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Daya Kishan and ors. Vs. State

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Court : Delhi

Decided On : May-21-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 148, 149, 300, 302, 304 and 323

Appeal No. : Crl. Appeal No. 545/2010

Appellant : Daya Kishan and ors.

Respondent : State

Advocate for Def. : M.N. Dudeja, A.P P.,; Sunil Mittal and; Shyam Sharma, A

Advocate for Pet/Ap. : D.K. Sharma and; K.K. Koul, Advs.

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. For the third time in succession within a span of 15 days, once again we find that the same Trial Judge has ignored relevant and material evidence. Gullibly, the eye witness account has been accepted. More than 30 citations have been noted, but the ratio of none has been culled out. Why have they been noted has not even been brought out. If the decisions were indeed cited, and if none was relevant, we

expect brief reasons to be brought on record for ignoring the citations as being irrelevant.

2. We have repeatedly highlighted the uselessness of simply noting the decisions cited by learned Counsel. With reference to appreciation of the testimony of eye witnesses we have highlighted that firstly, with reference to their statements recorded during investigation, improvements, improbability, exaggerations or embellishments projected, have to be noted and then to see whether the same pertains to an important aspect of a fact in issue and then the objection has to be dealt with and for said purpose, guidance can be had from past precedents. Indeed, every criminal trial unfolds its own story and strictly speaking there can be no precedent in a criminal trial.

3. In the instant case 3 eye witnesses have been cited; being Raj Bala PW-2, Gyanwati PW-3 and Prakashwati PW-5. All of them admittedly received injuries on 18.5.2002 i.e. the day when Baljeet was stabbed. All 4 i.e. Baljeet, Raj Bala, Gyanwati and Prakashwati were taken to Babu Jagjeewan Ram Memorial Hospital. The MLC Ex.PW-18/A of Baljeet records his being brought to the hospital at 11:35 AM by his nephew Sunder Lal (PW-8). He was declared brought dead at the hospital. The MLC Ex.PW-18/D of Raj Bala @ Pinki records her being brought to the hospital at 12:55 PM by Sanjeev Kumar (PW-20). It stands recorded in the MLC that Raj Bala had 3 injuries on her person, being a CLW each, on the left and the right side of the forehead, and a bruise on the right arm anterior aspect. The MLC Ex.PW-18/B of Gyanwati records her being brought to the hospital at 1:20 PM by Sanjeev Kumar (PW-20). It stands recorded in the MLC that Gyanwati had a solitary injury on her person, being a CLW on the scalp. The MLC Ex.PW-18/C of Prakashwati records her being brought to the hospital at 1:20 PM by Sanjeev Kumar (PW-20). It stands recorded in the MLC that Prakashwati had a solitary injury on her person, being an abrasion on the left cheek. The postmortem report Ex.PW-9/A of Baljeet shows that a single stab wound was inflicted on the lower left side of the chest and the lower lobe of the left lung was pierced. The weapon of offence, a knife Ex.P-8, got recovered by juvenile co-accused Rahul has a blade length of 7.3 inches.

4. As would be evident hereinafter, when we discuss the ocular eye witness account, spoken to by Raj Bala, Gyanwati and Prakashwati, the injuries recorded on their person assume importance and unfortunately, the learned Trial Judge has been blissfully oblivious to the same, forgetting that to test the truthfulness of a person who claims to be injured at an incident is, whether the claim of the person qua the injuries received by her match those on the MLC, if not in minute details, at least in substantial measure. This task has to be performed with care and caution when all the eye witnesses are not only inter-related to each other, but even to the deceased and further when all the accused are interrelated to each other. Indeed, in a situation of the kind where the entire members of a family, being 11 in number, are roped in as accused, it is the duty of the Judge to carefully see whether the complainant group is using an opportunity where the folly of a few of the opposite group, is used; nay misused, as a golden opportunity to ensnare in the clutches of criminal law the entire family of the ones who have committed the folly. How is this task to be performed? No straight jacket formula can be prescribed, but the quintessence and the signature tune of whatever formula is applied would have a common denominator i.e. use of commonsense as a prudent person and have a 360 microscopic look at the evidence.

