

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 20th August, 2010

+ **CRIMINAL APPEAL NO. 140 of 1997**

PARAMJIT SINGH @ BITTOO Appellant

- versus -

STATERespondent

Advocates who appeared in this case:

For the Appellant : Mr. Sunil Ahuja and Mr. Kanishk Ahuja, Advocates.

For the Respondent : Mr. Sunil Sharma, APP.

AND

+ **CRIMINAL APPEAL NO. 141 of 1997**

RAVINDER SINGH @ CHOTU & ANR. Appellants

- versus -

STATERespondent

Advocates who appeared in this case:

For the Appellant : None

For the Respondent : Mr. Sunil Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE P.K. BHASIN

1. Whether Reporters of local papers may be allowed to see the Judgment? (Yes)
2. To be referred to the Reporter or not? (Yes)
3. Whether the judgment should be reported in the digest? (Yes)

P.K. BHASIN,J

The appellants were convicted by the Additional Sessions Judge vide judgment dated 21st January, 1997 for murdering one Vijay and causing injuries to his brother PW-11 Vinod Kumar in an incident which took place on 22nd March, 1992 and vide order dated 24th January, 1997 they were sentenced to undergo imprisonment for life for the offence of murder and to

undergo rigorous imprisonment for three years for their conviction under Section 324/34 IPC. Accused-appellant Paramjit Singh was further convicted under Section 27 of the Arms Act also and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/-, in default of payment to undergo further rigorous imprisonment for one month. Out of the three convicted accused, who are brothers, two accused, namely, Ravinder Singh @ Chotu and Rajinder Singh @ Shanty filed a joint appeal (being criminal appeal no. 141/1997) while their brother Paramjit Singh challenged the trial Court's judgment by filing a separate appeal (being criminal appeal no. 140/1997).

2. During the pendency of these appeals appellants Ravinder Singh and Rajinder Singh after getting interim bail for some period did not surrender and so the trial Court declared them as proclaimed offenders. Their counsel also did not appear to argue their appeal when the same was taken up for hearing along with the appeal of their co-convict and brother Paramjit Singh and since the counsel for accused-appellant Paramjit Singh had appeared to argue his appeal we did not consider it necessary to appoint an *amicus curiae* for the unrepresented absconding appellants we have ourselves examined the prosecution case qua both of them also to find out whether their appeal deserves to be accepted or rejected. This is the course of action which we were expected to adopt even as per the decision of the Supreme Court in "***Bani Singh vs State of U.P.***", AIR 1996 SC 2439.

3. The prosecution case against the three accused, who are brothers, was that PW-12 Raj Kumar, brother of the deceased Vijay, had taken a loan of

Rs. 1,000/- from accused Ravinder Singh @ Chottu and had pledged one gold locket with him as security for return of the loan amount. That loan was taken by Raj Kumar about 15-20 days prior to the date of the incident which occurred on 22nd March, 1992. Thereafter accused Ravinder had been demanding his money from Raj Kumar but he could not arrange the money and he had been telling Ravinder that he would return his money as and when he would be able to arrange it. On 22nd March, 1992 Raj Kumar took a cheque for Rs. 1,000/- from his cousin and on that day at about 8.45 p.m., contacted accused Ravinder Singh for handing over that cheque to him. He along with his brothers Vinod Kumar(PW-11) and Vijay Kumar (the deceased) went to the house of Ravinder Singh. There Ravinder Singh was found standing with his brothers Paramjit Singh @ Bittoo and Rajinder Singh @ Shanty in the gali. When Raj Kumar told Ravinder Singh that he could not arrange the amount in cash and so he had brought a cheque Ravinder Singh asked him abusively as to why he had brought a cheque only for Rs. 1,000/- and saying that he should bring a cheque for a sum of Rs. 18,00/- threw the cheque at his face and all the three brothers started abusing Raj Kumar. When the deceased Vijay objected accused Ravinder Singh and Rajinder Singh caught hold of him and Paramjit Singh gave knife blows to Vijay on different parts of his body and when PW-11 Vinod Kumar tried to intervene Paramjit Singh caused injury to him also with the knife on his forehead. Upon Raj Kumar raising alarm all the three accused flew away from the scene. Vinod Kumar and Raj Kumar removed their brother Vijay to DDU hospital but the doctor there declared him dead. Vinod Kumar was also medically examined.

