

Ashish @ Danger Vs. State

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Court : Delhi

Decided On : May-08-2013

Judge : Siddharth Mridul

Appellant : Ashish @ Danger

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

19. 03.2013 Judgment pronounced on:

08. 05.2013 1. CRIMINAL APPEAL NO.496/2011 ASHISH @ DANGER Through: Mr. Sumeet (DHCLSC). Appellant Verma, Advocate versus STATE Through:

2. Respondent Mr. Sanjay Lao, APP. CRIMINAL APPEAL NO.1076/2010 NAZIM Through: Ms. Saahila (DHCLSC). Appellant Lamba, Advocate versus THE STATE OF NCT OF DELHI Respondent Through: Mr. Sanjay Lao, APP. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL JUDGMENT SIDDHARTH MRIDUL, J.

1. Ashish and Nazim have preferred these appeals against their conviction by the impugned judgment of the Additional Sessions Judge dated 30.03.2010 under Sections 302/34 of The Indian Penal Code, 1860 (IPC) for murder of Vinod. By the order of sentence dated 31.03.2010, the appellants have been sentenced to imprisonment for life for the offence under Section 302/34 and with fine of `5,000/-.

In case of default for payment of fine of `5,000/-, the appellants are to undergo Simple Imprisonment for one month each.

2. Homicidal death of Vinod is proved by the post mortem report (Ex.PW-18/A) conducted by Dr Rohit, Senior Resident, Aruna Asif Ali Hospital and established by the testimony of PW-18, Dr. S Lal. On post mortem examination the following injuries were found: External Injuries (i) Stab wound 41.5 cms cavity in 6th intercostal space with inner acute angle 10 cms outer to xiphisternum and 8 cms below the left nipple. The margins are clean cut and inner angle acute and outer angle obtuse. (ii) Stab wound 31.5 cms cavity deep, obliquely placed in 9th intercostal space (right), with inner obtuse angle 20 cms outer to xiphisternum, and 6.5 cms above the coastal margin in mid axillary line. The margins are clear cut with inner angle obtuse and outer angle acute. (iii) Abrasio

1. cms on right side of face, 1 cm outer to right eye. (iv) Incise wound 0.50.3 cms muscle deep on root of nose. Track of injuries (i) Pass through muscle in 6th intercostal space then pass through the pericardium and enters left ventricle with dimension o

0. 5 cms. The depth of injury is 8 cms and direction is backward, medially and downward. (ii) Cuts through right 9th rib and intercostal muscle, then pierces the diaphragm right dome, then enters right lobe of liver, goes through and through maneuvering 2.80.2 cms and then enters the transverse colon passes through and through. The depth is 12 cms and direction is backward, downward and medially.

3. According to the post mortem report, the cause of death was haemorrhage and shock consequent to the stab wound to the viscera vide Injury No.1 and 2. Injuries No.1 and 2 are caused by sharp single edged weapon and are sufficient to cause death in the ordinary course of nature singularly and collectively.

4. The prosecution version is that on 14.03.2008 at about 9.00 p.m. the two appellants came to Delhi Public Library near old Delhi Railway station and the deceased was given knife blows causing his death. The question is whether the appellants are the perpetrators of the said crime. The prosecution case relies upon three eye witnesses; PW-1 Suresh Mishra, PW2 Suraj and PW-3 Ajay. The

prosecution also relies upon circumstantial evidence which corroborates the statement of the eye witnesses in the form of disclosure statement and recovery of the weapon of offence, i.e., knife and the FSL report. They also rely upon the blood stained clothes, which were seized from the appellants and sent for forensic examination and the FSL Report (Ex.PW-23/G) received thereafter. EYE WITNESSES 5 PW-1 has deposed that he was selling eggs on rehri near Delhi Public Library on 14.03.2008, when at about 9.00 p.m. the appellant-Nazim came to the spot and caught hold of the deceased and appellant-Ashish gave knife blow to Vinod, who fell down. The blow was given on the front part of Vinods body but he could not state the exact place where the injury was caused. Appellant-Ashish at that time had uttered that the deceased had threatened him that today he would finish him. There was previous history of enmity of the appellants with the deceased. The appellants and the deceased were quarrelling and fighting with each other. During the occurrence, the knife with the appellant Ashish had fallen on the back side of his rehri but Ashish had picked up the said knife and hit the deceased. Somebody made a telephone call at number 100 and the police came to the spot but by that time the appellants had fled.

