

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 779 OF 2010

DHANPAL

.....APPELLANT

VERSUS

STATE NCT OF DELHI

.....RESPONDENT

WITH

CRIMINAL APPEAL NO.1442 OF 2019
(arising out of SLP(Crl.) No.3045/2010)

CRIMINAL APPEAL NO. 1441 OF 2019
(arising out of SLP (Crl.) No.3043 of 2010)

J U D G M E N T

ANIRUDDHA BOSE, J.

A collective assault resulting in the death of one Ajay Kumar Sharma gives rise to these three appeals. The incident occurred in the evening of 9th August, 1996. Cause of his death

was stabbing injuries inflicted on him in course of such assault. Sanjeev, the appellant in Criminal Appeal No.1442 of 2019 arising out of SLP (Crl.) No.3045 of 2010 had, while riding on his two-wheeler hit a cycle cart belonging to one Sanjay, at a location close to the latter's house in Purana Maujpur under Bhajanpura police station, North East Delhi. Deceased victim Ajay was Sanjay's cousin. As per prosecution evidence disclosed during the trial, there was some kind of verbal altercation between said Sanjeev and Sanjay after the collision. Sant Ram, the appellant in the proceeding in Criminal Appeal No.1441 of 2019 arising out of SLP(Crl.) No.3043 of 2010, also reached the spot and took Sanjeev's side in such quarrel. At the intervention of two relatives of Sanjay, Narender Kumar (P.W.3) and Sobha Ram (P.W.4), there was a temporary truce with Sanjeev and Sant Ram leaving that spot. Sanjeev however returned after a short while along with three other individuals, Kamal, Dhanpal and said Sant Ram to the place of occurrence. Sanjeev's sister is the wife of Kamal. Kamal's father is

Dhanpal and Sant Ram is Dhanpal's brother, thus uncle of Kamal.

2. By the time these four persons had returned to the spot, Ajay had reached there after attending to his dairy work. Ajay ran a business of dairy farm. Evidence reveals that at that point of time Sanjay was deliberating over the dispute with Shobha Ram and Narender. As per the statement of Sanjay, forming the basis of the FIR from which the case started, Dhanpal then said "Leh lo gaadi wale ko bach ke jaane na pai". Then all four of them attacked Ajay. Dhanpal, Sanjeev and Sant Ram held Ajay and within seconds Kamal assaulted Ajay with a knife on his chest, abdomen and hips. Sanjay thereafter took the deceased to G.T.B. Hospital with Narender's help. Ajay was declared brought dead at the hospital. The autopsy surgeon in the post-mortem report noted seven injuries on the body of Ajay, out of which four were incised stab wounds. These wounds were on right side of the buttock, midline of front of chest, midline of front of abdomen and right side of chest in the

mid axillary line. There was also injury on midline over front of abdomen and this was referred to as “incised wound”. The other two injuries referred to in the said report were red abrasion on the back of left forearm as also over left side front of neck. These injuries have been recorded in the judgments of the Trial Court and the High Court. It has also been recorded in the judgment of the Trial Court that such injuries were sufficient to cause death in ordinary course. The Trial Court found the three appellants as also Kamal, all four of whom were arraigned as accused persons, guilty under Section 302/34 of Indian Penal Code. The Trial Court primarily relied on eyewitness account of the incident in the depositions of P.W.1(Sanjay), P.W. 3 and P.W. 4 to come to its finding. So far as Kamal’s conviction is concerned, we find from the Trial Court judgment that there was recovery of his wearing apparels with bloodstains on the basis of his statement. But in relation to these three appeals, foundation of conviction was eyewitness account of the incident. Sanjay (P.W.1), Narender Kumar

(P.W.3) and Sobha Ram (P.W.4) testified as eyewitnesses and gave uniform account of assault on the deceased victim.

3. The incidence of assault took place at around 6.15 p.m. The Inquiry Officer, Surender Kumar (P.W.19) had reached the hospital and recorded the statement of P.W.1. The actual FIR was registered at 9.30 p.m. in Bhajanpura Police Station. On that basis a case under Section 302/34 was started.

4. The Trial Court found the appellants guilty relying on the testimonies of the aforesaid three witnesses of fact. The Trial Court believed the depositions of the three eyewitnesses finding no major contradiction or discrepancy in their statements made in course of their examination. Each of the accused persons was sentenced to life imprisonment and subjected to fine of Rs.2,000/- each. It was also specified in the order of sentence that in default of payment of fine, each defaulting convict would have to undergo further one month's simple imprisonment. The High Court confirmed the judgment of conviction and order of sentence. Before us, the learned

counsel for the three appellants have primarily argued that there was no evidence before the Trial Court to convict the appellants under the aforesaid provisions. The appellants' defence is that they had no knowledge of Kamal carrying the knife or his intention to inflict injuries on Ajay which led to the death of the victim.

