

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

Reserved on: 10.01.2012
Pronounced on : 25.01.2012

+ **CRL.A.134/2009**

JAGTAR SINGH @ JAGGA @ GANJA Appellant

Through: Sh. K.B.Andley, Sr. Advocate with
Sh. M.L. Yadav, Advocate.

Versus

STATE OF DELHI Respondent

Through: Sh. Sanjay Lao, APP.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S. RAVINDRA BHAT

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1. The Appellant impugns a judgment and order of the learned Additional Sessions Judge, dated 14-08-2003, in SC 60/2007, whereby he was convicted for the offence punishable under Section 302, IPC, and sentenced to undergo life imprisonment.

2. The prosecution alleges that on 13-04-2003, in the evening, at 09:00 PM, when Harsh Dua, and his brothers, Praveen and Sonu Dua, had gone to attend the engagement ceremony of their friend at Sanjay Park, Govind Pura, and were talking amongst themselves, the Appellant reached there, and

picked up a quarrel with Praveen. He reportedly told Harsh Dua, that Praveen had slapped him, and that he would not leave him. Harsh and the others tried to calm down the appellant; he went away. Harsh and his brothers went inside the park. A few minutes later, Inderjeet Chawla @ Deepak, a friend of Parveen also reached there. When all these friends were conversing, the Appellant came there. He complained to Inderjeet that Parveen had slapped him, without a cause, and that it did not bode well for him. Again, Praveen's brothers tried to diffuse the situation, and calm down the appellant; they also apologized on behalf of Parveen. At this stage, Parveen slapped the Appellant. Inderjeet tried to intervene; Jagtar then pulled out a knife, and inflicted injuries on him. He cried out for help. Parveen tried to save him; the appellant then turned on him, and gave several serious knife blows on his vital parts. Parveen fell down. The appellant fled the spot. Parveen's brothers rushed him to the hospital. Inderjeet gave his statement; an FIR, No. 136/03 PS Preet Vihar was registered, alleging offences under Sections 307/324 IPC. Later, in the early hours of the next morning, Parveen died. The appellant was arrested for committing the crime; Section 302 IPC was also added to the charge sheet. He pleaded innocence, and claimed trial.

3. The prosecution examined twenty witnesses in support of its case. The appellant examined his mother, in his defence. In addition, the court examined two witnesses, since a plea was taken that the Appellant was suffering from mental disorder, and was undergoing treatment in jail. One of these was CW-2, who had treated the Appellant for depression for over two years, i.e. 2000- end 2002, when apparently he was under regular medical treatment for mania, from April, 2000. After 2005, he underwent treatment

for bi-polar depression. After considering all the materials on record, the Trial Court, by the impugned judgment, convicted the Appellant for the offence mentioned in the preceding portion of the judgment, and sentenced him to undergo imprisonment in the manner described earlier.

4. Mr. M.L. Yadav, learned counsel for the Appellant urged at the outset, that the Trial Court findings as far as they pertained to the facts go, cannot be assailed, because PW-1 Inderjeet Chawla, the injured witness, and PW-5 as well as PW-7, brothers of the deceased, supported the prosecution about the attack which took place. Counsel urged that though there were some variations in the testimonies of these witnesses, they did not undermine the basic story about how Parveen had been attacked. It was however urged that the Trial Court fell into error in not noticing that the Court witnesses' depositions had clearly shown that the Appellant was not in his senses. Court witness No.2 was the doctor who had treated the Appellant even before the incident; he deposed about his mental illness. Even after his conviction, when he was undergoing sentence, the Appellant was a psychiatric patient, who underwent regular treatment. These clearly pointed to his not being in control of his senses at the time of the incident, in April 2003. The Court should have given these serious consideration; instead the impugned judgment does not reflect any application of mind.

5. It was argued next that even if the prosecution is said to have proved all the facts alleged in this case, at best the Appellant could have been justifiably convicted under Section 304-II IPC, and certainly not under Section 302 IPC. Here, counsel argued that the episode took place due to a sudden quarrel; the deceased had concededly slapped the Appellant, who

retaliated later by stabbing him. There was no premeditation, and deliberation or planning. Counsel relied on the decision reported as *Kandaswamy v State of Tamil Nadu* 2008 (11) SCC 97, where the facts were recounted as follows:

