

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.A.NO.240/2009**

Date of Pronouncement 17<sup>th</sup> June, 2009

# SHRI RAJ PAL ..... Appellant  
Through: Mr.Dushyant Chaudhary, Adv.  
Versus

STATE (NCT OF DELHI) & ORS. .... Respondents  
Through: Mr.Lovkesh Sawhney, APP for State

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

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**

**G.S. SISTANI, J:**

1. Present appeal is directed against the judgment dated 13.12.2008 and order on Sentence dated 18.12.2008 passed by the learned Additional Sessions Judge in C.C.No.3214/4, under sections 308/426/511/34 IPC, P.S. Seelam Pur, Delhi, by virtue of which the appellant has been convicted and ordered to be released on probation for a period of one year on his furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount with an undertaking of good behaviour.
2. The brief facts of this case as noticed by learned Additional Sessions Judge are that one Jagdish was residing in *jhuggi* 506 Gurudwara Road, New Seelampur, Delhi. He was in possession of a kiosk in front of the *jhuggi*. One Rohtash also laid claim over this kiosk which resulted in ill-will between Rohtash and his family on the one hand and Jagdish and his family on the other,

over possession of that kiosk. On 20.10.2004 at about 1:15 p.m. Rohtash and his wife Sona tried to take possession of the said kiosk. Appellant, Rajpal helped them in their activities. Dharambir and his mother, Savitri objected which resulted in an altercation between them. In the said altercation, Dharambir, sustained injuries over his head. The appellant came for help of Rohtash and his wife Sona. Jagdish was informed about the incident, who reached at the spot and removed Dharambir to the Police Station. At the police station he was advised to remove his son to the hospital for treatment, Accordingly, Dharambir was taken to GTB Hospital, Shahdara. He was treated by Dr.Mayank Dabral and a MLC was prepared. ASI Rati Ram reached the hospital but opted not to initiate any action in the matter. Mr.Jagdish thereafter approached SHO Police Station Seelampur, but no action was initiated on his complaint. He approached the DCP of the area on 23.10.2004, but in vain, ultimately he filed a complaint before the concerned Magistrate on 5.11.2004. The Magistrate took cognizance of the complaint. He examined Mr.Dharambir, Smt. Savitri, Mr.Subhash, Mr.Jagdish and Sushil Kumar, record clerk under section 200 of the Cr.P.C. and after hearing the complainant, accused were summoned for offences punishable under sections 308, 452 and 506 IPC. The matter was thereafter committed to the Court of Sessions on 12.7.2007. To substantiate the charge, the prosecution examined seven witnesses, however, no evidence was led by the defence. Out

of accused persons, i.e. Rohtash, Sona and Rajpal, only Rajpal has preferred the present appeal.

3. It is contended by learned counsel for the appellant that the judgment and order of the learned Additional Sessions Judge is contrary to law and also against the evidence and material available on the record and thus the same has resulted in gross miscarriage of justice. He also submitted that the judgment and order is full of conjectures and surmises as the appellant has been convicted and sentenced without any substantive and corroborative evidence of any eye witness or any other independent witness. It is also urged before this Court that on the basis of the sole evidence of Dharambir, the victim, which has been disbelieved, the learned Additional Sessions Judge has acquitted the accused of the charge for the offence punishable under sections 426 read with section 511 and 452 of the IPC. However, for the offence under section 308 read with section 34 IPC, the learned Additional Sessions Judge has relied upon the evidence of Dharambir and convicted the accused persons including the appellant.
4. Learned counsel for the appellant contended that there are material contradictions between the evidence recorded under section 200 Cr.P.C. and the evidence recorded in Court. Learned counsel further submitted that the appellant is a complete stranger to the incident as he has no concern either with Mr.Jagdish and his family and /or with Mr.Rohtash and his family.

5. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case as the appellant was neither present at the spot nor he is in any way related either to the complainants or to the accused persons and has only been named at the behest of one Sh. S.S. Singh, Advocate, who had forced the victim to give evidence and include his name. Counsel further submits that the first complaint dated 23.10.2004 filed by the complainants before the Deputy Commissioner of Police would show that the appellant was not named. Counsel also submits that even during the evidence recorded in the Court, the victim, PW-3, Dharambir, was not able to identify the appellant by name. Counsel next submits that the learned Trial Court did not rely on the evidence of the father of the victim as he was not witness to the incident but was only a witness of removing the injured to the hospital. Moreover, the evidence of PW-4, brother of the victim was also not relied upon. Counsel lastly submits that no specific role has been attributed to the appellant and injuries were not caused by the appellant to Dharambir.
6. While opposing the present appeal, learned counsel for the State submits that the victim had duly identified the appellant as well as he was part of the group of persons who came, prepared with Lathis and iron rods to demolish the kiosk.
7. It is contended by the learned counsel that simply by saying that the appellant has been falsely implicated at the instance of Sh. S.S. Singh, Advocate, is no ground to allow the appeal. The same cannot be maintainable as no suggestions were put to the

victim during his cross-examination by the appellant. Learned counsel for the appellant, however, submits that this stand was taken by the appellant in the statement recorded under Section 313 of the Cr.P.C. and also the questions had been put to the father of the victim. Learned counsel for the appellant submits that the present appeal is liable to be allowed.

