

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

% *Date of Decision : 25th May, 2009*

+ **CRL.APPEAL No.580/2000**

ANISH MALIK Appellant
Through: Ms.Padma Priya, Advocate.

versus
STATE Respondent
Through: Mr.Pawan Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

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

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 21.8.2000, the appellant has been convicted for the offence of murder as also for the offence punishable under Section 27 of the Arms Act. He has been sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- for the offence of murder and to undergo imprisonment for one year for the latter offence. Both sentences have been directed to run concurrently.

2. We need not pen a lengthy judgment for the reason, accepting in toto the case of the prosecution, the

offence which is made out is that of culpable homicide not amounting to murder.

3. The case of the prosecution is set out in the statement of the complainant, Mukhtar Ali (who we note has turned hostile) and has been reflected by the learned Trial Judge in para 3 of the impugned decision, as under:-

“SI Krishan Kumar recorded the statement of Mukhtar Ali to the effect that for the last 15 days he was working in the factory of Sharafat Ali located in house No.12A/21B, Sanjay Gali, Subhash Mohalla, Maujpur, Delhi. He was doing the stitching work there. On that day at about 1 PM he was stitching while sitting on the machine. Anish was a Contractor who used to pay Rs.10/- for stitching per piece. He used to charge Rs.12/- from Sharafat Ali as stitching charges for one piece. Bhoora Khan stitched some piece of cloth and handed over the same to Contractor Anish. Bhoora Khan was saying that he has to take Rs.600/- more from Anish as stitching charges. Anish was saying that he has paid all the stitching charges to Bhoora Khan. Upon this, a quarrel started between the two. Anish was saying that he was a Contractor and Bhoora Khan has insulted him before the other workers. Anish further said that he will teach a lesson to Bhoora Khan. In the meanwhile Anish took a knife meant for cutting vegetables from there and saying that he will finish Bhoora Khan, stabbed him on the chest near the nipple. When Anish was going to stab Bhoora Khan for the second time, Mukhtar Ali, Mehmood Ali, Nizamuddin and Sumer Singh caught Anish along with the knife.”

4. The three persons named by Mukhtar Ali i.e. Mehmood Ali, Nizamuddin and Sumer have been examined as PW-3, PW-4 and PW-6 respectively. Mukhtar Ali has been examined as PW-2. All have turned hostile.

5. The conviction has been sustained on the basis of the testimony of PW-1, Sharafat Hussain, the owner of the factory as per whom, the injured had made a dying declaration to him, informing that he had been stabbed by the appellant. As per Sharafat Hussain, he was the owner of the factory where the offence was committed and he was in his house when the crime was committed. Sumer, a worker employed by him, informed him that the appellant had stabbed Bhure in his factory. He immediately went to the factory and saw that the appellant had been caught by other workers. Bhure was lying on the floor near his sewing machine and was profusely bleeding from his chest. Bhure told him that the appellant had stabbed him. Additionally, the incriminating evidence against the appellant is the FSL report Ex.PW-19/P as per which the blood stained salwar and kurta worn by the appellant, when he was apprehended, and as shown as recovered in the seizure memo Ex.PW-19/G has been opined to be stained with human blood of the same group as that of the deceased. We note that the appellant was apprehended at the spot and a kitchen knife, stained with human blood of the same group as that of the deceased (as per the FSL report Ex.PW-19/P) was recovered from the spot itself.

6. The learned Trial Judge has summarized the incriminating evidence against the appellant as under:-

“62. From the above discussion, the position now boils down to this that the evidence against the accused is:-

- (i) recovery of blood stained knife from his possession.
- (ii) seizure of blood stained salwar-kurta worn by the accused at the time of incident.
- (iii) as per the FSL report, the blood of B group was found on the knife, clothes of the accused and clothes of the deceased.
- (iv) There is opinion of the doctor that the injury on the person of the deceased could be possible by the knife recovered from possession of the accused.
- (v) There is an oral dying declaration made before independent witness Sharafat Hussain by the deceased to the effect that he was stabbed by the accused.”

7. The sketch of the knife as reflected in Ex.PW-19/D shows that the knife has a blade of 12.8 cms and a handle of 9.8 cms. The knife is a kitchen knife. As per the post-mortem report Ex.PW-16/A, a single stab wound has been inflicted on the left upper part of the chest. Unfortunately, the knife pierced 12 cms inside and cut the left axillary artery resulting in haemorrhagic shock due to excessive bleeding.

8. Though, all witnesses of the prosecution have turned hostile except PW-1 and even the complainant has turned hostile, but taking the case of the prosecution at its best, which has to be the complaint, it is apparent that the appellant was not armed with the knife. He did not visit the

factory to pick on the deceased. A quarrel took place between the appellant and the deceased pertaining to wages. In the heat of passion during the quarrel, the appellant picked up a knife which was kept in the factory to cut fruits and gave a single blow to the deceased. It is obvious that the appellant never intended to cause the death of the deceased but intended only to inflict an injury with the knife. It is also apparent that the act committed was without pre-meditation and in a sudden fight, in the heat of passion upon a sudden quarrel. The knife used was an ordinary kitchen knife found in the kitchen of every house and even in factories, to be used for peeling and cutting vegetables and fruits.

9. Though the knife was struck on the chest, but the blade thereof which is 5 inches in length could not have, and as a matter of fact has not pierced the heart or even the lung as the wound has not traversed vertically inside. An artery supplying blood has been cut. It is apparently a case where the act done can be attributed to a knowledge that the act is likely to cause death. It cannot be said with certainty that there was an intention to cause such bodily injury as is likely to cause death.

10. The evidence on record makes out a case of an offence punishable under Section 304 Part-II IPC being committed.

11. When he was released on bail, the appellant had already undergone an actual sentence of 7 years and 5 months. He had earned remissions of 8 months and 26 days. (As per nominal roll dated 28.11.2003). Thus, if sentenced to undergo imprisonment for 8 years, the appellant would not have to surrender, since with remissions he would have already undergone said sentence.

12. We dispose of the appeal setting aside the conviction of the appellant for the offence of murder. We hold him guilty of the offence of culpable homicide not amounting to murder and punishable under Section 304 Part-II IPC and sentence him imprisonment for the period already undergone.

13. Since the appellant is on bail, his bail bond and surety bond are discharged.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

May 25, 2009
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