

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

% *Date of Decision : 13th April, 2010*

+ **CRL.APPEAL NO.545/2004**

CHAMELA Appellant
Through: Mr.Bhupesh Narula, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

CRL.APPEAL NO.653/2005

RAM PRASAD Appellant
Through: Mr.Bhupesh Narula, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. Crl.Appeal No.653/2005 filed by Ram Prasad has been listed for final hearing today in the category of 'After Notice Misc.Matters', in terms of the order dated 15.3.2010.

2. Registry has sent the file of Crl.Appeal No.545/2004 filed by Chamela, wife of Ram Prasad, for the reason even said

Appeal requires to be heard today itself.

3. Mr.Bhupesh Narula, Advocate appointed by the Delhi High Court Legal Services Committee for appellant Ram Prasad says that he is in a position to argue the appeal on behalf of Ram Prasad's wife Chamela, for the reason role assigned to Chamela is of exhortation; main assailant alleged is Ram Prasad.

4. Accordingly, we appoint Mr.Bhupesh Narula Advocate as the Amicus Curiae to represent Chamela, who we note is present in Court along with her daughter Sunita. We fix the fee of Mr.Bhupesh Narula Advocate in sum of Rs.5,500/- to be paid by the Delhi High Court Legal Services Committee. It is clarified that this fee would relate to Crl.Appeal No.545/2004.

5. Vide impugned judgment and order dated 22.5.2004 appellants Ram Prasad and his wife Chamela have been convicted for the offence punishable under Section 302/34 IPC. Two co-accused, Narender and Raj Kumar have been convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part-II IPC.

6. Vide order on sentence dated 24.5.2004, Ram Prasad and his wife Chamela have been sentenced to undergo imprisonment for life. Co-accused Narender and Raj Kumar

have been sentenced to undergo rigorous imprisonment for a period of 3 years and 6 months.

7. No appeal has been preferred by Raj Kumar and Narender, probably for the reason, they had already undergone imprisonment for 2 years and 6 months by the time sentence was imposed them and they thought that it would be worthwhile to remain in jail for another year rather than to spend money in filing an appeal.

8. Thus, we have only two appellants before us.

9. As per the case set up by the prosecution, Ram Prasad was in jail when deceased Kunwar Pal had teased Chamela, wife of Ram Prasad. On being set free, 10-15 days prior to 28.9.2001, alleges the prosecution, Ram Prasad accompanied by Chamela, Raj Kumar and Narender Pal came to the jhuggi cluster along the railway line at Azadpur. The time was around 9:00 PM. On the exhortation of Chamela who allegedly said '*meri bezati ka badla tab hoga jab iska kaam tamam kar do*', co-accused Raj Kumar and Narender caught hold of Kunwar Pal and facilitated Ram Prasad to inflict a single stab blow on the chest of Kunwar Pal, who died.

10. At the trial the stated eye-witnesses were Bimlesh PW-1, the wife of Kunwar Pal, Bhola Ram PW-2, Munna PW-4 and Shanti PW-6 the wife of Bhola.

11. Briefly noted, as deposed to by Bhola PW-2, he along with his brother Munna and wife Shanti resided in a jhuggi near the railway platform where deceased i.e. Kunwar Pal also used to reside on 28.9.2001. At about 9:00 PM all i.e. Bhola, Munna, Shanti and Kunwar Pal were sitting when Ram Prasad along with his wife Chamela accompanied by Narender and Raj Kumar came to the jhuggi cluster. The two men accompanying Ram Prasad caught hold of Kunwar Pal when Chamela exhorted '*mera badla yahin nikalna hai to nikal do nahin to mere tera koi saath nahin hai*', at that Ram Prasad took a knife and inflicted a blow on the chest of Kunwar Pal who fell down.

12. Bimlesh PW-1, wife of Kunwar Pal deposed that on 28.9.2001 at about 9:00 PM all four accused came and Chamela exhorted '*meri bezati ka badla tab hoga jab iska kaam tamam kar do*' at which Ram Prasad took out a knife and inflicted a blow on the chest of her husband when Narender and Raj Kumar had caught hold of her husband.

13. Munna PW-4 and Shanti PW-6 substantially deposed same facts save and except with a difference that Shanti deposed that they were sitting on a charpai on the railway platform at a distance of about 15 yards from where Kunwar Pal was sitting.

