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IN THE HIGH COURT OF DELHI

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Date of Decision : 30.07.2009

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CRL. APPEAL No.286/2001

DHARAMBIR & ANR. ...Appellants
Through : Mr. Sumeet Verma, Advocate

versus

STATE ...Respondent
Through : Mr. Pawan Sharma, Advocate

CRL. APPEAL No.528/2002

MAHENDER SINGH & ANR. ...Appellants
Through : Mr. B.S.Mor, Advocate

versus

STATE ...Respondent
Through : Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Noting that none appears for the appellants in Crl.A.No.286/2001 and further noting the fact that on a previous occasion, Mr.Sumeet Verma Advocate had appeared on behalf of appellant No.2 in said appeal, we appoint Mr.Sumeet Verma Advocate as the Amicus Curiae to argue Crl.A.No.286/2001 on behalf of the appellants therein.

2. We do so for the reason, Crl.A.No.286/2001 and connected Crl.A.No.528/2002 have reached for hearing today. Whereas Mr.B.S.Mor Advocate, appears for the appellants in Crl.A.No.528/2002, counsel for the appellants in Crl.A.No.286/2001 has not shown the courtesy to appear in Court. Since both appeals challenge the same judgment and order of conviction, they have to be heard together.

3. We fix the fee of Mr.Sumeet Verma Advocate at Rs.3,500/-.

4. As Mr.B.S.Mor, learned counsel for the appellants in Crl.A.No.582/2002 addressed arguments, Mr.Sumeet Verma learned Amicus Curiae appointed went through the file to ready himself in Crl.A.No.286/2001.

5. After attempting to demolish the testimony of PW-2, PW-3 and PW-4, finding no success, and hardly being in a position to urge any arguable point for consideration by this Court, Mr.B.S.Mor, learned counsel for the appellants in Crl.A.No.528/2002 stated that he has only one submission to make.

6. The submission is, that at best, the evidence establishes the commission of an offence punishable under Section 304 Part II IPC.

7. Mr.Sumeet Verma learned Amicus Curiae appointed for the co-appellants in the connected appeal also concedes to

the same position after having gone through the testimony of PW-2, PW-3 and PW-4.

8. The reason why the learned counsel for the appellants have conceded as aforesaid is the fact that PW-2, PW-3 and PW-4 have corroborated each other and there is good evidence to show their presence at the spot where Chander Singh, brother of PW-3 was stabbed.

9. Case of the prosecution is that on 29.8.1998, a municipal water tanker was stationed at G Block, Friends Enclave, Rattan Vihar, Sultanpuri and the inhabitants of the colony gathered at the spot to collect water in buckets and containers brought by them. The four appellants were present. Beena PW-3, came with a cooking vessel (patila) to collect water from the tanker. The appellants misbehaved with her. She hit appellant Mahender with the patila and he grappled with her. The shirt (jhumper) Ex.P-2 of Beena got torn. Her brother Chander Singh, the deceased, happened to be present at the spot. The appellants and Chander Singh had an altercation because Chander Singh intervened, on seeing his sister being humiliated. The three appellants, Dharamveer alias China, Surender alias Sunder and Jasbeer Singh alias Jaggu caught Chander Singh and appellant Mahender gave one stab blow directed towards the stomach of Chander Singh. Thereafter, all fled. The FIR has been registered pursuant to the statement Ex.PW-2/A made by Suresh Kumar PW-2.

10. Suresh Kumar PW-2 had removed the deceased to the hospital along with Om Prakash PW-4. The MLC Ex.PW-6/A shows that Chander Singh was got admitted at the hospital by Om Prakash. The said two documents i.e. the MLC of the deceased and the rukka show the presence of PW-2 and PW-4 with the deceased. Needless to state, PW-3 Beena was present at the spot because the origin of the trouble was her being eve-teased by the appellants.

11. Needless to state, PW-2, PW-3 and PW-4; namely Suresh Kumar, Beena and Om Prakash have deposed the same facts which have been disclosed in the statement Ex.PW-2/A i.e. the First Information Report.

12. Deposing in Court, Beena identified her jhumper Ex.P-2. The same was torn and thus said exhibit corroborates the testimony of the three witnesses that Mahender tore the jhumper worn by Beena when she hit him with the patila.

13. The submission made by learned counsel for the appellants is that, it is not a case where the accused came with any pre-determined intention to cause injury either to Beena or her brother i.e. the deceased. Counsels urge that the evidence establishes eve teasing by the appellants and Beena retaliating by hitting Mahender with a cooking utensil and inviting the counter reaction by Mahender who tugged at her shirt, which unfortunately, got torn. Her brother, the deceased, got infuriated and had a scuffle with the appellants.