The doctor who examined him found 1/4cm incised skin deep wound near the eye-brow. The injury was opined to be simple having been caused by a sharp weapon.

4. The police on getting the information about the incident reached the place of occurrence and on their coming to know that injured had been removed to hospital the investigating officer sub-inspector R.K. Rathi went to DDU hospital and there he met with the injured Vinod Kumar who got his statement (Ex.PW-11/A) recorded and on the basis of that statement the police registered FIR No. 230/1992 under Sections 302/324/34 IPC. PW-11 Vinod Kumar had narrated the aforesaid facts leading to the incident of stabbing in his statement Ex. PW-11/A.

5. Accused Paramjit Singh was arrested on 24th March 1992 and while in police custody he made a disclosure statement and pursuant thereto got recovered the weapon of offence which as per the prosecution case was used by him in the commission of murder of the deceased Vijay. The knife was got recovered from a park at the cremation ground in Beri Wala Bagh and on chemical analysis blood of 'A' group, which was the blood group of the deceased, was found. Since the shirt which accused Paramjit Singh was wearing at the time of his arrest had one button missing and pocket was torn, the same was seized by the investigating officer. That was done since the police had found one button and a piece of cloth from the scene of occurrence when it had reached there. The button and piece of cloth were found by the experts at the Central Forensic Laboratory to be of the shirt of this accused

which was seized by the police. Thereafter, other two accused were also arrested.

6. After completing the investigation the police filed a charge-sheet against the three accused brothers in the Court of concerned Magistrate who, in turn, committed the case to Sessions Court. The case was then assigned to Additional Sessions Judge who tried the three accused for the offences under Sections 302/324/34 IPC and accused Paramjit Singh was additionally charged and tried for the offence punishable under Section 27 of the Arms Act also. The prosecution had examined as many as 19 witnesses for establishing its case. However, the most material prosecution witnesses were the two eye witnesses of the occurrence both of whom were the brothers of the deceased. They are PW-11 Vinod Kumar and PW-12 Raj Kumar.

7. The learned Additional Sessions Judge accepted the evidence of the injured witness PW-11 Vinod Kumar and also the evidence of PW-12 Raj Kumar despite his turning hostile at the time of his cross-examination on behalf of the accused and also relied upon the prosecution evidence in respect of recovery of weapon of offence at the instance of accused/appellant Paramjit Singh and held all the three accused brothers guilty of the offences for which they were charged and tried and sentenced them in the manner noted already.

8. Feeling aggrieved by the judgment and conviction and the sentence awarded to them by the trial Court the three convicted accused approached this Court for setting aside their conviction. Since common appeal filed by appellants Ravinder Singh and Rajinder Singh and the other appeal filed by

appellant Paramjit Singh had arisen out of the same judgment of the learned Additional Sessions Judge we are deciding both the appeals by this common judgment.

9. Learned counsel for the appellant Paramjit Singh did not dispute before us the fact that the death of the deceased Vijay was homicidal. That fact even otherwise is fully established from the evidence of the autopsy surgeon PW-13 Dr. L.K. Baruah. As per his deposition he had found as many as seven injuries on the body of the deceased at the time of post-mortem examination. Injury no. 1, which by itself was found to be sufficient to cause death in the ordinary course of nature, was an incised wound on the left side of the chest. Cause of death was found to be shock and haemorrhage resulting from the injuries all of which were ante-mortem in nature. This witness had also given his opinion in respect of the weapon of offence which accused – appellant Paramjit had got recovered while in police custody. As per the opinion of PW-13 the incised wounds found on the body of the deceased could possibly be caused with the dagger produced before him for his opinion. PW-13 proved the post-mortem report and the same is Ex. PW-13/A. His subsequent opinion in respect of the weapon of offence is Ex. PW-13/B. This witness was not cross-examined on any aspect on behalf of the accused.

