

**Vicky Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Dec-21-2012

**Judge :** S. P. GARG

**Appellant :** Vicky Kumar

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

5. h November, 2012 DECIDED ON :

21. t December, 2012 + CRL.A.732/2011 VICKY KUMAR Through : ..... Appellant Mr.R.P.Luthra, Advocate with Mr.Saurabh Luthra, Advocate. versus STATE Through : ..... Respondent Mr.Sanjay Lao, APP. Through : ..... Appellant Mr.Swastik Singh, Advocate. CRL.A.601/2011 SUNNY Versus THE STATE Through : ..... Respondent Mr.Sanjay Lao, APP. Through : ..... Appellant Mr.Swastik Singh, Advocate. CRL.A.713/2011 VIKKI Versus STATE & ORS. Through : CrI.A.Nos. 732/11, 601/11 & 713/11 ..... Respondents CORAM: MR. JUSTICE SANJIV KHANNA MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Vikki Kumar S/o Ashok Kumar (A-1), Sunny (A-2) and Vikki S/o Prem Pal (A-3) have directed the appeals against the judgment dated 08.03.2011 and order on sentence dated 07.04.2011 in Sessions Case No.110/06/10 of learned Additional Sessions Judge by which they were held responsible for committing Pradeeps murder and sentenced to undergo imprisonment for life with fine.

2. On 21.10.2005, at about 21.46 hours Daily Diary No.34A was recorded at Police Station Mayur Vihar to the effect that a quarrel was going on between two groups in front of Baraat Ghar 35/109, Trilok Puri. The investigation was assigned to SI Onkar Singh who with HC Prabhat Singh went to the spot and came to know that the injured had already been shifted to Lal Bahadur Shastri (LBS) Hospital by PCR. He went to the hospital and collected Pradeeps MLC who was unfit to make statement. Adeesh Kumar, Pradeeps brother met him in the hospital and made statement (Ex.PW-7/A). The Investigating Officer recorded rukka and lodged First Information Report under Section 307 IPC. Adeesh disclosed that at about 09.00 P.M., when he was present near Ashoki Hotel, A-1 and A-3 picked up a quarrel with him. On hearing commotion, his brother Pradeep reached there at about 09.15 P.M. A-2 with one Vikas (since acquitted) also arrived there. A-2 had a churi. On the exhortation of A-1, A-2 inflicted churi blow on Pradeeps head, while A-3 and Vikas caught hold of him. A-1 also inflicted two or three knife blows on his forehead and back. The assailants fled the spot. He with Ajay brought Pradeep to LBS Hospital.

3. Later on, Pradeep succumbed to the injuries and the investigation was taken over by Insp.S.S.Kaushik. At around 02.30 A.M. Vikas and A-1 were apprehended and their disclosure statements were recorded. A-2 and A-3 surrendered before the Court. On 27.10.2005, A-2 recovered churi used in the incident from Safada Park. During the course of investigation, the Investigating Officer sent the exhibits to Forensic Science Laboratory and collected reports. Statements of the witnesses conversant with the facts were recorded. After completion

of the investigation, a charge-sheet was submitted against A-1 to A-3 and Vikas. They were duly charged and brought to trial. The prosecution examined seventeen witnesses to prove the charges. Incriminating material appearing against the accused was put in 313 Cr.P.C. statements. They pleaded false implication. The accused examined seventeen witnesses in defence.

4. After appreciating the evidence and documents on record and considering rival contentions of the parties, the Trial Court acquitted Vikas and convicted A-1 to A-3 for committing offence under Section 302/34 IPC. Being aggrieved, A-1 to A-3 have preferred the appeals. We note that State has not filed appeal challenging Vikass acquittal.

