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

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**CRL.A. 453/2006**

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Date of Order : February 11, 2009

DAULAT

..... Appellant

Through: Ms. Latika Chaudhary, Advocate for  
Ms. Poornima Sethi, Advocate

versus

THE STATE (GOVT OF NCT DELHI)

..... Respondent

Through: Mr. Pawan Sharma, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE ARUNA SURESH**

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

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

1. Heard learned counsel for the parties.
2. Whereas co-accused Sonu, against whom the prosecution alleged the role of exhorting the appellant who thereupon inflicted two stab wounds on the person of the deceased Ram Singh, has been acquitted on account of

insufficient evidence to prove the alleged exhortation, vide impugned judgment dated 18.11.2005, the appellant has been convicted for the offence of murdering Ram Singh. The appellant has been directed to undergo imprisonment for life and to pay a fine of Rs.5,000/-.

3. The case of the prosecution is that in the intervening night of 25/26.11.2003 Ram Singh, a resident of Block B-3, Raghubir Nagar was outside his house No.925. He was in the company of his wife Pushpa Devi. They were unloading goods from a cart. The appellant and Sonu were passing by and told them to get out of the site. Without any provocation, Sonu instigated Daulat saying "*ye sala dada banta hai, aaj iska kaam tamam hi kar dete hain*", upon which, appellant took out a knife from his pant and stabbed Ram Singh twice in the abdomen.

4. Somebody rang up the police and informed about the incident which was recorded at PS Rajouri Garden vide DD No.54, Ex.PW-4/A, by Const.Raghunath Prasad PW-4. ASI Om Prakash PW-14, accompanied by Const.Satish PW-6, left for the spot and on learning that the injured had been removed to DDU Hospital went to the hospital. They found Ram Singh admitted

in the hospital and in an injured condition. Pushpa Devi PW-11, the wife of Ram Singh who was present in the hospital made a statement Ex.PW-11/A, based whereon, the FIR was registered at 2:20 AM on 26.1.2003 by HC Jagdish Prasad PW-1. It may be noted that in her statement, Pushpa Devi told the police that on the exhortation of Sonu, the appellant had stabbed her husband.

5. It may be noted that when ASI Om Prakash and Const.Satish reached the spot, the appellant and the co-accused were already apprehended and were being held on to by Prabhu Dayal PW-12 and Yaad Ram PW-13. The police formally arrested both from the spot.

6. The weapon of offence, a knife, was seized at the spot. We note that there is a slight diversion in the testimony of the witnesses, whether the knife was recovered from a drain next to the spot where Ram Singh was injured or it was recovered from the possession of the appellant.

7. We shall be dealing with this aspect a little later.

8. After the FIR was registered, the investigation at the spot was completed by calling a photographer who took photographs of the site. Control earth, earth stained with blood

and the knife recovered were kept inside a parcel and the same were sealed. The shirt which was worn by the appellant was seized vide seizure memo Ex.PW-6/A, for the reason ASI Om Prakash and Const.Satish Kumar saw that the same was stained with blood.

9. At the hospital, injured Ram Singh was examined by Dr.Romit Gupta PW-7, who recorded the MLC Ex.PW-7/A, noting thereon, that the injured had a stab injury on the right abdomen and another stab injury on the left abdomen. The patient was referred for surgery.

10. Ram Singh was given medical treatment in the form of a surgical intervention for the reason, the internal wounds had to be sutured.

11. Ram Singh died on 30.11.2003. The body was sent for post-mortem, where on 2.12.2003, Dr.B.N.Mishra PW-19, conducted the post-mortem and gave his report Ex.PW-18/C, in which he recorded that there were four external injuries, the first two were surgical wounds made at the time of laprotomy. Injuries 3 and 4; one a spindle shape stab wound piercing 4.5 cms into the body having entry on the left side of anterior

abdomen had reached the colon and the second stab injury was found to be muscle deep i.e. having a depth of 1.3 cms. and had remained within the muscle tissue.

12. The cause of death opined in the post-mortem report Ex.PW-18/C is as under:-

“1. The cause of death was due to septicemic shock consequent upon development of acute peritonitis followed by piercing (perforation) of transverse colon by injury No.3.

2. The injury No.3 and 4 was inflicted by sharp edged weapon.

3. The exhibited weapon (knife) liable to inflict injury No.3 and 4.”

13. It is significant to note that in the post-mortem report, the doctor gave no opinion whether injury No.3 was sufficient in the ordinary course of nature to cause death or not.