5. But before that, a brief prelude by way of setting out the case of the prosecution.

6. In village Bankner in the Union Territory of Delhi, at the request of the residents of the village the Municipal Corporation of Delhi, claiming that the land in question belonged to the corporation, was in the process of developing the same as a public park and in furtherance of the development scheme had brought benches to be installed in the park. On 18.5.2002, when MCD officials commenced installation of benches on the land, Daya Kishan (A-1) objected. He threw the benches and the MCD officials retrieved to their office to report the matter to the police, fearing a law and order problem at the hands of Daya Kishan. Baljeet (deceased) who resided in the neighbourhood objected to Daya Kishan laying a claim to the land and said that it was the property of the public and he would ensure that Daya Kishan did not obstruct the development of the land as a park. Hari Kishan (A-2) the brother of Daya Kishan and Satish (A-3) son of Hari Kishan, acted in concert with Daya Kishan who had returned to the place after throwing out the benches on

learning that Baljeet had arrived. While Hari Kishan and Satish caught hold of Baljeet, Daya Kishan stabbed him in the lower left chest. This was witnessed by Raj Bala PW-2, the daughter of Baljeet. Her cries attracted Gyanwati PW-3, who is the wife of a cousin of Raj Bala as also Prakashwati PW-5, who is a sister-in-law of Baljeet. It is alleged that by that time the co- accused arrived and Jitender (A-4) and Sanjeev (juvenile) assaulted Raj Bala. Neha (A-7), Manju (A-8) and Pinki (A-9) assaulted Gyanwati. Leela (A-6) and Sona (A-5) assaulted Prakashwati. As per the prosecution all the accused including juvenile co-accused Sanjeev had formed an unlawful assembly and thus were liable for the death of Baljeet at par with those who actually participated in the assault on Baljeet. It may be noted that as per the prosecution another juvenile Rahul was also a member of the unlawful assembly and it was he who took the knife from Daya Kishan after Daya Kishan had stabbed Baljeet and had hid the knife and on his arrest made a disclosure statement and got the knife recovered.

7. Raj Bala PW-2, deposed that around 10:00 AM on 18.5.2002 she was sweeping outside her house and 3-4 workers were keeping benches in a MCD park which was in front of her house. Daya Kishan started abusing the MCD employees. Her father (Baljeet) objected to the behaviour of Daya Kishan, who abused her father saying: 'sala tujha dakukugan kito kasa us jagah par bhas bandtha ho kyoki woh jagah mi mere he park bhi mera ha'. She objected to Daya Kishan abusing her father. Daya Kishan went to his house saying to them, to wait and see, and came back with Hari Kishan, Satish, Jitender, Sanjeev and his daughters Neha, Manju, Pinki and his wife Sona and Leela wife of Hari Kishan. Daya Kishan was having a knife in his hand. Jitender and Sanjeev were carrying bats. Neha, Manju and Pinki were carrying dandas. Leela and Sona were carrying sticks (lathis). All the accused started abusing her father. Daya Kishan uttered 'maro salo ko'. Satish and Hari Shankar grabbed her father and Daya Kishan inflicted a knife blow in the chest of her father. She tried to save her father. Accused Jitender and Sanjeev hit her with cricket bats on her head, legs and other parts of the body including hand. She raised the alarm 'bachao bachao'. Gyanwati and Prakashwati, her relatives who reside in the neighbourhood, came. Neha, Manju and Pinki started beating Gyanwati by giving danda blows on her head and back. Her chachi Prakashwati was felled by Leela and Sona, who held her i.e. Prakashwati by the hair, and gave

lath! blows to Prakashwat! all over her body. She further deposed that thereafter the accused ran away and her father was removed to the hospital in a PCR van and a neighbour Sanjeev took the 3 injured ladies to the hospital and that her statement Ex.PW-2/A (i.e. the complaint on basis whereof the FIR has been registered) was recorded at the hospital by the police.

