

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

% *Date of Decision: 4th September, 2009*

+ **CRL.A. 438/2005**

AMUL KUMAR SARDAR Appellant
Through: Mr. Sumeet Verma, Advocate

versus

STATE Respondent
Through: Mr. M.N.Dudeja, Advocate

CRL.A. 924/2005

SUNIL @ SONU Appellant
Through: Mr. V.K.Raina, Advocate

versus

STATE Respondent
Through: Mr. M.N.Dudeja, 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 9.12.2002 the appellants have been convicted for the offence of having murdered Kul Bahadur Thapa. Vide order of even

date, they have been sentenced to undergo imprisonment for life.

2. The appellants have been convicted on the sole testimony of PW-1 Jagdish who deposed that when he was stationed at his handcart he saw the accused chasing a boy whom they stabbed while running. We note that Jagdish admitted that the time was around 8/8:30 PM. He denied that there was darkness in the street where the deceased was stabbed.

3. That a boy was stabbed near DDA flats Kalkaji was recorded at the police station Kalkaji vide DD No.14A dated 24.12.2000. It transpired that the boy who was stabbed was Kul Bahadur Thapa.

4. The post-mortem report Ex.PW-8/A of Kul Bahadur Thapa shows two stab wounds, one on the right chest placed 4.5 cm below right nipple and 6.5 cm from midline which was muscle deep. The second was a stab wound on the left side of the abdomen, 3 cms from umbilicus and 24 cm from the left nipple.

5. Needless to state the first injury is a simple injury caused by a sharp edged weapon. The second is a grievous injury and was the cause of death of the deceased because

after cutting through the muscles of the stomach, the weapon of offence even cut the intestines of the deceased. The result was excessive bleeding triggering haemorrhagic shock.

6. Some light is thrown on the issue at hand by Mohd.Munshi PW-14 who deposed that he was a conductor in bus No. DL 1PA 5131 which used to ply on the route Ambedkar Nagar to Lajpat Nagar. The bus commenced its return journey from Lajpat Nagar at 8:00 PM and while he was selling tickets to the passengers, a quarrel ensued between some passengers. He disclaimed any further knowledge and was declared hostile. On being cross examined by the learned Public Prosecutor he admitted that the deceased alighted from the bus, but denied that two other boys also alighted from the bus. He admitted that enroute, the bus had to cross DDA flats near Tuglakabad Extension.

7. Mohd.Munshi has suppressed certain aspects of the truth evidenced by the fact that the testimony of PW-1 clearly establishes that the accused had chased the deceased near DDA flats Tuglakabad Extension.

8. But, the testimony of Mohd.Munshi establishes that a quarrel took place between passengers in his bus and that the deceased de-boarded the bus. It is thus apparent that the

deceased and the appellants had a quarrel in the bus and as deposed to by Mohd.Munshi the deceased de-boarded the bus and so did the appellants. Thus, everything happened upon a sudden quarrel, the origin whereof has not seen the light of the day.

9. We note that after they were apprehended, the appellants refused to participate in the Test Identification Proceedings. The Test Identification Proceedings pertaining to appellant Sunil i.e. Ex.PW-22/A bearing signatures of Sunil at point Ex.PW-22/B record the reason for Sunil's refusing to participate in the Test Identification. He refused to join the Test Identification stating that his accomplice Amul had inflicted a knife blow to a Nepali in bus route No.416 and that the witness who had come to do the Test Identification had seen him along with the accomplice. The witness who was supposed to do the Test Identification was the conductor of the bus i.e. Mohd.Munshi. Similarly, as recorded in the record of the Test Identification Proceedings pertaining to Amul, i.e. Ex.PW-22/H, he has refused to participate in the Test Identification stating that on the day of the incident he was in the bus with Sonu (Sunil) but he did nothing and since he has been shown to the witness he refuses to participate in the Test

Identification Proceedings and that Sonu had stabbed the deceased.

10. The reasons given by the appellants while refusing to participate in the Test Identification Proceedings have let the cat out of the bag. Ignoring the confessional part of their statements made to the Magistrate who had conducted the Test Identification Proceedings, suffice would it be to note that both of them have given no justifiable cause to refuse participation in the Test Identification Proceedings. Qua Amul there is no evidence that the witness was permitted to see him when he was in custody. Thus, the refusal to participate in the Test Identification Proceedings is also an incriminating evidence against them.

11. It is not a case where the appellants had any previous enmity with the deceased.

12. The stabbing incident had taken place at 8:30 PM on 24.12.2000. By that time of the year i.e. Christmas Eve time, darkness sets in at Delhi by 5:30 PM. By 8:30 PM it is completely dark. The site plan Ex.PW-12/A shows that the spot from where Jagdish witnessed the occurrence is Mark B and at a distance of 8 meters across is an electric pole. The place where the deceased was stabbed has been shown as Mark A

which would be at a distance of about 5 meters from where Jagdish was standing. The electric pole would be throwing light from the opposite side to where Jagdish was standing i.e. would be illuminating persons in front of Jagdish from the rear of the said persons. As per Jagdish the appellants were running after the deceased and while running, stabbed him.

13. It cannot thus be said that the prosecution has successfully established that the appellants had intended to strike the deceased in the stomach. It is possible that a blow directed towards the deceased accidentally struck the stomach of the deceased. Thus, it cannot be said that it has been established that the appellants intended to cause injury on the stomach of the deceased. That apart, if a person stabs another person when the two are running, it would be a situation akin to the assailant indiscriminately attacking and thereby requiring an inference to be drawn that the specific injury caused was not the one intended to be caused.

14. In the decision reported as 2007 (6) SCALE 649 Sunder Lal Vs. State of Rajasthan, an incident in almost dark conditions with feeble light and attack being indiscriminate with one blow landing on the head which proved to be fatal was held to be the commission of an offence punishable under

15. We thus hold that the evidence establishes the commission of an offence punishable under Section 304 Part I IPC and not the offence of murder.

16. We partially allow the appeals, in that we hold the appellants guilty of committing culpable homicide not amounting to murder and for the offence, punish them under Section 304 Part I IPC by directing that the appellants shall undergo RI for 10 years. Needless to state the appellants would be entitled to the benefit of Section 428 Cr.P.C.

17. Since the appellants are still in jail, copy of this order be sent to the Superintendent Central Jail Tihar for necessary action.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

September 04, 2009
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