14. The blood stained clothes of the deceased as also the blood sample on a gauze piece were handed over to the investigating officer. The same, along with the blood stained shirt of the appellant and the knife which was seized at the spot as also the blood stained earth were sent for serological examination to a serologist who gave a report on 29.1.2004, Ex.PW-22/D, to the effect that the blood stained earth revealed

presence of human blood, group whereof could not be determined. The knife was also opined to be stained with human blood, group whereof could not be determined. The shirt of the appellant as also the clothes of the deceased and the blood sample of the deceased were opined to be human blood of group 'B'.

15. Armed with the aforesaid material and 3 eye witnesses, namely the wife of the deceased Pushpa Devi PW-11, Prabhu Dayal PW-12 and Yaad Ram PW-13, the charge sheet was filed. The appellant and the co-accused Sonu were charged for the offence of murdering Daulat Ram. The indictment was under Section 302/34 IPC.

16. Pushpa Devi PW-11 deposed that at 11:15/11:30 PM on 25<sup>th</sup> of the month she and her husband were removing peanuts from the cart and she heard noise that somebody had stabbed her husband. She came down and saw that her husband was having a stab injury in his abdomen. The persons were apprehended at the spot who had stabbed her husband. She stated that they were appellant Daulat and co-accused Sonu who live in Raghubir Nagar. She deposed that the knife was

lying on the floor and a PCR van came. She deposed that she reached the spot on hearing the screams of her husband that "*isne chaku maar diya*". She was declared hostile. Reason why she was declared hostile cannot be fathomed by us. She appears to have supported the prosecution in full.

17. Be that as it may, when the learned APP cross examined her, she stated that she did not know the reason why her husband was stabbed. She stated that she did not herself see as to who stabbed her husband.

18. The latter part of her deposition on being declared hostile, runs in the teeth of her earlier deposition. But, for the moment, we leave it at that.

19. PW-12 who gave his name as Prabhu Dayal, deposed that he reached the place upon hearing noise of Pushpa Devi that her husband was stabbed. He stated that he apprehended appellant Daulat on suspicion and that learnt after 2 hours that even Sonu had been arrested. But surprisingly he deposed that he had witnessed the arrest of the two and that the arrest memos Ex.PW-6/E (pertaining to Daulat) and Ex.PW-6/F (pertaining to Sonu) bore his signatures.

20. Yaad Ram PW-13, fully supported the prosecution, stating that on the intervening night of 25<sup>th</sup> and 26<sup>th</sup> November 2003 at about 11:15 PM a quarrel took place amongst the appellant Daulat and Sonu on the one hand and the deceased Ram Singh on the other. That Daulat took out a knife from his shoes and inflicted two blows on Ram Singh. He apprehended Daulat and Sonu was apprehended by one Chawla, a resident of the same locality. He stated that the accused threw the knife in a drain when he apprehended them. Police came to the spot and removed the injured to the hospital. The knife Ex.P-1 was seized by the police in his presence. He was extensively cross examined as to who was that person named Chawla to whom he had referred to as the one who had apprehended Sonu. He stated that the person named Chawla was a resident of the area.

21. But, we note that arrest memo of the appellant and Sonu has been witnessed by Yaad Ram and a person whose name has been noted as Prabhu Dayal Chawla. The address of Prabhu Dayal Chawla is House No.926/B/III, Raghubir Nagar, the same as was disclosed by Prabhu Dayal PW-12 when he appeared as a witness; meaning thereby, the person whose

surname is Chawla, is none other than Prabhu Dayal PW-12.

22. Since neither Prabhu Dayal nor Yaad Ram deposed of Sonu giving any exhortation and since the learned public prosecutor, for unexplainable reasons got declared Pushpa Devi hostile, the learned Trial Judge has belittled her testimony and as a result Sonu has been acquitted. The reason is obvious. The factum of Sonu having given exhortation which led the appellant to inflict the injuries on Prabhu Dayal has failed.

23. Pertaining to the appellant, from the fact that the appellant was apprehended at the spot and that PW-13 has fully supported the case of the prosecution, coupled with the fact that even Prabhu Dayal Chawla did not deny his having witnessed the arrest of the appellant and having signed as a witness on the arrest memo, coupled with the fact that he identified the knife as the one which was recovered by the police from the spot; with reference to the FSL report which recorded presence of human blood of group 'B' on the shirt of the appellant; there being no explanation from the side of the appellant as to how blood came on his shirt; the fact that the blood group of the deceased was 'B', the learned Trial Judge has held that there is sufficient

evidence to convict the appellant for having murdered Ram Singh.

24. At the hearing of the appeal today learned counsel for the appellant draws our attention to the fact that the wife of the deceased, Prabhu Dayal and Yaad Ram have deposed at variance pertaining to the recovery of the knife. Counsel further urges that even ASI Om Prakash PW-14 and Const.Satish Kumar PW-6 have deposed at variance, in that, some witnesses speak of the knife being in the hand of the appellant when he was apprehended and even when the police formally arrested him, some speak of the knife being thrown by the appellant in the drain next to the street and recovered therefrom.

