

(2009) 09 DEL CK 0326
In the Delhi High Court
Case No : Criminal Appeal 583 of 2001

Satya Prakash and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34, 448, 452

Citation : (2009) 09 DEL CK 0326

Hon'ble Judges : Pradeep Nandrajog, J;Indermeet Kaur, J

Bench : Division Bench

Advocate : Ritu Gauba, for the Appellant; Richa Kapoor, for the Respondent

Judgement

Pradeep Nandrajog, J.—Satya Prakash, his wife Saroj and his sons, Raj Kumar @ Raju and Harish have challenged the judgment and order dated 2.8.2001 convicting them for the offence punishable u/s 302/34 IPC; 307/34 IPC and for the offence punishable u/s 452 IPC. For the offence of murder they have been directed to undergo imprisonment for life. For the offence punishable u/s 307 IPC they have been directed to undergo imprisonment for 10 years and for the offence punishable u/s 452 IPC they have been directed to undergo imprisonment for 5 years. All sentences have been directed to run concurrently.

2. The charge of murder related to the death of Ajay son of Ram Singh. The charge of attempt to murder related to the assault on Ram Singh. The charge pertaining to Section 452 IPC related to committing house trespass in the house of Ram Singh after making preparation for causing hurt to Ram Singh.

3. In returning the finding of guilt the learned Trial Judge has laid emphasis on the fact that Ram Singh PW-5 being an injured, is obviously an eye witness, and there was nothing to show that Ram Singh had not deposed the truth. With reference to the place where the blood of the deceased and blood of Ram Singh was lifted, as deposed to by the investigating officer, the learned Trial Judge has held that the same established that the assault on Ram Singh and his son took

place within the precincts of the residence of Ram Singh. With reference to the post-mortem report Ex. PW-1/A of Ajay; noting injury No. 1, the learned Trial Judge has held that the same established the intention of the accused to murder Ajay. With reference to the MLC Ex. PW-4/A of Ram Singh, the learned Trial Judge has held that it establishes a murderous assault on Ram Singh, who survived the assault due to good luck.

4. At the hearing of the appeal, learned Counsel for the parties had agreed that the fate of the appeal needs to be decided on the testimony of Ram Singh and the defence of the appellant taken at the very beginning i.e. Ram Singh and his son were the aggressors. That an incident did take place on 11.9.1997 in which Ram Singh, Ajay and Satya Prakash sustained injuries was admitted.

5. Before noting the testimony of Ram Singh and the defence taken, it may be noted that even Satya Prakash, appellant No. 1 had received fairly serious injuries at the time of the incident; but unfortunately, what those injuries were has not come on record since the MLC of Satya Prakash has not seen the light of the day. Neither the prosecution filed the same nor Satya Prakash produced the same in defence. But, the fact that even Satya Prakash had received serious injuries is evidenced from DD No. 31A, Ex. PW-10/A, recorded at the police station by the duty officer HC Banwari Lal PW-10 at 7:45 PM on 11.9.1997, which notes that two men named Ram Singh and Satya Prakash both residents of House No. 457, Old Hospital, Najafgarh had come together to the police station to lodge cross complaints. But since both were bleeding heavily and their clothes were soaked in blood, they were sent to Safdarjung Hospital. At the trial HC Banwari Lal PW-10 proved DD No. 31A. He deposed that both Ram Singh and Satya Prakash were badly injured when they came to the police station and Const. Surat Singh of Home Guard took them to Safdarjung hospital.

6. MLC Ex. PW-4/A of Ram Singh, duly proved at the trial by the author thereof; namely, Dr. Sunil Dayal PW-4, records that Ram Singh aged 70 years was examined at the hospital at 9:00 PM and had the following injuries:

1. 1 long incised wound, one inch lateral to left nipple horizontally along the axis of the rib.
2. 1 inch long incised wound 1 inch lateral to left nipple at the level of 5th rib (horizontal).
3. 1 incised wound at the level of 9th rib vertically at the level of vertical line of mid axilla.
4. 1 cm incised wound at the level of 2nd rib lateral to xiphisternum.
5. Punctured wound 2 inches right alias crust with exposure of omentum.