8. Gyanwati PW-3 deposed that Baljeet was the uncle of her husband and resided near her house. Raj Bala was daughter of Baljeet and at 10:00 AM on 18.5.2002 she heard a noise of 'bachao bachao' and saw 2 people near Baljeet. She saw Daya Kishan with a knife which was blood stained and Baljeet was on the ground. She saw Sanjay and Jitender beating Raj Bala with a belt. Prakashwati, wife of brother of Baljeet reached the spot simultaneously with her. She i.e. Prakashwati was given beatings by the wives of Daya Kishan and Hari Kishan and that she i.e. Gyanwati was hit on the head by the three daughters of Daya Kishan who used a danda.

9. Relevant would it be to note that during cross- examination Gyanwati clarified that Raj Bala was assaulted with bats and not a belt.

10. Prakashwati PW-5 deposed that Raj Bala was her niece and was the daughter of Baljeet. At around 10/10:30 AM on 18.5.2002 she was present in her house and heard cries 'bachao bachao' of Raj Bala. She came outside her house and saw Baljeet injured in the park and bleeding from the chest. She saw Daya Kishan with a knife in his hand and Raj Bala near the park. She saw the 2 sons of Daya Kishan beating Raj Bala with a bat. As she came forward to save Raj Bala, Gyanwati also reached. Manju, Neha and Pinki, daughters of Daya Kishan grappled with Gyanwati and hit her with dandas. Leelawati and Sonawati grappled with her i.e. Prakashwati and fell her on the ground with her hair and beat her with dandas.

11. It is apparent that Gyanwati and Prakashwati have not claimed to have witnessed the manner in which Baljeet received injuries, for they claim to have reached the spot where Baljeet was injured after Raj Bala cried 'bachao bachao' when her father had been injured, but inculpate Daya Kishan inasmuch as they say that they saw him with a blood stained knife in his hand. It is further apparent that Gyanwati and Prakashwati as also Raj Bala have corroborated each other, in

that, claim of Raj Bala that Jitender and Sanjeev hit her with bats all over her body is so stated as having been seen by Gyanwati and Prakashwati. The claim of Gyanwati that Neha, Manju and Pinki assaulted her on the head with a danda stands corroborated by Raj Bala and Prakashwati who claim to have so seen. The claim of Prakashwati of having been felled on the ground by tugging at her hair by Leela and Sona and being inflicted lathi blows all over the body is so stated as having been seen by Raj Bala and Gyanwati.

12. Ramesh PW-6, employed as an employee under the Municipal Corporation of Delhi and deputed for work at the park where benches were being installed, deposed that five years back he was working as a gardener with Municipal Corporation of Delhi. At about 9:30 AM on a day in the month of May when along with nine other MCD employees he was at the MCD Park, Bankner for the purpose of installing iron benches in the said park. Daya Kishan objected to benches being installed in the park. Daya Kishan told him to remove the iron benches and when they did not obey, Daya Kishan threw the benches from the park. Since they apprehended that a quarrel might ensue, he i.e. Ramesh, along with his associates returned to their office to inform their Supervising Officer. By the time they returned to the park, police had already arrived and his statement was recorded.

13. Sunder Lal PW-8 deposed that on 18.5.2002 when he returned to his house in village Bankner at about 10:45 AM he saw a huge crowd gathered outside his house and found his uncle (tau) Baljeet Singh lying in an injured condition with blood scattered all over. On inquiry, his uncle told him that Daya Kishan had stabbed him with a knife while Hari Kishan and Satish had caught hold of him. The PCR van had arrived and he accompanied his uncle Baljeet Singh in the PCR van to BJRM Hospital. On the way to the hospital his uncle kept saying that 'Daya Kishan did not act well by stabbing me by a knife'. Thereafter, his uncle became unconscious and was declared dead by the doctors when they reached the hospital at 11:35 AM.

14. Sanjeev Kumar PW-20 deposed that when he reached his house at around 11:30 to 11:45 AM he learnt about a quarrel between Daya Kishan and Baljeet

Singh and at around 12:00 noon he reached the house of Baljeet Singh where he saw Raj Bala, Gyanwati and Prakashwati lying in an injured condition and took them to a hospital.