8. I have heard learned counsel for the parties, who have taken me through the record of the case. The incident in the present case took place on 20.10.2004. It is stated that PW-1, Mr.Jagdish (father of Dharambir), is the sole owner of the kiosk. The alleged altercation took place between the two factions on account of possession of the kiosk. The learned ASJ has rightly observed that this witness (PW-1) was not present at the time of the incident and had reached the spot only after the incident was over. PW-1 had removed his son Dharambir to the Police Station and thereafter to the GTB Hospital. He had lodged a report dated 23.10.2004 with the DCP. In this report, Mr.Jagdish had named Rohtash, his wife (Sona) as well as their son-in-law (Sunil) along with certain unknown persons. He had categorically stated that Rohtash, his wife and their son-in-law had threatened to murder his sons and his wife. He further stated that Rohtash and his wife (Sona) had caught hold of Dharambir and Sunil gave two lathi blows on his head, as a result of which blood started oozing out. When his son Subhash and his wife tried to save his second son (Dharabmir) from their clutches, then Rohtash and his wife (Sona) and their son-in-law (Sunil) rushed towards them in order to attack them with lathis

and iron rods. But his wife and son in order to save their lives ran inside their *jhuggi*. In this complaint the present appellant, Rajpal, has not been named.

9. It is pertinent to note that in the complaint filed by Mr.Jagdish under section 200 of the Code of Criminal Procedure, this appellant has been named. The prosecution had examined PW-4, Subhash (son of Mr.Jagdish). However, his evidence was not considered to be reliable or trustworthy by the learned Additional Sessions Judge. The prosecution had also examined one Tejender Dutta, PW-5, who was stated to be an eye witness, but on close scrutiny and examination of his evidence, the same was found to be unreliable and the learned trial Court has observed that the story projected by this witness is concocted and he has fabricated facts with a view to present a convenient story. PW-6, Ms.Devki, is the sister of Jagdish. A careful reading of her evidence would also show that she was not present at the spot at the time of the incident, as she had stated that on 20.10.2004, she had gone to her job as she works as a maid servant in the house of one Dr.Virender Jain and reported home at 3:00 p.m. She found the kiosk, which was outside the house of Jagdish in a broken condition and further deposed that Savitri narrated facts to her. Thus the evidence of PW-6 cannot be relied upon.
10. Out of seven witnesses, who have been examined by the prosecution, the evidence of two witnesses has been found to be unreliable and untrustworthy. PW-2, is the doctor, who has proved the MLC. PW-1, Jagdish was admittedly not present at

the spot at the time of the incident and the same holds true for PW-6 Smt.Devki. This leaves only two witnesses i.e. victim, Dharambir, PW-3 and his mother Smt.Savitri, PW-7.

11. Dharmbir PW-3 is the victim who sustained head injuries and PW-7, Savitri, mother of Dharambir are the witnesses and on the basis of their evidence the trial court has convicted the appellant. The evidence of these two witnesses is of utmost importance and Dharambir is the star witness of the prosecution. It may be noticed that Dharambir had sustained head injuries which finds corroboration in the MLC Ex.PW-2/A, which would show that on account of these injuries he was removed to the GTB hospital. PW-3, Dharambir had stated in his examination that on 20.10.2004 at about 1:00 p.m. he was working in his kiosk / shop which is near to his house. He identified Rohtash and Sona as his neighbours. He deposed that third accused is their accomplice (appellant herein), whose name was not known to him. Dharambir further stated that all the three accused persons along with their associates, namely, Gunjan and Sunil came to the kiosk, duly armed with *lathis* and iron rods with one or two other unknown persons and started demolishing the kiosk. Dharambir resisted at this juncture. Thereafter, Rohtash and Sona caught hold of him and Sunil gave a lathi blow on his head. He further deposed that Sunil is not present in the Court today. PW-3 stated that he started bleeding from his head and in the meantime his mother (Savitri) and brother (Subhash) reached to save him. Accused persons assaulted them as well. In the cross-examination this witness

has also reiterated that Rohtash had caught hold of him from his left shoulder and Sona had caught hold of him from the right shoulder.