6. PW-2 has stated that he was working as a painter and used to do white washing and for this purpose he used to sit at the Ghantaghar Chowk. On 14.03.2008 at about 9.00/9.15 p.m., when he was going back to his house he saw three boys quarrelling with each other near the gate of Delhi Public Library. He knew the two appellants from before but he did not know the deceased. Appellant-Ashish was giving beating to the third boy and was swearing that he would finish him, as the deceased had beaten him earlier. The appellant-Ashish took out a knife from his pocket and gave knife blow on the front portion on the left side of the stomach. Another blow was given on the right side of the stomach. Appellant-Nazim had caught hold of the boy when the blows were given. The injured boy fell down and the blood started oozing out. He had tried to intervene in the scuffle but stepped back after Ashish took out the knife. He also deposed that the knife had fallen near a rehri and was picked up by Ashish before he gave the blows. Police reached the spot when someone informed by telephone at number 100. The police had recorded statement at the spot and then on the next day i.e. on 15.03.2008 he had gone to village Malik, Loni, Ghaziabad where the two appellants were identified

and apprehended. Appellant had produced a knife there underneath a green colour plastic sheet, which was seized vide seizure memo Ex.PW-2/A. Sketch of the knife (Ex.PW-2/B) was also prepared and signed by PW-2 at point X. The appellants were arrested.

7. PW-4 Ajay has stated that he used to sleep near Delhi Public Library and on 14.03.2008 at about 8.30/9.00 p.m. Vinod, who used to work like him as a waiter in marriages, was sitting with him. They were planning to go to sleep. The two appellants came there and started quarrelling with Vinod. Appellant-Ashish told them that he wanted to take revenge for the previous beatings. Vinod was beaten up and at that time appellant-Ashish took out a knife which fell down but was picked up and then he stabbed Vinod. Appellant-Nazim had caught hold of Vinod at that time. The appellants ran away and Vinod expired within 10-15 minutes. Someone informed the police and they reached the spot.

8. Presence of PW-1 and PW-4 at the spot cannot really be challenged and questioned. PW-1 was selling eggs on the rehri near Delhi Public Library at night time when the incident had happened. He is the complainant and had signed Ex.PW-1/A. He was cross-examined in detail but his credibility and his presence on the spot has not been shaken. He has stated that on both sides of his rehri persons used to sleep on bed (bisters) which were provided on rent. He knew Vinod as he used to eat eggs but was not his friend. PW-4s statement in chief has remained unscratched. He has stated that he used to take bed on rent for sleeping like others for `5/-. On the fateful night he was sitting on chabutra left side of the gate of the library. He did not remember the colours of the clothes worn by the appellants but that they were wearing pants and shirt. He tried to intervene but after seeing the knife had stepped back. His statement was also recorded on the spot. He identified the appellants.

9. The deceased-Vinod was a vagabond. His parentage and permanent address were not known and could not be ascertained. However, name Vinod finds mention and is recorded in the rukka Ex.PW-1/A, which was recorded on statement of PW-1. We are not inclined to disbelieve PW-1 and treat him as a stock witness on the ground that he had earlier deposed ten years back in a theft

case. The time gap is substantial and long. This by itself does not destroy the credibility of statement made by PW-1 that he was present at the spot and was selling eggs as a street vendor. PW-1 has also deposed that he did not have any licence but this does not mean that he was not working or selling eggs. Most of the street vendors tend to operate without any licence. The contention that PW-1 may not have seen the occurrence because he was busy with work or because of the noise has to be rejected. An incident, such as this, would have attracted attention. Being busy with work and noise in crowded old Delhi area is one thing but when there is occurrence like this, it catches attention. Most persons get distracted and attention necessarily gets focused on the incident, possible consequence etc.