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PWs 1 and 2 were examined as eye witnesses to the occurrence. Gurvammal is the elder sister of PW 1 and deceased Alagarsamy is her husband. The accused was known to him. Guruvammla died leaving behind two children - a girl and a boy. This made his father (PW 2) to bring Alagarsamy to his house. At about 8.30 p.m. on the occurrence day, he was standing opposite to the house of Ramaiah with his son, after returning from the house of Visalam. PW 2 was also coming in the street from the shop and he asked as to whether he had gone to Visalam's house and come back. Alagarsamy alighted from the bus and PW 2 also asked him as to whether he had gone to Visalam's house. Palpandi (son of accused) also alighted from the bus and the accused asked him as to why he has not brought his mother with him for which he had been sent. Palpandi replied to his father (the accused) that unless the accused goes mother will not come. Finding fault that he is repeating the same answer, the accused beat his son. Alagarsamy asked him as to why he was beating the young boy for which the accused responded stating that he had no business to intervene in his family problem and saying so, removed the Aruval from his person and cut Alagarsamy which injury landed on his left hand. Alagarsamy fell down and the accused thereafter indiscriminately cut him. PWs 1 and 2 rushed towards the scene questioning the act of the accused. Threatening them with dire consequences, the accused made good his escape. Alagarsamy was lying dead.

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After discussing the law on the subject and previous decisions of the Supreme Court, it was held that:

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21. When the factual scenario is considered in the background of the legal principles set out above, the inevitable conclusion is that the appropriate conviction would be under Section 304 Part I IPC.
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6. The learned APP argues that the facts proved clearly point to the Appellant’s guilt for the offence punishable under Section 302, IPC. It was urged that the prosecution witnesses uniformly deposed about the Appellant’s involvement, in respect of the murder of Parveen. It was argued that in fact one of the witnesses was even injured on account of the Appellant’s attack, and there was no reason to disbelieve him. Counsel also argued that the evidence led has clearly shown that the Appellant initially went to the park, fought with Parveen, left the spot, and later returned with a knife, which he used for attacking the deceased. This betrayed pre-meditation. Further, it was not as if only one or two knife blows were given; the Appellant inflicted several injuries during the attack. Having regard to these facts, conversion of the conviction from Section 302 to Section 304 IPC was not warranted.

7. As noted earlier, the appellant has not disputed the basic fact about the attack on the deceased; we notice however, that this attack was preceded by an incident, very proximate in point of time, as to constitute almost a part of the event itself, where the deceased Parveen had slapped him. The sequence of events was that after that, the Appellant left the spot, went somewhere and

returned with a knife, which he wielded against the deceased. Before discussing whether the attack and the injuries would appropriately be the subject matter of an offence under Section 302, it would be necessary to deal with a contention that the Appellant was mentally unstable. Section 84 IPC, which is relevant in this regard, is as follows:

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84. Act of a person of unsound mind.— Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.
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Now, during the trial no plea of insanity was taken. Section 84, IPC, which is applicable in such cases, requires that during the trial, such a plea has to be entered by the accused, at the relevant time. This was so stated by the Supreme Court, in the decision reported as *State of M.P. v. Ahmadull*, AIR 1961 SC 998. The court had then held that the burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by the section, lies on the accused who claims the benefit of this exemption vide Section 105 of the Evidence Act [Illustration (a)]. In *T.N. Lakshmaiah v. State of Karnataka*, (2002) 1 SCC 219, it was held that:

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9. Under the Evidence Act, the onus of proving any of the exceptions mentioned in the Chapter lies on the accused though the requisite standard of proof is not the same as expected from the prosecution. It is sufficient if an accused is able to bring his case within the ambit of any of the general exceptions by the standard of preponderance of probabilities, as a result of which he may succeed not because that he proves his case to the hilt

but because the version given by him casts a doubt on the prosecution case

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In a recent ruling, i.e. *Surendera Mishra V. State Of Jharkhand* AIR 2011 SC 627 it was held by the Supreme Court that:

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9. *In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression “unsoundness of mind” has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.*

10. *Next question which needs consideration is as to on whom the onus lies to prove unsoundness of mind. In law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities. The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, his conduct at the time or immediately after the offence with reference to his medical*

condition by production of medical evidence and other relevant factors. Even if the accused establishes unsoundness of mind, Section 84 of the Indian Penal Code will not come to its rescue, in case it is found that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime. Behaviour of an accused pertaining to a desire for concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the consequences of the act done by him.

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11. In a case where the exception under Section 84 of the Indian Penal Code is claimed, the court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The entire conduct of the accused, from the time of the commission of the offence up to the time the sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bona fide or an afterthought.