7. Ajay was removed from the spot to the hospital by ASI Raj Singh PW-13 who was in charge of PCR Gypsy (Zebra) and received information that a stabbing incident had taken place in a house at Hospital Road, Najafgarh behind a

Dharamshala. He took the gypsy to House No. 457, Najafgarh, as deposed to by him, and took Ajay to the hospital. The MLC Ex. PW-3/A of Ajay prepared by Dr. H. Ganesh PW-3 records that Ajay was brought dead.

8. The body of Ajay was seized and sent for post-mortem. Dr. Alexander PW-1 conducted the post-mortem and prepared the post-mortem report Ex. PW-1/A noting that Ajay died due to hemorrhagic shock consequent upon injury No. 1 which was caused by a double edged sharp weapon. He opined that the injury was sufficient in the ordinary course of nature to cause death. Seven other injuries were noted and were opined to be caused by blunt force impact with a hard surface or a blunt object used as a weapon. All injuries were opined to be ante-mortem. The eight injuries i.e. one caused by a sharp edged weapon and the other seven caused by a blunt force impact were as under:

(i) Longitudinal stab injury on the left epigastric region of the anterior abdomen of size 3 cm x 0.5 cm x 10 cm. Both the margins were sharp and clean cut with small intestine and omentum protruding out. Both edges acute. The center of the wound being 106 cm above the level of left heel and 5 cm below the level of left hypochondrial margin.

(ii) Abrasion on the front of forehead of size 1 cm x 1 cm.

(iii) Abrasion on the back of right elbow of size 1 cm x 1 cm.

(iv) Abrasion over the left eyebrow of size 1 cm x 0.5 cm.

(v) Multiple graze abrasion on the upper aspect of anterior left side chest within an area of 2 cm x 3 cm.

(vi) Multiple grazed abrasion on the lower aspect of anterior right side chest within an area of 15 cm x 3 cm. (vii) Multiple abrasions on the front of middle 3rd left leg within an area of 6 cm x 4 cm. (viii) Abrasion on the back of left elbow of size 1 cm x 0.5 cm.

9. Suffice would it be to note that injury No. (i) has pierced 10 cms into the abdominal cavity cutting the small intestines and also the duodenum. The left renal artery had been cut as recorded in the post-mortem report under the caption internal injuries..

10. Unfortunately, PW-1 was not cross examined as to whether the abrasion injuries No. (v) to (viii) and especially injury No. (v) and (vi) which were recorded as grazed abrasions could be the result of being pulled on a staircase. Had he been questioned as affronted, some light could have been thrown as to what actually happened for the reason the photographs taken at the spot and especially the photograph marked A-6 shows considerable blood on the staircase. From the photograph one can estimate that the width of the staircase is about 3 feet.

11. The site plan Ex. PW-12/A prepared by Insp. Rajesh Kumar PW-12, who has not been cross examined with respect to the site plan shows the spots from

where Insp. Rajesh Kumar lifted blood. The site plan shows that House No. 457, Old Hospital Road, Najafgarh has two parts. The northern part is the house of the appellants and the southern half is the house of Ram Singh. The place where Ajay was picked up in an injured condition has been marked A which is at the point where the flight of steps leading up to the first floor is shown. Spot B, C and D are the three spots wherefrom blood was lifted. Spot B is in the staircase. Spot C and D are on the open terrace on the first floor abutting a room at the rear of the open terrace.

12. Since the investigating officer has not been questioned with respect to his testimony pertaining to the site plan Ex. PW-12/A and lifting of blood from spots A, B, C and D, it is apparent that the incident took place in the house of Ram Singh and to this extent it is apparent that the intruders has entered the house of Ram Singh and not that Ram Singh and his son went outside.

13. We feel that we have reached the stage to note the testimony of Ram Singh as also the testimony of his brother Gopi Chand PW-9 and thereafter look at the defence. But, we note that the knives allegedly used by Raj Kumar and Harish were not recovered.

14. Ram Singh PW-5 deposed that he was having a constant feud with his brother Satya Prakash and on 11.9.1997 after attending a hearing at Tis Hazari Courts pertaining to a property dispute relating to the property of his mother, he returned home at 6:00 PM and was sitting in his house with his son Ajay. At 7:00 or 7:15 PM, Satya Prakash, his wife Saroj and his sons Raju and Harish entered his house. Satya Prakash said that he would teach him a lesson for not deposing favourably in Court. Raju said that somebody should catch him so that he could inflict a knife injury on him. Satya Prakash grabbed him and Raju inflicted injuries on his abdomen and chest four or five times with a knife. Till then the other accused remained standing. His son Ajay tried to save him. Satya Prakash and Saroj gave lathi blows to both of them and Harish stabbed Ajay with a knife on the right side of his abdomen. Immediately thereafter the accused fled. He deposed that his son became unconscious. He went to the police station leaving behind his son. Even Satya Prakash reached the police station. Police removed Satya Prakash and himself to the hospital and at the hospital he learnt that his son had died.

