. He was taken to Hindu Rao Hospital in a PCR Van where police recorded his statement Ex. PW-2/B. His signatures were at Point A.

13. In cross-examination, PW-3 admitted sour relations with the accused and civil litigation between the brothers. He also stated that accused Robin @ Kale had attacked him with a knife. He stated that on hearing his cries, his brother Ranjit came to the spot. He denied the suggestion that he was injured by some other persons of the locality as he was caught being intoxicated.

14. Two brothers of the injured (who were also the brothers of 3 of the accused and real uncles of 2 accused) namely Suresh and Ranjit were examined as PW-6 and PW-5 respectively.

15. Ranjit PW-5 deposed that on hearing cries to Bachao Bachao of his brother Jagdish he rushed to the spot and saw accused beating Jagdish with sticks. Presuming him to be dead they rushed towards him. At this stage, with permission of the Court witness was permitted to be cross-examined as he was started to be not deposing as per his statement recorded under Section 161 Cr.P.C.

16. Cross-examined by the learned A.P.P. he stated that Kale inflicted knife injuries on Jagdish and on his raising noise, Suresh PW-5 also came. He took Jagdish to Hindu Rao Hospital.

17. Cross-examined by the accused, he stood his ground. Nothing material was pointed out by counsel for the appellant to me which could discredit this witness, save and except that the witness was declared hostile and was not trust worthy. It was also urged that this witness admitted sour relations within the family.

18. Suresh, the other brother, examined as PW-6 deposed that he came out of his house on hearing noise and saw accused assaulting Jagdish being armed with lathis. He stated that he only saw lathis with the accused. He was cross-examined by the learned A.P.P. with permission of the Court as he was stated not to be deposing as per his statement recorded by the police under Section 161 Cr.P.C. In said cross-examination he admitted that PW-5 was at the place of the incident and he had tried to save Jagdish. He was confronted with his statement recorded by the police where it was recorded that he saw Kale inflict knife injuries on Jagdish. He denied having so stated. Cross-examined by the accused, he admitted sour relations within the family. He admitted that 10-12 persons of the locality had gathered at the spot.

19. PW-8, HC Randhir who had accompanied ASI Manipal Singh (PW-10) when information was received at the police post of stabbing and the two had gone to the spot, stated that when they reached the spot 8-10 public persons were present. I.O. enquired from them about the incident. They stated that they had not

witnessed the incident.

20. ASI Manipal Singh (PW-10) deposed about recording of the statement of Jagdish (PW-2/B) and preparation of site plan Ex. PW-10/A. He stated that he had recorded statement of PW-5 and PW-6. He deposed about collecting MLC and blood stained clothes of Jagdish. He deposed about arrest of the accused.

21. Impugned judgment of the learned ASJ shows that 12 points were urged by the accused. 1st point urged that as per PW-3 he had disclosed the names of the assailants to PW-1 but these were not recorded on the MLC therefore PW-3 should be disbelieved has been repelled by the learned ASJ on the ground that the doctor is to record MLC as per columns specified and it is not for the doctor to record the statement of the injured. 2nd point noted is that it was argued that there was discrepancy in the statement of PW-3 who stated that he was injured with a knife but doctor stated that the injury was caused by a blunt object. It has been repelled by holding that PW-1 stated that weapon was 'blunt and shape'. I may only add that the word 'shape' appears to be a typography error. It makes no sense to read 'blunt and shape'. The word shape should read 'sharp'. Probably the knife had one blunt edge and the other sharp. In any case, PW-4 who had operated upon PW-3 clearly deposed that 'weapon used was a sharp object.'

22. 3rd point noted was that it was urged that it was dark and therefore it could not be ascertained as to who caused which injury. It has been repelled on the basis of categorical deposition of PW-3 on the point. 4th point noted was the contention that the weapon of offence were not recovered. It was repelled by holding that in view of oral and medical evidence, it was immaterial that the knife and lathis were not recovered. 5th point noted is that it was urged that there was enmity between the parties. It has been repelled by holding that this by itself was immaterial. I may only note that enmity is a double edged weapon. It requires the court to be on guard against false implication and no more. 6th point urged was that no public witness was associated. It has been repelled on the ground that it is well known that public witnesses generally do not want to be associated with criminal cases. I may only add that PW-8 had stated that 8-10 persons were found at the spot but on being questioned by IO stated that they had not witnessed the

incident.

