

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

% Date of Decision: 29th April, 2010

+ **CRL.APPEAL No.1023/2008**

CHAND MIYAN @ SONU Appellant
Through: Ms.Rakhi Dubey, 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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 14.9.2007 the appellant has been convicted for the offences punishable under Section 302/324/34 IPC.
2. The offence of murder relates to the injuries caused upon the person of Tasleem, who was declared 'brought dead' at the hospital. The conviction for the offence punishable under Section 324 IPC is for the injury caused to Mohd.Chand

PW-6.

3. Section 34 IPC was invoked for the reason Dalip had acted in concert with the appellant, as alleges the prosecution. We note that Dalip could not be apprehended and was declared a proclaimed offender.

4. DD No.14-B, Ex.PW-4/A, was recorded at PS Welcome Delhi at 10:25 AM on 16.2.2004 that a wireless message has been received from the police control room conveying information that the police control room was informed that a man had been stabbed in Seelampur at a spot ahead of T-point near a nalla.

5. As deposed to by HC Pramod Kumar PW-8, he was on PCR duty in the van 'Baker-57' from 8:00 AM to 8:00 PM on 16.2.2004 and the van was in the north-eastern zone. At about 10:20 AM wireless message was received in his van that a person was lying injured near nalla in front of Seelampur T-point. Accompanied by the staff in the van he reached the spot and found two persons injured, one of whom disclosed his name as Mohd.Chand (PW-6). He learnt that the name of the other injured person was Tasleem. He removed both to GTB Hospital where Tasleem was declared brought dead. ASI Jogender Singh and the SHO of PS Welcome Colony Insp.Anand Sagar PW-22 reached the hospital.

6. HC Pramod Kumar has been subjected to cross-

examination. His cross-examination reads as under:-

“The name of the assailant was not disclosed to me by either of the injured. I had inquired from the public persons standing nearby about the incident but no one was able to tell anything about the incident.”

7. ASI Jogender Singh PW-21 and the SHO Insp.Anand Sagar PW-22 deposed that when information recorded vide DD No.14-B, Ex.PW-4/A, was passed on to them they reached the spot and there-from to GTB Hospital where they found Tasleem brought dead and a record in the form of Mohd.Chand's MLC Ex.PW-13/B but with further information that Mohd.Chand had fled after getting himself treated for an injury on his left leg.

8. Fortunately for the two police officers, Mohd.Chand had disclosed his address to the doctor as recorded on the MLC Ex.PW-13/B, being a jhuggi in Block-7, New Seelampur and hence the two police officers could track Mohd.Chand and noticing that blood was still oozing from his pant they brought him back to GTB Hospital and Insp.Anand Sagar recorded his statement Ex.PW-6/A making the endorsement Ex.PW-22/A beneath the same he sent the same for FIR to be registered at 2:15 PM. He seized the T-shirt and a pyjama type pant worn by Mohd.Chand which were stained with blood as entered in the memo Ex.PW-6/C.

9. Returning back to the spot accompanied by Mohd.Chand, Insp.Anand Sagar prepared the rough site plan

Ex.PW-22/B. He collected blood control earth as also blood which he put in a glass vial as entered in the memo Ex.PW-6/B. He also seized a pair of cream colour chappals stained with blood as entered in the memo Ex.PW-6/D.

10. The dead body of Tasleem was seized and inquest papers were filled up and the body sent to the mortuary where it was identified by Islam Mohd. and Nawab relatives of Tasleem.

11. Dr.Arvind Kumar PW-5 conducted the post-mortem on 17.2.2004 and noted various injuries on the person of the deceased, two of which need to be specifically noted; being injury No.1 and 2. The same are as under:-

“1) Incised stab wound of 2.6 cm x 0.5 cm x 10 cm present obliquely over upper middle front of right side chest. The upper inner angle is broad and 4.5 cm above the right nipple and 5.5 cm outer to the midline. The lower outer angle is acute. The injury has entered the chest wall and is going upwards, outwards to the right, slightly backwards up to a distance of 10 cm in chest wall only and did not enter the cavity.

