

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

% *Judgment Reserved On: 16<sup>th</sup> March, 2010*  
*Judgment Delivered On: 25<sup>th</sup> March, 2010*

+ **CRL.APPEAL 709/2001**

FATEH SINGH & ORS. .... Appellants  
Through: Ms.Neelam Grover, Advocate

versus

STATE ..... Respondent  
Through: Ms.Richa Kapoor, A.P.P.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE SURESH KAIT**

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

**PRADEEP NANDRAJOG, J.**

1. The above captioned appeal has been filed by appellants Fateh Singh, Suraj Bhan, Karan Singh, Jai Bharat, Prem Singh, Raj Tilak and Santosh @ Pappy challenging the judgment and order dated 19.09.2001 passed by the learned Trial Judge convicting them for the offences punishable under Crl.A.No.709/2001

Section 148 IPC, as also Sections 302/149 IPC. For the offence of murder, the appellants have been sentenced to undergo imprisonment for life and to pay fine in sum of Rs.3,000/- each; in default of payment of fine to undergo simple imprisonment for one month each. For the offence punishable under section 148 IPC, the appellants have been sentenced to undergo rigorous imprisonment for one year. The sentences have been directed to run concurrently.

2. The broad contours of the case set up by the prosecution are that there is a Valmiki temple situated near Anant Ram Dairy in R.K.Puram, Delhi. The temple belongs to appellant Fateh Singh who is a Valmiki. Appellant Fateh Singh wished to extend the temple and for said purpose wanted to take over possession of a vacant plot situated adjacent to the temple. Anant Ram PW-6 is a Gujar. He claimed to be the owner of the said vacant plot and therefore resisted Fateh Singh from taking possession of the same. As a result, about 2-3 days prior to the date of the incident in question i.e. 14.10.1991, an altercation took place between appellant Fateh Singh and his family, i.e. the Valmikis, on the one side and Anant Ram PW-6 and his folks i.e. the Gujars, on the other. In the said incident, appellant Jai Bharat, a Valmiki, sustained injuries for which incident, FIR No.506/1991 PS R.K.Puram was

registered in which Anant Ram and his family members were named as accused. On 14.10.1991, in the morning at about 6:00 A.M., Satish Kumar PW-2 son of Anant Ram PW-6, a Gujar by caste was returning to his house after attending the call of nature. As he reached near the shop of one Ram Sarup, the appellants who were armed with deadly weapons such as trishul, iron rods and lathis waylaid him. Appellant Jai Bharat exhorted to the other appellants that Satish Kumar PW-2 and his family members had beaten him on the previous night and were preventing them from building the temple. On this, the other appellants gave lathi blows upon the head of Satish Kumar. When Satish cried out for help, his brother Satya Dev rushed towards him, but the appellants immediately targeted Satya Dev and assaulted him. Soon thereafter Jagdish PW-8, Ajab Singh (the deceased) and Mannu Dev PW-1, relatives of Satish PW-2, also reached the spot to rescue Satish and Satya Dev. But, being armed with weapons such as lathis, rods and trishul, the appellants managed to inflict blunt as well as incised wounds on them. Fatal injuries were inflicted upon the person of Ajab Singh, who died soon thereafter.

3. That on 14.10.1991, at about 6:00 A.M. a quarrel took place between the Valmikis and the Gujars near the Valmiki temple at Anant Ram Diary has not been disputed by

either group. The reason for us to note is the fact that on the complaint of the Gujars FIR No.507/1991 against the appellants, as accused, was registered and for the same incident on the complaint of the Valmikis' FIR No.508/1991 at the same police station was registered.

