

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

% Date of Decision : 8th April, 2010

+ **CRL.A. 442/2008**

AMIT KUMAR Appellant
Through: Ms.Anu Narula, Advocate

versus

STATE OF NCT OF DELHI 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 Reporter or not?
3. Whether the judgment should be reported in the Digest?
Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Unfortunately, none appears for the appellant at the hearing of the appeal today. None appeared even in the forenoon when application seeking bail was taken up for hearing. The application was dismissed by a separate order passed in the forenoon noting that the appeal can be argued today itself.

2. Ms.Anu Narula Advocate who is present in Court has agreed to render assistance as Amicus Curiae and we accordingly appoint Ms.Anu Narula Advocate as the Amicus Curiae to represent the appellant and fix her fee in sum of Rs.7,500/-, to be paid by the Delhi High Court Legal Service Committee.

3. With the help of learned counsel Ms.Anu Narula we have gone through the evidence on record. We have heard learned counsel for the State.

4. The appellant has been convicted for the offence of having murdered Chetan, his first cousin.

5. As deposed to by Shree Pal PW-2, the father of the appellant, the appellant along with his wife and children used to reside on the first floor of House No.247-248/15, Kalyanpuri, Delhi, on the ground floor whereof Shree Pal used to reside with the mother of the appellant and the brother of the appellant as also Chetan, the first cousin of the appellant who was orphaned when he was an infant. The appellant was a short tempered person and used to quarrel with his wife Hemwati. On the night of 9.10.2005, the appellant picked up a quarrel with his wife. To cool the matter, Shree Pal told the wife of the appellant to sleep on the ground floor along with her children, at which the appellant became furious and commanded his wife not to listen to her father-in-law i.e. Shree Pal PW-2, but the wife of the appellant obeyed what was desired of her by her father-in-law and mother-in-law i.e. she along with her children slept on the ground floor. Next day morning at 5:00 AM the appellant knocked at the ground floor. The mother of the appellant opened the door. The appellant had an altercation with her. The appellant went up and after sometime returned and picked up a

quarrel and all of a sudden thrust a scissor in the stomach of Chetan, who probably tried to pacify the anger of the appellant. Unfortunately for Chetan, the single stab wound damaged his intestines. Before timely medical aid could be rendered to Chetan, he died.

6. There is corroboration to the testimony of Shree Pal through the testimony of Jitender PW-4 who is the brother of the appellant.

7. We see no reason as to why the father Shree Pal and Jitender, the brother of the appellant, should be falsely deposing against him. We have gone through the cross-examination of the two witnesses and do not find anything worthy of being noted wherefrom the credit of the two witnesses can be impaired.

8. But, in view of the circumstances brought out by Shree Pal and Jitender it cannot be said that the act of the appellant constitutes the offence of murder.

9. Suffice would it be to state that it is not the testimony of the two witnesses that the appellant had any ill will against Chetan or had any motive to kill Chetan. The testimony of Shree Pal and Jitender brings out the short tempered nature of the appellant and that he struck a blow with a scissor on the stomach of Chetan probably out of anger and with an intention to injure Chetan.

10. We note that neither PW-2 nor PW-4 have actually

seen as to what actually transpired between Chetan and the appellant when the appellant inflicted a solitary blow on Chetan. But, the events of the previous night and the events at 5:00 AM on the day of the incident bring out that the appellant was annoyed at his parents permitting his wife to sleep on the ground floor and the wife of the appellant not obeying the command of the appellant. It is not a case where the appellant brought a knife with him. It is not a case where the appellant came pre-armed. In all probability he picked up a scissor lying in the room and thrust the same in the stomach of his cousin.

11. But, knowledge can certainly be attributed to the appellant that if he struck the scissor and pierced the stomach of his cousin by such act he was likely to cause death.

12. Thus the offence committed by the appellant would be culpable homicide not amounting to murder and since Section 299 (c) of the Penal Code would be attracted, we hold that the appellant has committed an offence punishable under Section 304 Part II IPC.

13. We hope and expect that the period of incarceration which the appellant has suffered, being 4 years, 6 months and 27 days would have chastened the appellant.

14. We have on record a very pathetic and tear rendering letter written by the wife of the appellant to the appellant which has been filed by the appellant at the stage of seeking interim

bail.

15. The plight evidenced by Hemwati, the wife of the appellant, shows that the persons who are actually penalized is not the appellant, but his wife and three children.

16. In the confines of Tihar jail, the appellant is fed a breakfast, a lunch and a dinner. He gets tea and biscuits twice a day. His basics are well-looked after by the jail authorities.

17. But what is the plight of the wife and children of the appellant?

18. We briefly note the same.

19. As per the letter of Hemwati addressed to the appellant in jail, after invoking the blessings of God she has informed the appellant that life has become unbearable for her and she is just not able to bear the pain of suffering of her children. As per her, after the unfortunate incident, her in-laws compelled her to leave her matrimonial house along with her three children. She shifted to the house of her mother where her brother and her sister-in-law got tired of feeding four mouths and after sometime told her to fend for herself and her children. Hemwati writes, that to help her brother she took up a job of cleaning utensils and moping the floor in a house, but the money was insufficient. Her brother compelled her to leave his house and one night she was thrown on the street along with her children. Hemwati writes that she is unable to bear the pains of

hunger of her children and their suffering each day. She has desired that the appellant should return to care for the family before it is too late. She has wondered as to for what sin she and her children are suffering. She has informed the appellant that her life is ebbing and her courage to fight hardship has evaporated and she has lost the battle. Invoking her being a married Hindu lady and requesting the appellant to uphold the pride of her Manglasutra, she concludes the letter by stating that she has had enough of misery in life and unless her husband takes up responsibility of managing the affairs of the family she may be compelled to take the extreme step.

20. We have noted the plight of the wife and the children of the appellant not only to bring home the point as to how sentencing policies sometimes let go the real culprit and the axe falls on the innocent. Indeed, it is not the appellant who is suffering a sentence. His wife and children, who are innocent, are the real sufferers.

21. Be that as it may, we conclude our decision by disposing of the appeal holding that the appeal is partially allowed. The conviction of the appellant for the offence of murder is modified. The appellant is convicted for the offence of culpable homicide not amounting to murder under Section 304 Part II IPC, for which offence we sentence the appellant to undergo imprisonment for period already undergone.

22. We are informed that as per policy framed by the Department of Social Welfare, Government of NCT Delhi, from out of the Prisoners' Welfare Fund, money is paid to the family of a prisoner where it is found that the family is in extreme distress.

23. The letter written by Hemwati in the month of January 2010 brings out the plight of Hemwati. Thus, we direct that if the policy framed by the Ministry of Social Welfare, Government of NCT Delhi permits some financial assistance to be rendered to Hemwati, needful would be done. While taking a decision in respect of extending aid to Hemwati, it would be kept in view that she has three children.

24. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar with a direction that if the appellant is not required in custody in any other case he would be set free forthwith.

25. We further direct that a copy of this decision would be sent to the Secretary Law, Government of NCT of Delhi.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

APRIL 08, 2010
mm