2) Incised stab wound of 3.0 cm x 0.5 cm x cavity deep present obliquely over the lower middle front of left side chest. The upper outer angle is broad and placed 5.5 cm vertically below the left nipple and 7.0 cm outer to the mid line towards the left. The lower inner angle is acute. The injury after entering the chest wall, going into the chest cavity through the 4th inter costal space by cutting the lower margin of 4th rib. The injury going upwards, inwards and backwards and entering the heart from its front surface of left ventricle, 2 cm above the apex by making entry wound of size 2.5 cm x 0.5 cm and is going further upwards, backwards coming out from upper part, back surface of left atrium. Then ending by making a small

nick over the upper inner surface of left lung inner, the (illegible). **The total depth of the injury is 16.0 cm."**

12. He opined that all seven injuries noted by him on the person of the deceased were ante-mortem and that injuries No.1 and 2 were caused by a single sharp-edged cutting weapon and that injury No.2 was sufficient to cause death in the ordinary course of nature. The observations were penned on the post-mortem report Ex.PW-5/A.

13. A perusal of the description of injury No.2 on the deceased shows a professional hand. The manner in which the track of the injury has moved: upwards, inwards and backwards suggests that the handler of the weapon of offence had good knowledge of using the same. Very successfully, the weapon of offence has been made to enter the chest cavity through the fourth intercostal space the heart has been pierced in the front at the left ventricle; upwards and backwards has the knife moved, cutting across the heart and coming out at the back surface of the left atrium traversing as recorded in the post-mortem report 16 cm into the body.

14. Since Mohd.Chand, had in his statement Ex.PW-6/A inculpated the appellant, who as per the statement was a pick pocket and a professional extortionist, the police had no problem in apprehending the appellant who is a registered Bad

Character of Krishna Nagar, a fact admitted to by the appellant in response to question No.30 when the appellant was examined under Section 313 Cr.P.C.

15. After the appellant was apprehended, he made a disclosure statement admitting to the crime and got recovered a knife, sketch whereof is Ex.PW-6/J. The knife in question is a butcher knife used to cut chicken or mutton.

16. Mohd.Chand appeared as PW-6 and while deposing on 5.10.2005 fully supported the case of the prosecution. He deposed that he was employed in a factory, where in an accident in the year 1996, he lost his right hand. He became unemployed and started moving around with vagabonds. He knew deceased Tasleem who was a pick pocket and that both i.e. Mohd.Chand and Tasleem used to pick pockets of passengers in buses. They knew the appellant who was also a pick pocket and used to snatch money by threatening public. On 16.2.2004 at 9:00 AM Tasleem met him i.e. Mohd.Chand. They went to Dharampura Bus Stand but could not get work. *(It is apparent that Mohd.Chand intends to say that they could lay their hands on no victim to pick pocket upon).* They returned back to Seelampur and when they were on a pulia at about 10:00 AM appellant Chand Miyan along with his friend met them. He knew Chand Miyan who was a pick pocket and snatched money by threatening people. Chand Miyan asked

Tasleem what they had earned. Tasleem replied that he had earned nothing and told the appellant to run away. The accomplice of the appellant who was wearing a black pant caught hold of Tasleem and exhorted appellant to put Tasleem in the right place as he was acting too brave. Appellant took out a butcher's knife from his dub and stabbed Tasleem. When he i.e. Mohd.Chand tried to rescue Tasleem, appellant stabbed him on his left thigh. He fell down and started bleeding. Appellant and his accomplice Dalip ran away. PCR van came and removed him and Tasleem to GTB Hospital where Tasleem died. He went back to his jhuggi from the hospital but the police came and took him back to the hospital where his statement Ex.PW-6/A was recorded and thereafter he helped the police in preparing the site plan. He was a witness to earth control with blood being lifted. He handed over his shirt and pyjama to the police. He further deposed that on 20.2.2004 he was with the IO when a secret informer informed about the presence of the appellant who was apprehended in his presence and disclosure statement Ex.PW-6/F was recorded to which he was a witness. Thereafter appellant led the IO to a jhuggi in Kachhi Colony and from within the ballies got recovered the knife Ex.P-4 which was seized vide memo Ex.PW-6/K and sketch thereof Ex.PW-6/J was prepared in his presence. He deposed that the T-shirt and the pyjama Ex.P-1 and Ex.P-2

were the ones which he had handed over to the IO.

17. It is apparent that Mohd.Chand has fully supported the case of the prosecution when he deposed on 5.10.2005.

18. When cross-examined very briefly on 13.4.2006 he supported the prosecution, but unfortunately only one page of cross-examination was recorded and matter was adjourned to 2.4.2007 on which date he resiled from what he had deposed in Court by way of examination-in-chief.

