

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

% *Date of Decision: 15th January, 2010*

+ **CRL.APPEAL NO.578/2005**

BHUREY LAL Appellant
Through: Mr.Bhupesh Narula, Advocate.

Versus

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

CRL.APPEAL NO.304/2005

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

PRADEEP NANDRAJOG, J. (Oral)

1. Appellant Bhurey Lal and Chhote Lal have filed the two captioned appeals challenging their conviction vide

impugned judgment and order dated 14.3.2005. Both of them have been convicted for the offence punishable under Section 302/34 IPC. Bhurey Lal has additionally been convicted for the offence punishable under Section 323 IPC.

2. Vide order on sentence dated 16.3.2005, the appellants have been sentenced to undergo imprisonment for life pertaining to the offence of murder. Bhurey Lal has been further sentenced to undergo imprisonment for 3 months in respect of the offence punishable under Section 323 IPC.

3. Learned counsel for the parties i.e. the appellant and the State concede that the fate of the appellants needs to be decided with reference to the testimony of PW-1 and PW-2. Both of them claim to be eye-witness. PW-4 is the one in respect of whom, for the injury caused to him, Bhurey Lal has been found guilty of the offence punishable under Section 323 IPC. Counsel further states that with respect to the acts of the appellants, if held established through the testimony of PW-1 and PW-4, the testimony of PW-10 and the post-mortem report Ex.PW-10/A would not be considered.

4. As per Dr.R.K.Punia PW-10 who prepared the post-mortem report Ex.PW-10/A after he conducted the post-mortem on the dead body of the deceased Om Prakash, he

found a single stab wound over back of right side chest. The wound was a penetrating incised wound. It had entered the back of the deceased at the 7th inter-costal space. The track of the wound was 4.6 cm in length and was directed back to front, right to left and slightly upwards.

5. As a result of the weapon of offence entering the body of the deceased at the back perforating the 7th inter-costal space, the same went 4.6 cm deep and punctured the right lung of the deceased. This resulted in excessive bleeding and before medical aid could be given to the deceased he died at the hospital at 6:15 PM.

6. We may highlight that the sketch of the weapon of offence as pen profiled shows that the same is a dagger. The length of the blade is about 28 cm. It tapers at the tip. The length segment of the tip is 4.6 cm.

7. Panna Lal PW-1 has deposed that 19.3.2003 was when the festival of Holi was being celebrated, he was passing by the jhuggis, when he saw the accused Chhote Lal and Bhurey Lal exchanging abuses with the deceased Om Prakash and Brijesh (PW-4). He deposed that accused Bhurey Lal was excited and said that he will beat Om Prakash. We may note that the expression used by Panna Lal is “*maareng*”. He

went on to depose that Chhote Lal caught the hand of Om Prakash and Bhurey Lal stabbed Om Prakash with a knife on the side. When Brijesh tried to rescue Om Prakash, Bhurey Lal picked up a brick and hit him i.e. Brijesh on the head and thereafter both the accused ran away. He deposed that he and Brijesh along with other persons removed the deceased to the hospital.

8. Brijesh PW-4 deposed that on 19.3.2003 the festival of Holi was being celebrated. At around 2/2:30 PM he was sitting in his jhuggi along with Om Prakash. Bhurey Lal and Chhote Lal came to the jhuggi. An altercation between the accused and Om Prakash pertaining to the repair of a jhuggi had taken place a week ago. The accused started abusing Om Prakash. Accused Bhurey Lal brought a chhura from his jhuggi. Chhote Lal caught Om Prakash and Bhurey Lal inflicted a knife blow in his arm-pit. He started crying. Bhurey Lal gave a brick blow on his forehead and thereafter both the accused fled. He and Panna Lal got Om Prakash admitted in the hospital.

9. On being cross-examined Brijesh Kumar stated that Chhote Lal had caught the deceased Om Prakash from behind

and at that time both arms of Om Prakash were taken into grip from behind.

10. With reference to the post-mortem report of the deceased, it is apparent that Chhote Lal could not have caught Om Prakash from behind as claimed by Brijesh Kumar for the reason if this was so, it is impossible that the knife blow could be inflicted on the back. It is apparent that Brijesh Kumar had made some embellishments while deposing, but the said embellishments in his testimony is not of a kind where from his testimony in its entirety needs to be rejected.