4. The admitted evidence on which there can be no dispute is that on 14.10.1991 between 7:00 AM to 7:30 AM, Ajab Singh, Jagdish and Ramesh, three persons belonging to the Gujar community, were admitted at AIIMS and four persons from the same community, namely, Anant Ram, Satish Pal, Satay Pal and Mannu Dev were admitted at Safdarjung Hospital with the alleged history of being involved in a fight or of having been assaulted. The injuries noted on their person in their respective MLCs are as under:-

<b><u>Patient</u></b>	<b><u>MLC</u></b>	<b><u>Injury</u></b>	<b><u>Weapon</u></b>
Ajab Singh	Ex.PW-4/A	Brought dead	
Jagdish	Ex.PW-4/B	<i>Dangerous injuries being:- (1) multiple CLW (L) Scalp (5 in nos.) 2"-3" in size, no underlying compounding (2) 1" CLW (L) hand with fracture of the fifth metacarpal bone. (3) boggings with tenderness (L) Leg lower 1/3'</i>	Blunt object

Ramesh	Ex.PW-4/C	Simple injury being:- CLW (R) Abdomen 1 cm. Superficial wound. Peritoneum is not breached. One CLW (L) hip 1cm.	Blunt object
Anant Ram	Ex.PW-9/A	Simple injuries being:- Trifurcate cut over (L) parietal region. Abrasion over abdomen. Abrasion over Rt. Shoulder.	Sharp object
Satish Pal	Ex.PW-9/B	Grievous injuries being:- (1) Swelling Rt cheek (2) 1" long deep CIW Rt temporal region (3)abrasion rt shoulder (4) abrasion (L) abdominal wall 1' X 2"	Sharp object
Satay Ram	Ex.PW-9/C	Simple injuries being:- (1) 3" long CIW (L) parietal region (2) abrasion on both hands 1cm X 1cm (3) abrasion 1" X 2" over (L) abdominal wall (4) abrasion (L) elbow	Sharp object
Mannu Dev	Ex.PW-9/D	Simple injuries being:- (1) CIW (L) parietal region 3" long (2) 1 cm circular wound (R)	Sharp object

		<i>lumber region (3) abrasion both legs'</i>	
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5. On the side of the Valmiki community only four persons, namely, appellant Fateh Singh, Suraj Bhan, Jai Bharat and Karan Singh sustained injuries in the same incident. The same are recorded on their respective MLCs prepared at Safdarjung Hospital. They are as under:-

<b><u>Patient</u></b>	<b><u>MLC</u></b>	<b><u>Description of Injury</u></b>	<b><u>Weapon</u></b>
Fateh Singh	Ex.PW-9/DA	<i>Simple Injuries being:- Swelling, tenderness in right shoulder. Tenderness left thigh. CLW Scalp linear redness frontal (illegible) 4 cm.</i>	Blunt object
Suraj Bhan	Ex.PW-9/DB	<i>Simple injuries being:- (1) CLW Scalp (L) parietal region. (2) Inj. (R) shoulder, abrasion 1/2" x 1/2". (3) Abrasion (R) knee. (4) Abrasion (L) knee.</i>	Blunt object
Jai Bharat	Ex.PW-9/DC	<i>(1) CLW Scalp fronto-parietal jugular (1" large). (2) Abrasion CLW (R) knee region. (3) Abrasion (L) knee (1" x</i>	Blunt object

		1"). (4) (L) Skin (1 cm x 1 cm).	
Karan Singh	Ex.PW-9/DD	Grievous injuries being:- Depressed fracture frontal bone and fracture terminal phalanx of left little finger. (1) Trifurcate injury (L) frontal region exposing frontal bone. (2) Contusion (L) eye + (3) 2 cm long cut left little finger, difficulty in moving little finger.	Blunt object

6. The injuries sustained by Ajab Singh are to be found noted on his post-mortem report Ex.PW-11/A, which records the following:-

- (1) Contusion on (L) lower chest placed obtusely of size 11 X 1.5 cm.
- (2) Contusion (L) Thigh 17 X 2 cm.
- (3) Contused Lacerated Wound (R) costal margin in midclavicular line 2 x 1 cm, 25 cm below clavicle (R), muscle deep.
- (4) Contused Lacerated Wound (R) chest in Anterior Axillary (illegible).
- (5) Abraded contusion (R) shoulder 2 x 2 cm.
- (6) Contusion (R) Deltoid over area 3 x 2 cm.
- (7) Contused Lacerated Wound 1 cm above (L) elbow of size 3 x 1 cm.