14. Relevant would it be to note that neither witness has deposed of any racing or chasing going on in which the accused had chased the deceased.

15. What does the site plan prepared by the investigating officer tell us?

16. The site plan Ex.PW-13/A lists 6 spots marked 'A' to 'F' as under:-

- (A) Shows the place where dispute started between deceased Kanwarpal and accused persons and Smt.Bimlesh and Shanti Devi were also present there.
- (B) Shows the place where accused-persons attacked on the deceased Kanwar Pal and stabbed knife and blood was also found scattered condition there.
- (C) Shows the place where deceased Kanwar Pal fell down in injured condition and blood was also lying there.
- (D) Shows the place from where Smt.Bimlesh w/o Kanwar Pal and Smt.Shanti w/o Bhola witnessed the occurrence.
- (E) Shows the position of pole having lighted mercury bulb on it.
- (F) Shows the position of pole having lighted mercury bulb on it."

17. As per the site plan the distance between spot 'A' and spot 'C' is about 40 meters. The distance between spot 'C' and spot 'D' is about 15 meters.

18. It is apparent that some racing and chasing has taken place, which has not been deposed to by the eye-witnesses.

19. It is thus apparent that the eye-witness account of

what actually transpired has not come out with purity.

20. It may be noted that the learned Trial Judge has not fastened the intention on co-accused Narender and Raj Kumar to cause the death of the deceased. Intention fastened on the two is simply to facilitate an attack on the deceased with knowledge that the manner in which attack was committed is likely to result in the death of the deceased and for said reason the two have been convicted for the offence of culpable homicide not amounting to murder.

21. Now, the role of the said two accused is of catching hold and that of Chamela is of exhortation.

22. Suffice would it be to state that it is very easy to falsely implicate somebody by alleging exhortation. Since the manner in which the offence has taken place as reflected in the site plan has not been stated through the eye-witness account we are of the opinion that Chamela should be entitled to some benefit as was extended to Narender and Raj Kumar. Thus, we hold that the evidence on record, at best, makes out the commission of an offence punishable under Section 304 (II) IPC read with Section 34 as far as even Chamela is concerned.

23. As regards Ram Prasad, reference be made to the post-mortem report Ex.PW-15/A and the testimony of Dr.R.K.Puniya PW-15, the author of the report. Only two

injuries, one being an abrasion above the left eye-brow and the other being a stab wound on the chest are the injuries caused.

24. If two people had caught the deceased and Ram Prasad assaulted the deceased, had the intention been to kill the deceased, surely, given the opportunity, Ram Prasad would have inflicted more than a single stab wound.

25. Infliction of a single stab wound though opportunity available was to stab much more, evidences that Ram Prasad's intention was to cause injury upon the deceased.

26. It is unfortunate that the lower tip of the left ventricle got pierced resulting in death. It is of importance to note that the ventricle got pierced because the knife traversed at an angle after it entered near the fifth rib; but for the angle the ventricle would not have been in the path of the blade of the knife.

27. In our opinion, the act of Ram Prasad amounts to the offence of culpable homicide not amounting to murder.

28. Ram Prasad is still in jail and as per his nominal roll has suffered incarceration for a period of a little over 9 years. He has earned remission for a period of 1 year and 5 months.

29. Chamela has undergone an actual sentence of about 3 years and 6 months when she was admitted to bail.

30. Noting that co-accused Narender and Raj Kumar were sentenced to undergo imprisonment for 3 years and 6 months and the State has not sought enhancement of sentence, ends of justice would be met if Chamela is sentenced to undergo imprisonment for the period already undergone.

31. Bringing the curtains down, we direct as aforesaid. Since Chamela is on bail we discharge the bail bond and surety bond furnished by her.

32. As regards Ram Prasad we impose the sentence on him to undergo rigorous imprisonment for a period of 10 years.

33. Noting that taking into account remissions, Ram Prasad has undergone a sentence in the excess of period of 10 years and extending to him the benefit of Section 428 Cr.P.C. we direct that he shall be set free forthwith unless required in custody in some other case.

34. Copy of the instant decision be sent to Superintendent, Central Jail, Tihar for compliance qua Ram Prasad.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

APRIL 13, 2010

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