11. Ignoring some variations in the testimony of the two witnesses, from the testimony of Panna Lal it is apparent that some exchange of hard words preceded the assault. The hard words i.e. abuses, as per Panna Lal were being exchanged between the accused on the one hand and the deceased and Brijesh on the other. The testimony of Panna Lal shows that during verbal duel which resulted in exchange of abuses, Bhurey Lal inflicted a knife blow and at that point of time Chhote Lal had caught the hand of Om Prakash. Thus, what happened took place at the spur of the moment. From the testimony of Panna Lal it is apparent that the accused persons did not come with the intention to kill Om Prakash for

the reason if the purpose of their arrival was to kill Om Prakash, they would have not engaged themselves in any verbal duel with Om Prakash. They would have given effect to their pre-planned intention of murdering Om Prakash.

12. We do not intend to copy the much copied chart of comparing and contrasting Section 299 IPC and Section 300 IPC, where Section 299 IPC is shown as having 3 limbs and Section 300 IPC as having 4 limbs.

13. Suffice would it be to state that in the instant case, intention to kill Om Prakash is ruled out when we read the testimony of PW-1 and PW-4.

14. With respect to the injury caused to Om Prakash the question would arise whether the injury in question is of a kind where Section 300 thirdly or Section 300 fourthly of the Indian Penal Code would be attracted or is it a case where the offence made out would be attracting the third limb of Section 299 IPC.

15. The injury on Om Prakash is a solitary injury. The appellants who had a chance to inflict much more than one injury were satisfied by causing a single injury. This has to be factored in while evaluating the facts. The situs of the injury is the 7th inter-costal space at the back. Notwithstanding the fact

that the weapon of offence is a dagger having a blade of length segment 28 cm but the blow with the dagger has not been inflicted with ferocity evidenced by the fact that the dagger has traversed only 4.6 cm into the body of Om Prakash. It is apparent that the force used was in the mid segment i.e. neither too excessive nor too little. It is unfortunate for Om Prakash that the injury which pierced only 4.6 cm into his body resulted in his death.

16. In the decision reported as 1984 SC 759 Tholan vs. State of Tamil Nadu, the weapon of offence was a knife. The place where it was struck was the right side of the chest. Injury was only one. Death was due to haemorrhagic shock on account of the stab injury which had pierced the lung; the stabbing incident being preceded by an altercation and everything happening on the spur of the moment, conviction rendered by the Court of Session and upheld by the High Court for the offence punishable under Section 302 IPC was altered to one under Section 304 Part-II IPC.

17. In the decision reported as 1982 SC 1466 Gurmail Singh & Ors. vs. State of Punjab, the weapon of offence was a spear. Injury was only one. The situs of the injury was the chest cavity. Death was due to internal organs being

damaged, resulting in excessive bleeding. The deceased not being the target of the assault but being the one who intervened in an existing fight, it was held that the offence made out is attracting Section 304 Part-II IPC. Conviction rendered by the Court of Sessions upheld by the High Court for the offence punishable under Section 302 IPC was altered.

18. The facts of the instant case show that the accused cannot be attributed with any pre-meeting of the minds. They had a verbal altercation with the deceased and PW-4. The verbal altercation resulted in a scuffle and one of the accused caught the hand of the deceased. The other inflicted a single stab blow. The said facts preceding the assault coupled with the situs of the injury and the injury being only one, taking guidance from the decisions in Thoran's case (supra) and Gurmail's case (supra), we hold that pertaining to the death of Om Prakash, the acts of the appellants make out a case for punishment under Section 304 Part-II IPC.

19. Noting that the appellant Bhurey Lal is still in custody i.e. has remained in prison for 6 years and 10 months and that appellant Chhote Lal was admitted to bail after he had undergone a sentence of 3 years 4 months and 24 days and by then had earned a remission of 4 months and 5 days,

considering further the fact that appellant Bhurey Lal was the one who stabbed and Chhote Lal had a lesser role i.e. of catching hold, we feel that the ends of justice would be met if the appellants are directed to undergo a sentence for the period already undergone. In respect of Bhurey Lal's conviction and sentence for the offence punishable under Section 323 IPC we direct that the same shall run concurrently.

20. The appeals stand partially allowed. The conviction of the appellants for the offence punishable under Section 302 IPC is set aside. The appellants are convicted for the offence punishable under Section 304 Part-II/34 IPC for which they are directed to undergo imprisonment for the period already undergone. Appellant Bhurey Lal's conviction for the offence punishable under Section 323 IPC and the sentence is maintained but with a direction that both sentences imposed upon Bhurey Lal shall run concurrently.

21. In view of the sentence imposed upon Chhote Lal, the bail bond and the surety bonds furnished by him are discharged.

22. Since Bhurey Lal is in jail we direct that a copy of this order be sent to the Superintendent, Central Jail, Tihar for necessary action and to be made available to Bhurey Lal who

shall be set free forthwith if not required in custody in any other case.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 15, 2010
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