5. There are sufficient materials, however, to establish the three appellants had returned together to the place of occurrence and attacked the deceased victim with Dhanpal exhorting to kill Ajay. They had grappled the victim and said Kamal inflicted multiple injuries on him with the knife. On the basis of evidence disclosed, the Trial Court and the High Court found that there was prior meeting of minds of all the four convicts and all the three appellants had intention common with that of Kamal. On this point, the ratio of the judgment of this Court in the case of **Asif Khan vs. State of Maharashtra and Another** [(2019) 5 SCC 210] is relevant. In an earlier case, **Rajkishore Purohit vs. State of Madhya Pradesh and**

Others [(2017) 9 SCC 483], it has been held that to establish common intention to cause murder, overt act or possession of weapons by all the accused persons is not necessary. In the case of **Richhpal Singh Meena vs. Ghasi alias Ghisa and Others** [(2014) 8 SCC 918], the ratio is that in the event the nature of the assault is such that the target person is likely to die from the injuries resulting therefrom, the accused must be deemed to have known the consequences of his act.

6. The learned counsel for the appellants highlighted two sets of discrepancies from the depositions of the prosecution witnesses. The first related to use of the words for exhortation by Dhanpal, which we have quoted earlier. Words narrated by the P.W.1 were not repeated by P.W. 3 in identical term. P.W.3 had broadly recorded the same version of the incident but while referring to Dhanpal's exhortation, he said it was "lelo Dhadi wale ko bach ke na jane paye". The Trial Court in its judgment has dealt with this aspect of discrepancy in the following manner:-

“No criminal trial is free of minor discrepancies. This case also has its own share of such discrepancies. The Ld. Defence counsel has done a meticulous study of the oral evidence and pointed out the following discrepancies. In the first place whether the exhortation of Dhannu was i.e. “Lo Gadi wali Ko” “or Le Lao Dhadi wale Ko” needs little explanation. In the FIR the exhortation is described as “Le LO Rehrio Wale Ko”. Rehri Gadi and Dhadi are words with similar pronunciation. The witness may not have heard the words similarly and have given different versions of the exhortation. Their testimony cannot be discarded on that account. Secondly, it is pointed out that Narender and Shobha Ram were with Sanjay till 10:30 pm as stated by both Sanjay and Narender PW1 and PW3. PW4 Shobha Ram says that the three of them remained there all right. Sanjay says police recorded his statement at the spot after return form the hospital. PW 3 says that his statement was recorded in the same night as the spot. So, says Shobha Ram. Yet Shoba Ram says that police did not record the statement of anyone in his presence. While PW 1 says that he cannot say if statement of any other witness was recorded in his presence. The IO PW 19 SI Surinder Kumar says that he recorded the statements of the witnesses at the spot after coming from the hospital. When each witness says that his statement was recorded at the spot and the IO says the

same, I do not think that their failure to say that the statements of other witnesses were recorded at the spot in their presence cannot be a matter of material contradiction or material discrepancy.”

(quoted verbatim)

7. The other factor to which our attention was drawn was delay in registering the FIR. But explanation for such delay appears from a written communication of the I.O. to the Duty Officer, which forms part of Annexure “P1” in Criminal Appeal No.1442 of 2019 arising out of SLP(Crl.) No.3045 of 2010. This reads:-

“To Duty officer P.S Bhajanpura. It is submitted that on receipt of a copy of the report No.61 B.I alongwith Constable Pradeep Kumar No.897 NE proceeded towards the place of incident near house No.3. Mauzpur where blood was lying on the road on inquires it was known that deceased Ajay Kumar Sharma S/o Bal Ram Sharma has been taken to GTB Hospital and eye witness was present at the place of incident so left constable Pradeep Kumar to look after the place of occurrence, I proceeded to GTB Hospital and got MiC report C-272196 regarding Ajay Kumar Sharma who was declared dead by Dr. Sahay casualty at 7 PM. In

hospital I met Sanjay Kumar Sharma the brother in Hospital and his statement was recorded which was read over to him which was confirmed by him in Hindi and his signatures are attested by me. On the basis of statement and circumstances of the case a case under section 302/34 IPC is made out and case diary is with constable Rampal No.1537 at P.S. Hospital and SHO and his staff has also come to hospital special report is sent to officer and crime team and photographs be sent at the place of incident.”

(quoted verbatim)

8. We find the approach of the Trial Court and the High Court in appeal was proper in dealing with the discrepancies pointed out on behalf of the appellants. The delay in registering the FIR has been explained properly and judgment of conviction cannot fail for that reason. It is a fact that the eyewitnesses were known to the deceased and there was no neutral witness. But for that factor alone we cannot exonerate the appellants, particularly since the Court of first instance and the First Appellate Court have already examined the evidence and given their findings in favour of prosecution. We do not find any error

in the judgment of conviction and order of sentence so far as the appellants are concerned. All the three appeals are dismissed.

9. The bail bonds of the appellants are cancelled. The appellants are directed to surrender before the Trial Court within six weeks and serve out their sentence. In case they do not surrender within the aforesaid timeframe, the Trial Court shall take necessary steps to take them into custody.

Pending application(s), if any, stand disposed of.

Let a copy of this judgment be sent to the Trial Court forthwith along with the records of the Court of first instance.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi,
Dated: 27 April, 2020