7. With reference to the injuries afore-noted, it is apparent that the total number of injuries inflicted upon the 7 persons injured and belonging to the Gujar community are about 25 in number, while the total number of injuries inflicted upon the four injured from the Valmiki community are 12 in number.

8. Elaborating on the medical evidence a little more, it may be noted that Ajab Singh a Gujar died as a result of the fight. Jagdish also received dangerous injuries. He remained hospitalized for a few days. All other injured Gujars were discharged from the respective hospitals on the same day. There are injuries on the parietal region of the injured Gujars but none of them is a serious injury evidenced by the fact that no fracture of any bone of the skull resulted. Jagdish had a fracture of the fifth metacarpal bone of the left hand. On the side of the Valmiki community Karan Singh received grievous injuries, in that a bone on his skull got depressed and fractured. The left little finger of the hand also got fractured. The injuries on the members of the Valmiki community also show that the opposite camp was targeting their skull. But, it must be noted that save and except for Karan Singh, the resultant injuries on the other members of the Valmiki community are simple injuries.



9. It may be noted that as deposed to by the witnesses of the prosecution belonging to the Gujar community, three other Valmikis, namely, Prem Singh, Raj Tilak, Santosh @ Pappy participated in the assault, none of whom has received any injury.

10. For record it may be noted that pertaining to FIR No.508/1991 in which the Gujars were the accused, vide Judgment and order dated 19.9.2001, holding that the evidence established that the members of the Valmiki community were the aggressors, the accused therein were acquitted.

11. At the instant trial ocular evidence was led by the prosecution by examining Mannu Dev PW-1, Satish Kumar PW-2, Ramesh Chand PW-5, Anant Ram PW-6, Shiv Dayal PW-7 and Jagdish PW-8.

12. Mannu Dev PW-1 deposed that on 14.10.1991 at about 6:00 A.M. when he was sleeping at his house, he was awoken by his cousin Jagdish who told him that Satish had been beaten. Accompanied by Ajab Singh and Jagdish, he i.e. Mannu Dev proceeded towards the place where they were told of Satish being beaten. On reaching near the jhuggi of Narayan he saw Jai Bharat, Karan Singh, Prem Singh, Suraj Bhan, Raj Tilak, Santosh and Fateh Singh i.e. the appellants

and two or three other boys present and armed with weapons. Accused Jai Bharat exhorted "*saalon ko jaan sey maar do*" upon which Jai Bharat assaulted Jagdish on his temporal region with a trishul. Karan Singh hit Jagdish on his head with an iron rod used in weightlifting. Raj Tilak and Santosh @ Pappy also gave beating to Jagdish. When Ajab Singh ran to rescue Jagdish, Raj Tilak gave a lathi blow on the head of Ajab Singh. Santosh @ Pappy also hit Ajab Singh thrice in his armpit with a spear like object and Karan Singh hit him with an iron rod. Suraj Bhan and Jai Bharat also assaulted Ajab Singh. When he i.e. Mannu Dev ran to rescue Ajab Singh, Prem Singh hit him on his head from behind with a rod. Thereafter Santosh @ Pappy hit him on his abdomen with a spear like object. Fateh Singh, Suraj Bhan and Raj Tilak also gave him laathi blows. Finally when some women folk from the village pelted stones upon the accused they fled. Neighbours removed them to the hospital. The reason for the dispute was that Fateh Singh, the owner of a Valmiki temple, wished to extend the temple in the vacant place in front of the temple. The vacant place belonged to his father Anant Ram. For said reason, his cousin Jagdish and father Anant Ram were opposing the extension of the temple owned by Fateh Singh.

13. Relevant would it be to note that as deposed to by Mannu Dev he has witnessed five out of seven injuries being inflicted upon Jagdish. Further, he i.e. Mannu Dev was assaulted by Prem Singh, Santosh @ Pappy, Fateh Singh, Suraj Bhan and Raj Tilak. But, the injuries suffered by Mannu Dev are only three in number, one of which is an abrasion. It is apparent that Mannu Dev has given, if not a completely untruthful picture, at least an exaggerated version thereof. Further, the testimony of Mannu Dev shows that he is stretching himself to inculpate as many accused as he can.

