

**HIGH COURT OF DELHI: NEW DELHI**

+ **CRL. APPEAL NO. 143/2001**

% Judgment reserved on: 30<sup>th</sup> November, 2009  
Judgment delivered on: 3<sup>rd</sup> December, 2009

ROOP CHAND & ORS. .... Appellants  
Through: Mr. Inderjit Sharma, Adv.

Versus

STATE .....Respondent  
Through: Mr. M.P. Singh, APP

**Coram:**  
**HON'BLE MR. JUSTICE A.K. PATHAK**

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**A.K. PATHAK, J.**

1. Appellants Naresh Kumar, Rajinder Kumar @ Babloo and Shahib Singh had been convicted under Section 323/304 Part I of the Indian Penal Code (for short hereinafter referred to as "IPC") read with Section 34 IPC by the learned Additional Sessions Judge, Delhi (for short hereinafter referred to as "ASJ"). They have been sentenced to face rigorous

imprisonment for a period of five years and to pay fine of Rs. 2,000/- each under Section 304 Part I/34 IPC and in default of payment of fine, to undergo further rigorous imprisonment for a period of four months each; sentenced to pay fine of Rs. 10,000/- each under Sections 323/34 IPC and in default of payment of fine, to undergo rigorous imprisonment for a period of two months.

2. Appellant Roop Chand was also convicted along with appellants Naresh Kumar, Rajinder Kumar @ Babloo and Shahib Singh under the aforesaid provisions and was awarded the same sentence. However, appeal against Roop Chand stood abated vide order dated 16<sup>th</sup> November, 2009 since he died on 1<sup>st</sup> November, 2006.

3. In brief, prosecution case, as set out in the charge sheet under Section 173 of Code of Criminal Procedure (for short hereinafter referred to as "Cr.P.C."), was that, deceased Darshan Singh was the neighbour of the appellants. About one year prior to the incident, Roop Chand had taken loan of Rs.

4,000/- from the deceased. When deceased asked Roop Chand to return the loan, he quarreled with him. On 8<sup>th</sup> August, 1996 at about 4:30 pm deceased was present in his house along with his wife Smt. Saraswati, daughter Prem Lata and her daughter's husband Pukh Raj when Roop Chand along with his sons Naresh Kumar, Kishan and Babloo came there and started abusing the deceased. They forcibly dragged the deceased from the house and started beating him in the *gali*. In the meanwhile, Shahib Singh, Sat Pal @ Satte and Bal Kishan came there carrying *dandas* in their hands and started beating the deceased. Smt. Saraswati along with her daughter Prem Lata and son-in-law Pukh Raj tried to save the deceased at which they also received beatings by the gang. Prem Lata and her husband Pukh Raj ran away from there. In the meanwhile, Smt. Angoori @ Bhani wife of Roop Chand, her daughter Lakshmi as well as her daughter-in-law Praveen also came to the spot and started instigating their relatives (assailants) to eliminate the deceased. Roop Chand caught hold of deceased from his hair, while Naresh, Sri Kishan and Babloo caught hold

of him by his hands and Shahib Singh, Bal Kishan @ Bale and Satte gave *danda* blows to the deceased. Naresh, Bal Kishan and Babloo beat the deceased with fist and kicks. Smt. Angoori @ Bhani, Lakshmi and Praveen also gave fist blows and kicks to the deceased. When Smt. Saraswati tried to save her husband she also received beatings in the hands of above mentioned assailants. A crowd gathered there and the deceased had also become unconscious. In the meanwhile, Police also arrived at the spot and on seeing the Police personnel, accused persons fled from there. Police removed Smt. Saraswati and the deceased to Deen Dayal Upadhyay Hospital (for short hereinafter referred to as "DDU"), where deceased was declared as "brought dead".

4. D.D. No. 44 B was recorded in the Police Station Vikas Puri regarding the incident and thereafter given to SI Pyare Lal (hereinafter referred to as Investigating Officer). Investigating Officer recorded statement of Smt. Saraswati wherein she

narrated the incident in the manner, as has been described in the para No. 3 hereinabove.

5. Pursuant to the statement of Smt. Saraswati, FIR No. 434/96 under Sections 302/323/34 IPC was registered by Police Station Vikas Puri. Roop Chand, Shahib Singh, Naresh Kumar and Sri Kishan were arrested on 9<sup>th</sup> August, 1996. Rajinder Kumar @ Babloo was arrested on 27<sup>th</sup> August, 1996. Site plan was prepared. Post mortem of the dead body was conducted on 9<sup>th</sup> August, 1996 in the mortuary of D.D.U. hospital. After the post mortem, dead body was handed over to the family of the deceased.

