

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

% Date of Decision : 23rd April, 2010

+ **CRL.A. 383/2010**

KHURSHID Appellant
Through: Ms.Nilofar Qureshi, Advocate

versus

THE STATE (N.C.T. OF DELHI) Respondent
Through: Mr.M.N.Dudeja, 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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 27.01.2010, the appellant has been convicted for the offence of having murdered Tehsheem Khan @ Taslim Khan at about 11:15 PM on 01.05.2006 at Nawab Road within the jurisdiction of P.S. Sadar Bazar.

2. As per the prosecution, a motive proved through the testimony of Mohd.Mansoor Khan PW-1, who is the brother-in-law of the accused is that the deceased used to brag that he

was having illicit relationship with the wife of accused and humiliated by these taunts, the accused did the offending act.

3. It may be noted that the deceased is the son of one Robesha, the sister of Mohd.Mansoor Khan. In other words, the deceased was the nephew of Mohd.Mansoor Khan and the accused is the brother-in-law of Mohd.Mansoor Khan.

4. PW-1, PW-10, PW-14, PW-15 and PW-17 were cited as eye-witness, all of whom have supported the case of the prosecution, having deposed that on 01.05.2006 they were at Nawab Road at 11:15 PM having seen of Manne Khan who took a train to go to his village and all of a sudden, the accused took out a knife and inflicted a solitary blow on the person of the deceased. They raised a hue and cry which attracted the attention of the police and the accused was apprehended at the spot with a chhuri.

5. The police personnel who caught the appellant at the spot as deposed to by Ct.Balbir Singh PW-11 is himself.

6. As deposed to by him, from 8:00 PM on 01.05.2006 till next day morning i.e. 8:00 AM on 02.05.2006 he and Ct.Ikramuddin were deputed at picket duty at Nawab Road. At about 11:15 PM he heard noise from in front of shop of Salim Murgewala. He saw a person lying injured at the cover of a sewer chamber and saw another person with a knife in his right hand who was running towards Nawab Road, Basti

Harphoolsingh. His instinct told him that the person who was running obviously was the one who had caused injuries to the person lying on the road. He chased him and apprehended him. The person apprehended was the accused from whose hand he took possession of a blood stained chhuri which he handed over to the Investigating Officer who reached there after the FIR was registered and since the clothes of the appellant were stained with blood, they were taken into possession by the Investigating Officer.

7. It is true that all the eye-witnesses who are from the same village and are inter-related to each other as also the deceased and the accused have deposed to a property dispute involving the family of the accused and PW-16 who is the co-brother of the accused, but from said fact alone, it would be difficult to draw a conclusion that all the eye-witnesses have gagged up to falsely implicate the accused; having a motive. If at all, only PW-16 had a motive to falsely implicate the accused and not the others.

8. But, there is independent corroboration to the involvement of the appellant in the crime which has surfaced through the testimony of Ct.Balbir Singh PW-11, against whom no such motive can be alleged.

9. Ct.Balbir Singh had deposed events which may be called *res gestae* evidence. Suffice would it be to state that if

a person is lying injured on the road and at that very moment another person with a knife in his hand is seen running away and is apprehended at the spot, said fact and conduct of running away would be sufficient evidence, without any further proof, to hold against the guilt of the person, unless the said person proves a fact which breaks the inference on which the assumption of guilt is premised.

10. Further incriminating evidence against the appellant is that lungi Ex.P-5 which appellant was wearing when he was apprehended as also the knife recovered from his hand when he was apprehended, vide FSL report Ex.PX have been found to be stained with human blood of group 'A', which is the blood group of the deceased.

11. Thus, with reference to the eye-witness account, the account of *res gestae* deposed to by PW-11 and the forensic evidence in the form of the report of the serologist we agree with the reasoning of the learned trial judge that the prosecution has successfully established that the fatal blow with the knife on the abdomen of the deceased was inflicted by the appellant.

12. Unfortunately, from the fact that death has resulted, without any enquiry whether the act of the appellant constitutes the offence of culpable homicide not amounting to murder, finding returned is that in view of the motive i.e. the

bragging of the deceased that he was having illicit relationship with the wife of the accused which led the accused to do the act it has been held that the intention of the accused was to kill the deceased.

13. Now, the appellant, who was armed with a knife has inflicted only a solitary stab blow on the abdomen of the deceased. Having an opportunity to inflict many more blows, the appellant has inflicted only one blow. He did so when he and the deceased were walking back in the company of as many as five relatives. As deposed to by the said five relatives, the appellant took out the knife from his lungi and all of a sudden inflicted one stab blow on the person of the deceased. There were neither any altercations nor any provocation which preceded the assault.

14. With reference to the motive, it is apparent that the appellant was chocked with pent up feelings and when his emotions over came him, little realizing that there were five other relatives who were seeing what he did and could have apprehended him at the spot, unmindful of the consequences, the appellant stabbed the deceased.

15. Now, the time of the incident is 11:15 PM. It was dark. None can say with certainty that the intention was to strike a blow at any particular part of the body. But, it can be said with safety that there was an intention to cause a serious

injury to the deceased for the reason, a knife having blade of 12 cm was used.

16. The post-mortem report Ex.PW-9/A of the deceased proved at the trial by Dr.K.M.Panigrahi shows that the knife pierced the skin at the abdomen and cutting through the muscles underneath ended up at the pancreas. Unfortunately, the abdominal aorta was cut which resulted in excessive bleeding and hence death due to shock.

17. Under the circumstances it would be difficult to concur with the view taken by the learned trial judge that it can be safely said that the intention of the accused was to kill the deceased.

18. The fact that a knife, having blade of 12 cm was used would require knowledge to be imputed to the appellant that if his blow struck a vital part of the body of the deceased there was every likelihood of an injury being caused which could result in the death of the deceased.

19. Thus, the offence committed by the appellant would be culpable homicide not amounting to murder.

20. In our opinion the appropriate sentence which the appellant should be required to undergo is RI for a period of 10 years.

21. The appeal stands disposed of modifying the conviction of the appellant from the offence punishable for the

offence of murder to the offence of culpable homicide not amounting to murder.

22. For the offence committed by the appellant we sentence him to undergo RI for a period of 10 years.

23. The appellant shall be entitled to the benefit of Section 428 Cr.P.C.

24. Since the appellant is in jail, we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar, to be made available to the appellant after making entry in the jail record pertaining to the modified sentence which the appellant has to suffer.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

APRIL 23, 2010
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