14. Satish Kumar PW-2 deposed that on 14.10.1991 he was returning after attending the call of nature, when he encountered Jai Bharat, Fateh Singh, Karan Singh, Suraj Bhan and three to four other persons. Jai Bharat was carrying a trishul, Fateh Singh was carrying a lathi, Karan Singh was carrying a rod, Suraj Bhan and Prem Singh were armed with a lathi each. On seeing him, Jai Bharat exhorted that the previous night he and his family had beaten him i.e. Jai Bharat, and that they were causing obstacle in the construction of the temple. On this, Karan Singh gave a blow with a rod on his i.e. Satish Kumar's head, Suraj gave him a lathi blow on his head and Karan Singh and Prem gave him kicks and knee blows. When he cried for help, his brother Satya Dev rushed to his

rescue. On this, Pappy and Raj Tilak assaulted Satya Dev with lathis and Jai Bharat assaulted him with trishul. Thereafter his brother Jagdish, Mannu Dev and his brother-in-law Ajab Singh also came at the spot. Immediately Jai Bharat gave trishul blow upon the temporal region of Jagdish, Karan Singh also hit Jagdish with iron rod on the temporal region and Raj Tilak, etc. attacked him with lathis. When Ajab Singh tried to rescue Jagdish, Raj Tilak attacked Ajab Singh with lathi on his temporal region. Karan Singh gave rod blow to Ajab Singh and Santosh @ Pappy attacked Ajab Singh on his armpit with an arrow like object. Jai Bharat then assaulted Ajab Singh with a trishul and Suraj Bhan gave lathi blow to him stating "Maar do sale ko jaan se". Thereafter Mannu Dev and Ramesh were attacked by Fateh Singh, Raj Tilak, Suraj Bhan and three- four others. Women folk gathered there and pelted stones and only then the accused fled. The cause for the dispute was the temple. Accused were trying to grab the land belonging to them in front of the temple, which they were resisting. In this regard, 2-3 days prior to the incident, Jagdish had prevented Jai Bharat from extending the temple premises.

15. Relevant would it be to note that as per Satish Kumar he received all the injuries immediately when he was surrounded by the accused. It is also relevant to note that as

per Satish Kumar he witnessed the entire assault on the other Gujars and when the other Gujars were being assaulted, nobody hit him. It is also apparent, as was apparent from the testimony of Mannu Dev, that even Satish Kumar has somewhat overstretched himself to inculcate the Valmikis.

16. Ramesh Chand PW-5 deposed that on 14.10.1991 at 6:00 A.M. he heard somebody say that a quarrel had taken place near the jhuggi of Narain. As he reached there to see what happened he saw Fateh and his family members fighting with Jagdish, Anant, etc. He also received injury, but he did not know who hit him.

17. Anant Ram PW-6 deposed that on the day of incident at about 6:00/6:30 A.M. Jagdish, Mannu Dev, Satish, he and others from their side sustained injuries in a fight. Ajab Singh lost his life in the same fight. He received injuries after his son Sattu had already been beaten up. Jagdish was beaten up by Jai Bharat, Santosh @ Pappy and a third person whose name he did not remember. Prem also assaulted. He did not see Satish and Mannu being bashed as they were beaten prior to his reaching at the spot. He was assaulted from behind and therefore he could not see who assaulted him. But, Jai Bharat, Santosh @ Pappy, Raj Tilak, Karan Singh, Prem Singh and Fateh were the assailants. He did not know Suraj Bhan.

Pappy, Prem and Jai Bharat gave beating to Ajab Singh. Raj Tilak assaulted Jagdish. Jai Bharat was carrying a rod at the time of incident. Karan Singh was carrying a trishul. Santosh @ Pappy was carrying a chhuri and Fateh was carrying a lathi. The fight took place in his dairy. The fight took place for the reason the accused were Valmikis and he was a Gujar and the accused wished to take possession over the lands belonging to him.

