

**(2015) 08 SC CK 0039**

**In the Supreme Court Of India**

**Case No :** Criminal A. No. 1047 of 2015 (Arising out of SLP(Criminal) No. 5003/2014) and Crl.A. No. 1048 of 2015 (Arising out of SLP(Criminal) No. 8256/2014)

Mukesh Kumar

APPELLANT

Vs

State of Delhi

RESPONDENT

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**Date of Decision :** 12-08-2015

**Acts Referred:**

Constitution of India, 1950 — Article 136  
Evidence Act, 1872 — Section 145  
Penal Code, 1860 (IPC) — Section 302, 323, 324, 34

**Citation :** (2015) 4 RCR(Criminal) 506 : (2015) 9 SCALE 209

**Hon'ble Judges :** Ranjan Gogoi, J;N.V. Ramana, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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**Judgement**

1. Heard Learned Counsels for the parties. Delay condoned.
2. Leave granted.
3. Aggrieved by the affirmation of their conviction recorded under Section 302 of the Indian Penal Code, 1860 (for short "IPC") and the life sentence awarded, the three Appellants in the two sets of appeal are before us under Article 136 of the Constitution of India.
4. The conviction of the Appellants by the learned trial Court and affirmed by the High Court is based on the testimonies of eyewitnesses Suresh (P.W.I) and Sarla (P.W.2) which evidence the Court had found to be corroborated by the evidence of Sunil Kumar Vats @ Sonu (P.W.5) and Manish Lakra (P.W.6).
5. Learned Counsels for the Appellants in both sets of appeals have very strenuously argued the case on behalf of the Appellants. It is contended that the entire of the prosecution case is false and fabricated inasmuch as the earliest version of the incident as recorded by the Police Control Room and the

immediate communications issued thereafter indicate the assault to be by stabbing which subsequently was altered to one of injuries caused by a blunt weapon. According to the Learned Counsels for the Appellants, the prosecution case revolves around an incident of assault over the return of a loan of Rs. 2 lakhs by the accused Ranbir @ Pappu to Sarla (P.W.2). It is submitted that P.W. 2 was incapable of generating any such kind of money in view of evidence on record which showed that she had a meagre income of Rs. 2,000/- from pension and Rs. 2,500/- from rent besides some additional income from sale of milk. It is contended that the evidence of P. Ws. 5 and 6 is replete with highly improbable and unnatural versions of the conduct of P. Ws. 1 and 2 who, though are the brother and sister of the deceased, had not accompanied the deceased to the hospital. This is contended to be proved by the Medico Legal case (MLC) of the deceased prepared by the doctor in the Sonia Hospital, Nangloi, Delhi which has been duly exhibited. The fact that P. Ws. 5 and 6 are related to P. Ws. 1 and 2 and the deceased has also been stressed upon to contend that the testimonies of the said witnesses are not worthy of credence. The embellishment in the evidence of P. Ws. 1 and 2 and the contradictions with reference to their previous statement in writing, duly proved in accordance with the provisions of Section 145 of the Indian Evidence Act, 1872, has also been argued to contend that the evidence of the eye-witnesses should not inspire the confidence of the Court. Lastly, it is contended that in any view of the matter even if the prosecution case is to be believed, common intention required under Section 34 of the Indian Penal Code is wholly absent in the present case so as to sustain the conviction of the accused.

6. The arguments advanced on behalf of the Appellants have met with stiff resistance offered by the Learned Counsel for the State of NCT of Delhi. A reference to the stab injuries in the earliest version of the prosecution case has been explained by referring to the cross-examination of P.W. 6 wherein he had stated that though he had initially made the phone call to the Police Control Room, the actual communication of the incident was by somebody else to whom the phone was handed over by P.W. 6. The starting point being what is revealed from the aforesaid part of evidence of P.W. 6, the subsequent communications so far as the" description of the assault as stab injuries, has been contended to be reasonably explained. Learned Counsel for the State contends that there is nothing in the evidence of eye-witnesses or the evidence of P. Ws. 5 and 6 which makes their testimonies doubtful. Insofar as Section 34 of the Indian Penal Code is concerned, according to the learned State Counsel, on the facts of the case as proved by the evidence on record, common intention is clearly made out

7. We have considered the submissions advanced by the rival parties. We have looked into the relevant part of the evidence and the materials on record.

