

R-47

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

% *Date of Decision : July 21, 2009*

+ **CRL.APPEAL NO.288/2001**

JAGAT RAM @ NANKU Appellant.
Through: Ms.Ritu Gauba, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, 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 NANRAJOG, J. (Oral)

1. The aforesaid appeal has reached for hearing today.

2. We note that the appeal was filed by a counsel privately engaged by the appellant who stopped appearing and in said circumstance the appellant sought legal aid. Ms.Ritu Gauba, a lawyer on the panel of the Legal Aid Committee was assigned the appeal to argue the application filed by the appellant seeking suspension of sentence. Ms.Ritu

Gaubha, learned Amicus appointed on behalf of the appellant, successfully obtained bail for the appellant as directed vide order dated 6.5.2003. We hereby formally appoint her as an Amicus to assist the Court on behalf of the appellant and fix her fee at Rs.3,500/-.

3. The nominal roll of the appellant shows that as of 20.12.2002, the appellant had served a jail sentence of 4 years, 10 months and 3 days. He had earned remissions of 7 months.

4. Being released on bail pursuant to the order dated 6.5.2003, taking 6.5.2003 as the date of release, it is apparent that the appellant would have undergone actual imprisonment for 5 years and 3 months.

5. With reference to the evidence on record and in particular the defence evidence, we note that as per the testimony of CW-1 and CW-2, being the Headmaster and Head Mistress of 2 municipal primary schools, where appellant was admitted as a student, it stands established that the appellant was born on 10.6.1979.

6. The date of the incident is 9.2.1998. It is apparent that as on the date of the incident, the appellant was aged 18 years and 8 months.

7. We have paraphrased our decision by recording

aforenoted facts to bring out the facet pertaining to the age of the appellant, who, though not to be treated as a minor when the offence was committed, was an immature person.

8. It is not in dispute that on 9.2.1998 Sonu received a single stab wound on his neck. Unfortunately, the jugular vein of Sonu got cut and as a result thereof he died.

9. The dimensions of the knife as noted in the sketch Ex.PW-12/G may be noted. The knife has a blade 10 cms long. Its width is 1.75 cms. The knife has a single cutting edge and is rounded at the end. The pen picture of the knife reveals the same to be an ordinary kitchen knife. It is not a button actuated knife.

10. The eye witness to the incident is Pawan Singh Negi PW-11. We note his testimony.

11. He deposed on 6.3.2000 and stated that in the year 1998 he was residing at Durga Park and was a student of Government Boys Senior Secondary School No.2, C Block, Janak Puri. He was a student of Class IX. On 10.2.1998 (should read 9.2.1998) he returned back from the school at 4:00 PM to his house. Sonu i.e. the deceased came to his house and told him that the appellant had beaten him. At that time another boy was accompanying Sonu. All three i.e. the witness, Sonu and the other boy went to the house of the

appellant on cycles. Since his cycle had a locking problem, he parked the same at some distance from the house of the appellant. Sonu and the other boy went to the house of the appellant and called him. Appellant came out. For the reason what was further stated is very relevant, we prefer to quote. He deposed: *“when I was locking my cycle and I turned around I saw that Sonu, Jagat Ram and the other boy were standing outside the house. Jagat Ram was standing behind Sonu. I saw that an altercation (chinaa jhapti) took place between Sonu and Jagat Ram. I saw Jagat Ram attacking 3 times on Sonu with a knife. Once he attacked Sonu on neck and twice probably on chest.”*

12. Relevant would it be to note that during cross examination Pawan Singh Negi deposed that the deceased and the appellant had a dispute in the past regarding some ball.

13. It is urged by learned counsel for the appellant that from the testimony of PW-11 it is apparent that Sony, one more person and Pawan Singh Negi came to the house of the appellant. It was not that the appellant went armed or with a pre-determined mind to do something. Learned counsel further urges that from the testimony of PW-11 and especially with reference to the words “chinaa jhapti” it is apparent that some altercation preceded the attack. Learned counsel urges

that the backdrop of there being a previous quarrel and the deceased and the other boy along with Pawan Singh Negi visiting the house of the appellant are suggestive of the fact that Sonu, the other boy and Pawan Singh Negi had come to the house of the appellant to teach him a lesson and that the appellant acted in self-defence.

14. From the testimony of PW-11 it is apparent that the act of stabbing was preceded by an altercation. It is thus apparent that when the appellant came out of the house he did not come out with any intention to start a quarrel. From the testimony of PW-11 it is apparent that the appellant came out of his house on being called by Sonu and the other boy.

15. The origin of what happened at the spot is not clear. The past is clear, being a dispute between Sonu and the appellant on the issue of some ball.

16. The post-mortem report of the deceased shows only a single wound on the neck. The testimony of PW-11 that the appellant attacked twice on the chest of the deceased is incorrect.

17. We thus have on record the fact that everything happened upon the spur of the moment and a single stab injury was inflicted on the person of the deceased with a knife, which is an ordinary kitchen knife.

18. In the decision reported as AIR 1968 SC 1390 Laxman Kalu Niklji Vs. State of Maharashtra a single stab blow with a sharp edged object directed towards the right clavicle i.e. the chest, resulting in the arteries inside being cut causing excessive bleeding leading to haemorrhagic shock was opined to be an act which attracts the offence punishable under Section 304 Part II IPC and not the offence punishable under Section 302 IPC or Section 304 Part I IPC.

19. In the decision reported as (2006) 13 SCALE 228 Saleem Sahab Vs. State of Madhya Pradesh an assault, upon a sudden quarrel, with a pair of scissors directed towards the abdomen and the chest was held to be an act attracting the offence punishable under Section 304 Part II IPC.

20. The decision highlights the importance of taking into account the size of the weapon of offence for the reason, the nature of the weapon of offence is linked to the knowledge or culpability. Small cutting weapons would attract a lesser degree of knowledge and hence a lesser degree of culpability.

21. Under the circumstances we hold that the act committed by the appellant attracts the offence of culpable homicide not amounting to murder and punishable under Section 304 Part II IPC.

22. Noting the young age of the appellant and

therefrom deducing the fact that the appellant was a fairly immature person when he committed the act, noting further that the appellant has already undergone an actual sentence of 5 years and 3 months we are of the opinion that ends of justice would be met to direct the conviction of the appellant for the period already undergone.

23. The appeal is partially allowed. The conviction of the appellant for having committed the offence punishable under Section 302 IPC is modified, in that, the appellant is convicted for the offence punishable under Section 304 Part II IPC. As regards the sentence we direct that the appellant stands sentenced to undergo imprisonment for the period already undergone.

24. The appellant is on bail. In view of the sentence imposed upon the appellant, the bail bond and surety bond stand discharged.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JULY 21, 2009
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