10. Our attention was drawn to cross-examination of PW-1 wherein he had stated as under: .Many police personnel reached and they came on foot, motorcycle and in the vehicle also. My statement was recorded on the spot. I cannot tell if statement of any other person was recorded on the spot. I have visited the Police Station once in connection with this case when the accused persons were arrested. I went to the Police station on the same night and the accused persons were also brought in the Police Station in the same night when I present there. I have seen both the accused persons in the Police Station at about 2:00 a.m. on the same night. I have signed a paper at that time in the Police Station. It was accordingly submitted that there is a contradiction whether PW1s statement was recorded at the spot or at the police station. We do not agree. Apart from the fact that this is a minor discrepancy, on close scrutiny it is apparent that PW-1 preceded the statement narrating that his statement was recorded at the spot itself. He has deposed that he had visited the police station only once in connection with the case. Thus, PW-1 has deposed that he had once again visited the police station at about 2.00 a.m., when he saw the appellants in police custody.

11. We agree with the counsel for the appellants that PW-1 should have been more categorical and clear when he had seen the appellants in police custody. However we have deposition of PW-2 Suraj, who has stated that the two appellants were arrested on 15.03.2008 from Loni, district Ghaziabad, U.P. vide arrest memo Ex.PW-2/C and Ex.PW-2/D. He had also signed the said memos.

PW-2 is a chance witness but his presence at the spot is probable. He was residing in the area where the occurrence had taken place and he also knew the two appellants. He identified them by name. In the cross examination, he has given description of the clothes worn by the two appellants and is consistent that the knife injury was given by Ashish and Nazim had caught hold of the deceased at that time. In the crossexamination PW-2 has stated that there was one person selling rasgullas near the spot who had tried to intervene in the fight but he did not know his name. PW-1 is the rehriwala who was selling eggs and not ragullas. However, PW2, in his examination in chief has affirmed presence of a rehri of eggs at the spot and that the knife had fallen near the rehri of eggs and was picked up by appellant Ashish before he stabbed the deceased. Reference to presence of rehriwala selling rasgullas who has not been produced or referred to by others does not impel us to disregard the testimony of PW-1 or PW-2. Similarly the minor discrepancy and mistake made by PW-2 on the colour of the clothes worn by the appellants is not compelling enough to disregard the ocular statement of PW-2.

CORROBORATION OF THE EYEWITNESSES BY OTHER WITNESSES AND INJURIES ON THE APPELLANTS, AT THE TIME OF ARREST 12 The place of occurrence is confirmed by Mohd. Abdul Kasim Siddiqui (PW-19), who had stated that on 14.03.2008 at about 9.00/9.15 p.m. when he reached Delhi Public Library, Old Delhi he saw one person in a dead condition. Several persons had gathered around him. He made a telephone call to the police from his mobile number and the injured was taken to the hospital. The statements made by PW-1, 2 and 4 have been corroborated by the police witnesses SI Shishpal (PW-21) and Inspector Randhir Singh (PW-23) the investigating officer. He had recorded the statement of PW-1, Ex.PW-1/A and made an endorsement and the FIR was registered. The Crime Team was called at the spot and the dead body was photographed and blood stains were collected. He has stated that the deceased was identified as Vinod whose parentage could not be ascertained. Rough site plan was prepared and he had recorded statement of Suraj and Ajay, PW-2 and PW-4 respectively. Thereafter, on 15.03.2008 at about 07.15 p.m. they went to Loni, Ghaziabad and the two appellants were apprehended and arrested. Disclosure statements (Ex.PW-9/A and Ex.PW-9/B) were made by the two appellants Ashish and Nazim, respectively. The knife hidden in the plastic sheet,

which was lying in a room, was recovered. Sketch of the knife was prepared. Blood stained clothes of the accused were also seized vide seizure memo Ex.PW-9/C and Ex.PW-9/D. The appellant-Ashish was having fresh injury on fingers and hands. The appellants were taken to Aruna Asaf Ali Hospital for medical examination and thereafter taken to the police station. After the appellants were arrested on 15.03.2008, the Investigating Officer had requested that they should be medically examined.