6. Accused Bal Kishan @ Bale and Sat Pal @ Satte got recovered a *dandas* from their residential houses, pursuant to their disclosure statements, on 18<sup>th</sup> October, 1996. Dandas were taken in possession and sealed.

7. After completion of investigation, charge-sheet under Section 173 Cr.P.C. was filed in the court of learned Metropolitan Magistrate, who took cognizance of the offence

and committed the case to the court of Sessions, as offence under Section 304 IPC was exclusively triable by the court of Sessions.

8. Charges under Section 304 Part I IPC read with Section 34 IPC as well as under Sections 323/34 IPC were framed against the appellants as well as other accused persons on 11<sup>th</sup> February, 1996 to which they pleaded not guilty and claimed trial.

9. Prosecution examined seventeen witnesses to prove its case. After prosecution closed evidence, statements under Section 313 Cr.P.C. of the appellants as well as other accused persons were recorded on 12<sup>th</sup> December, 2000 wherein entire incriminating evidence, which had come on record, was put to them. Appellants denied their complicity in the crime and claimed themselves to be innocent. They stated that they had been falsely implicated. Appellants did not lead any evidence in their defence.

10. On the same set of evidence Bal Kishan @ Bale, Sri Kishan, Lakshmi, Praveen and Angoori @ Bhani were acquitted. Due to the shifting stand taken by PW4 at different stages learned ASJ did not find testimony of eye witness Smt. Saraswati sufficient to implicate these persons.

11. I have heard the learned counsel for the appellants and have perused the entire material on record including the testimony of eye witnesses. As per the prosecution, PW4 Saraswati, PW5 Smt. Sita, PW6 Prem Lata and PW7 Pukh Raj had witnessed the incident. I find that, PW5 to PW7 did not support the prosecution case at all. They were declared hostile and were cross examined at length by the learned Additional Public Prosecutor (for short hereinafter referred to "APP") for the State, but nothing could be elicited in their cross examination.

12. PW5 Smt. Sitaj, sister of the deceased, categorically deposed that nothing had happened in her presence and she did not make any statement before the Police. In her cross

examination she denied that she had witnessed the incident. She denied her statement under Section 161 Cr.P.C. recorded by the Investigating Officer in toto. PW6 Prem Lata is daughter of the deceased; whereas PW7 Pukh Raj is son-in-law of the deceased. As per the prosecution, they had witnessed the incident. In fact, PW4 Smt. Saraswati, in the FIR, had stated that PW6 Prem Lata and PW7 Pukh Raj had come to her house on the day of incident and were present when deceased was pulled out from his house and was given beatings by the appellants. And other accused persons. However, PW6 has categorically deposed that nothing had happened in her presence; none of the accused had caused injuries to her father in her presence. She categorically denied having been made any statement before the Police implicating the appellants or their associates.

13. Thus it is clear that only testimony of PW4 Saraswati was available to the learned ASJ for convicting the appellants. Learned ASJ observed in part 20 of the judgment that PW4 had



materially deviated from her statement Ex. PW4/A made to the Police, on the basis whereof FIR in question was registered. She had fully exonerated Bal Kishan @ Bale and Sri Kishan of having given beatings to the deceased. In fact, while deposing in the court, she termed them as rescuers of her husband. Learned ASJ further observed that she could not be termed as a wholly reliable witness and her testimony required independent corroboration in material particulars to base conviction of any of the accused. In spite of making these observations, learned ASJ found the testimony of PW4 trust worthy as far as relating to the role played by the appellants in causing fatal injuries to the deceased. As per the learned ASJ, PW11 Dr. Komal Singh, who conducted the post mortem of the deceased, as also PW14 J.C. Vashisht, Record Clerk of the D.D.U. hospital corroborated Smt. Saraswati's testimony.

14. I am at a loss to understand as to in what manner the testimony of PW11 and PW14 corroborates the statement of PW4 Saraswati with regard to role played by the appellants in

causing the injuries to deceased Darshan Singh. PW11 had proved the post mortem report and his testimony only goes to show that deceased Darshan Singh had received certain injuries and he died due to injuries in spleen and liver which led to instant hemorrhage resulting into immediate shock and ultimately death. MLC of Smt. Saraswati also shows that she had sustained certain injuries. However, from the testimony of PW11 and PW14, it cannot be said that it in any manner whatsoever corroborates PW4, to the extent that the injuries were caused by the appellants. In my view, learned ASJ has committed an error in arriving at a conclusion that the medical evidence in the shape of PW11 and PW14 corroborates PW4 Smt. Saraswati with regard to the role played by the appellants. Their testimonies do not suggest that injuries were caused by the appellants.