15. It may be noted, now and at this stage, that during arguments, learned Counsel for the appellants made an attempt, by referring to the testimony of HC Dharambir Singh PW-27, that his testimony completely rules out the involvement of Daya Kishan, but learned Counsel conceded that in view of Daya Kishan's testimony during re-examination, either it has to be held that HC Dharambir is a totally discredited witness or that his testimony during reexamination has to be accepted. We note that HC Dharambir was incharge of a PCR van deployed near village Bankner and in his examination-in-chief deposed that on receiving a call he reached MCD park in village Bankner and removed Baljeet to the hospital. But, on cross-examination he stated that when he reached the spot, a quarrel was going on and accused Daya Kishan showed his some papers at a distance of 10-15 yard from the place where the quarrel was going on. After seeing the papers he went through the crowd to intervene and sort out the quarrel and at that time he saw a person injured. But, on re-examination he stated that what he said during cross-examination was under confusion and reaffirmed that when he reached the spot he saw Baljeet whom he removed to the hospital.

16. In view of the vacillating testimony of HC Dharambir, finding him to be a most untrustworthy person, we deem it appropriate to ignore his testimony.

17. Eschewing reference to the evidence of various exhibits i.e. two bats, five lathis and a knife being recovered pursuant to the disclosure statements of the accused and noting that the trial of juvenile accused Sanjeev and another accused Rahul who has not been named by any witness as being present when the offence took place but against whom the prosecution alleges having secreted the knife used to stab Baljeet, has been referred to the Juvenile Court, we proceed to analyze the creditworthiness of the testimony of the three eye witnesses pertaining to the 9 appellants who have been convicted for the offence punishable under Section 302/323/148/149 IPC.

18. Apparently, the 3 eye witnesses; Raj Bala, Gyanwati and Prakashwati have supported each other and save and except difference in the language used, have attributed the same roles to the accused. It is for this reason that the learned Trial Judge has accepted their version, finding each corroborating the other.

19. But, the learned Trial Judge has glossed over a very important circumstance. From the charge sheet as also the testimony of not only the 3 eye witnesses, but even from the testimony of Ramesh PW-6, it is apparent that there was tension in the village which had spread between the family of the deceased and the accused. Daya Kishan (A-1) had a problem with a parcel of land near his house being converted into a park by the Municipal Corporation of Delhi and the family of the deceased, which resided near the land, supported the park being developed on the land. In such a scenario, as held in the decisions reported as 1981 Cri.LJ 1034 State of UP v. Sahai and Ors., 2003 Cri.LJ 401 Raghunath and Ors. v. State of Haryana and : JT 2010 (1) SC 24 Boddella Babul Reddy v. Public Prosecutor HC of AP, it was not unusual for a factionist to take advantage of every situation and occurrence and there was an incurable tendency in the factionists to rope in the innocent members of the opposite faction along with the guilty and twist and manipulate the facts with regard to the mode and manner of the occurrence so as to make their case appear true with the innocent members of the opposite faction also as participants in the occurrence. In such situations, it was the duty of the Court to microscopically scrutinize the evidence of the eye witnesses.

20. Pertaining to the three eye witnesses, the only empirical evidence we have before us are the contents of the 3 MLCs; Ex.PW-18/D of Raj Bala, Ex.PW-18/B of Gyanwati and Ex.PW-18/C of Prakashwati. The contents thereof have been noted by us in para 3 above. The 3 MLCs show the injuries suffered by the 3 ladies when they were examined at around 1:20 PM on the day of the occurrence.

21. Let us analyze by juxtaposing the injuries on each one of them as per their respective MLC and what they claim as having been inflicted upon the three.