13. PW-22 Dr. A. Rehman had proved the medical examination of the two appellants, which was conducted by Dr. Pragyana Hanoi marked Ex.PW-22/A and Ex.PW-22/B dated 15.03.2008 vide CR No. 5296/2008. Appellant-Nazim had a scar on his left and right forearm and the right elbow. Appellant Ashish had following injuries: (i) an abrasion on his right index finger and little finger i) ii) iii) iv) v) vi) 14. multiple scar marks over scalp scar marks on left ear multiple scar marks on left arm and forearm old burn marks over both wrists multiple scar marks on right lower leg scar marks on back The appellants have not explained these injuries and on being questioned regarding the same in their examination under Section 313 Cr.P.C., have stated that the suggestion was incorrect. Presence of the aforementioned injuries on the appellants soon after their arrest, coupled with the non-explanation of these injuries by the appellants corroborates the statement of eye witnesses that the appellants were involved in a brawl with Vinod who as a result had sustained knife injuries and consequently his life. DISCLOSURE AND RECOVERY 15 The appellants were arrested on 15.03.2008 from Malik Village, opposite Vijay Nagar, Loni, Ghaziabad at around 07:30 p.m. vide arrest memos Ex.PW-2/C and Ex.PW-2/D.

16. Both made their disclosure statements and on the pointing out of appellant Ashish, a knife having blood stains on it was recovered which was hidden under a plastic sheet and was lying in the room. A sketch of the knife Ex.PW-2/B was prepared and the knife was seized and sealed vide seizure memo Ex.PW-2/A and was sent to FSL. The clothes of both appellants were having blood stains and were seized vide seizure memo marked as Ex.PW9/C and Ex.PW-9/D and sent to FSL. PW-2, is a witness to the arrest memos and the seizure memo of the blood stained knife.

17. The knife seized from the place of arrest was sent for medical opinion and on 24.03.2008 Dr. Rohit has opined (vide Ex.PW-18/B) that Injuries No.1 and 2 as mentioned in the post mortem report No.323/08 could be possible by the weapon (knife) submitted.

18. The sealed parcels containing clothes of both appellants were sent to FSL, Rohini for expert opinion. The FSL report Ex.PW-23/G and Ex.PW23/H shows that human blood O group was detected on the pants of Ashish and on the shirt of Nazim which is the blood group of Vinod, also.

19. The clothes of Vinod were sent to be examined on 27.03.2008 to opine on whether they have corresponding cut marks as per the injuries mentioned in the post mortem. Dr. Rohit has given his opinion Ex.PW-23/F, which was proved by PW-18, Dr. S. Lal. After examination of the full sleeve shirt and trouser with belt of Vinod, Dr. Rohit has opined that the two cut marks on the clothes of Vinod correspond to the Injury No.1 and 2 as mentioned in the post mortem Report Ex.PW-18/A. MOTIVE AND CONDUCT 20 All three eye witnesses have consistently stated that appellant Ashish had said that he had come to take revenge for prior beatings by Vinod. PW-1 and PW-2 have also categorically stated that appellant Ashish had during the scuffle had threatened Vinod saying aaj tera kaam tamam kar dunga.

21. The prosecution has relied on the testimony of Dr Anubha PW-7 and Dr Simon Thomas PW-20 and the MLC of Ashish on 26.12.2007 to prove that appellant Ashish had sustained injuries in a fight.

22. PW-7 has deposed that on 26.12.2007, she was the Medical Officer at Aruna Asif Ali Government Hospital, Delhi and appellant Ashish was brought to the hospital around 2:30 a.m. by ASI Ved Pal, PCR with alleged history of assault. On local examination the following injuries were noticed:(i) (ii) (iii) (iv) (v) 23. CLW two in number on left parietal region of scalp 3X 0.2 X 0.2 cm and 3.5X 0.2 X 0.2 cm CLW behind left ear 2 X 0.2 X 0.2 Abrasion on Lt. Pinna 1 X 0.5 cm Swelling in left hand dorsum, right clavicle right ankle with CLW 0.5 X 0.2 X 0.2 cm left hand Loss of left lateral incisor with abrasion on upper lip left side. She deposed that the patient was then referred to SR surgery, SR Orth and Dental SR for detailed

examination. The MLC No.3251/07 is marked as Ex.PW-7/A. PW-20 has proved the MLC No. 3251/07 dated 26.12.2007 Ex.PW-20/A of Ashish who was examined by Dr Pradeep and the X ray Report Ex.PW-20/B given by Dr. Kiran.