5. Learned counsel for the appellants while assailing the impugned judgment urged that the Trial Court did not appreciate the evidence in its true perspective and erroneously placed reliance on the testimonies of PW-7 (Adeesh Kumar) and PW-8 (Ashish Kumar) who were close relatives of the deceased and were interested witnesses. It did not ensure their reliability and credibility. Conduct of PW-7 (Adeesh Kumar) and PW-8 (Ashish Kumar) was unreasonable and unnatural and ruled out their presence at the spot. Neither of them lodged report with the police or took the victim to the hospital. They did not intervene in the occurrence. PW-12 (Ajay Nagwal)s name alone finds mention in the MLC (Ex.PW-2/A). The appellants had no motive to inflict fatal injuries to the victim. Pradeep sustained injuries at the hands of unknown persons at the house of Kunwar Pal where he and PW-7 (Adeesh Kumar) used to consume liquor and indulge in gambling. PW-7 (Adeesh Kumar) made vital improvements in his deposition in the Court. The Trial Court did not believe PW-7 (Adeesh Kumar) and PW-8 (Ashish Kumar) to convict Vikas. It is further argued that even if case of the prosecution is taken on its face value, it is not a case of murder as single blow was inflicted in a sudden quarrel.

6. Learned APP while supporting the judgment urged that the appellants in furtherance of common intention inflicted fatal blows to the victim without provocation. The victim was unarmed and had no confrontation with the appellants. The appellants were annoyed due to a quarrel over bread with PW-7 (Adeesh Kumar). Though PW-12 (Ajay Nagwal) did not support the prosecution, exclusion of his testimony would not cause dent in the prosecution case. PW-7 (Adeesh Kumar) and PW-8 (Ashish Kumar) had no animosity to depose falsely against the appellants and were interested to bring the real culprits to book.

7. We have considered the submissions of the parties and have examined the Trial Court records.

8. Homicidal death of Pradeep is not under challenge. He was brought in injured condition at LBS Hospital on 21.10.2005 at about 09:55 P.M. with the CrI.A.Nos. 732/11, 601/11 & 713/11 alleged history of assault. (Dr.S.B.Jangpangi) examined him vide MLC (Ex.PW-2/A). Pradeep succumbed to the injuries and was declared dead at 11:15 P.M. PW-15 (Dr.Mukta Rani) conducted post-mortem examination of the body on 22.10.2005 vide report Ex.PW-15/A. The cause of death was hemorrhage and shock consequent upon stab injury No.(iii). All the injuries were antemortem, fresh and produced by stabbing and cutting weapon. Injury No.3 was sufficient to cause death in the ordinary course of nature. She opined in her report Ex.PW-15/B that injury No. (iii) was possible with the weapon of offence shown to her. Undoubtedly, it was a case of culpable homicide.

9. PW-8 (Ashish Kumar), the deceaseds brother-in-law claimed that the occurrence was witnessed by him. He deposed that on 21.10.2005 at about 9/9:30 P.M. when he was going to meet his sister, he saw A-2 inflicting a knife blow on Pradeeps head while A-3 had caught hold of him. When he started bleeding, A-2 further caused 2/3 knife blows on his back. Several persons gathered at the spot. He fled the spot. Pradeep had expired before he reached LBS Hospital in the night. Presence of this witness at the spot is doubtful. His conduct is unnatural and unreasonable. Pradeep was his sisters husband and was allegedly stabbed in his presence. He did not raise hue and cry and intervene to save Pradeep. Neither did he assist PW-7 (Adeesh Kumar) to take the injured to the hospital nor did he report the incident to the police. He did not explain the purpose of his visit to his sister at that time. There is inconsistency whether he had gone to meet his sister or a friend. He made vital improvements in his deposition in the Court and was confronted with 161 Cr.P.C statement (Ex.PW-8/DA). In the statement under Section 161 Cr.P.C., he named four assailants who caused injuries to Pradeep,

however, in the statement before the Court, he implicated only A-2 and A3. His version is contrary to PW-7's statement, an eye witness. PW-8 (Ashish Kumar) admitted that he did not meet PW-7 (Adeesh Kumar) at the spot. There is delay in recording statement under Section 161 Cr.P.C. PW-8's house was situated at a distance of half kilometer from the place of occurrence but he did not inform anybody in the house about the incident. When he met PW-7 (Adeesh Kumar) in the hospital at 1:30 A.M., he did not inform him about his presence at the place of occurrence. House of his sister was at a distance of 10-20 yards from the spot. He did not go to inform them. PW-7 (Adeesh Kumar) did not speak PW-8's presence at the spot. In 161 Cr.P.C. statement, he stated that Pradeep was taken to the hospital in a TSR by PW-7 from the spot. For all these reasons, we doubt his presence at the spot and are not inclined to place reliance on his testimony and ignore it.

