

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 736/2005**

% *Date of Order : January 14, 2009*

AKHLAK @ BHURA Appellant
Through : Mr. Bhupesh Narula, Advocate

VERSUS

THE STATE (G;N.C.T. OF DELHI) Respondent
Through : Ms. Richa Kapoor, APP

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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. Heard learned counsel for the parties.
2. Criminal law was set into motion when pursuant to a telephonic call DD No. 6A, Ex.PW-4/B, was recorded by PW-4, HC Sushila at 9.15 A.M. on 29.7.2002 at Police Station Nangloi to the effect that at Rajdhani Park, New India Public

School, a person has been stabbed with a knife. Copy of the DD entry was handed over to SI Babu Ram, PW-15, through Const. Joginder, PW-8. Both of them reached the spot along with Const. Subhash, PW-12, where they learnt that two persons had been removed by the PCR Van to Sanjay Gandhi Memorial Hospital by Const. Rakesh, PW-13, who had reached the spot at around 9:10 A.M. when he received a call.

3. Leaving behind PW-12 at the spot, accompanied by PW-8, PW-15, SI Babu Ram, reached the hospital where he learnt that one out of the two persons who were stabbed, namely Ehkam (Ahkam), was brought dead and the other, Munir, PW-1, was admitted in an injured condition and was fit to make a statement. PW-15, SI Babu Ram, recorded the statement of Munir, Ex.PW-1/A, and made an endorsement thereon, Ex.PW-15/A, and forwarded the same at 11:30 A.M. for registration of a FIR. PW-4, HC Sushila registered the FIR, being No. 663/2002 under Sections 302/307 IPC, Ex.PW-4/A. PW-8, Constable Jogender thereafter handed over the FIR to the SHO, Inspector Ran Singh, PW-18, who investigated the crime.

4. At the Sanjay Gandhi Memorial Hospital, Ehkam

and Munir were examined by Dr. Ashish Sehgal, PW-3, who recorded their MLC, Ex.PW-3/A and Ex.PW-3/B respectively.

5. Ex.PW-3/B, MLC of Munir, records the following injuries:-

“(i) Penetrating wound of 2 cm in (L) lower chest 8 cm below left nipple.

(ii) Clean incised wound of 3.5 cm over middle third of (L) forearm.”

6. Ehkam was declared dead when brought to the hospital and hence his body was sent to the mortuary. On 30.7.2002, Dr. Komal Singh, PW-19, conducted the post-mortem. As per the post-mortem report, Ex.PW-19/A, following external injuries were noted by him on the body:-

“Clean incised wound in Suprasternal area of neck centrally placed in a vertical manner; size being 2.3 cm x 1 cm both angle acute.”

7. On internal examination, undernoted injuries were noted:-

“Leading to stab injury corresponding cut to neck muscle and other connective tissue finally penetrated the upper lobe (at it apex) of ® lung size being 1.5 cm x 1 cm x 1 cm; clotted blood present around”

8. He recorded his opinion that the cause of death was haemorrhagic shock subsequent to penetrating injury to

the lung. He opined that the injury was sufficient to cause death in the ordinary course of nature. All injuries were found to be anti-mortem and of the same duration.

9. P.K.Madan, PW-10, a photographer, was summoned at the site on 29.7.2002 itself. He took 7 photographs of the site of the incident, being Ex.PW-10/A8 to Ex.PW-10/A14; negatives whereof were Ex.PW-10/A1 to Ex.PW-10/A7. PW-18 prepared a rough site plan, Ex.PW-18/A of the spot. Thereafter, Inspector Devender Singh, Draftsman, Crime Branch, Delhi, PW-11, visited the site on 21.8.2002 and prepared the site plan to scale, Ex.PW-11/A.

10. Since Munir, PW-1, had disclosed the name of assailant to be Akhlak @ Bhura i.e. the appellant, PW-18, Inspector Ran Singh, SHO Police Station Nangloi went to the residence of the accused and was informed that the accused had fled to Goa. Information was flashed to the Police at Goa where appellant was apprehended/detained. PW-9, S.I. Vipin, brought the appellant on a transit remand to Delhi on 15.8.2002.