24. From the evidence of PW-7 and PW-20 and the documents prepared by the officials at Aruna Asif Ali Hospital it is clear that appellant Ashish had sustained injuries in the early hours of 26.12.2007 and was brought to this hospital. In his statement under Section 313 Cr.P.C., appellant Ashish has not put forth any explanation or denied these injuries nor has he led any evidence to disprove the aforesaid evidence.

25. Based on this evidence it can be presumed that appellant Ashish did enter into a scuffle on 26.12.2007 and was therefore, motivated to take revenge.
EXAMINATION UNDER SECTION 31 Cr.P.C.

26. Both the appellants in their statement under Section 313 Cr.P.C. have denied their involvement in the commission of the offence they were charged with stating that they were innocent and had been falsely implicated. The appellants have stated in their additional statement under Section 313 Cr.P.C. that they were residing in a one room apartment as tenants in Village Malik, DLF Ankur Vihar in the month of March. However, they were not arrested from there. Instead Appellant Ashish was arrested from Chandni Chowk near Fawara on 15.03.2008 at noon time. Appellant Nazim states that he was arrested from a tea shop in Chandni Chowk in front of Shish Ganj Gurudwara on 15.03.2008 at noon time. They further state that their clothes were not changed after arrest and the clothes produced in evidence did not belong to them. The blood stains on the clothes were planted by the police and those clothes have never been worn by them. They also denied having known Vinod or the factum of any enmity with him at any point of time.

27. With regard to the arrest of the appellants, it is noteworthy to mention that PW-9, Constable Neeraj Kumar has stated in his cross examination that the landlord had come to the house wherefrom the appellants were arrested whereas, PW-10 Bijender Singh, who is the landlord of the house at Village Malik has stated that he was informed by the Chowkidar that the appellants were arrested and had gone to

the police station on 06.04.2008 in that connection. There is therefore, a minor contradiction in the testimonies of PW-9 and PW-10 regarding PW-10s presence at the time of arrest. PW-2 is a witness to both the arrest memos and the seizure memo of the blood stained knife recovered from the residence of the appellants. The appellants have admitted that they were residing in the address mentioned in the arrest memo. PW-2 knew both the appellants from before and was therefore, joined in the arrest of the appellants. Thus, the argument of false arrest is without merit and consequently fails. CONVICTION UNDER SECTION 30 IPC AND ROLE OF NAZIM 28 Learned Counsel for appellant Ashish has then urged that the incident being in the nature of a sudden fight, the conviction be converted to Section 304 Part I IPC.

29. There is evidence on record to show previous enmity of Ashish with the deceased nearly 3 months before the incident. The eye witnesses to the incident have categorically deposed that Ashish had said that he had come to take revenge for prior beatings. The evidence that has come forth by way of testimonies of PW-1, PW-2 and PW-4 stands corroborated by the MLC Ex.PW-7/A and Ex.PW-20/B of Ashish on 26.12.2007. It is thus established that there was previous enmity between Ashish and the deceased. Further, appellant Ashish was armed with a knife before approaching the deceased. This is evidence of the fact that they had come with a premeditated plan and establishes their intention. The possibility of a sudden fight is ruled out as Ashish was armed with a weapon i.e. knife and uttered the words *tera kaam tamam kar dunga*. A sudden fight implies mutual provocation and in the instant case, the deceased was sitting unarmed, near Delhi Public Library around 9.00 p.m., as it was his place of sleep. The argument of sudden fight therefore fails.

30. Learned Counsel for the appellant Nazim has contended that the role ascribed to appellant Nazim in this offence as put forth by way of testimonies of PW-1, PW-2 and PW-4 is that he had caught hold of Vinod. He did not have any previous enmity with the deceased and there was a complete absence of motive and intention to kill the deceased on his part and therefore, his conviction should be modified from Section 302 to one under Section 304 Part I of the IPC. Reliance was placed upon the decisions in case of *Joginder Singh vs. State*, 2011 (2) JCC

133.and Neerak Kumar & Ors. vs. State, 2012 VAD (Delhi) 560.