18. Shiv Dayal PW-7 deposed that on 14.10.1991 at about 6:00 A.M. Satish and Satte sustained injuries near the jhuggi of Narain. All the accused present in court were present at the spot. Anant Ram, Jagdish, Ajab Singh and Ramesh reached the spot after the quarrel had already begun. They were not carrying any weapons. Even Satish and Satya Prakash were not carrying any weapons. He did not see who inflicted the injuries.

19. Jagdish PW-8 deposed that on 14.10.1991 at about 6:00 A.M. the noise of a quarrel attracted him near the jhuggi of Narain. There he saw accused Jai Bharat holding a trishul, Karan Singh holding a rod, Fateh and Prem holding "Lakdi". On his reaching the place, Karan inflicted rod blow upon him and Jai Bharat inflicted Trishul blow upon him.

20. Relevant would it be to note that whereas Mannu Dev PW-1 and Satish Kumar PW-2 gave a graphic description of the assault, other witnesses have not deposed as to who did what, but generally stated that the Valmikis gave them a beating. It would be further relevant to note that none of the witnesses afore-noted have deposed of the Gujars being armed or of the Gujars launching a counter-attack or use of force to ward off the assault on them. Thus, none of the witnesses had explained the injuries suffered by the Valmikis.

21. With reference to FIR No.506/1991 the fact that there was tension between the members belonging to the Valmiki community and the Gujar community for the last two or three days on account of dispute qua the land abutting the Valmiki temple has not been disputed. Fateh Singh, a Valmiki was claiming ownership of the temple and the land abutting the temple. Anant Ram PW-6 was claiming ownership of the land abutting the temple. Thus, the evidence of the prosecution witnesses has to be read with care and caution for the reason the members of the Gujar community would have a motive to falsely implicate the members of the Valmiki community.

22. More often than not, the circumstances enwombing the acts or an occurrence throw light on what could have

possibly happened and in the instant case the said circumstance is the situs of the place where Satish claims to be waylaid, which became the place of the alleged assault by the Valmikis on the Gujars. The site plan Ex.PW-11/B-12 prepared by Insp.Chand Mohan PW-22, the investigating officer of the instant case, shows that the spot marked 'G' on the site plan is the place where the fight took place and is near the Valmiki Temple.

23. The learned Trial Judge has convicted the appellants holding that the testimony of the eye-witnesses establishes that the appellants had formed an unlawful assembly, object whereof was to assault the Gujars. Since, Ajab Singh was killed, all the appellants have been held liable for the acts of those who assaulted Ajab Singh due to the common object of the unlawful assembly.

24. But, the learned Trial Judge has ignored the various features which we propose to notice. The first and foremost is the feature that the place of the assault is near the Valmiki temple and the feature that there was tension between the Valmikis and the Gujars. It is difficult to believe that Satish would venture at the spot in question at 6:00 AM in the morning, he would presumably be aware that Valmikis would be encountered by him if he goes anyway near the Valmiki



temple. Further, if the appellants, who were all armed as claimed by the prosecution had the common object of teaching a lesson to the Gujars by thrashing the first Gujar on whom they could lay their hands upon, Satish could not have got away with the injuries which are to be found on his person. Seven armed Valmikis could have reduced him to pulp within seconds.

25. It assumes importance to note that seven Gujars have received 32 injuries and seven Valmikis have received 12 in quid pro quo. No doubt most of the injuries received by the Gujars are on the parietal region, but so is the case with the injuries on the person of the Valmiki community. Though directed towards a vital part of the body, the force used, except upon the deceased, by both groups shows restraint. Nobody's skull or a bone on the face has been fractured except Karan Singh, who incidentally is a Valmiki. The injuries on the victims on both sides are lacerated and contused injuries and none injured other than Jagdish had to be hospitalized, of course Ajab Singh required no hospitalization as he died. We find it strange that Karan Singh who was grievously injured, having a fracture on the skull was discharged the same day. It speaks volume of the antipathy of the system towards Dalits. It is apparent that both sides have

used force, but with restraint. A fight has admittedly taken place, but with hesitation. Seven people on one side and seven on the other participated in the group fight.