11. The accused was interrogated by PW-18 and he made a disclosure statement, Ex.PW-16/A, in presence of PW-

16, Const. Kuldeep Kumar, informing that he could get recovered a knife used for committing the crime as also the blood stained clothes which he was wearing at the time of the incident.

12. Since the accused had made a disclosure statement and volunteered to get recovered the weapon of offence i.e. the knife used to commit the crime, as also the blood stained pant and shirt which he was wearing at the time of the incident, Const. Kuldeep Kumar, PW-16, accompanied by PW-18, Inspector Ran Singh and PW-6 Mohd. Ahmad Ali Khan, a public witness went along with the accused, to be led to the place wherefrom accused stated that he could get the recoveries effected. Accused led the team to Azad Hind Gram, Tourist Spot, Tikri Kalan, Main Rohtak Road, Delhi and went near a wall between the tourist spot and petrol pump and vide pointing out memo, Ex.PW-6/E, pointed out a stone and from there under, got recovered a blood stained pant; a blood stained shirt as also a knife which were seized vide seizure memo Ex.PW-6/C and Ex.PW-6/D.

13. Before it was sealed, a sketch of the knife was drawn being Ex.PW-6/B.

14. Needless to state, the appellant was sent for trial. A charge under Section 302 IPC was framed for having murdered Eham. A charge under Section 307 IPC was framed for attempting to murder Munir.

15. PW-1 Munir, PW-5 Shahabir, PW-6 Mohd. Ahmad Ali Khan, PW-7 Manzoor, and PW-17 Shamshad, were cited as the eye-witnesses since during investigation, their statements were recorded under Section 161 Cr.P.C. The police officers and the doctors named hereinabove who were associated with the registration of the FIR and conduct of investigation were also examined. They proved the facts aforementioned.

16. PW-1, Munir, supported the prosecution and stated that he along with Eham were residing as tenants in a room in property No. A-75, Rajdhani Park. He stated that the accused and one Salman, had also taken on rent a room in the same building. That all were working as Mistry, doing moulding work of furniture. He stated that three days prior to 29.7.2002 (the date of the incident), Eham had abused him at which the accused had said that no abusive language should be used and if in future any was used, he would cut their necks. He further deposed that he and the deceased

were boxing on 29.7.2002 at around 8.00 A.M. The accused came and heard their voices and thought that the two were teasing him. Accused took out a knife and stabbed Eham on the neck. He i.e. PW-1, tried to intervene. He too was stabbed in the stomach by the accused. He tried to run away. He was stabbed again by the accused on his left arm. Thereafter, the accused ran away. He stated that the police recorded his statement, Ex.PW-1/A in the hospital and his blood stained clothes were seized by the police vide memo Ex.PW-1/B.

17. On being cross-examined, with reference to the weapon of offence i.e. the knife, Ex.P-1, recovered pursuant to the disclosure statement made by the appellant and at the instance of the appellant, he stated that the knife used for commission of the offence was bent. He admitted that the knife shown to him in court had a straight blade. In cross-examination he stated that he did not tell the police about any incident having taken place 3 to 4 days prior.

18. PW-5 turned hostile, but admitted being a resident of A-75, Rajdhani Park (the place of the incident) and engaged in the work of wooden moulding. He stated that he was not

present when the incident took place and that when he reached the spot the police had already made a visit. On cross examination by the learned public prosecutor he stated that he was taken to the Police Station where his signatures were obtained on blank papers. He denied the incident as disclosed by Munir.

19. Relevant would it be to note that on being cross-examined by the learned Public Prosecutor, he admitted that the injured Munir and Ehkam had been removed from the spot to the hospital by the PCR Van, but went on to state that by that time the accused had run away.

20. PW-6, Mohd. Ahmad Ali Khan also turned hostile and did not support the prosecution pertaining to the recoveries effected at the instance of the accused pursuant to his disclosure statement Ex.PW-16/A. However, it would be relevant to note that on being cross-examined by the public prosecutor he admitted; *"It is correct that I have seen the sketch of the chhuri which is Ex.PW-6/B and it was prepared in my presence and bear my sign at point A. It is also correct that recovery memo of the clothes and chhuri Ex.PW-6/C also bears my sign at point A. It is also correct that recovery*

memo of chhuri and pointing out memos which are Ex.PW-D (Sic ? Ex.PW-6/D) and Ex.PW-6/E also bear my sign at point A on each. I can identify the chhuri and clothes if shown to me."