10. Mr. Sunil Ahuja, learned counsel for appellant Paramjit Singh, however, had seriously contended that the prosecution case that Paramjit Singh had stabbed the deceased as well as his brother PW-11 Vinod Kumar cannot be said to have been proved beyond reasonable doubt. It was

contended by the learned counsel that the evidence of eye witness PW-11 Vinod Kumar was of highly doubtful nature and as far as the other eye witness PW-12 Raj Kumar, who also happened to be the brother of the deceased, is concerned, his evidence is also of no help to the prosecution case since he had been cross-examined on behalf of the prosecution because he had not supported the prosecution case in respect of the recovery of the weapon of offence at the instance of accused Paramjit Singh and as far as the main incident is concerned even though he had supported the prosecution in his examination-in-chief but when he was cross-examined on behalf of the accused persons he changed his version and denied having himself witnessed the occurrence and claimed that his mother had told him that his brother Vijay has been stabbed. Regarding the injuries sustained by his brother PW-11 Vinod Kumar he stated in his cross-examination that when he had enquired from Vinod as to how he had got injured he had informed him that while he was being taken to the hospital he was hit on the forehead by striking with the police jeep. He had also claimed in his re-examination by the public prosecutor about his changing the version that whatever he had deposed in his examination-in-chief recorded on 3rd May, 1995 was not true and that he had been tutored by the police to make that statement.

11. Learned additional public prosecutor, on the other hand, while supporting the judgment of the trial Court submitted that the evidence of the injured eye witness PW-11 Vinod Kumar by itself was sufficient to sustain the conviction of the accused persons and no dent can be said to have been caused to the prosecution case by PW-12 Raj Kumar who turned hostile

when he was being cross-examined on behalf of the accused persons. Since that cross-examination was conducted after about 14 months from the date when his examination-in-chief was recorded during that long period this witness appeared to have been won over by the accused persons. It was contended that since the examination-in-chief of this witness was recorded on 3rd May, 1995 on solemn affirmation and his deferred cross-examination on behalf of the accused persons on 4th July, 1996 was also on solemn affirmation the trial Court could very well have accepted any one of the two versions and after carefully examining his entire statement the learned trial Court had rightly come to the conclusion that whatever this witness had deposed vide his examination-in-chief on 3rd May, 1995 when he had narrated the entire incident as per the prosecution case and had clearly deposed that accused Paramjit Singh had stabbed his brother Vijay while other two accused had caught hold of him and further that when his brother PW-11 Vinod had tried to intervene Paramjit Singh had caused injury on his forehead also with the knife. Mr. Dudeja further submitted that the prosecution case in respect of the recovery of the weapon of offence at the instance of accused – appellant Paramjit Singh was also fully established from the evidence of PW-12 Raj Kumar and the investigating officer PW-17 Inspector R.K. Rathi. It was also contended that even if the evidence of PW-12 is excluded from consideration for the reason that he had turned hostile during his cross-examination on behalf of the accused persons the evidence of the investigating officer was sufficient to prove the prosecution case in respect of the recovery of the weapon of offence.

12. This being a case where there are eye witnesses of the incident of murder we shall now examine the evidence of the two eye witnesses in order to find out whether their evidence is acceptable and has been rightly accepted by the learned trial Court for holding the accused persons guilty. PW-11 Vinod Kumar is the injured eye witness. The relevant part of his examination-in-chief in respect of the incident of stabbing is being re-produced below:-

“Deceased Vijay Kumar was my real brother and PW Raj Kumar is my younger brother. My younger brother Raj Kumar had pledged gold locket with accused Chottu now present in the court today towards whom the witness had pointed out who is also known by the name of Virender, for Rs.1000/- about 15/20 days prior to the date of incident of murder. When my brother Raj Kumar went to the accused Chottu to redeem his locket from Chottu and Chottu accused demanded Rs.1800/- for the redemption of the locket/ Since Raj Kumar was not having that amount, he went to Som Nath Kohli (The son of my Mause) for arrangement of the money. Since Som Nath Kohli could not arrange for the full amount he gave a cheque of one thousand to Raj Kumar. Thereafter myself my brother Raj Kumar and my brother Vijay Kumar went to the house of accused Chottu with that cheque on 23.2.92 again said 22.2.92 again said 22.3.92 at about 9.00 P.M. (the witness said that he was confused while stating the date) Accused Chottu met us in the Gali about some distance away from the house that is a distance, from this court to the bus stand outside. And that time Chottu was alone. I asked Chottu that we could not arrange for the amount and we have brought a cheque and then my brother Raj Kumar handed over that cheque of Rs.1000/- to accused Chottu. Accused Chottu asked Raj Kumar “SALE CHEQUE HAZAR RUPEY KE KEYO LE KE AAYE HO ATTHARSO RUPEY OF KEO NAHI LEKHAR AAYE”. And he throw away that cheque on my face. At the time of handing over the cheque both the other two accused Shanty and Paramjit were also standing with accused Chottu. Then all the three accused persons starting abusing all of us and then accused Chottu and Shanty caught hold of my younger brother Vijay and accused Paramjit Singh attacked him with knife and gave him 6/7 knives blows and stabbed him. He gave knife blows to Vijay Kumar on his chest, back and neck due to the infliction of the knife injures my brother feld down and when I intervene to save my brother from the accused persons. Accused Paramjit Singh also stab me with knife on my forehead on my left side of the head. My brother Raj Kumar who was also with us got perplexed and confused and raised alarm ‘Bachao Bachao’. And thereafter all the three accused persons Paramjit Singh, Chottu and Shanty ran away from the spot. I took my younger brother Vijay Kumar