22. Raj Bala. As per MLC Ex.PW-18/D, she had 3 injuries on her person; being a CLW each, on the left and the right side of the forehead, and a bruise on the right arm anterior aspect. But, as per Raj Bala and her aunt as also her cousin sister-in-

law, Jitender and Sanjeev hit her with cricket bats on her head, legs and other parts of the body including hand. It is but apparent that all the 3 eye witnesses have stated a highly exaggerated account of the assault on Raj Bala, who has no injuries on the legs and other parts of the body. The injuries are only on the forehead and a bruise on the arm. The injuries on the forehead, being clean lacerated wounds (CLW), it is highly improbably that they could be the result of being hit with bats, the stated objects in the hands of Jitender and Sanjeev. The injuries have dimensions, being 2 cm x 1 cm in size and 2.5 cm x 1 cm in size and even this suggests that an object akin to a stick, having thickness between 2 cm to about 4 cm has been used to cause injuries on the forehead of Raj Bala. That no internal injury in the occipital region having resulted, it can safely be presumed that either the two blows were not struck with force or that the stick used was having lesser thickness i.e. around 2 cm.

23. Gyanwati. As per the MLC Ex.PW-18/B, a single injury on her scalp, being a CLW having length of 4 cm was found on her person. It is apparent that Gyanwati was struck only once on the scalp with an object akin to a stick or a stick. No internal injury has resulted. The breadth of the injury not being noted, it is apparent that the injury was extremely mild. As per the eye witnesses, Neha, Manju and Pinki gave danda blows on the head and the back of Gyanwati. As per the eye witnesses, Neha, Manju and Pinki were each armed with a danda. That only one injury with a danda has been caused on the person of Gyanwati makes it crystal clear that 3 ladies have not struck blows on her head or on the back. Only one person has struck a blow on her head.

24. Prakashwati. As per the MLC Ex.PW-18/C, a solitary injury, being an abrasion on her left cheek was noted. The dimensions thereof of are 1 cm x 0.5 cm. It is apparent that Prakashwati was either struck with a blunt object on her cheek or her left cheek struck against a hard blunt surface. As per the eye witnesses, Prakashwati was felled by Leela and Sona who had felled her by her hair and both gave lathi blows to her all over her body.

25. It is but apparent that the eye witness account pertaining to the assault on Raj Bala, Gyanwati and Prakashwati is totally belied by the medical examination of the

said 3 ladies and the conclusion is obvious: the three have colluded to state an exaggerated version. The reason is plain obvious. The family of Baljeet got a golden opportunity to ensnare in the clutches of criminal law the entire family of Daya Kishan and his younger brother Hari Kishan. We reiterate that the two brothers and their respective spouses, their four sons and three daughters have been roped in. Not a single family member has been spared.

26. We are pained that the learned Trial Judge has not even bothered to note that as per the charge sheet filed, Neha the daughter of Daya Kishan, was married at the time of the incident and was residing with her husband Nishant at House No. 66, H Block, Shalimar Bagh. The learned Trial Judge has further ignored that where there is factionalism in a village or a community, it is desirable to examine independent eye witnesses, if they are available. In the instant case, from the testimony of the police officers who had reached the place of the offence, there is proof of the fact that many villagers had gathered and thus we see no reason why at least one or two were not produced as witnesses of the prosecution.

27. From the narratives of the evidence hereinabove it becomes evident that Raj Bala, Gyanwati and Prakashwati have stated exaggerated versions of what happened to them and what they saw happening to the other. Motive to falsely implicate, if not all, some of the accused does exist. The number of injuries on Raj Bala, Gyanwati and Prakashwati does not evidence that they were assaulted in the manner as they claim. The claim of Raj Bala that Jitender and Sanjeev hit her with cricket bats on her head, legs and other parts of the body is false. The claim of Prakashwati being assaulted by Leela and Sona and beaten all over the body with sticks is false. The claim of Gyanwati of being beaten on the head and back with sticks by Neha, Manju and Pinki is false. That Gyanwati has a single injury on her person shows that only one person could hit her with a stick like object. The single injury on the left cheek of Prakashwati shows that at best only one person could hit her. Thus, the involvement of 5 persons qua the injuries on Gyanwati and Prakashwati is completely ruled out from the MLCs of the said 2 ladies. The injuries on Raj Bala could be caused by 2 persons, but her claim that apart from being hit on the head she was assaulted on her arms and legs is false. Thus, there is no scope but to reach the inevitable conclusion that qua the injuries suffered by

Raj Bala, Gyanwati and Prakashwati the question of 7 persons i.e. Jitender, Sanjeev, Sona Devi, Leelawati, Neha, Manju and Pinki being the assailants does not arise. But, from the fact that the 3 have received, 3, 1 and 1 injuries respectively, it can be inferred that at best 4 persons assaulted them: 2 assaulting Raj Bala and 1 each assaulting Gyanwati and Prakashwati.

