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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 11th February, 2010

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CRL. APPEAL NO.732/2005

CHAMAN LAL Appellant
Through: Mr.Vijay Singh Charak, Advocate.

versus

STATE Respondent
Through: Mr.M.N.Dudeja, 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. The appellant had filed the appeal through jail availing the services of a legal aid counsel and from the jail had signed on the form in the month of December 2009 that he desires Ms.Purnima Sethi, a lawyer on the panel of Delhi High Court Services Committee to argue his appeal.

2. The appeal has reached for hearing today and Shri Vijay Singh Charak has appeared informing us that the appeal was marked to him as is evidenced by the order dated

14.9.2005 admitting the appeal.

3. Learned counsel states that he would be arguing the appeal.

4. Arguments heard.

5. Vide impugned judgment and order dated 24.11.2004 the appellant has been convicted for the offences punishable under Section 449/307/302/506 Part-II IPC.

6. The appellant has been acquitted of the charge for the offence punishable under Section 27 of the Arms Act.

7. Vide order on sentence dated 27.11.2004 the appellant has been sentenced to undergo imprisonment for life for the offence of murder. For the offence punishable under Section 307 IPC he has been sentenced to undergo imprisonment for 10 years. For the offences punishable under Section 449 IPC he has been sentenced to undergo rigorous imprisonment for 10 years. For the offences punishable under Section 506 Part-II IPC he has been sentenced to undergo rigorous imprisonment for 5 years.

8. All sentences have been directed to run concurrently. We read the order on sentence to mean that save and except the sentence for life which by its very nature has to enure for the life, subject to the power of the State to grant remission as per policy, other sentences shall run

concurrently.

9. As per the charge framed against the appellant the offence of murder pertained to the appellant entering the ground floor on House No.H-2/891 at around 6:00 AM on 26.8.2002 and assaulted Laxman who was declared 'brought dead' at the hospital. The offence punishable under Section 307 IPC relate to the injuries caused on Shanker. The offence punishable under Section 449 IPC relate to having entered the house afore-noted in order to commit the offence of murder. The offence punishable under Section 506 Part-II IPC is for having criminally intimidating Hema Devi, the wife of the appellant, being the sister of Laxman and Shanker.

10. Ignoring the incriminating evidence pertaining to the recovery of the knife Ex.P-6 at the instance of the appellant on account of no public witness being associated at the time of the recovery, the learned Trial Judge has acquitted the appellant of the offence punishable under Section 27 of the Arms Act. The State has not filed any Petition seeking Leave to Appeal qua the appellant's acquittal for said offence. The decision of the learned Trial Judge has attained finality to that extent.

11. SI Rajinder Kumar PW-11 was entrusted with the investigation after DD No.8-A was recorded at PS Jahangirpuri

at around 6:38 PM about the incident and he went to House No.H-2/891 Jahangirpuri where he saw blood. On learning that two brothers – Laxman and Shanker had been taken to Babu Jagjiwan Ram Memorial Hospital by their neighbour Ganesh he reached Babu Jagjiwan Ram Memorial Hospital, where with reference to MLC Ex.PW-7/A prepared by Dr.P.D.Majumdar, he learnt that Laxman was brought dead. As recorded on the MLC, Shanker and Ganesh, stated to be the brother and a neighbour respectively of Laxman, had brought him to the hospital at around 7:05 AM on 26.8.2002.

12. SI Rajinder Kumar recorded the statement Ex.PW-1/A of Shanker who disclosed how the appellant had entered their house and had threatened Hema Devi, the wife of the appellant and had thereafter assaulted Laxman and himself i.e. Shanker and that Ganesh brought both of them to the hospital.

13. Making an endorsement Ex.PW-11/A beneath the statement Ex.PW-1/A SI Rajinder Kumar got the FIR Ex.PW-8/A registered at around 8:35 AM.