12. I have carefully perused the evidence of PW-3, Dharambir, the victim. A bare reading of his evidence would show that he in his evidence has neither named this appellant, Rajpal, as the person, who attacked him or who had caught hold of him while *lathi* blows were given over his head. Dharambir has categorically stated that all the accused persons had come to the spot armed with lathis and iron rods and they started demolishing the kiosks, however, Rohtash and Sona had caught hold of him and Sunil gave *lathi* blows over his head. He has not named the appellant as the person, who inflicted the blows over his head. Dharambir further deposes that after he was hit, his mother and brother reached there to save him. The accused persons assaulted them as well and then his mother and brother ran towards the house to save themselves. Thus, nowhere does PW-3, Dharambir, mentions the name of the appellant, as the person who assaulted him. At this juncture it would be appropriate to reproduce the evidence of Smt. Savitri, PW-7:

“Accused persons, are known to me. I identify them. Accused persons are my neighbours. A kiosk was installed in front of my Jhuggi. Accused persons were laying claim on that wooden kiosk. On 20.02.2004, at about 1 or 2 p.m., accused persons, came there to demolish my kiosk. Again said I am not certain about the date. In that month Nav Durga festival was to be celebrated, when this incident occurred. Accused persons, started demolishing out kiosk. When we people objected, then they assaulted my son Dharambir. Accused

persons were armed with lathies and clubs. They wielded blow over the head of Dharambir. Accused Rohtash had wielded blow over the head of my son. He was overpowered by Sunil and Sona. Sunil is not present before the court. Raj Pal was not present at the spot at that time.”

13. As per Smt.Savitri, the accused persons started demolishing the kiosk and when an objection was raised they assaulted her son, Dharambir and accused Rohtash has wielded a blow over the head of his son. She has categorically stated that Rajpal was not present at the spot at that time.
14. It would also be useful to take into consideration the observations made by the Hon'ble Supreme Court of India as far back as in the year 1957 in the case of **Swarn Singh Ratan Singh Vs. State of Punjab, AIR 1957 SC 637** that in criminal cases mere suspicion, however, strong, cannot take place of proof. The court must also take into consideration that an accused is presumed to be innocent till charges against him are proved beyond reasonable doubt. Mere suspicion, however, strong it may be, cannot take the place of legal proof.
15. As a final court of facts, the High Court is entitled to re-appraise the evidence and arrive at its own independent conclusion as to the guilt or innocence of the accused. The Court must thus be satisfied that the case of the prosecution is substantially true and that the guilt of the appellant has been established beyond reasonable doubt. It is only when the prosecution has proved its case beyond reasonable doubt that conviction cannot be disturbed in appeal. It will be useful to reproduce the observations of the Hon'ble Supreme Court in the case of **Kali**

**Ram Vs. State of Himachal Pradesh, AIR 1973 SC 2773**

which are as follows :-

*“Another Golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.*

*Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.*

*The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record.* Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, however is more apparent than real.

*It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether."*

16. Applying the aforesaid principles to the facts of the present case, I find that in the complaint dated 23.10.2004 to the DCP, Jagdish had not mentioned the name of this appellant. The mentioning of this appellant in the complaint before the Magistrate under section 200 Cr.P.C. seems to be an afterthought. Further the star witness of the prosecution i.e. the victim, Dharambir has categorically stated that Rohtash and his wife, Sona had caught hold of him and Sunil gave two lathi blows on his head. Dharambir has not named Rajpal as the person who assaulted him. The only other witness, who has been relied upon by the trial court is Smt.Savitri, mother of the victim, who has also categorically stated that Rajpal was not present at the spot.
17. The case of the prosecution is that the Jagdish resides in a *jhuggi* and there was a dispute between Jagdish and his family member on the one hand and Rohtash and his family member on the other. The other co-accused was Sona, wife of Rohtash and the other persons named at the spot were the daughter

and Sunil (son-in-law of Rohtash). In my considered opinion, it is not established beyond reasonable doubt that the appellant, Rajpal was present at the time of the incident. PW-3, victim, and PW-7, his mother, star witnesses, have not named the appellant who inflicted the blows on PW-3 nor he was the one who caught hold of PW-3 and as per the evidence of PW-7 appellant was not present at the spot. Thus no case is made out against the appellant, Rajpal. Accordingly, the present appeal is allowed. The judgment dated 13.12.2008 and order on sentence dated 18.12.2008 passed by learned Additional Sessions Judge in C.C.No.3214/4, under sections 308/426/511/34 IPC, P.S. Seelam Pur, Delhi, against the appellant alone is set aside. Bail bonds be cancelled and surety be discharged.

**G.S. SISTANI, J.**

**June 17<sup>th</sup>, 2009**  
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