

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

**DECIDED ON : 24<sup>th</sup> April, 2012**

**+ CRL.A165/2012 & CrI.M.(Bail)272/2012**

**CHOTTE LAL SHRIVASTVA @ CHOTTE ....Appellant.**  
**Through: Mr.Vivek Sood, Advocate.**

**versus**

**STATE OF NCT OF DELHI ....Respondent.**  
**Through: Ms.Richa Kapoor, APP for the State.**

**CORAM:**  
**MR. JUSTICE S. RAVINDRA BHAT**  
**MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (OPEN COURT)**

1. The present appeal is directed against the judgment dated 18.11.2011 and order on sentence dated 24.11.2011 of a learned Additional Sessions Judge in Sessions Case No.42/2009 by which the appellant Chotte Lal Srivastva @ Chotte was convicted for committing the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with fine of ₹3,00,000/-.

2. The prosecution alleges that on 11.03.2009 at 03.40 P.M. Daily Diary (DD) entry No.51B (Ex.PW21/A) was recorded at Police Station Anand Parbat on information received from Duty Operator Room to the effect that a boy has been stabbed with a knife at B-2611, Gali No.22, Baljeet Nagar. The investigation was assigned to ASI Suresh on

telephone and he reached the spot. The injured had already been taken by CATS ambulance to DDU hospital. He (ASI Suresh) with constable Satpal reached the hospital and collected the MLC of the deceased (identified as Avdesh Tiwari @ Saadhu, resident of D-220, Punjabi Basti). He made an endorsement on the DD No.51/B and sent the rukka for registering case under Section 302 IPC. Further investigation was taken over by Inspector Raghubir Singh (PW-22) who summoned the crime team and got the scene of incident photographed. He recorded the statements of Shiv Prakash Tripathi (PW-3), Mahinder Singh PW-12), Puran Singh (PW-11) and Parshu Ram (PW-6) and it emerged that since it was Holi, they were celebrating the festival with their neighbours. Both the accused and the deceased had consumed liquor. At about 3:00 P.M., a quarrel took place between the two, and the neighbours separated them. After that, the accused went to his room on the third floor and all the while deceased (Avdesh Tiwari @ Saadhu) remained standing near his room on the ground floor. After about 8-10 he returned they again started quarrelling with each other. The deceased had a wooden 'danda' in his hand. A scuffle took place. When they were separated by the neighbours, the deceased (Avdesh Tiwari @ Saadhu) informed them that the accused had stabbed him with a knife. He ran towards Baljit Nagar and after search, he was found unconscious near the Tanki, Baljit Nagar and taken to the hospital.

3. During the course of investigation, the accused was arrested and pursuant to the disclosure statement, he got recovered the blood stained knife. The IO also seized the control earth, blood-stained earth, deceased's shirt and prepared necessary seizure memos. Dr.Komal Singh

(PW-23) conducted post-mortem of the body. After conclusion of the investigation, the IO filed a charge-sheet against the accused for committing the offence punishable under Section 302 IPC. The accused was duly charged and brought to trial.

4. To prove its case, the prosecution examined 26 witnesses in all. Statement of the accused was recorded under Section 313 Cr.P.C.; he denied his hand in the crime and pleaded false implication. After appreciation of the evidence and considering the rival contentions of the parties, the Trial Court convicted him.

5. During the course of arguments, the learned counsel, under instructions from the appellant, opted not to challenge the findings of the Trial Court whereby he (the accused) was held responsible for causing injuries to the victim resulting in his death. He, however, urged that even if the prosecution's case is taken at its face value, Section 302 IPC was not attracted. The incident took place suddenly without premeditation and the accused in a fit of rage stabbed the deceased. The counsel further argued that the assault by the deceased triggered the situation ruling out 'intention' to murder the deceased.

6. Learned APP supported the judgment in its entirety and urged that it does not call for any interference. The accused was armed with a deadly weapon and he stabbed the deceased on vital part of the body resulting in his instantaneous death. The 'intention' to murder was apparent, emphasized the counsel, as the accused had intentionally brought a dangerous weapon i.e. knife from his house and inflicted forceful blow in the scuffle. The conviction of the accused under Section 302 IPC is proper and reasonable.

7. We have considered the submissions of the parties and have scrutinized the Trial Court records. Since the Appellant has not opted to challenge the findings whereby he was held responsible for causing injuries with a knife to the deceased on the date of incident, Trial Court's conclusion in this regard is upheld to that extent.