28. So exaggerated is the version of the 3 ladies qua their respective injuries and so interwoven is the lie with the truth, that it is impossible to retrieve the nugget of truth from the web of lies and qua the injuries on the 3 ladies, it is impossible to separate the grain from the chaff.

29. Where the innocent cannot be separated from the accused, law requires all to be acquitted. Thus, qua the injuries on Raj Bala, Gyanwati and Prakashwati, with regret to the 3 ladies, but with the note that they are responsible for the situation as they had deliberately chosen to mix lies with truth, we conclude by holding that the 7 accused charged of participating in assaulting the 3 ladies are entitled to the benefit of doubt.

30. Qua the manner in which Baljeet has suffered a death, the grain of truth in the testimony of Raj Bala that she saw Hari Kishan and Satish catching hold of Baljeet and Daya Kishan stab him, finds corroboration to the origin of what happened, from the testimony of Ramesh PW-6 who is an independent person and has stated that Daya Kishan commenced the ruckus by not only preventing the MCD officials to install iron benches in the park but by throwing the benches. Daya Kishan's presence at the park and his determination to prevent benches being installed in the park and his agitated state of mind on the issue has been brought out with graphic details by Ramesh PW-6. The presence of Raj Bala at the spot cannot be doubted as she herself has received some injuries. That her aunt and cousin sister-in-law who resided nearby responded to Raj Bala's calls of distress when she cried 'bachao bachao' also support the fact that Raj Bala saw something which required Raj Bala to seek summons for rescue. Obviously, this something seen by Raj Bala would be her father being assaulted. She has spoken the truth when she said that only one stab injury was inflicted on her father. The MLC Ex.PW-18/A of Baljeet shows that Baljeet was got admitted to the hospital by

Sunder Lal PW-8. This means that Sunder Lal was with Baljeet when Baljeet was removed to be taken to the hospital. Sunder Lal's claim that Baljeet told him that when Hari Kishan and Satish had caught him, Daya Kishan had stabbed him, corroborate the testimony of Raj Bala of the manner in which Baljeet received injuries. The cause of his death disclosed by Baljeet to Sunder Lal has to be treated as Baljeet's dying declaration.

31. The question now arises is whether at all any unlawful assembly with a common object was formed

32. There is no evidence that except for Daya Kishan, his brother or the wife and children of his brother or for that matter the wife of Daya Kishan or his children shared the same animus against anybody or were aggrieved by the land in question being converted into a park and benches installed therein. The version of the 3 eye witnesses of an assembly being formed of 10 persons has been found to be an exaggerated version by us. That the place where the incident took place is a parcel of land abutting the houses of Baljeet and the accused has to be kept in view and is of importance while considering the issue at hand. A spontaneous verbal fight between Baljeet and Daya Kishan could have attracted the family members of Baljeet and Daya Kishan and the said family members assembling in response to the high pitched sounds of the two men and not assembling with any common object is what emerges as the most probable and likely event to have occurred and thus we hold that there is no scope to hold that whosoever assembled had any common object.

33. Thus, Daya Kishan, Hari Kishan and Satish have to suffer for what they did.

34. Now, finding exaggeration in the testimony of the eye witnesses, it cannot be said with certainty that Hari Kishan and Satish assembled at the spot after having discussed anything with Daya Kishan. Thus the intention of the two has to be gathered with reference to their respective roles. As per the dying declaration made by Baljeet and as per the testimony of Raj Bala, Satish and Hari Kishan caught Baljeet and Daya Kishan inflicted a solitary stab blow on the lower left chest of Baljeet.