along with Raj Kumar to DDU Hospital where Vijay Kumar was declared brought dead and I was medically examined.....”

13. In cross-examination it was suggested to PW-11 that in fact there was a quarrel between the deceased and 100-150 boys and in that quarrel the deceased was injured when he fell down on a pointed nail lying on the road. Regarding the injury sustained by the witness it was suggested to him that he and his brother were called from their house by the police and he was dragged by the police and thrown in the vehicle and in that process he had sustained injuries. PW-11 had denied these suggestions. From the suggestions put to this injured eye witness by the accused persons it becomes clear that even the accused were not disputing that there was some incident in which the deceased and PW-11 had sustained injuries and that the accused were present at the place of the occurrence. However, that version of the incident was given up by the accused when they were examined under Section 313 Cr.P.C. which shows that no such quarrel took place between the deceased and some other boys as had been suggested to PW-11 in cross-examination. The statement of PW-11 that his brother Raj Kumar had pledged a locket with accused Paramjit Singh for the loan of Rs. 1000/- was not challenged in cross-examination. It was also not challenged that Paramjit Singh was demanding back his money or that on the day of the incident, the deceased along with PW-11 and PW-12 had come to the house of the accused Paramjit Singh with cheque of Rs. 1000/- which he did not accept and threw it on the face of PW-11.

14. The learned counsel for the appellant Paramjit Singh had submitted that it had been elicited from this witness in his cross-examination on behalf of the accused that when he had taken the deceased to the hospital on a rickshaw his(PW's) hands and clothes had got blood stained as the deceased was bleeding and he had tried to stop the bleeding and further that the police had not taken his clothes into possession. It was also stated that he had not disclosed to the doctor in the hospital the name of the assailants who had caused injuries to him and the deceased. These answers, according to the counsel Mr. Ahuja, made the evidence of PW-11 highly suspect and his evidence could not be accepted merely because he had sustained a minor injury.

15. We are, however, not inclined to reject the evidence of PW-11 for the afore-said reasons put forth by counsel for the appellant Paramjit Singh. As far as the failure of the investigating officer to take into possession of the blood stained clothes of PW-11 is concerned, the same, in the facts and circumstances of the present case, cannot be considered to be fatal for the prosecution case. When the investigating officer(PW-17) was cross-examined he claimed that he did not remember if there were any blood stains on the clothes of Vinod(PW-11) and further that if he had seen blood on his clothes he would have taken those clothes into possession. So, this is not a case where the investigating officer despite noticing blood stains on the clothes of an eye witness did not bother to take them into police possession. In any case, even if that had been the situation the testimony of PW-11 would not have been rejected for that reason since it is now well settled that for the

lapse on the part of the investigating officer evidence of an eye witness, who is otherwise found to be reliable and trustworthy, cannot be jettisoned. We have found PW-11 to be a wholly reliable witness on whose testimony implicit reliance can be placed. Nothing could be extracted from him during his cross-examination which could discredit him. Besides being himself an injured witness he happens to be the brother also of the deceased and such a close relation of a murdered person normally cannot be expected to falsely implicate someone on the charge of murder. No contradictions or improvements with reference to his police version could be brought on record during his cross-examination on behalf of the accused persons which shows that he had stuck to the version which he had given before the police immediately after the occurrence while deposing in Court even after more than three years of the incident.