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8. We are conscious of the fact that the accused did not plead insanity at the relevant time, during the trial. Nevertheless, during the proceedings, the judge who recorded the evidence apparently found his conduct strange or abnormal enough to summon two doctors; CW-1 was the jail doctor who deposed to treating the Appellant since 2005, for depression. He was unaware whether the Appellant had received regular treatment for any

psychiatric condition earlier. CW-2, on the other hand, deposed that the Appellant was under his regular treatment for mania for almost three years, from 2000 to December 2003, when he received a regular course of medication. According to this witness, the Appellant stopped his treatment, and stopped visiting him. He also deposed that depression is the very opposite of mania, and that he required more time, and a session with the Appellant to depose better. A disquieting feature in the impugned judgment is the complete lack of discussion by the learned judge, Shri. Chandra Shekhar, who delivered the judgment, about this evidence. On the one hand, a learned judge who recorded the evidence found it important to summon doctors who had treated the Appellant, to ascertain his possible mental condition during the trial, and at the time of the offence. This evidence was glaringly omitted. Courts have to be vigilant in such circumstances, and ensure that the entire evidence led during the proceedings are carefully weighed, before any conclusion is drawn. If this care is not displayed, there is a real possibility of someone entitled to claim such defences, being denied justice altogether.

9. Although the Trial Court did not discuss this aspect, yet the evidence on record falls short of the minimum standard required for the court to conclude that the Appellant was under a mental condition that entitled him to claim a defence under Section 84. To hold such, either of the doctors who deposed ought to have deposed clearly that in his opinion the Appellant was incapable of understanding the consequences of his action, at the relevant time, or that he was in such a mental condition as to be not in full possession, or control of his senses. Evidence of such kind is, unfortunately lacking. What is there, however is that the Appellant has been continuously

under psychiatric treatment and management for the last 6 years or so, for depression.

10. It would now be relevant to discuss the main submission on behalf of the Appellant, i.e. that the offence in question was not Section 302, IPC, but was Section 304 IPC. In such cases, it has been held that the nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death. The distinction between culpable homicide and murder was aptly drawn by the Supreme Court in *Kandaswamy v. State of Tamil Nadu* (2008) 11 SCC 97. It was held that:

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whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in

the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.

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In the decision reported as *Preetam Singh v. State of Rajasthan*, (2003) 12 SCC 594, it was held that:

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20. In the present case, there are three head injuries, two on the scalp and one on the left parietal region. The first two injuries are, undoubtedly, fatal injuries. As a result of those injuries, multiple fractures of the right parietal bone occurred, the membranes got severed and there was injury to the brain matter. As regards the third injury, which is an incised wound of 2? × 1? on the left parietal region, it cannot be said for certain that in the ordinary course 604 it would have caused death. The medical evidence is silent on this aspect. The doctor did not even say what impact this third injury had internally. All the three appellants inflicted injuries on the head of the deceased with the weapons in their hands according to the prosecution witnesses. There is an allegation that after the deceased fell down all the three went on giving blows on the leg and waist. Certain injuries were found on the knee joint, elbow joint and left forearm of the deceased....

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...intention that can be safely imputed to Appellants 1 to 3 o 3 was to cause bodily injuries to Pyara Singh which were likely to cause death. It is this common intention which, in our view, had developed on the spot. Therefore, the offence committed by Appellants 1 to 3 would be culpable homicide not amounting to murder and they are liable to be convicted and punished under Section 304 (Part I). They are also liable to be convicted under

Section 148 IPC for the offence of rioting. On the basis of the evidence on record and the findings recorded by the High Court, there is no escape from the conclusion that the appellants were members of an unlawful assembly of five or more persons having the common object falling within the scope of clause (iii) of Section 141, though the common object was not to kill or hurt the deceased person.

22. We, therefore, convict Appellants 1 to 3 under Section 304 (Part I) read with Section 34 and also under Section 148 IPC. The conviction under Section 302 read with Section 34 IPC is set aside. Coming to the question of sentence, we are informed that Appellants 1 to 3 have already suffered imprisonment for a period of about eight years. We are of the view that having regard to the facts and circumstances of the case, imprisonment for eight years coupled with the enhancement of fine would be adequate punishment for the main offence they committed under Section 304 Part I. Accordingly, they are sentenced to eight years' RI and at the same time we consider it just and proper to enhance the fine to Rs 2000 in the case of each of the three appellants. It is further directed that in default of payment of enhanced fine within a period of one month from today, they should suffer rigorous imprisonment for a further period of nine months. Appellants 1 to 3 are sentenced to one year's RI for the offence under Section 148 IPC. The sentences for the aforesaid two offences should run concurrently.