15. On being cross examined Ram Singh admitted that the plaint Ex. PW-5/DA pertained to the suit for partition filed by him. He admitted that the suit was instituted on 30.4.1998. He denied the suggestion that no case was listed in Court on 11.9.1997. He denied that on 11.9.1997 he went to Court in connection with a case of FIR No. 257/89 PS Najafgarh u/s 326/34 IPC. He admitted that he was an accused in a case u/s 448 IPC titled State v. Ram Kumar. He admitted that a case pertaining to his beating their brother Gopi Chand was also pending trial. He denied that his son Ajay and his other son Vijay had dragged Ravi the brother-in-law of Satya Prakash inside his house and gave him beating upon which Ravi stabbed Ajay and fled. He denied that he and his sons Ajay and Vijay

went to the house of Satya Prakash and asked him to sign papers to surrender his share in the property in his i.e. Ram Singh's favour.

16. From the cross examination of Ram Singh it is apparent that as per Satya Prakash, Ram Singh had come to his house to compel Satya Prakash to sign some papers and that his i.e. Ram Singh's two sons; namely, Ajay and Vijay were present and that some altercation took place. Ravi, the brother-in-law of Satya Prakash intervened and was dragged to the house of Satya Prakash where Ravi stabbed Ajay.

17. Suffice would it be to state that the defence put up is falsified from the fact that blood has been lifted from the open terrace on the first floor of the house of Ram Singh and it is not possible that without resistance Ravi was dragged upstairs. Further, the defence put up does not explain how Satya Prakash received injuries. It is apparent that the defence is nothing but a futile attempt to create a smoke screen.

18. But one thing emerges from the testimony of Ram Singh. It is a continuous past history of bickering between the brothers and criminal cases lodged against Ram Singh. Due to this enmity, Ram Singh could possibly rope in all family members of Satya Prakash whose involvement in the offence is evidenced from the fact that even Satya Prakash had received injuries as deposed to by PW-3.

19. Thus, we have to look carefully at the testimony of Ram Singh who has spoken, if not more, at least two lies. The first lie is that he went to Court on 11.9.1997 to attend a hearing in the suit for partition filed by him. Ex. PW-5/DA is the plaint of the suit filed by Ram Singh against his brothers which shows that the plaint was verified on 30.9.1998. Ram Singh has admitted that the suit was instituted on 30.9.1998. The second lie spoken by Ram Singh is that he was assaulted by Satya Prakash and Saroj with sticks. As noted above, as per Ram Singh he was first attacked by Raju with a knife when Satya Prakash had caught him and that when his son Ajay tried to save him, Harish stabbed Ajay with a knife and prior thereto Satya Prakash and Saroj gave lathi blows to him and Ajay. The MLC Ex. PW-4/A of Ram Singh does not show any lacerated or abrasion wound and thus rules out any assault on Ram Singh with a lathi. The injuries on Ram Singh, save and except the last are all incised wounds i.e. wounds caused by a knife or any other sharp edged weapon.

20. That apart, the photographs A-1 to A-6 show a narrow staircase leading up to the first floor. The open terrace on the first floor appears not to be very big in size. Unfortunately, no site plan to scale has been proved at the trial and rough site plan Ex. PW-12/A does not give the dimensions. What we intend to convey is that there is not much probability of 6 people fighting on the open terrace.

21. Witnesses can be classified into three categories. Wholly reliable; partially reliable and wholly unreliable.

22. Witnesses in category one can be believed without corroboration. Witnesses

in the last category have to be discarded. It is the mid category witnesses which create a problem for the reason the Court has to sift their testimony to separate the grain from the chaff. To do so, corroboration is the only method available.

23. We now have a look to the testimony of the third brother namely Gopi Chand who has deposed in line of the defence taken by the accused. He has deposed that Ram Singh desired Satya Prakash to sign some papers and when Satya Prakash refused to do so, Ram Singh brought a lathi from his house and assaulted Satya Prakash. Ravi intervened and was attacked. Ravi was dragged into the house of Ram Singh and Ravi inflicted the fatal stab blow on Ajay as also inflicted injuries on Ram Singh.