During the scuffle, appellants Dharambir, Surender and Jasbir caught the deceased and appellant Mahender inflicted a single stab blow. Counsel urges that being numerically superior in the ratio 4:1, had the intention of the appellants been to kill Chander Singh they could have easily inflicted more than one stab blow. Drawing attention to the sketch Ex.PW-9/B of the knife which was got recovered by Mahender Singh counsel point out that knife is an ordinary kitchen knife. With reference to the post-mortem report Ex.PW-9/A, counsel urge that the same shows a single stab blow in the abdomen of the deceased. Counsel further urge that no vital organ of the deceased has been cut and that the cause of death is haemorrhagic shock due to excessive bleeding. It is urged that the deceased had excessive bleeding because he was first taken to Hari Hospital as deposed to by PW-4, which hospital was not equipped to deal with serious cases; requiring the deceased to be shifted to Jaipur Golden Hospital, and in the process, valuable time was lost. Bleeding continued and ultimately excessive bleeding proved fatal.

14. Learned counsel for the State urges that merely because a single stab blow is inflicted, does not lead to the conclusion that the intention was not to murder the deceased.

15. Circumstances under which an act is committed by an accused is very relevant at a criminal trial. More often than not, the surrounding circumstances under which an act has

been committed throws much light on the intention of the accused.

16. In the instant case, the appellants did not gather at spot with an intention to cause any injury much less the death of Chander Singh. What led to the stabbing of Chander Singh is an act of misbehaviour by the appellants and the misbehaviour was directed towards PW-3 who retaliated by hitting Mahender with a cooking utensil. In turn, Mahender retaliated by pulling her shirt. The shirt got torn. The deceased who was the brother of PW-3 could not digest the insult of his sister. He grappled with the accused. Mahender stabbed him once when he was in the grip of the other accused.

17. It is apparent that an incident of eve teasing went out of hand, resulting in a brawl, followed by stabbing.

18. Intention to cause death of the deceased is clearly ruled out.

19. The circumstances show that it was not even an intention to cause such bodily injury as was caused for the reason from the evidence on record it cannot be said that all the accused had an intention that an injury should be caused on the stomach of the deceased so that the deceased should die.

20. Knowledge that death could be caused by striking a knife in the stomach of the deceased can certainly be

attributed. But, whether the knowledge is of a lesser degree or a higher degree i.e. is it a knowledge contemplated by the 3rd limb of Section 299 IPC or is it knowledge which is contemplated by Section 300 fourthly would determine the dead lock whether the offence is one of murder or of a lesser magnitude.

21. In so doing, we take guidance from past precedents. The third limb of Section 299 IPC uses the expression: *with the knowledge that the act is likely to cause death*. Section 300 fourthly of the IPC uses the expression: *with the knowledge that the act is so imminently dangerous that it must in all probability cause death*. Thus, the difference is one of the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree.

22. In the decision reported as AIR 1968 SC 1390 Laxman Kalu Nikalje Vs. State of Maharashtra a single stab blow which cut the auxiliary artery and veins resulting in haemorrhagic shock and consequent death, was held to be attracting the offence punishable under Section 304 Part II IPC. In the decision reported as AIR 1981 SC 1441 Gokul Parashram Patil Vs. State of Maharashtra a single stab wound with a knife on the left clavicle resulting in the superior vena cava being cut and consequent death due to haemorrhagic shock was held attracting the offence punishable under Section 304 Part II. In

the decision reported as AIR 1984 SC 759 Tholan Vs. State of Tamilnadu a single stab wound on the right side of the chest piercing the heart and the lung was held to be an act attracting the offence punishable under Section 304 Part II IPC.

23. The most important circumstances in each case was that either the presence of the accused or the deceased at the spot was accidental and there was no pre-meditation by the accused to even injure the deceased, much less cause death.

24. In the instant case the fact that the deceased lost excessive blood due to being shifted from Hari Hospital to Jaipur Golden Hospital has also to be kept in view. We may hasten to add that merely because a person dies due to inadequate medical aid does not lessen the gravity of the offence. What we intent to convey is that no vital organ of the deceased was affected by the assault and the death is due to excessive bleeding, meaning thereby, the knowledge attributable to the appellants by their wanton act is of a lesser degree and not a higher degree.

25. The appeals are partially allowed.

26. The conviction of the appellants for the offence punishable under Section 302 IPC is set aside. The appellants are convicted for the offence punishable under Section 304 Part II IPC.

27. We note that by the time they were released on bail, the appellants had undergone actual imprisonment for periods ranging between 5 years and 5 years and 6 months. They had earned remissions for periods ranging between 8 months to 10 months.

28. We feel that the ends of justice would be met if we sentence the appellants to undergo imprisonment for the period already undergone.

29. In view of the sentence imposed upon the appellants, bail bonds and surety bonds furnished by the appellants are discharged.

**(PRADEEP NANDRAJOG)
JUDGE**

**(INDERMEET KAUR)
JUDGE**

**JULY 30, 2009
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