16. As far as the non-disclosure of the names of the assailants by PW-11 to the doctor in the hospital at the time of his medical examination is concerned PW-11 during his cross-examination had stated that the doctor had not asked him about the names of the assailants. That is sufficient explanation for the absence of the names of the assailants in the MLC of this injured witness as well as that of the deceased. Therefore, we are not inclined to entertain any kind of doubt in our minds in respect of the trustworthiness of this witness for this reason also put forth on behalf of accused – appellant Paramjit Singh.

17. Even though we have come to the conclusion that PW-11 Vinod Kumar is a wholly reliable witness upon whose testimony implicit reliance can be placed and conviction of the appellant – accused Paramjit Singh, the

stabber, could be sustained without any kind of corroboration but his evidence in any case is corroborated also by the testimony of his other brother PW-12 Raj Kumar. PW-12 had also narrated the incident in the same manner as has been deposed by PW-11 Vinod Kumar when he was examined on 3rd May, 1995. The relevant part of his examination-in-chief recorded on that day is being reproduced below:

“..... I know all the three accused persons Paramjit Singh, Ravinder Singh and Rajinder Singh now present in the court. Deceased Vijay Kumar was my real brother and PW Vinod Kumar is also my real brother. About 15/20 days prior to incident I have mortgage/pledged one gold locket with accused Ravinder Singh @ Chottu for Rs.1000/- Accused Ravinder @ Chottu has been demanded money back from me for the pledging of the locket and was asking me to relieve back to same but I had been telling him that I would redeem the same after having made arrangement of the money. Since I could not arrange the money I went to my cousin Som Nath Kohli (son of my Mausli) for taking money from him and he delivered me a cheque for Rs.1000/-. At 4.00 P.M. on 22.3.92 I have also taken along my brother Vijay Kumar and Vinod Kumar when received cheque from my cousin. On that day, at about 8.45 P.M. we all left our house for handing over the cheque to accused Ravinder Singh @ Chottu Singh and there we met accused Ravinder Singh @ Chottu along with his brothers Shanty and Paramjit Singh who were standing outside their house. I then handed over the cheque for Rs.1000/- to accused Ravinder Singh @ Chottu telling him that I could not arrange for the money. Then accused Ravinder Singh @ Chottu told me that he wanted Rs.1800/- for the redemption of the locket/released and then all the three accused persons abused all of us and accused Ravinder @ Chottu threw that cheque on the face of my brother Vinod then my brother Vijay told the accused persons that he could not arrange for the money and he could arrange for the cheque of Rs.1000/- and hesitating to pay Rs.1800/- as demanded. And thereafter accused Paramjit Singh took out a knife and starting hitting my brother Vijay repeatedly four/five times on the chest/abdomen, back and other parts of the body. When my brother Vinod intervened and try to save Vijay from the accused persons he had also stab by accused Paramjit Singh on his forehead.”

The examination-in-chief of this witness was not concluded on 3rd May, 1995 and when his further statement resumed on 4th July, 1996 he not only did not support the prosecution case in respect of recovery of the

weapon of offence at the instance of accused Paramjit Singh but when he was cross-examined on that day on behalf of the accused persons he came out with a new story that he had been informed by his mother that his brother Vijay had been stabbed and thereupon he had gone to the place of occurrence from where his brother had already been removed to Deen Dayal Upadhyay Hospital and his brother Vinod also reached the hospital after his reaching there. In his re-examination by the public prosecutor this witness stated that whatever he had deposed in his examination-in-chief on 3rd May, 1995 and on that day he had been tutored by the police to make that kind of statement in Court and that whatever he had deposed on that day, i.e. 4th July, 1996 was true. The learned trial Judge in the impugned judgment while dealing with the evidence of PW-12 and particularly his turning hostile at the time of his deferred statement on 4th July, 1996 observed that “Apparently this witness has been influenced and whatever might have been the motivating factor one thing is clear that witness in his statement before the Court on 4-7-96 has not spoken truth. He cannot be said to have been tutored on 3rd May, 1995. Accordingly it is not possible to believe PW-12 that even his brother PW-11 was not a witness to the assailant on the deceased.” We are in full agreement with these observations of the learned trial Judge. PW-12 had made his statement on oath on 3rd May, 1995 and the statement which he made on 4th July, 1996 was also on oath. Since we are not inclined to accept the explanation of this witness that he had been tutored by the police to make a different statement on 3rd May, 1995 we can safely rely upon his statement which he made in Court on 3rd May, 1995 in preference to what he stated on