10. Undisputedly PW-12 (Ajay Nagwal) assisted to take Pradeep to the hospital. In MLC Ex.PW-2/A, he is stated to be the relative or friend of the victim who admitted him. PW-7 (Adeesh Kumar) deposed that PW-12 (Ajay Nagwal) had accompanied him to the hospital in a TSR. PW-12 did not support the prosecution and expressed complete ignorance about the case. Instead of requesting the Court for permission to cross-examine him, Additional Public Prosecutor, without any reasons opted to give up the witness as unnecessary. Consequently, he was not further examined in the court. PW-12 was not confronted with his 161 Cr.P.C. statement and it cannot be relied upon for any purpose.

11. PW-7 (Adeesh Kumar), deceased's brother is a crucial witness as initial confrontation took place with him. He deposed that on 21.10.2005 at about 09:00 P.M., when he was present ahead of Ashoki Hotel, Extra Block No.35, Trilok Puri, Delhi, A-1 and A-3 met him. A-1 caught him by collar and inquired why he had quarreled over bread three days back and started abusing him. After sometime, A-2 who had a knife arrived there with Vikas and they started quarrelling with him. When around 09:15 P.M., his younger brother Pradeep @ Laloo reached there, on the exhortation of A-1 to kill (maar do jaan se sale ko). A-2 attacked him (Pradeep) with a knife on his head. When he attempted to flee, Vikas and A-3 caught hold of him and A-2 inflicted 2/3 knife blows on his back. The assailants fled the spot. He and Ajay took Pradeep to LBS hospital in a TSR and was referred to GTB hospital but on the way, he succumbed to the injuries. The police recorded his statement Ex.PW-7/A in the hospital. In the cross-examination, he admitted that there were many public persons at the spot. He was not sure at what time his statement was recorded. He admitted that his and that of Ajay's bloodstained clothes were not seized by the police. He elaborated that there was street light and the lane where the occurrence took place was 10/12 feet wide. He admitted that he had not lodged report with the police for the previous altercation. He stated that there was exchange of hot words for 10-12 minutes and he sustained injury on teeth and kick blow on his abdomen but was not medically examined. He denied the suggestion that he and Pradeep used to indulge in gambling and on the day of occurrence, Pradeep had consumed liquor and when he was gambling at the house of Kunwar Pal, in an altercation, he sustained injuries there with brick bats and stones. He further denied any attempt to extort ` 1 lac from Subhash Chand, father of the accused- Vikas to settle the matter. He stated that Pradeep reached all of a sudden and could not get chance to release him from the clutches of the accused.

12. We have no reasons to disbelieve or doubt PW-7's presence at the spot. The initial confrontation took place with him for about 10/12 minutes and there was exchange of hot words. PW-7 even claimed that he sustained injuries when the accused quarreled with him before Pradeep's arrival. The occurrence took place at about 09:00 P.M. PW-16 (SI Onkar Singh) reached the spot on assignment of Daily Diary No.34/A (Ex.PW11/A). The victim had already been shifted to LBS hospital. He deposed that the injured's elder brother met him in the hospital and he recorded his statement (Ex.PW-7/A). He prepared rukka at 11.00 P.M. and lodged First Information Report at police station Mayur Vihar. First Information Report in a criminal case is a vital and valuable piece of evidence for corroborating the oral evidence. The object of insisting upon prompt lodging of the report to the police is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence without any fabrication. In the instant case, the FIR was recorded promptly without any delay before there was time and opportunity to embellish the version. In his

statement made to the police at the first instance, PW-7 claimed that the incident was witnessed by him and the victim was admitted by him and Ajay at the hospital. He named the assailants and narrated how and under what circumstances, they had inflicted injuries to Pradeep.