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In another decision, reported as *Subran v. State of Kerala*, (1993) 3 SCC 32 it was held that:

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The High Court failed to draw the distinction between an offence under clause (b)^{††} and (c)[†] of Section 299 IPC and that falling under clause (3)[†] of Section 300 IPC. The intention to cause murder of Suku deceased, could not be attributed to him and the medical evidence also shows that the injuries attributed to him

were not sufficient in the ordinary course of nature to cause death of the deceased. The conviction of appellant 1, Subran, for the substantive offence under Section 302 IPC is therefore unwarranted and cannot be sustained. That Suku deceased died as a result of injuries inflicted on him by all the four appellants is not a matter which is in doubt. From the ocular evidence read with the medical evidence, it stands established that the injuries on the deceased had been caused by all the four appellants and that the death of Suku had occurred due to receipt of multiple injuries. What offence can then be said to have been committed by the four appellants?

12. According to the medical evidence, the injuries caused were cumulatively sufficient to cause death and the death had occurred due to multiple injuries which were found sufficient in the ordinary course of nature to cause death. According to the ocular testimony of witnesses namely, Biju (PW 4) and Anil (PW 5), who have been believed by both the courts below and with which finding we have no reason to differ, all the four appellants had caused those injuries. It is, therefore, necessary in a case like this to determine as to which of the accused is guilty of a particular offence. On a consideration of the circumstances of the case, the type of weapons with which they were armed and nature and seat of the injuries, it is not possible to hold that all the four appellants had shared the common object of causing such bodily injuries on the deceased as were  39 likely to cause the death of Suku or were sufficient in the ordinary course of nature to cause his death. The appellants would, therefore be liable for the offence committed individually by each one of them.

13. As already noticed, though it may not be possible to attribute to appellant 1, Subran, the necessary intention to cause death of Suku so as to hold him guilty of an offence of murder under Section 302 IPC since the injuries inflicted by him were not found to be sufficient in the ordinary course of nature to cause death of Suku, but looking to the weapon with which he was armed and the nature, number and seat of injuries inflicted by him though not on any vital part, he can certainly be attributed with the knowledge that with those injuries it was likely that death of Suku may be caused and, therefore, he can be clothed with the liability

of causing culpable homicide not amounting to murder. The case of the first appellant, therefore, falls within Section 299 IPC punishable under Section 304 Part I IPC. We, accordingly, convict him for the said offence and sentence him to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs 2000 (two thousand) and in default of payment of fine suffer further rigorous imprisonment for one year. Fine if realised shall be paid to the heirs of the deceased.

14. Coming now to the case of the other three appellants. Since, their conviction for an offence under Section 326 with the aid of Section 149 is not sustainable in law, we set aside their conviction under Sections 326/149 IPC. They would be responsible for their individual acts. The injuries caused by Rajan and Preman appellants 2 and 3, were with a torch, iron rod and a cycle chain. None of the injuries caused by them according to the post-mortem report were on any vital part of the body, though some of the injuries caused by blunt weapons were grievous in nature. We, therefore, convict each of the two appellants Rajan and Preman, for an offence under Section 325 IPC and sentence them to suffer rigorous imprisonment for two years each.

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11. In the present case, there were two injuries on the neck, and two in the chest, of the deceased, caused by a sharp edged weapon. There were other minor injuries and abrasions; in all there were nine injuries. According to the doctor who conducted the post mortem of Parveen’s body, the shock caused as a result of the injuries to the neck and chest was sufficient to cause death in the ordinary course of nature. The surrounding circumstances in the case point to some previous quarrel between the deceased and the Appellant; the latter was agitated and confronted the deceased in the first part of the incident, on the day of occurrence. The eyewitnesses sought to mollify the Appellant; however, the deceased slapped him. This resulted in the Appellant holding out a threat of dire consequences, and returning very

shortly later, and inflicting knife injuries. Though he did inflict several blows – some of which were fatal, it is clear that he did not set out with a pre-meditated intention to kill the deceased. The facts clearly establish an offence under Section 304 Part-I, in which the intention was to cause such bodily injuries as would have resulted in death in the ordinary course of nature.

12. As far as sentence is concerned, the nominal roll dated 18-10-2011 reveals that the Appellant had undergone detention for 8 years and 5 months. He has spent another 3 months in jail; he has also earned eight months remission. Having regard to these facts, and the other surrounding circumstances, we feel that ends of justice would be subserved if he is sentenced to the period of detention already undergone. The Appeal is therefore allowed; the conviction is altered to one under Section 304 Part I, IPC; the Appellant's sentence is accordingly reduced to the actual period of detention, already undergone by him. The Appellant shall be released forthwith if not required in any other case. Order dasti, under signatures of court master.

S. RAVINDRA BHAT
(JUDGE)

S.P.GARG
(JUDGE)

JANUARY, 25 2012