14. Since the spot investigation relate to blood-stained articles lifted at the spot and the photographs taken and nothing turns thereon, we proceed straightway to note that the dead body of Laxman was sent to the mortuary where

Dr.R.K.Puniya PW-19 conducted the post-mortem and prepared the report Ex.PW-19/A noting thereon 5 incised stab wounds inflicted on Laxman. All injuries were opined to be ante-mortem and injury No.4 was held to be sufficient to cause death in the ordinary course.

15. Injury No.4, as per the post-mortem report and the testimony of Dr.R.K.Puniya is a stab incised wound horizontally placed over front of left side chest, piercing the muscles of the fourth intercostal space the weapon of offence penetrated the left lung and as a result thereof the left cavity collapsed. 2000 ml of blood was detected in the collapsed lung.

16. It is apparent that the witnesses of the prosecution would be Shanker, Hema Devi the wife of the appellant and the sister of Shanker and Laxman, as also Ganesh.

17. There is another witness cited by the prosecution by the name of Sona Devi wife of Babulal resident of H-2/896 Jahangirpuri i.e. a lady living in the neighbourhood of Shanker and Laxman.

18. Shanker has deposed that his sister Hema Devi was married with the appellant and that he i.e. Shanker along with his brother Laxman and Manoj were residing in House No.H-2/891 Jahangirpuri. In the night, the brothers were sleeping in their house. Their sister Hema Devi was also in their house.

Hema Devi had come to their house because she was beaten by the appellant. Next morning, at around 6:00 AM the appellant came with the knife Ex.P-6 in his hand and shouted that Laxman would not be spared. He i.e. Shanker tried to prevent the attack on Laxman but he did not succeed, having received an injury on his left arm with the chhura. His sister Hema Devi tried to rescue Laxman but she was intimidated with the knife by the appellant. His brother was stabbed. Their neighbour Ganesh took both of them to Babu Jagjiwan Ram Memorial Hospital in a rickshaw where after examining Laxman, the doctor declared him dead. Police reached the hospital and recorded his statement Ex.PW-1/A which bore his left thumb impression.

19. He deposed facts of the various exhibits lifted at the spot where the crime took place, of which we take no notice as nothing much turns thereon save and except the proof of the fact that the crime took place in the house of the deceased, a fact which is even otherwise proved through the testimony of the eye-witnesses, and that said fact shows that Shanker was not fatally assaulted.

20. Shanker has been cross-examined at length and nothing has been brought out to discredit his testimony.

21. Hema Devi PW-2 corroborated the testimony of her

brother PW-1 in respect to what happened in the house of her brothers and as deposed to by Shanker.

22. Hema Devi has been cross-examined very briefly and we find that her testimony has remained unshattered.

23. Ganesh PW-3 has deposed that in the morning of 26.8.2002 at around 6/6:15 AM, he heard shouts from the house of Laxman, Shanker and Manoj. He came out of his house and saw Shanker carrying his injured brother Laxman. On seeing them he arranged a rickshaw and took Laxman and Shanker to Babu Jagjiwan Ram Memorial Hospital where Laxman was declared 'brought dead' by the doctor who examined him.

24. Sona Devi PW-4, deposed that she had left her house in the early morning hours on 26.8.2002 to purchase milk and on the way when she reached near the house of deceased Laxman, she saw the appellant coming out of Laxman's house with a knife in his hand and he was saying "*maine Laxman ka kaam tamam kar diya hai*". So saying the appellant ran away. She went inside the house and saw Laxman in a pool of blood. Shanker and Ganesh took Laxman to the hospital in rickshaw.

25. Sona Devi has been cross-examined but nothing has been brought out to discredit her testimony.

26. Dr.R.Sinha PW-7, a colleague of Dr.P.D.Majumdar proved the MLC Ex.PW-7/A prepared by Dr.P.D.Majumdar since Dr.P.D.Majumdar had left employment under Babu Jagjiwan Ram Memorial Hospital. He deposed that he had seen and hence was familiar with the writing and signatures of Dr.P.D.Majumdar. He deposed that as per MLC, 5 incised stab wounds were noted by Dr.P.D.Majumdar on the MLC Ex.PW-7/A.