23. 7th point urged was that PW-3 in his examination-in-chief did not state that he received injuries in the abdomen. Learned ASJ has repelled it by noting that this was stated by WP-3 in cross-examination. I may note that in his examination-in-chief PW-3 stated that Kale had attacked him on the abdomen and hip.

24. 8th point noted by the Learned ASJ was the argument that PW-3 stated that police took him to the hospital after he was injured, whereas Ranjeet (PW-5) stated that he took PW-3 to the hospital. It has been held that both versions were not contradictory inasmuch as Ranjeet having accompanied injured to the hospital in the PCR Van cannot be ruled out. It has to be noted that MLC (Ex. PW-1/A) records that the injured was brought in a PCR Van and ASI Feru Singh had accompanied the injured. PW-9, Ct. Satish also deposed that the injured was taken to hospital in a PCR Van. 9th point urged was that personal search memo of the accused are not signed by independent witnesses. Learned ASJ has repelled the argument by holding that requirement of joining independent witnesses is must only when recovery is effected from house search under Section 100 Cr.P.C. To my mind, said point is otherwise irrelevant inasmuch as no personal recovery is relied upon by the prosecution as a piece of evidence.

25. 10th point urged was that as per evidence, accused were armed only with lathis. It has been repelled on the testimony of PW-3 and PW-5. It has to be noted that both categorically deposed that accused Mr. Kale was armed with a knife. 11th point urged was that the injuries suffered by PW-3 were not of the kind that they would endanger life. Learned ASJ has noted the testimony of PW-1 who had examined the injured. PW-1 stated that fat was coming out of the stomach injury which required major operation. I may only add that Dr. B.R. Choudhary who was examined as PW-4 corroborated the dangerous nature of the injuries in reference to his opinion appended on the MLC, being Ex. PW-4/A. It has further to be noted that the injured remained in hospital for about 13 days. He was operated upon. I would be dealing with the nature of injuries a little later in the context of the arguments of learned counsel for the accused that conviction cannot be sustained under Section 307 IPC.

26. Having gone through the case of the prosecution and the evidence on record, learned counsel for the accused could hardly create any dent in the impugned judgment. Except for trifles here and there in the evidence, nothing of substance could be brought out during arguments. The impugned judgment, in my opinion has considered the evidence on record from all probabilities. I see no reason to differ with the view taken by the learned ASJ. Evidence on record unerringly points to the guilt of the accused and excludes possibility of innocence. It may be true that there was enmity within the family. This is no reason to presume that the accused have been falsely implicated. It has also to be noted that two of the accused were apprehended at the spot.

27. Shri B.T. Singh, learned counsel for the appellants urged that on the evidence on record, at best case is made out under Section 308 IPC. Counsel urged that from the evidence on record, intention to commit murder of Jagdish cannot be culled out.

28. Intention is a mental state of a person. It cannot be ascertained with an instrument. Since intention manifests itself in an overt act, intention has to be gathered from the act of the party. In a case of the kind, weapon of offence, nature of injuries, body parts towards which injuries are directed, guide in formation of the opinion as to intention.

29. 5 injuries were inflicted on Jagdish. 2 injuries are directed towards these skull. 1 injury was directed towards abdomen. 2 injuries were directed towards the hip. Injury on the abdomen is a deep penetrating wound. Fat was precluding from the wound. Injured had to be operated upon. He remained hospitalized for 13 days. I see no reason to differ with the view taken by learned ASJ that keeping in view the nature of the injuries; the body part towards which they were directed; case is made out for conviction under Section 307 IPC.

30. Accused person, being five in number formed an unlawful assembly. With a common object, they assembled and proceeded to attack PW-3. They were armed with Lathis and a knife. Evidence on record justifies conviction under Section 148 IPC and Section 307 read with Section 149 IPC.

31. On the issue of sentence, as noted, learned ASJ has taken a most lenient view for reasons recorded in the order of sentence. There is no scope for reduction.

32. Appeals are dismissed. Accused are on bail. They shall surrender to serve the unexpired sentence.

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