35. Qua Satish and Hari Kishan, can it be said that, with reference to their acts, that they shared a common intention with Daya Kishan that Baljeet should be murdered or that an injury be inflicted on Baljeet at a particular part of the body i.e. the chest? Or, was it their intention that let Baljeet be injured so that he is taught a lesson?

36. Where everything happens within seconds it is apparent that minute details of the incident would be missing. It would thus become very difficult for a trier of facts to return determinative and conclusive findings. Indeed, where the role alleged is of catching hold and the assailant has struck only one blow, the intention of the persons who have caught hold becomes very difficult to decide.

37. Keeping in view the fact that evidence brought on record only shows a motive in the mind of Daya Kishan to teach a lesson to Baljeet and there being no evidence of any motive in the mind of Hari Kishan and Satish, further keeping in view the circumstances under which the incident took place it cannot be held determinatively that Hari Kishan and Satish intended or shared any common intention with Daya Kishan to cause the death of Baljeet or to cause any particular injury on Baljeet. At best, their intention would be that Baljeet should be injured. Since the two could see a knife in the hand of Daya Kishan, knowledge can be imputed to the said two persons of knowing that Daya Kishan might cause an injury which was likely to cause the death of Baljeet. Thus, qua Hari Kishan and Satish we hold that the offence committed by them is punishable under Section 304 Part II/34 IPC. The two cannot be fastened with a liability other than for the offence of culpable homicide not amounting to murder pertaining to the death of Baljeet.

38. Qua Daya Kishan, there is evidence that he had a motive to ensure that no development work is carried out in the park. His determination to achieve his motive is evidenced by the fact that he scared away the MCD employees. He threw the benches. When Baljeet objected to his conduct, to teach Baljeet a lesson he used a knife, blade length whereof was 7.3 inches. The blow was struck with force on the lower chest. The motive in the mind of Daya Kishan can be gathered de hors his act of stabbing and the motive was to teach Baljeet a lesson

for asserting a public right. That Daya Kishan came armed with a knife which is akin to a dagger shows his determination. One objective fact before a Court in relation to a weapon of offence is the knowledge which can be imputed to the one who uses such a weapon. To put it differently, the nature of the weapon of offence is empirical evidence before the Court. Thus, if not attracting Part I, Part II or Part III of Section 300 IPC, Part IV thereof is certainly attracted. By using the knife Ex.P-8 and striking a blow on the chest of Baljeet knowledge can certainly be attributed to Daya Kishan that by his acts death of Baljeet would be caused in all probability. Certainly, the act of Daya Kishan in using the knife Ex.P-8 having blade length of 7.3 inches by thrusting the same in the lower chest of Baljeet is an imminently dangerous act. Thus, qua Daya Kishan the offence made out is of having murdered Baljeet.

39. The appeal stands disposed of as under:

A. Appellants Jitender, Sona Devi, Leelawati, Neha @ Rakesh, Manju and Pinki are acquitted of the charges framed against them. The impugned judgment and order dated 24.2.2010 convicting them in respect of the charges framed against them is set aside and the order on sentence dated 26.2.2010 qua them is quashed.

B. The conviction of appellants Hari Kishan and Satish is altered from the offence punishable under Section 302/323/148/149 IPC for the offence punishable under Section 304-II/34 IPC for which offence both of them are sentenced to undergo RI for a period of 5 years and pay fine in sum of Rs. 5,000/- each and in default of payment of fine to undergo SI for 2 months.

C. The conviction of appellant Daya Kishan is altered from the offences punishable under Sections 302/323/148/149 IPC to that of the offence punishable under Section 302 IPC and the sentence of life imposed upon him is maintained.

40. Since the appellants are in jail, we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar with a direction that appellants Jitender, Sona Devi, Leelawati, Neha @ Rakesh, Manju and Pinki be set free forthwith unless required in custody in any other case. Qua appellants Hari Kishan and

Satish, if they have undergone the sentence imposed by us and on payment of the fine, they also be set free forthwith. Necessary entry be made in the jail record pertaining to appellant Daya Kishan.

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