

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

% *Date of Decision: 29th April, 2010*

+ **CRL.A. 176/2010**

MUKESH SINGH @ LICHHI Appellant
Through: Mr.Ajay Verma and Mr.Gaurav
Bhattacharya, Advocates.

versus

STATE (NCT) OF DELHI Respondent
Through: Mr.M.N.Dudeja and
Ms.Richa Kapoor, APP.

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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.(Oral)

1. The weapon of offence, a knife Ex.P-1, sketch whereof Ex.PW-6/D shows that the knife is an ordinary kitchen knife having blade length of 9.5 cm and blade width of 1.5 cm. The post-mortem report Ex.PW-13/A of the deceased evidences that a single blow was inflicted with the knife. The blow was directed at the left side of the chest and entered between the 4th and 5th intercostals space in mid clavicle line. Unfortunately, left side of the ventricle got pierced resulting in death due to

hemorrhagic shock. As per the opinion Ex.PW-13/B of the doctor who conducted the post-mortem, the injury in question could have been caused by the knife Ex.P-1.

2. Believing the eye witness account of Bahori Lal PW-1 and Sonu PW-2, the learned trial Judge has held that the appellant inflicted the solitary knife blow on the person of deceased Satish and the appellant was assisted by his brother-in-law Jaspal who had caught the deceased, thereby facilitating the assault.

3. Vide impugned judgment and order dated 03.06.2009, the appellant has been convicted for the offence of having murdered Satish. Holding that the probable intention of Jaspal was to facilitate only an injury on the deceased, Jaspal has been convicted for the offence punishable under Section 304 Part-II IPC. For the simple injuries inflicted upon Bahori Lal PW-1, both appellant and Jaspal have been convicted for the offence punishable under Section 323/34 IPC.

4. For the offence of murder, the appellant has been sentenced to undergo imprisonment for life. For the offence punishable under Section 323/34 IPC, the appellant has been sentenced to undergo one year Rigorous Imprisonment.

5. We have checked up the status of appeal, if any, filed by Jaspal not only from the Registry of this court but even from the Superintendent Central Jail Tihar and have been informed that Jaspal has not preferred any appeal probably for the reason by the time order on sentence was pronounced he had already undergone the sentence of imprisonment imposed upon him and probably, since he earned his freedom when verdict was announced, Jaspal had no problem with the stigma of his conviction standing.

6. Only issue raised by learned counsel for the appellant is, whether the act of the appellant constitutes the offence of murder vis-à-vis the injury caused to Satish or whether the offence is that of culpable homicide not amounting to murder.

7. From the eye witness account of Bahori Lal and Sonu, who we note are the father and the cousin of the deceased, the deceased was earning his livelihood by plying a TSR and so was the livelihood of appellant Mukesh. An altercation took place between the two when appellant verbally abused the deceased on the deceased stopping the TSR on the street in a manner which obstructed the appellant in plying his

TSR. Appellant questioned from the deceased whether the street was the personal property of his father. From the testimony of Bahori Lal it is apparent that these kinds of altercations were common between the appellant and the deceased, probably for the reason the street where they resided was narrow being Shiv Mandir Wali Gali in Block-A, Mandawali, an unauthorized slum colony in Delhi.

8. 14.09.2003 was an unfortunate day in the life of the appellant and the deceased. During one such altercation, helped by his brother-in-law Jaspal, who had caught the deceased and exhorted appellant: '*DEKHTA KYA HAI HIT HIM*' the appellant stabbed the deceased in the chest. In the process, Bahori Lal who had intervened received fist blows from the appellant and Jaspal.

9. Having spent 16 months on the Criminal Division, we have been privy to many appeals being decided, most of which relate to the offence of murder. If not more, at least 50% of cases decided by us pertained to trivial incidents in slum colonies in Delhi, where for no apparent reason (from the point of view of a reasonable person) the crime was committed on the impulse of anger; the act being of stupidity of assaulting

using a knife making liable the accused for being punished for the offence of murder.

10. Indeed, solitary stab injuries have troubled the courts in determinatively recording findings with reasonable certainty as to what degree of bodily injury was intended to be inflicted by the offender.

11. The most fundamental difference between a human and animal consists in the human power of reflection. Animals feel pain and pleasure. Even they are moved by anger and joy. They exercise cunning in achieving their ends e.g. when pursuing games. But, their notions, desires and acts, spring directly from their emotions or from their associations by memory.

12. But with a human it is different. Even a human is subject to the direct impulses of his emotional nature, but by the side of this direct driving apparatus in the mind of the human there is the consciousness of an entirely different mental process, in which process, the consciousness of the human holds up the mirror to his/her emotions, ideas and resolves and as a result the human lives through the events and action not

only in their direct sequence but also as through a reflected series.

13. Ms. Richa Kapoor, learned counsel for the State contributes that criminalization is the consequence, not of genetic or inherit wickedness, but is generally caused by frustration, provocation, humiliation, unfulfilled desires and unresolved conflicts and so on; the common denominator being mal-adapted stress.

14. Thanking the learned counsel, we further pen down, that in an unequal society where the under privileged are denied even the right of basic sustenance what else would be expected from them, other than animal behavior. What we mean to say is that those, who are denied the opportunity of education and an opportunity of achieving their full potential would act upon their sudden impulse and emotions as animals do, without using the mirror of their consciousness to foresee the result of their impulsive action. These humble human beings find that the connecting links of their reflection hardly reaches beyond the immediate needs and promptings of their rudimentary life.

15. It is in this scenario that we are compelled and called upon to decide the instant appeal of Mukesh whose nominal role shows that except for the instant solitary stray incident in his life when he deviated from the path of rectitude, Mukesh has lived life as a law abiding citizen and has only come to brush with criminal law only once.

16. We take guidance from a few decisions where the weapon of offence was either a knife or a small dagger akin to a knife; the blade length whereof was less than 5 inches, death resulting on account of either an important artery or the heart or a lung being punctured, said acts being held to be an offence of culpable homicide not amounting to murder. The said decisions are: i) 1976 SCC 1519 Jaya Raj vs. State of T.Nadu; ii) 1968 SC 1390 Laxman Kalu Nikalje vs. State of Maharashtra; iii) AIR 1981 SC 1441 Gokul Parasharam Patil vs. State of Maharashtra and iv) AIR 1984 SC 759 Tholan vs. State of T.Nadu.

17. Noting that the blade of the knife used as a weapon of offence in the instant case is having length of 9.5 cm i.e. a little less than 4 inches and the width of the blade is 1.5 cm; the knife being an ordinary kitchen knife, considering the cause of

the attack, we bring the curtains down on the fate of the appellant by partially allowing the appeal and modifying the conviction of the appellant to having committed the offence of culpable homicide not amounting to murder pertaining to the death of Satish, for which offence, we sentence the appellant to undergo RI for a period of 10 years.

18. Sustaining the conviction of the appellant for the offence punishable under Section 323/34 IPC and the sentence thereto, we direct that both the sentences shall run concurrently and the appellant shall be entitled to the benefit of Section 428 Cr.P.C.

19. The appeal stands disposed of.

20. Since the appellant is still in Jail, we direct that a copy of this decision be sent to Superintendent Central Jail Tihar for necessary correction in the Jail record pertaining to the sentence to be undergone by the appellant and also for being supplied to the appellant thereafter.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

APRIL 29, 2010/'nks'