13. PW-7 deceaseds brother was acquainted with the accused. His close relationship to the deceased is no ground to reject his testimony if otherwise it is reliable. He would be most reluctant to spare the real assailants and falsely implicate an innocent one. We have no reasons to suspect him as an interested witness to have a hostile attitude towards the accused facing trial. In such cases, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible. His presence at the spot was natural as initial confrontation occurred with him and he lived nearby. PW-7s presence was not challenged in the cross-examination. He was extensively cross-examined but nothing material emerged to discredit his entire version. He attributed specific role to the each accused. We are conscious that Vikas was implicated but acquitted. However, acquittal of a co-accused for certain reasons detailed in the impugned judgment is not a ground to give benefit to the appellants. The maxim falsus in uno falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence. Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. PW-7 cannot be branded as liar and his evidence cannot be rejected outright even if part of his testimony is found to be true and correct. The said part can be accepted and relied. The Court has to appraise the evidence to see to what extent it is worthy of acceptance. PW-7 categorically affirmed that fatal blow was inflicted with the aid of knife by A-2. A-1 exhorted his associates to kill. A-3 assisted A-2 in inflicting injury to the victim when he caught hold of him. The accused did not deny their presence at the spot. They participated in the crime and fled the spot after the occurrence.

14. Churi (Ex.P1) was recovered pursuant to A-2s disclosure statement and seized vide seizure memo Ex.PW-14/B. The weapon of offence was shown to Autopsy Surgeon who was of the opinion that injuries on the victims body were possible with that churi. It was also sent to Forensic Science Laboratory and as per CFSL report (Ex.PW17/H) blood group A was detected on it. It was the deceaseds blood group. There is thus, no conflict between the ocular and medical evidence. We have no doubt that the appellants are the perpetrator of the crime and they in furtherance of their common intention caused injuries to the victim.

15. There is inconsistency in MLC (Ex.PW-2/A) and post- mortem report (Ex.PW15/A). MLC ( Ex.PW2/A) was prepared by PW-2 (Dr.S.B.Jangpangi) on 21.10.2005 at about 09:55 P.M. and it depicted one incised wound and two lacerated wounds on the body. However, the post-mortem report (Ex.PW-15/A) proved by PW-15 (Dr.Mukta Rani) mentions three stab incised wound of various dimensions. prosecution did not reconcile the two reports. The MLC (Ex.PW-2/A) specifically records that injuries were caused by sharp and blunt objects. The injuries had not resulted in the death of the victim at the spot. PW-2 in the cross-examination admitted that victim was in a position to speak and he (victim) had given the history of assault to him. It appears that the victim had sustained only one incise stab wound with knife which proved fatal. PCR record reveals that a quarrel had taken place between two groups and stones were pelted. It seems that the lacerated wounds mentioned in Ex.PW-2/A were the result of pelting of stones.

16. This takes us to the alternative plea taken by the counsel that even assuming the case to be true, the mater would still not fall within the definition of murder but would be culpable homicide not amounting to murder punishable under Section 304 part I IPC. On scrutinizing the evidence and considering the circumstances in which the occurrence took place, we are also of the view that the accused had no intention to murder Pradeep. Intention is a subjective element and in most of the cases direct proof of intention is not forthcoming. The mans intention is a question of fact and it can be gathered from his acts. Intention to cause a specified result or actors purpose has to be gathered and inferred from the action of the person and the

surrounding circumstances such as motive of the accused, utterances made, nature of attack, the time and place of attack, the nature and type of weapon used, the nature of injuries caused and so on. These and other factors are to be taken into consideration to determine whether the accused had requisite intention.