21. Thereafter, the sealed pulanda duly sealed with the seal of the court was opened. Knife, Ex.P-1, was identified by him but he stated that he had seen the same in the police station. The blood stained pant, Ex.P-5, and the blood stained shirt, Ex.P-6, seized by the police at the time of the recovery on being pointed out by the accused were identified by him. It is relevant to note that qua these he did not say that he had seen them in the police station.

22. PW-7, Manzoor admitted being a resident of the neighbouring flat and knowing the appellant, Ehkam and Munir; but denied having witnessed any quarrel, much less appellant inflicting any injury on Ehkam and Munir. However, it is relevant to note that on being cross examined by the learned public prosecutor he admitted having telephoned the police.

23. Shamshad, PW-17 admitted being a resident of Rajdhani Park and engaged in wooden moulding work. He

admitted that Ehkam, the appellant, Shahabir, Manzoor and Munir were residing in the same building and all being engaged in the work of wooden moulding. He stated that there were ten rooms in the building and that he was a resident of room No.8. He denied being present at the spot when the incident took place. During cross examination by the learned prosecutor he admitted having told the police that 3 days prior the accused had a quarrel with Ehkam and Munir and that he had pacified them. He stated that both parties had threatened to kill each other.

24. Learned Trial Judge has held the appellant guilty of the offence under Section 302 IPC holding that evidence on record establishes his intention to kill Ehkam. He has been convicted for the offence under Section 307 IPC for attempting to kill Munir. The appellant has been sentenced to undergo imprisonment for life for the offence of murder as also to pay a fine of Rs.500/-, in default to undergo RI for 6 months. For the offence punishable under Section 307 IPC he has been sentenced to undergo RI for 5 years and to pay a fine of Rs.300/-, in default to undergo RI for 2 months. Both sentences have been directed to run concurrently.

25. At the hearing today, Sh.Bhupesh Narula, learned counsel for the appellant made a feverish attempt to argue that being a friend of the deceased, Munir was an unreliable witness. Counsel urged that if testimony of Munir is to be discarded there was no evidence against the appellant. Alternatively, learned counsel urged that as deposed by Munir, the appellant felt offended by the sounds being made by Munir and the deceased when they were boxing and hence there was a provocation. Counsel urged that exception 4 to Section 300 IPC stood attracted and hence it was not a case of murder.

26. Pertaining to the first plea urged by learned counsel, we see no reason to disbelieve Munir whose presence at the spot cannot be disputed for the reason from the site of the incident he was removed to the hospital along with the deceased as proved by S.I. Ran Singh, PW-14. His presence gets further fortified by the fact that MLC Ex.PW-3/A and Ex.PW-3/B pertaining to the deceased and Munir were recorded by PW-3 at 9:40 A.M. evidencing that Munir was present with the deceased when both were injured. The other prosecution witnesses may have turned hostile but we find

that there are traces of them not speaking truthfully. As noted above, Manzoor, PW-7 denied being present when the incident took place but admitted having telephoned the police. He has not explained as to what was the occasion for him to make a telephonic call to the police. Similarly, PW-6, Mohd. Ahmad Ali Khan may have denied his presence when the incident took place or his being present when the recoveries were effected pursuant to the disclosure statement of the accused, but, his having admitted that the sketch of the chhuri, Ex.PW-6/B, was prepared in his presence and he signed the same at point A as also his having signed the recovery memos Ex.PW-6/D and Ex.PW-6/E, shows his presence at the time when recoveries were effected pursuant to the disclosure statement made by the appellant; and at the instance of the appellant. It is also important to note that he identified the pant and the shirt, Ex.PW-5 and Ex.PW-6 respectively as those of the appellant. Now, if the sketch of the knife was prepared in the presence of PW-6, it obviously had to be pursuant to the recovery effected in the presence of PW-6. That Munir stated in evidence that the knife used to commit the crime was bent and the fact that the knife

recovered as the weapon of offence was straight is of not much importance, being a minor discrepancy. Possibility of Munir imperfectly recollecting the physical description of the knife cannot be ruled out.