31. We do not agree with the said contention. While it may be true that there is no evidence on record to show that appellant Nazim had any previous enmity with the deceased, however, (PW-1 and PW-2) the eye witnesses have categorically stated that appellant Ashish had said that he had come to take revenge and that he uttered the words *tera kaam tamam kar dunga*. Therefore, Ashish was very vocal about his intention to kill the deceased. Also it is established through the version of the eye witnesses that appellant Ashish took out the knife from his pocket but it fell on the ground and was subsequently picked up by Ashish to stab the deceased. It is noteworthy to mention here that there were two stab wounds inflicted by Ashish on the deceased. Nazir was an equal participant as he had caught the deceased and, thus gave the requisite opportunity to Ashish to cause the injuries. It is a well settled principle that the charge of common intention can be established by evidence that there was a plan or meeting of mind of all the accused persons to commit the offence and such meeting of mind can be at the spur of the moment and does not necessarily require evidence of a premeditated arrangement. Explaining the concept of joint liability, in case of *Babulal Bhagwan Khandare vs. State of Maharashtra*, 2005 (10) SCC 404. it has been observed:

20. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the

crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v. State of Punjab*:

1977. Cri.L.J.

164, the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

32. Therefore, it can be concluded that appellant Nazim had the required common intention with Ashish and the offence was committed in furtherance of this common intention.

33. The decisions relied upon by the counsel for appellant Nazim can be distinguished on facts. It is a trite proposition, repeatedly recognized by the Supreme Court that each case turns on its own peculiar facts. In the judgment reported as *Megh Singh vs. State of Punjab*, 2003 (3) JCC 1513, it was observed that circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based.

34. *Joginder Singh vs. State*, 2011 [2] JCC 133.(Delhi) is decision of a Division Bench of this Court referring to Exception IV to Section 300 IPC and elucidates the philosophy behind the said section. It has been observed that criminal jurisprudence recognizes that unexpected events may cloud a man's sober reason and sometimes can compel him to do deeds, which he would not otherwise do. In such cases criminality is lowered and not treated at par with cases of premeditated murder. In facts of the said case, exception was applied in spite of three stab

wounds. In our case the said exception is not applicable as the appellants had come to the spot armed with a knife and with the intention to take revenge.

35. In *Surinder Kumar vs. Union Territory, Chandigarh*, AIR 198.SC 109, it has been observed that to invoke Exception IV, there should be a sudden fight; there should not be any premeditation; the act should have been done under heat of passion; and the assailant should not have taken any undue advantage or acted in a cruel manner. The said conditions are not satisfied in the present case.

36. In *Neeraj Kumar vs. Soni*, 2012 (5) AD (Delhi) 560, question of common intention under Section 34 IPC was examined. The primary accused, it was held, nursed a grudge against the deceased and was waiting for an opportunity and, therefore, was held to be guilty under Section 300 IPC. The other accused persons, who had caught hold of the deceased or had exhorted, were convicted under Section 304 Part-I IPC on the ground that they did not share common intention under Section 302 IPC to commit murder. It was observed that there was absence of clear cut motive or proof of premeditated design. In the present case, however, there is specific evidence that the two appellants had come together with desire and motive to take revenge for injuries, which had been earlier suffered by Ashish in a fight with the deceased. Ashish was armed with a knife and had come with a premeditated plan to take revenge. The two appellants had acted in a concert and with a common design. Nazim was an equal participant and not a spectator. Two stab wounds were given while the appellant Nazim was holding the deceased.

37. In view of overwhelming medical evidence, the testimonial evidence of the witnesses to the incident and the motive and conduct of the appellants, we conclude that both appellants caused murder of Vinod on 14.03.2008 in furtherance of their common intention. We uphold the conviction and sentence of both Ashish and Nazim for the offence of murder of Vinod under Section 302/34 IPC. The appeals are dismissed. (SIDDHARTH MRIDUL) JUDGE (SANJIV KHANNA) JUDGE MAY 08.2013 dn