4th July, 1996. His statement, therefore, can be certainly used to the advantage of the prosecution. In this regard we may make a useful reference to one judgment of the Supreme Court in “*Khuji @ Surinder Tiwari Vs. State of Madhya Pradesh*”, (1991) 3 SCC 627 wherein also one of the eye witnesses had supported the prosecution case fully in his examination-in-chief but in his cross-examination, which was recorded after about one month, he had turned hostile regarding the identity of the assailants and claimed that he had not seen the faces of the assailants at the time of the incident but had seen their backs only. The Sessions Court did not accept his testimony but relying upon other evidence one of the six accused persons was convicted while the other five were acquitted. In appeal, the High Court observed that the eye witness who had turned hostile during his deferred cross-examination seemed to have been won over or had succumbed to the threats of the accused but maintained the conviction of the convicted accused relying upon the evidence of other witnesses of the incident. The Supreme Court accepted even the evidence of the eye witness who had turned hostile during his cross-examination while endorsing the views of the High Court that that witness had tried to help the accused by changing his statement regarding the identity of the accused when his cross-examination was recorded one month after the recording of his examination-in-chief and accepted his evidence even in respect of the identity of the assailants. Therefore, it is because PW-12 in the present case had changed his version during his deferred cross-examination the Court is not bound to disregard whatever he had deposed during his examination-in-chief,

as was the submission of the learned counsel for the appellant Paramjit Singh.

18. As far as involvement of accused–appellant Paramjit Singh is concerned, the prosecution case against him gets further strengthened from the evidence of recovery of the blood stained weapon of offence pursuant to his own disclosure statement. The blood on that weapon was found to be of the group which was the blood group of the deceased. That is evident from the CFSL report Ex. PW-17/J-4. PW-12 Raj Kumar was one of the witnesses of that recovery but since he did not support the prosecution case in that regard the prosecution is left with the evidence of the investigating officer and which has been accepted by the trial Court, which observed in the impugned judgment that even though PW-12 had not supported the prosecution case in respect of the recovery of the weapon of offence at the instance of accused Paramjit Singh the evidence of the investigating officer was sufficient to establish that recovery this is what the learned trial Judge observed while dealing with the prosecution case in respect of the blood stained weapon of offence at the instance of accused Paramjit Singh:-

“As regards the recovery of knife no doubt, PW12 has disowned the recovery of the knife Ex. P-4 as having been affected in his presence but he is admitted to be the signatory to the documents but his statement in the Court on 4-6-1996 that he had signed these papers at the police station is proved to be a statement made after he had been influenced by the accused persons but at the same time, in the facts and circumstances of this case, the Court finds no justifiable reasons to disbelieve the witnesses of the police as to the factum of recovery of knife at the instance of the accused Paramjit. It is also true that the knife has been recovered from a public place but the very spot where the knife was found was in the peculiar knowledge of the accused Paramjit and, therefore, it cannot be said by any stretch of imagination that somebody else may have dropped the knife Ex. P-4. The blood on it which as per the report of the serologist Ex. PW-17/J-4 was found to have human blood and that too of A group. The blood group of the deceased is also found to be of A group. All these circumstances leave no room for doubt that the knife which the accused Paramjit got recovered

was, in fact, the weapon of offence and if the accused Paramjit had nothing to do with this weapon of the offence he was not expected to know of the precise place where it would be lying.”

19. We are in full agreement with these observations also of the learned trial Judge in respect of the evidence of recovery of the weapon of offence which strengthens the prosecution case against accused–appellant Paramjit Singh. No arguments were advanced by the counsel for Paramjit Singh in respect of this part of the prosecution case and he argued rightly so because the investigating officer PW-17 had clearly deposed that accused Paramjit Singh had got the weapon of offence recovered after his arrest pursuant to the disclosure statement made by him in police custody from the bushes in the cremation ground at Beriwala Bagh, which place, as per the investigating officer, was at a distance of about half a kilometer from his house. Nothing could be extracted from him in his cross-examination which could discredit him and there is nothing brought on record during his cross-examination or otherwise to show that he had some reason to falsely implicate the accused.