27. Even otherwise, learned counsel for the appellant could not point out any infirmity in the testimony of Munir.

28. There is no merit in the first submission made by learned counsel for the appellant. Even the conduct of the appellant of absconding is relevant and points towards his guilt. He was not to be found in his house after the incident.

29. Pertaining to the second submission made, suffice would it be to state that to bring a case within exception 4 to Section 300 IPC, it has to be established that the offence was committed without pre meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

30. Where is the evidence of a sudden quarrel? None has been shown. As per the testimony of Munir, on 29.7.2002, at 8:00 A.M. when he and the deceased were boxing, the appellant came there and on hearing their voices.

Thinking that he was being teased he took out a knife from his pocket and stabbed the deceased on his neck. When Munir intervened the appellant stabbed him in the stomach. When he i.e. Munir started running, the appellant inflicted another stab wound on his left arm. It is also important to note that no such theory of a sudden quarrel was ever projected by the appellant when evidence was being recorded. When examined under Section 313 Cr.P.C., appellant denied his involvement and his presence at the spot at the time of the occurrence.

31. That the appellant was armed with a knife and pounced upon the deceased and inflicted the stab wound shows his pre-determination and acting without any provocation or a quarrel. It has also to be noted that Munir, who intervened, probably to save his friend, was also attacked twice.

32. It is trite that a mental attitude i.e. the intention or the knowledge of the offender has to be gathered by the Court from the conduct of the accused. By intention, it means the expectation of the consequences; for a man would expect the natural consequences of his act and therefore, in law, is

presumed to intend them. Further, presumption is that a man knows the probable result of his conduct. As per the first clause of Section 300 IPC, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death. The second clause is attracted where an act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death. The mental attitude to be considered, while appreciating the second clause, is two fold. First, whether the intention is to cause bodily harm and the second, whether there is a mental knowledge that death will be the likely consequence of the intended injury. The third clause discards subjective knowledge. The focus of consideration is to see, from the act done, whether an intention of causing the specific bodily injury is emerging, and thereafter to see whether the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. The fourth clause comprehends the commission of imminently dangerous acts which must, in all probability, cause death.

33. The distinction between knowledge contemplated by the third limb of Section 299 IPC and the knowledge

contemplated by clause 4 of Section 300 IPC is one of degree.

34. While determining intention or knowledge, the manner in which the weapon of offence is used becomes relevant. In the decision reported as 1979 CrL LJ (Guj) 334 Satish Vs. State of Gujarat, the accused plunged a big knife in the chest of the deceased without any exchange of words, causing death. An inference of intention to cause death was drawn. Similarly, in the decision reported as 1995 CrL LJ 1742 (Del) Dalip Kumar Vs. State a single blow with a screw driver on the head of the deceased, given with great velocity, was held to be indicative of an intention to kill.

35. Where the weapon of offence is a knife having a blade of 10.05 cm; total length of the knife being 21.05 cm, as is the length of the knife in the instant case, culpability of intention or culpability qua knowledge, that if the knife is used with great force while attacking a person on a vital part of the body, is very strong.

36. The sketch of the knife used in the instant case evidences it having a blade of 10.05 cm. The injury on the deceased as per the post-mortem report, as noted in paras 6 and 7 above, shows the ferocity of the blow. The injury is

directed on a vital part of the body, namely the suprasternal area of the neck. The velocity of the blow can be gathered by the fact that the right lung lobe was penetrated up to 1 cm. Human anatomy tells us that to penetrate from the suprasternal area of the neck and reach the lung, the knife had to cut through a distance of approximately 6 cms.

37. We concur with the reasoning of the learned Trial Judge that the evidence on record establishes that the appellant intended to cause the death of deceased Ehkam.

38. No submissions have been made pertaining to the conviction of the appellant pertaining to the finding of guilt for the offence under Section 307 IPC.

39. We find no merit in the appeal.

40. The appeal is dismissed.

**(PRADEEP NANDRAJOG)
JUDGE**

**(ARUNA SURESH)
JUDGE**

**January 14, 2009
Jk/mm**