17. In the instant case, an altercation took place on a trivial issue between PW-7 (Adeesh Kumar) and A-1 and A-3 without any premeditation. They were not armed with any weapon and did not cause physical harm to PW-7 (Adeesh Kumar). They did not anticipate that PW7 would be available at the spot. A-2 and Pradeep were not present during that scuffle. Both arrived later on. It appears that a quarrel without apparent excuse ensued in which stones were also pelted. There was no previous intention or determination to fight. In the said sudden quarrel, A2 on the exhortation of A-1 inflicted a solitary knife blow to Pradeep. A-2 had no animosity with PW-7 or Pradeep and had no nexus with the quarrel genesis of confrontation of PW-7 with A-1 and A-3. The weapon used in the occurrence was a normal vegetable knife. A-2 did not take undue advantage and did not proceed to inflict other injuries. The accused were not aware that Pradeep would arrive at the spot. A-2 did not cause any harm with the aid of knife to PW-7 (Adeesh Kumar). The circumstances in which the incident occurred reveal that sudden fight took place between the two groups and the victim was stabbed in a sudden fight, in a fit of rage which ruled out intention to murder Pradeep. It is relevant to note that it was not an instantaneous death. The victim was conscious and oriented at the time of medical examination at LBS Hospital. Initially, the First Information Report was lodged for the commission of offence under Section 307 IPC. Pradeep succumbed to the injuries subsequently.

18. In the case of Sukhbir Singh v.State of Haryana, AIR 200.SC 1168.there was no enmity between the parties. The occurrence took place when Sukhbir Singh got mud stains on account of sweeping of a street by Ram Niwas and a quarrel ensued. The deceased slapped the appellant for no fault of his. The quarrel was sudden and on account of a heat of passion. The accused went home and returned armed in the company of others without telling them of his intention. The time gap between the quarrel and the fight was a few minutes only. The Supreme Court observed that it was, therefore, probable that there was insufficient lapse of time between the quarrel and the fight which meant that the occurrence was sudden within the meaning of Exception 4 of Section 300, IPC. In another case of Golla Yelugu Govindu v.State of Andhra Pradesh, (2008) 16 SCC 769.at about 2:00 A.M., when the deceased was in the house there was exchange of hot words and quarrel took place between the accused and the deceased. This happened in the presence of the children. Suddenly the accused hacked the deceased in the neck with a sickle and the deceased fell down and the accused once again hacked on the neck and the left ear of the deceased causing severe bleeding injuries. It resulted in the death of the lady. The Appellant there submitted that Section 302 IPC had no application to the assault made during the course of a sudden quarrel and Exception 4 of Section 300, IPC applied. The Supreme Court discussing the law in detail converted the conviction to Section 304 Part 1 IPC. In Sudhakar vs. State of Maharashtra, (2012) 9 SCC 725.the appellant father stabbed his son who was misbehaving as usual in a drunken state. There was conclusive proof to hold that it was the appellant who was responsible for single stab injury inflicted upon the deceased with the aid of a knife. The Supreme Court held that there was nothing to suggest that there was any plea pre-meditation in the mind of the appellant to cause the death of the deceased. The behaviour of the son was a continual source of torment to him. Unmindful of consequences, though not in a cruel manner, the father inflicted a single blow which caused severe damage to vital organs, resulting into the death of the deceased. It was held that the offence proved against the father was under Section 304 part I IPC.

19. In the light of the above discussion, we are of the opinion that conviction of the appellants is required to be altered from Section 302 IPC to Section 304 Part-I IPC. We have also heard the parties on the point of sentence. Considering the role played by each accused, their young age, clean antecedents, the order on sentence is modified. A-2 who had caused the stab wound and had yield the knife is sentenced to undergo rigorous imprisonment for eight years. A-1 and A-3 shall undergo rigorous imprisonment for six years each. Other sentences are left undisturbed. The appellants A-1 and A-3 are directed to surrender and serve the remainder of their sentence. For this purpose, they shall appear before the Trial court on 05.01.2013. The

Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

20. The appeals are partly allowed and orders of conviction and sentence are modified in the above terms.  
(S.P.GARG) JUDGE (SANJIV KHANNA) JUDGE DECEMBER 21 2012 Sa/tr

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