20. Learned counsel for the appellant had also in the end made a half-hearted submission that the accused should be given the benefit of the right of self defence since as per the prosecution case when the police had reached the place of occurrence on getting the information of the incident a stick was recovered from the spot and that showed that the deceased and his brothers had in fact come to the house of the accused armed with a lathi with the intention of beating him so that they could avoid repayment of loan amount to accused Chottu and in self defence accused Paramjit Singh can be held to be justified in assaulting the deceased and his brother. We are, however, not

persuaded to accept this submission. There is no doubt that the police had recovered one stick from the spot but from that circumstance alone it cannot be said that the deceased or any of his two brothers was carrying that stick when they had gone to the house of the accused. No such case was even put to any of the witnesses in cross-examination nor such a plea was taken by the accused at the time of recording of statements under Section 313 Cr.P.C.. There is no foundation laid by the accused-appellant Paramjit Singh for sustaining the right of self defence during the trial.

21. Thus, we have no hesitation in sustaining the conviction of accused-appellant Paramjit Singh.

22. We now come to the prosecution case in respect of the other two accused, namely, Ravinder Singh @ Chhotu and Rajinder Singh @ Shanty who have been convicted with the aid of Section 34 IPC. It is undisputed that there was no prior enmity between the accused brothers and the three brothers from the complainant side. It is not the prosecution case that it was a pre-planned attack on the deceased. The role attributed to these two accused by the injured eye witness PW-11 was that they had caught hold of the deceased while accused Paramjit Singh had stabbed him. He had also claimed in his examination-in-chief that when he along with his two brothers had gone to the house of the accused persons because Chhotu had met them in the gali at some distance from his house and further that at that time Chhotu was alone. Then he also stated that when he had handed over the cheque to Chhotu other two accused were also standing at that time. However, PW-12 Raj Kumar, whose statement in examination-in-chief has

been accepted by us despite his turning hostile at the time of recording of his deferred statement, had claimed that when he along with his two brothers had gone to the house of accused Ravinder Singh @ Chhotu they had met him along with his brothers Shanty and Paramjit Singh and they were standing outside their house. Though he had also claimed that when he had handed over the cheque to accused Ravinder Singh @ Chhotu all the three accused had abused him and his two brothers and further that accused Paramjit Singh had taken out a knife and had started stabbing his brother Vijay but he did not claim that other two accused had caught hold of the deceased at the time of stabbing. It is significant to note that even though he had not attributed the overt act of catching hold of the deceased to accused Ravinder Singh and Rajinder Singh in his examination-in-chief the public prosecutor had also not put to him while cross-examining him this part of the prosecution case in respect of these two accused persons. His cross-examination by the public prosecutor was primarily confined to the recovery of the weapon of offence at the instance of accused Paramjit Singh. In these circumstances, we are inclined to give the benefit of doubt to accused Ravinder Singh @ Chhotu and Rajinder Singh @ Shanty. While giving them the benefit of doubt we have also taken into consideration one judgment of the Supreme Court reported as AIR 1991 SC 536, "*Vencil Pushpraj Vs. State of Rajasthan*" wherein the convicted accused before the Supreme Court was given the benefit of doubt even when the role attributed to him was that he had pinned down the deceased by catching hold of his hands from behind and thereby had facilitated his co-accused in stabbing the deceased. The Supreme Court

noticed that there was no material to draw an inference that the two accused had acted in concert or that there was a pre-planned plan to commit the murder of the deceased. In the present case also there is no material before us to infer that all the three brothers had any prior plan to kill the deceased. So, the conviction of accused Rajinder Singh and Ravinder Singh deserves to be set aside.

23. With the acquittal of the accused – appellants Rajinder Singh and Ravinder Singh the conviction of accused –appellant Paramjit Singh would stand converted into one under Sections 302 and 324 IPC *simplicitor* since he was the only stabber.

24. In the result, appeal of accused – appellant Paramjit Singh fails. The appeal of accused-appellants Ravinder Singh @ Chhotu and Rajinder Singh @ Shanty is allowed and the judgment of the learned Additional Sessions Judge is set aside to the extent it holds these two accused–appellants guilty and consequently both of them stand acquitted of all the charges.

P.K. BHASIN, J

BADAR DURREZ AHMED, J

August 20, 2010
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