24. Gopi Chand has obviously lied and appears to have settled scores with Ram Singh. Our reason for so stating is the fact that it is not possible that Ravi was dragged up the stairs till the open terrace on the first floor of the house of Ram Singh.

25. The only corroboration we have to the testimony of Ram Singh is through the MLC of Ram Singh and the post- mortem report of his son. The only truth which we can segregate in the testimony of Ram Singh is of his being attacked with a knife and his son being stabbed with a knife and hit by a lathi. Ram Singh's testimony that he i.e. Ram Singh was hit by a lathi is false. We have evidence that even Satya Prakash was grievously injured and was heavily bleeding. If it was a case of four assailants v. two defenders, it would be difficult for the two defenders to launch a counter attack and grievously injure Satya Prakash. That only Satya Prakash i.e. one out of four assailants received serious injuries and the others none indicates something more, being that, in all probability there were three attackers and two defenders and in the fight two out of the three attackers being armed with knives inflicted four incised wounds on Satya Prakash and a fatal stab wound on Ajay and some lathi blows on Ajay, and in return, one attacker; namely, Satya Prakash received lathi blows. There have to be three persons who have attacked Ram Singh and his son for the reason three weapons of offence have been used; namely, two knives and a stick.

26. This is our process of reasoning for separating the grain from the chaff in light of the fact that admittedly, the assault has taken place in the house of Ram Singh whose family members could not be the assailants. Admittedly Satya Prakash received injuries which made him shed considerable blood. (We note that DD No. 31 A notes that clothes of Satya Prakash and Ram Singh were soaked in blood and that was the reason their statements were not recorded and both were sent to the hospital).

27. The question arises as to who accompanied Ram Singh?

28. In view of the fact that there is past enmity between the brothers and that Ram Singh has not deposed the full truth; taking note of the injuries inflicted upon Ajay and Ram Singh; the fact that even Satya Prakash was injured; the fact that three weapons of offence have admittedly been used to cause injuries on

Ajay and Ram Singh; the fact that there is past enmity between the family of Ram Singh and Satya Prakash leading to a possibility of false implication of the entire family of Satya Prakash; we conclude by holding that Satya Prakash, Raju and Harish were the ones who participated in the assault and as deposed to by Ram Singh, Harish inflicted the fatal injury on Ajay, and Raju inflicted knife injuries on Ram Singh and Satya Prakash inflicted lathi blows on Ajay.

29. Further question which needs to be answered is whether Satya Prakash, Harish and Raju acted in concert to cause the death of Ajay.

30. It is apparent that Harish, Raju and Satya Prakash are the aggressors and went to the house of Ram Singh. They were armed to the knowledge of each other. Satya Prakash was armed with a stick. Harish and Raju were armed with a knife each. On entering the house of Ram Singh, Satya Prakash exhorted that Ram Singh would be taught a lesson. Raju responded by saying that somebody should catch Ram Singh to facilitate his attacking Ram Singh. Satya Prakash grabbed Ram Singh and Raju inflicted injuries with a knife on the chest and the abdomen of Ram Singh. Ajay tried to save Ram Singh and was assaulted by Satya Prakash and Harish. A knife was in the hand of Harish who used the same to stab Ajay on the stomach. The blow hit the stomach of Ajay evidenced by the post-mortem report of Ajay. The intention to cause the injury which has actually been caused has been proved through the testimony of Ram Singh. The post-mortem report shows that the blow was struck with considerable force. The internal injuries show that the intended injury was sufficient in the ordinary course of nature to cause death. Thus, Satya Prakash, Raju and Harish must suffer the consequence of their concerted action. It is apparent that they shared a common intention. The principle architect of the assault is Satya Prakash. His sons actively assisted him till the end.

31. The appellants Satya Prakash, Raju and Harish have rightly been convicted. We give the benefit of doubt to Saroj.

32. The appeal stands dismissed qua Satya Prakash, Raju and Harish. The appeal stands allowed qua Saroj who is acquitted of the charges framed against her.

33. The appellants are on bail. The bail bond and surety bonds furnished by Satya Prakash, Raju and Harish are cancelled. They are directed to surrender and suffer the remaining sentence. The bail bond and surety bonds furnished by Saroj are discharged.