8. While the slight difference in the initial version of the prosecution and the FIR version has been reasonably explained by the cross-examination of P.W. 6, it is our considered view that minor discrepancies, embellishments and contradictions

in the evidence of the eyewitnesses do not destroy the essential fabric of the prosecution case, the core of which remains unaffected. Even if we have to assume that there are certain unnatural features in the evidence of the eyewitnesses the same can be reasonably explained on an accepted proposition of law that different persons would react to the same situation in different manner and there can be no uniform or accepted code of conduct to judge the correctness of the conduct of the prosecution witnesses i.e. P. Ws. 1 and 2. The relation between the P. Ws. 5 and 6 and the P. Ws. 1 and 2 and the deceased, in our considered view, by itself, would not discredit the testimony of the said witnesses. There is nothing in the evidence of the P. Ws. 1 and 2 which makes their version unworthy of acceptance and their testimony remains unshaken in the elaborate cross-examination undertaken.

9. Insofar as Section 34 of the Indian Penal Code is concerned by which the culpability of the accused has been determined, from the sequence of events narrated by the prosecution witnesses so far as the assault is concerned, what we find is that initially Ranbir @ Pappu, Mukesh Kumar and Daulat Ram were present in the scene of the crime. Accused Ranbir @ Pappu had held the deceased by the neck and all the three accused were assaulting the deceased with their legs and fists. Clearly, the aforesaid accused were not armed. At some later point of time, the accused Ravi @ Ashu came with a "danda" and assaulted the deceased on his head. Thereafter all the four accused held the deceased by the neck with "danda".

10. Dr. V.K. Jha (P.W.-20) who performed the postmortem examination of the deceased had found the following injuries on the body of the deceased.

1. Bruising on left shoulder on its outer aspect of size 3 cms x 2 cms.
2. Bruising of lower lip.
3. Lacerated wound just below chin 3 cms x.5 cm x muscle deep
4. Multiple bruises on front of neck of size varying from 3 cms x 2 cms to 2 cms x 2 cms.
5. Lacerated wound on right temporal region 3 cms x 2 cms x Scalp deep." On internal examination, there was sub-scalp haematoma on right temporo-parietal region. There was generalized subdural haematoma and subarachnoid haemorrhage on tempo-parietal region; on internal examination of neck, there was bruising of neck tissue on front.

His opinion on the cause of death as deposed by him is as follows:

After postmortem examination I opined cause of death as coma as a result of head injury consequent to blunt force diverted upon head by other party. Head injury was sufficient to cause death in ordinary course of nature.

11. From the above, it clearly transpires that the solitary cause of death is the head injury which corresponds to injury No. 5 and the internal injury, description

of which has been given by Dr. V.K. Jha (P.W.20) in his evidence. Therefore, it is the assault on the head of the deceased by accused Ravi @ Ashu which caused the death. In a situation where the deceased was already held by the accused Ranbir @ Pappu and all of them were assaulting the deceased with their fists and legs and the accused Ravi @ Ashu appeared in the scene with a "danda" at a subsequent point of time, liability for causing death by invoking Section 34 of the Indian Penal Code cannot be attributed to the accused Ranbir @ Pappu and Mukesh Kumar. The situation, perhaps, would have been otherwise if after the arrival of accused Ravi @ Ashu on the scene any of the other accused had held back the deceased and the accused Ravi @ Ashu had delivered the death blow. In the above circumstances, we are of the view that it is the accused Ravi @ Ashu who came later armed with the "danda" with which he alone assaulted the deceased on the head who would be liable for his individual act which in the present case caused the death as testified by P.W. 20. This is where we disagree with the High Court.

12. In view of our findings and conclusions as recorded above, we hold that the accused Appellants Mukesh Kumar and Ranbir @ Pappu would at best be guilty of commission of offence under Section 323 or Section 324 of the Indian Penal Code. As they have been admittedly in custody for more than eight years, we direct that the aforesaid two accused Appellants i.e. Mukesh Kumar and Ranbir @ Pappu be set at liberty forthwith. The conviction against the said two accused Appellants are altered from Section 302/34 Indian Penal Code to Section 324/34 Indian Penal Code. Insofar as accused Appellant Ravi @ Ashu is concerned, we maintain the conviction recorded under Section 302 and the sentence of life imprisonment awarded. The accused Daulat Ram has chosen not to file any appeal against his conviction and sentence. We, therefore, refrain from passing any orders insofar as the said accused is concerned. Consequently and in the light of the above, both the appeals are partly allowed to the extent indicated above.