19. We are pained to note that the learned Trial Judge has been negligent in not paying heed to the repeated directions issued by this Court and the Supreme Court not to defer cross-examination of eye-witnesses and in any case not by over one year and to complete the cross-examination of eye-witnesses immediately after their examination-in-chief is recorded. The reason is obvious. Eye-witnesses are suborned during this period, as indeed has happened in the instant case.

20. On 2.4.2007, Mohd.Chand claimed to have not seen the incident. He stated that the police came after 10-15 minutes and that he never disclosed his name and address either to the doctor or to the police officers. He stated that he was taken to the police station where he signed some documents.

21. So gibberish are the statements of Mohd.Chand when he was cross-examined that it becomes apparent that he

was threatened and suborned into falsely stating facts when he was cross-examined.

22. We highlight one illustration. He claims not to have told the doctor at the hospital either his name or his address.

23. Relevant would it be to note that in the MLC Ex.PW-13/B address of Mohd.Chand has been noted as also the fact of HC Pramod having brought him to the hospital. As noted above, HC Pramod Kumar PW-8 deposed that he received wireless message at 10:20 AM and reached near T-point Seelampur and removed Tasleem and Mohd.Chand to GTB Hospital. It is relevant to note that the time when Mohd.Chand was got admitted at GTB Hospital is 11:22 AM. We further note that ASI Jogender Singh and Insp.Anand Sagar have deposed that since Mohd.Chand had left the hospital without a discharge they tracked him at his jhuggi and brought him back to the hospital, which obviously they could with reference to his address on the MLC. No suggestion has been given to the two witnesses that they did not bring back Mohd.Chand to the hospital as claimed by them. Indeed, in his examination-in-chief Mohd.Chand had said so. This instance highlights how Mohd.Chand has been suborned.

24. The testimony of HC Pramod Kumar and the contemporaneous record prepared reflecting the same, being the MLC Ex.PW-13/B proves that what Mohd.Chand stated to

the police in his statement Ex.PW-6/A and what he deposed in Court in examination-in-chief is the truth and that his utterances after more than one year when he was cross-examined are a result of his being threatened into submission.

25. From the testimony of Mohd.Chand in examination-in-chief it should have dawned upon the learned Trial Judge that he was dealing with an accused who was a professional gangster and therefore the learned Trial Judge ought not to have deferred cross-examination of Mohd.Chand by postponing the same by more than one year.

26. We are satisfied that Mohd.Chand deposed to the true facts in his examination-in-chief and that the same establishes that the appellant was the one who stabbed accused and also caused the injury on Mohd.Chand.

27. With reference to the decision reported as 2010 (III) AD (Delhi) 34 Gore Lal vs. State, learned counsel for the appellant states that as in the instant case, in Gore Lal's case (supra) also only two injuries were caused with a knife and said act of the assailant was held being an offence punishable under Section 304 Part-I IPC. Learned counsel urges that the appellant is entitled to the benefit of sentence being altered, post conviction being converted from the offence of having committed murder to the offence of culpable homicide not amounting to murder.

28. Facts in Gore Lal's case (supra) were that the deceased had spread himself on a cot on a public street and one Kanta Prasad objected to the same telling the deceased that he ought not to occupy the public place, to which the deceased responded by saying that the street did not belong to Kanta Prasad. At that stage Gore Lal and one Mattu and Kallu reached the spot and told the deceased that Kanta Prasad was right. The deceased acted obstinate, resulting in exchange of words, followed by Gore Lal inflicting two stab wounds on the deceased with a pocket knife. The sketch Ex.PW-1/B of the knife used by Gore Lal showed it having a blade of 4.3 cm i.e. less than 4 inches.

29. Noting that everything happened upon a sudden quarrel, with the accused being the one who initiated the fight, and that the weapon used was a pocket knife, conviction for the offence of murder was converted to one under Section 304 Part-I IPC.

30. Instant case stands on an entirely different footing. There was no sudden quarrel. Appellant was attempting to extort money from the deceased and PW-6. On being said that they had no money, appellant used a butcher knife to inflict two injuries on the person of the deceased. The professional manner in which the knife has been used has already been highlighted by us herein above in para 13.

31. We find no merit in the appeal which is dismissed.

32. Since the appellant is still in jail we direct a copy of this decision be sent to the Superintendent, Central Jail, Tihar for being supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 29, 2010
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