8. This takes us to the alternative plea taken by the counsel that even assuming the case to be true, the matter would still not fall within the definition of murder but would be culpable homicide not amounting to murder punishable under Section 304 Part I IPC. On scrutinizing the evidence and considering the circumstances in which the occurrence took place, we are also of the view that the accused had no 'intention' to murder the deceased. It was a day of celebration and all the neighbours including the accused and the deceased were playing Holi. There was no animosity between them. Both had consumed liquor that day and were under the influence of alcohol. On a trivial issue, an altercation took place between the two and they started abusing each other. A quarrel ensued and the neighbours intervened, pacified and separated them. Initially, none was armed with any weapon. The accused, thereafter, went to his house and after 8-10 minutes of his return, they started quarrelling without apparent excuse and a scuffle took place. After the scuffle was over, the deceased told the neighbours about his being stabbed by the accused and they saw him bleeding from the injuries on his abdomen. Thereafter, he ran towards Baljit Nagar and was subsequently spotted lying unconscious at some distance. No prosecution witness saw the accused in possession of the knife any time. None of them even saw him inflicting the stab injury on the vital part of the deceased's body during

scuffle. It is not certain where he had concealed the knife and when had taken it out to inflict the fatal blow. After the incident, the knife was not in his possession and was allegedly recovered from underneath the stairs of his house subsequently. Surprisingly, after sustaining serious stab injury, he for no apparent reason, ran towards Baljit Nagar and deprived the neighbours an opportunity to take him to the nearby hospital to provide medical aid. They lost precious time in searching him and ultimately spotted him lying unconscious at the Water tanki, Baljit Nagar.

9. The circumstances in which the unfortunate incident occurred reveal that a 'sudden' fight took place between the two. There was no previous intention or determination to fight. They were playing Holi with their neighbours and there was no exchange of abuses at that time. Only at about 3:00 P.M. when the celebrations were to come an end, a verbal spat took place between them. Undisputedly, both had consumed liquor and were under its influence. Often, under the influence of liquor, revelers, who celebrate Holi, abuse each other. The consumption of liquor apparently had impaired their mental faculties and they lost power of self-control. In the initial quarrel, none of them was armed with any weapon and no one was beaten. Subsequently, the deceased was observed with a lathi/danda and it provoked the accused to bring churi/knife from his house. Again, the weapon used in the occurrence was an ordinary vegetable knife. He did not take undue advantage; he gave a solitary knife blow and did not proceed to inflict other injuries. Both were neighbours and there was no previous history of bitter relations. The facts and circumstances show that the victim was stabbed by the accused

in a sudden fight, in a fit of rage and under the influence of liquor and ruled out his 'intention' to murder him.

10. A similar situation had arisen in the case of *Sukhbir Singh v.State of Haryana: (2000) 3 SCC 327: (AIR 2002 SC 1168)*. In that case also there was no enmity between the parties. The occurrence took place when Sukhbir Singh got mud stains on account of sweeping of a street by Ram Niwas and a quarrel ensued. The deceased slapped the appellant for no fault of his. The quarrel was sudden and on account of a heat of passion. The accused went home and returned armed in the company of others without telling them of his intention. The time gap between the quarrel and the fight was a few minutes only. The Supreme Court observed that it was, therefore, probable that there was insufficient lapse of time between the quarrel and the fight which meant that the occurrence was 'sudden' within the meaning of Exception 4 of Section 300, IPC.

11. In the case of *Golla Yelugu Govindu v.State of Andhra Pradesh (2008) 16 SCC 769*, at about 2:00 A.M., when the deceased was in the house there was exchange of hot words and quarrel took place between the accused and the deceased. This happened in the presence of the children. Suddenly the accused hacked the deceased in the neck with a sickle and the deceased fell down and the accused once again hacked on the neck and the left ear of the deceased causing severe bleeding injuries. It resulted in the death of the lady. The Appellant there submitted that Section 302 IPC has no application to the assault made during the course of a sudden quarrel and Exception 4 of Section 300, IPC applied. The Supreme Court discussing the law in detail converted the conviction to Section 304 Part 1 IPC.

12. In the case of 'Kalu Ram Vs. State of Rajasthan' 2000 (10) SCC 324, the Supreme Court held that conduct of the accused can not be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that the victim might die. Para No.7 of the aforesaid judgment is as follows :-

*“7. But then, what is the nature of the offence proved against him? It is an admitted case that the appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to light the matchstick. When she failed to do so he collected the matchbox and ignited one matchstick but when the flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all that the accused thought of was to inflict burns to her and to frighten-her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder”.*

13. In the light of the above discussion, we are of the opinion that conviction of the accused is required to be altered from Section 302 IPC to Section 304 Part-I IPC. We have also heard the parties on the point of

sentence. Considering the role played by the accused and the fact that he inflicted injuries with knife on the vital part of body, interest of justice would be served if he is sentenced to undergo rigorous imprisonment for nine years. Other sentences are left undisturbed.

14. The appeal is partly allowed and orders of conviction and sentence are modified in the above terms.

**Crl.M.(Bail)272/2012**

In view of the orders passed above, this application stands disposed of as having become infructuous.

**(S.P.GARG)  
JUDGE**

**(S. RAVINDRA BHAT)  
JUDGE**

**April 24, 2012**  
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