15. I have carefully perused the testimony of PW4 Smt. Saraswati and I find it to be wholly untrustworthy and unreliable. She had taken shifting stand at different stages. In

the FIR, she stated that at about 4:30 pm on 8<sup>th</sup> August, 1996 Roop Chand, Bal Kishan @ Bale, Naresh and Sri Krishan came to her house and started abusing the deceased. They dragged her husband in the *gali* and gave beatings to him. In the meanwhile, Shahib Singh, Sat Pal @ Sattee and Bal Kishan @ Bale also came there with *dandas* in their hands and they also gave beatings to the deceased. When her daughter Prem Lata, daughter's husband Pukh Raj and herself tried to save the deceased, they were also given beatings. Thereafter, Smt. Angoori @ Bhani, Lakshmi and Praveen also came there and not only exhorted the other assailants to finish the deceased Darshan Singh but also gave beatings by fist blows and kicks. However, while deposing in the court, she has given a different version. In the court, she deposed that Roop Chand, Rajinder Kumar @ Babloo, Naresh and Smt. Angoori @ Bhani and Shahib Singh came to her house and at that time they were having *dandas*. They dragged the deceased outside the house and gave beatings. Subsequently, Sat Pal @ Satte, Kishan and Bal Kishan @ Bale also came there and started beating the

deceased with *dandas*. When she tried to rescue her husband she was also given beatings. Her this version is different than that contained in the FIR and creates a serious doubt about the veracity of her version. In the FIR, she had stated that her daughter Prem Lata and her son-in-law Pukh Raj were also present in the house when assailants came there, however, in her cross examination she deposed that her daughter and son-in-law came there after her husband's death. Her this version is also materially different than her statement before the Police.

16. In her statement before the Police she stated that Bal Kishan @ Bale and Kishan gave beatings to her husband by *dandas*. However, in her cross examination, she deposed that Bal Kishan @ Bale and Kishan had not assaulted her husband; rather they tried to rescue her husband. Her this statement in cross examination is totally at variance with her statement in the FIR. For this reason she was even cross examined by the APP for the State regarding the role played by the Bal Kishan @

Bale and Sri Kishan. However, she maintained stand that Bal Kishan @ Bale and Siri Kishan did not give beatings to her husband. She denied that she had made a statement before the Police that Bal Kishan @ Bale and Sri Kishan had assaulted her husband with *dandas*. She deposed that their names were given in the FIR at the behest of Police officials. Her this statement shows that FIR is based on the tutored statement of the complainant.

17. It is pertinent to mention that, as per the prosecution, Bal Kishan @ Bale got recovered the *danda* used at the time of commission of offence, pursuant to his disclosure statement, however, PW4 in her cross examination, categorically deposed that Bale was not having any *danda* with him nor he assaulted the deceased rather Bale tried to rescue her husband. Her this statement is contrary to the prosecution case as set up in the FIR. Recovery of *dandas* at the instance of Bal Kishan @ Bale, in no manner, lends credence to the deposition of PW4.

18. In her deposition in the court she stated that her daughter and son-in-law were not present in the house at the time of incident though in her statement before the Police she had stated that they were not only present but were also given beatings by the appellants and their associates, when they tried to save the deceased. However, in her statement before the court she deposed that she did not make any such statement.

19. Testimony of PW4 regarding role played by the appellants is also not consistent with the prosecution case. Discrepancies, as pointed out above in the statement of PW4, by no standard, can be termed as minor. In my view, the shifting stand taken by the PW4 at different stages, which is materially at variance with the prosecution case, makes PW4 Saraswati wholly untrustworthy and unreliable witness and it would not be safe to base the conviction only on her sole testimony.

20. It is true that conviction can be based on the testimony of a single eye witness provided such witness passes the test of reliability. So long as the sole eye witness is a wholly reliable witness conviction can be based on his testimony alone without looking for some independent corroboration. However, in this case the sole eye witness, in my view, is wholly unreliable and her testimony is liable to be discarded in toto.

21. I am of the opinion that the prosecution had failed to place any cogent evidence on record to prove beyond shadow of reasonable doubt that the appellants had caused injuries on the person of deceased including injury to the spleen and liver, resulting in his unfortunate death.

22. In the light of above discussions, I conclude that the learned ASJ committed an error by basing the conviction of the appellants on the sole testimony of PW4, who, as already stated above, is totally unreliable and untrustworthy.

23. Accordingly, I allow this appeal and set aside the conviction of the appellant under Section 304 Part I IPC as well

as under Sections 323/34 IPC. Consequence is that order on sentence also goes.

24. Appellants are acquitted. Their bail bonds and surety bonds are discharged.

**A.K. PATHAK, J.**

**December 03, 2009**

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