25. The said variation in the testimony of the witnesses is not material. With passage of time, human memory fades; that somebody spoke of the knife being thrown and somebody spoke of the same not being thrown, is inconsequential.

26. The fact that the appellant was apprehended at the spot; the fact that Yaad Ram PW-13 has witnessed the incident and has with stood the test of cross examination; the fact that the blood group of the deceased was B and blood of same group

was found on the shirt of the appellant; the fact that the appellant has not explained the presence of blood on his shirt, are sufficient evidence to hold that indeed, the appellant was the person who inflicted the stab injuries on Ram Singh.

27. But, there is a problem with respect to whether the appellant has to be convicted for the offence punishable under Section 302 IPC or whether the offence would be punishable under Section 304 IPC.

28. As noted above, in the post-mortem report, the doctor has not given any opinion whether injury No.3, which proved to be fatal was sufficient in the ordinary course of nature to cause death. Unfortunately, when Dr.B.N.Mishra PW-19, the Doctor who conducted the post-mortem was examined in Court, no opinion was sought from him whether the injury in question was sufficient in the ordinary course of nature to cause death.

29. It has to be noted that the injury had cut through the left lower abdominal wall, and has gone 4 cms. deep. Traversing this short distance, the knife pierced the colon of the deceased. The colon is a part of the digestive system of the human body and is located towards the back and not towards the front cavity

of the stomach. It is positioned at the lower end of the stomach cavity. Its position is at a place where vital body organs are not to be found.

30. Intention of a person has to be gathered from his acts, as indeed there is no other measure of ascertaining the same.

31. Single stab blow which happens to be fatal, have always foxed the Court, whether the offence would fall under Section 302 IPC or would fall under Section 304 IPC. Further, even when attracting Section 304 IPC, whether part I or part II thereof is attracted becomes a complicated issue.

32. Adopting a common sense approach, when a single knife blow is inflicted, the intensity of the attack (to be measured by the distance the weapon of offence has cut into the body); the nature of the weapon of offence; the body part towards which the injury is directed and the circumstances of the assault are considered by the Court. Where it is found that the intensity of the blow was ferocious, evidenced by the knife piercing a large segment of the body of the deceased and was directed towards a vital part of the body, for example the chest or the

upper abdomen, judicial opinion has leaned in favour of the view that such an act evidences an intention to cause the injury which has proved to be fatal. Thus, the focus of attention has been “such injury” vis-à-vis “an injury”.

33. In the decision reported as AIR 1990 SC 2252 Hemraj Vs. State (Delhi Administration), a single stab injury on the chest of the deceased, occurrence happening on the spur of the moment and upon a sudden quarrel and there being no pre-meditation in the matter of causing injury, was opined to be a case where intention to cause death could not be imputed. However, knowledge was inferred that from the injury in question, death was likelihood and hence conviction was sustained under Section 304 Part II IPC. The concurrent finding returned by the Court of the Sessions and the High Court that the conviction had to be under Section 302 IPC was reversed.

34. In the decision reported as 2008 AIR SCW 7726 State of M.P. Vs. Sughar Singh & Ors. three injuries being (i) incised wound 1” x ½ “ x ¼ “ on the middle of the head; (ii) incised wound 1” x ¼ “ x 1” on the right leg and (iii) multiple contusions 4” x 2” and 5” x 2” were held to be attracting culpable homicide

not amounting to murder and punishable under Section 304 Part II IPC.

35. Taking aid of the aforesaid decisions of the Supreme Court and noting that in the instant case Ram Singh died as a result of the colon being punctured resulting in faeces spreading into the abdominal cavity causing infection; septicemia resulting and the same being the cause of the death, we are of the opinion that since the other stab wound was only 1.3 cm deep and hardly cut through the muscle tissue and that the stab wound which was the cause of the death was 4 cm deep; death resulting after 5 days due to the cause as noted above, it cannot be said that the intention of the appellant was to cause the death of Ram Singh or that the intention was to cause such injury which was sufficient in the ordinary course of nature to cause death. We note that there is no opinion of any doctor that the injury was sufficient in the ordinary course of nature to cause death.

36. We partially allow the appeal. The impugned conviction of the appellant for the offence of murder is modified. The appellant is convicted for the offence punishable under

Section 304 Part II IPC.

37. We impose the sentence of rigorous imprisonment of 8 years upon the appellant which we feel is sufficient punishment for the appellant. The appellant shall be entitled to the benefit of Section 428 Cr.P.C.

**PRADEEP NANDRAJOG, J.**

**ARUNA SURESH, J.**

**FEBRUARY 11, 2009**  
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