27. SI Rajinder Kumar PW-11 has deposed facts till FIR was registered and the spot investigation conducted by him.

28. Dr.R.K.Puniya PW-19 who conducted the post-mortem on the dead body of Laxman has proved the post-mortem report Ex.PW-19/A.

29. We have gone through the Trial Court Record with the assistance of learned counsel for the parties. We have also gone through the statement of the appellant under Section 313 Cr.P.C. but do not find anywhere any evidence pertaining to the nature of the injuries suffered by Shanker save and except the statement of Shanker that he received an injury on his arm when appellant struck a blow with a chhura and the testimony of Hema Devi that Shanker received an injury with a knife. The MLC of Shanker has not even been filed, much less proved.

30. We are surprised that inspite of the fact that in para 64 of the impugned decision the learned Trial Judge has noted as aforesaid, yet the appellant has been convicted for the offence punishable under Section 307 IPC pertaining to the injury suffered by Shanker.

31. It is settled law that to establish the charge punishable under Section 307 IPC it has to be established that the act of the accused was life threatening. It has to be proved that if by the act death would have resulted the offence would be that of murder, only then, upon the victim surviving is the offence of attempt to murder made out.

32. We fail to understand as to how in the absence of Shanker's MLC being proved or there being evidence that Shanker was stabbed in a vital part of the body the offence would be attracting Section 307 IPC.

33. The learned Trial Judge has ignored the fact that the injury suffered by Shanker, though not proved through the medium of MLC, was a simple and superficial injury for the reason Shanker has returned to the spot the same day along with the police and has assisted in the preparation of the rough site plan. He is a witness to all the seizure memos prepared at the spot which as per the testimony of SI Rajinder Kumar PW-11 were prepared the same day after FIR was

registered.

34. It is thus apparent that pertaining to the injury caused to Shanker the offence committed by the appellant is not of attempt to murder but of voluntarily causing hurt using a dangerous weapon.

35. Conscious of the fact that recovery has failed, but that would mean relatable to the chhura Ex.P-6, all eye-witnesses have deposed that the appellant had a knife in his hand.

36. Thus, pertaining to injury caused to Shanker, the offence committed by the appellant is punishable under Section 324 IPC.

37. Pertaining to the other offences for which the appellant has been convicted, with reference to the post-mortem report of the deceased, we see hardly any scope for any argument that it is not a case of murder. The intention of the appellant can be gathered by the evidence, being that he came armed with a knife. Before launching the assault he said that he would not spare Laxman. He was angry because Laxman, Shanker and Manoj had given shelter to their sister who was the wife of the appellant. The wife of the appellant had taken shelter in the house of her brothers as the appellant used to beat her.

38. The evidence on record establishes that the appellant, with the intent of murdering Laxman, came armed with a knife. Notwithstanding he being a relation of the deceased we are satisfied that he entered the house of the deceased with the intent to commit an offence of murder. We are satisfied from the evidence on record that the prosecution has proved the commission of the offences punishable under Section 302/449/506 IPC.

39. The appeal is partially allowed.

40. Conviction of the appellant and the relatable sentence thereto for the offence punishable under Section 307 IPC qua the injury caused to Shanker is set aside and for the injury caused to Shanker the appellant is convicted under Section 324 IPC and is sentenced to undergo imprisonment for a period of two years.

41. The conviction and the sentence imposed upon the appellant for the other offences is sustained.

42. Needless to state, after having suffered the sentence of imprisonment for two years the sentence imposed upon the appellant for the offence under Section 324 IPC would be treated as having run concurrently.

43. The appeal stands disposed of.

44. Noting that the appellant is still in jail, we direct

that a copy of this order be sent to the Superintendent, Central Jail, Tihar for necessary entries to be made in the jail register and thereafter to be handed over to the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

FEBRUARY 11, 2010
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