26. Is it possible that the Gujars had proceeded to settle some scores, but unfortunately for them they got outwitted?

27. Has the investigating officer probed the truth as required? Was it not the duty of the investigating officer to probe the truth a little better?

28. On being cross-examined, Insp.Chand Mohan the investigating officer stated that he did not remember having checked up or obtained any opinion qua the injuries received by the Valmikis. To the specific question whether he recorded the statements of the injured Valmikis he said that he did not do so as SI Prem Chand was holding a separate inquiry. He was questioned as to why he did not inform the Court in his examination-in-chief that two cases were registered for the same incident, he said that he did not say so as he did not remember so. When questioned that while investigating the case was he aware that a cross case had been registered and did he bother to check the record of investigation of the said case, he responded that he read the file casually. He admitted

that he did not bother to record the statements of the accused or note their version. He admitted that he did not investigate as regards the defence of the accused. On being questioned as to why inspite of knowledge that the accused were injured he did not make any inquiry to ascertain how the accused received injuries, he responded that he did not consider it necessary. On being questioned whether he obtained documentary proof from the Patwari qua the title of the property which was the cause of the dispute, he replied that he did not do so.

29. It is apparent that the investigation has proceeded as if the Valmikis were to be nailed and not that the truth had to be unearthed.

30. As held in the decision reported as Ram Sunder Yadav & Ors. Vs. State of Bihar 1998 (7) SCC 365, followed with approval in the decision reported as Boddella Babul Reddy vs. Public Prosecutor High Court of A.P. JT 2010 (1) SC 24, where the evidence consists of interested and inimical witnesses and where defence alleges a version which competes in probability with that of the prosecution, the prosecution has to explain the injuries on the accused.

31. As held in the decision reported as 1993 Cri.LJ 3664 Sikhar Behara & Ors. Vs. State of Orissa where death is caused in a free fight between two groups, nature of participation, weapons used and injuries caused are factors relevant to infer common object of members of the alleged unlawful assembly. In the said decision, with reference to the injuries caused both individually and collectively, it was opined that the common object of the assembly was to indulge in a fight and resume possession of the land in dispute and not to murder anyone. It was held that the death of a deceased and injuries to a few more would make out the offence of culpable homicide not amounting to murder for the reason knowledge could be imputed to the members of the unlawful assembly that death may result.

32. By looking at the evidence in the instant case we find it difficult to conclusively determine as to what is the origin of the fight. It could be that the Gujars went towards the Valmiki Temple and got outnumbered. There is also a possibility that the Valmikis may have triggered the fight. But, we find a hesitant use of force on both sides but with the difference that the members of the Valmiki community appear to have used more force.

33. Thus, in either case, if there was a free fight or the Valmikis were the aggressors, we find that the intention was to beat the other group and no more. In this connections it is important to note that Ajab Singh has received only contused wounds. At the maximum what we can said against the appellants is that they had knowledge of the kind contemplated by Section 299 (c) IPC of death may result of the person they beat. Thus, whether it was a free fight or the Valmikis were the aggressors the offence made out against the appellants would be that of culpable homicide not amounting to murder.

34. The order sheet shows that save and except Fateh Singh who was aged 85 years as on 7.2.2002 when he was admitted to bail, when admitted to bail all other accused had undergone sentences ranging from more than 7 years to more than 9 years.

35. Today, Fateh Singh would be aged about 93 years.

36. The appeal is partially allowed, modifying the conviction of the appellants for the offences punishable under Section 302/148/149 IPC to one under Sections 304 Part II/148/149 IPC.

37. Ends of justice would be served if the appellants are directed to be sentenced to undergo imprisonment for the period they have already undergone.

38. The appellants are on bail. Their bail bonds and surety bonds stand discharged.

**(PRADEEP NANDRAJOG)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

**MARCH 25, 2010  
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