

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

% Date of Decision: 17th February, 2010

+ **CRL.APPEAL NO.90/2010**

VINOD KUMAR Appellant
Through: Mr.Sachin Dev Sharma, Advocate
and Mr.Hakikat Yadav, Advocate.

versus

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

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 the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

Crl.M.(Bail) No.104/2010

Since learned counsel for the appellant states that he would be arguing the appeal today itself and learned counsel for the State also states that he is prepared to argue the appeal, instant application which seeks suspension of sentence pending hearing of the appeal is dismissed.

Crl.Appeal No.90/2010

1. Notwithstanding the fact that Paras Ram PW-1 who also received injuries simultaneously at the point of time and

at the same place where deceased Mukesh @Babloo was stabbed, after fully supporting the case of the prosecution when he appeared as a witness on 21.3.2007, turning turtle on 21.5.2008 when he was cross-examined, counsel for the appellant concedes that there is sufficient evidence wherefrom it is apparent that for unexplainable reasons Paras Ram PW-1 chose to resile from truth and that with reference to the testimony of Const.Suresh PW-15 as also the MLC Ex.PW-7/A and the testimony of Dr.Jatinder PW-7 who examined Paras Ram soon after the incident, it stands established that it is the appellant who had inflicted the knife injury on Mukesh @Babloo as also caused the injury with a knife to Paras Ram PW-1.

2. But, learned counsel for the appellants urges that in the facts and circumstances of the instant case the offence made out, with reference to the act of the appellant, is culpable homicide not amounting to murder punishable under Section 304 Part-I IPC.

3. Learned counsel points out that as per the case of the prosecution and even the testimony of PW-1 in examination-in-chief, the appellant had no animus against the victim. The victim was unknown to him. A verbal altercation took place when everybody was watching Ramlila.

Notwithstanding the fact that after the verbal altercation the appellant went to his house and returned with a knife, but he did nothing except stand at the same place to watch Ramlila. Mukesh @Babloo who was working as a volunteer told the appellant to sit down, at which something happened, compelling the appellant to inflict a single knife blow in the stomach of Mukesh @Babloo. Counsel urges that it was obviously a case of the appellant wanting to cause an injury on Mukesh @Babloo intending to cow down Mukesh to compel the appellant not to stand at the place where the appellant was standing to watch Ramlila.

4. Counsel states that if the intention of the appellant was to cause the death of Mukesh, he had the opportunity to strike more than one blow.

5. With reference to the post-mortem report of Mukesh, learned counsel points out that the injury shows that the knife was stabbed inside the stomach and pulled back in the same position i.e. no attempt was made to rotate the knife inside the stomach. Unfortunately, urges the counsel, the knife cut the artery of the kidney and before that pierced through the small intestines. Excessive bleeding resulted due to the artery of the kidney being cut. This is as per the post-mortem report.

6. Learned counsel cites the decision reported as AIR 1968 SC 1390 Laxman Kalu Nikalje vs. State of Maharashtra as also 1981 SC 1441 Gokul Parashram Patil vs. State of Maharashtra to urge that in said two cases noting that the death was caused, in the first case due to the auxiliary artery and vein being cut and in the latter the superior venecava being cut, holding that it would be too much to assume that the accused intended or even knew that the said arteries would be cut, conviction for the offence punishable under Section 302 IPC was converted to one under Section 304 Part-I IPC.

7. A perusal of the testimony of Paras Ram shows that it was a case of a chance encounter between the appellant and the deceased. There was no previous enmity. It was darkness, the time was around midnight in the intervening night of 9th and 10th October 2005, a single stab blow has been inflicted.

8. There are decisions where the stabbing took place in twilight or in darkness and for said reason the Courts took the view that under the circumstances it may be difficult to even gather whether the accused intended to strike the part of the body which he actually struck. Though, when a single blow is inflicted, by itself may not be indicative of a particular

intention, as held in various cases, but authorities lean in favour of ruling out an intention to cause murder if the blow inflicted is a single blow and the encounter was a chance encounter; there being no motive for the crime.

9. In the Special Report of the Indian Law Commissioners presented on 19th November 1847 preceding the enactment of the Penal Code, the authors of the Code, while drawing distinction between what would be 'murder' and 'culpable homicide not amounting to murder' cautioned that a 'homicide' which is not the product of so much evil to the community as 'murder' should be normally treated as an offence of culpable homicide not amounting to murder. The Commission noted that the reasons for homicide which are far more respectable than those which are of a evil kind should be taken account of and such acts should not be normally treated as that of murder.

10. We accordingly dispose of the appeal by partially allowing the same. The conviction of the appellant for the offence punishable under Section 302 IPC for the death of Mukesh @Babloo is set aside and the appellant is convicted for the offence of culpable homicide not amounting to murder for the death of Mukesh @Babloo and for the said offence committed by the appellant we direct the appellant to undergo

rigorous imprisonment for ten years.

11. The conviction and the sentence of the appellant for the offence punishable under Section 324 IPC pertaining to the injury caused to Paras Ram is maintained.

12. It is directed that both sentences shall run concurrently.

13. Needless to state, the appellant would be entitled to the benefit of Section 428 Cr.P.C. as also such remissions which he may have earned as per the policy of the Executive for good conduct in jail.

14. We express our gratitude to learned counsel for the appellant and the State who has assisted this Court in disposal of an appeal which was filed in late January 2010. The appeal was listed for preliminary hearing i.e. for admission on 29.1.2010 and is being disposed of on the 19th day of its admission.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 17, 2010
dkb