

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

% DATE OF DECISION: APRIL 18 , 2012

+ **Crl.Rev.No.199/2012 and Crl.M.No.4618/2012**

JASDEEP SINGH @ RICKY Petitioner
Through:Mr.Jitender Sethi with Mr.Sharad Saini,
Advocates

versus

STATE, NCT OF DELHI Respondent
Through:Mr.Navin Sharma, APP

**CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI**

% **O R D E R
18.04.2012**

1. This Criminal Revision Petition has been filed by the petitioner impugning the order dated 21.2.2012 vide which he was charged for having committed the offence punishable under Section 302/34 IPC passed by learned Additional Sessions Judge.

2. Learned counsel for the petitioner Shri Jitender Sethi submitted that he is not praying for quashing of charge but limiting his submissions to the extent that from the allegations made in the charge sheet, prima facie an offence under Section 304/34 IPC is made out and petitioner should have been charged for the said offence.

3. Referring to the charge sheet and the post mortem report, learned counsel for the petitioner submitted that as per the complaint, the assailants were armed with *danda, lathi, kirpan* and *rod*. The post mortem and FSL report reveal that injury No.1 is on a non-vital part i.e. thigh and could be caused with '*kirpan*'. Cause of death, as per post mortem report is haemorrhagic shock subsequent to injury to left femora vessels by stab injury. The post mortem report does not mention that the injuries mentioned were sufficient to cause the death in the ordinary course of nature. Learned counsel for the petitioner has referred to the judgment **Gokul Parashram Patil v. State of Maharashtra 1981 Crl.L.J. 1033** wherein, in the case of solitary blow given by the accused to the deceased on a non-vital part, was considered not sufficient to convict the appellant for the offence punishable under Section 302 IPC but under Section 304 Part II IPC.

4. Counsel for the petitioner further relied upon the judgment **Union of India v. Prafulla Kumar Samal & Anr. 1979 Crl.J. 154** to buttress his contention that if two views are possible, the one favourable to the accused should be taken by the Court. He has relied upon the following observations of the Apex Court in support of his contention that if two views are possible, the benefit should be given to the accused:-

"The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused."

5. On behalf of the State, it has been submitted that from the statement of the complainant as well as the nature of injuries, post mortem report and the FSL result as prima facie case under Section 302/34 IPC is made out, the petitioner has rightly been charged for the said offence.

6. FIR No.82/2011, P.S. Moti Nagar was registered on the basis of statement of a minor child aged 13 years who is son of the deceased and an eye witness. As per the statement made by the son of the deceased, his two sisters along with his mother reside separately at his maternal grandmother's house whereas he used to reside with his father. On the day of occurrence, he along with his father returned from the factory situated in Anand Parbat and let out by his father. After reaching home, while his father was still on the motor cycle, he started opening the lock. At that time, his cousins Amritpal Singh and Harsimranjit Singh who were armed with hockey and rod along with 2-3 other persons, one of them was armed with *kirpan* and another with *danda*, reached there. While uttering the words "*is saale ne hamara jeena dubhar kar rakha hai roz hamen aakar gaaliyan deta hai aur jab se iski rakhel Gursharan Kaur ise chod kar gayi hai tab se yeh hamen bahut pareshan kar raha hai aaj hamne iska khel khatam kar dena hai*" and started assaulting his father. In order to save his life, his father rushed to the house of their neighbour Balbir Singh but the offenders chased him and managed to catch hold of him in the verandah of that house. When he (complainant) tried to save his father, one of those boys assaulted him,

pressed his throat and `kataar' was also put on his neck uttering that if he wanted to remain alive, he should remain standing at distance and they also threatened to kill him.

7. It is further mentioned in the complaint that all those persons armed with the weapons continued assaulting his father with the weapons in their hands despite the fact that his father continuously pleaded for mercy and to spare him. None of them cared to listen to his plea for mercy and continued attacking him. As per complainant *"jab tak mere papa ki awaz band na ho gayi tab tak ve unhe maarte rahe aur uske baad mere papa behosh ho gaye to Amritpal Singh ne kaha ki lagta hai yeh khatam ho gaya hamara kaam ban gaya hai."* Thereafter, all of them left the spot saying that their work has been done.

8. The endorsement by S.I. Devender Singh made on the complaint is to the effect that on receipt of DD No.66B dated 3.4.2011. Sub-Inspector along with Constable Ajay Kumar reached the spot and came to know that injured had been removed for DDU Hospital by PCR. Lot of blood was found at the spot and after leaving Constable Ajay Kumar to guard the spot, he left for DDU hospital where he collected the MLC No.6219/2011 of Shamsheer Singh on which he found that the doctor had recorded the injured to be `brought dead'. Thereafter, he recorded the statement of the injured complainant i.e. son of the deceased and sent the same for registration of the case and conducted further investigation.

9. From the statement of the son of the deceased, who is an eye witness as well as the fact that the PCR immediately removed the injured to the hospital but he was declared 'brought dead', the intention of the offenders can be gathered. Non-mention of the opinion in the post mortem report that injuries were sufficient to cause death in the ordinary course of nature in itself is not a ground to charge the offenders for the offence punishable under Section 304 IPC. Here it becomes relevant to mention that as per the complainant, despite the fact that the deceased Shamsheer Singh rushed towards the house of Balbir Singh to save himself, he was not only chased but caught in the verandah and assaulted till he fell silenced and, thereafter, also the offenders allegedly left uttering the words that their job had been done. These circumstances, at the stage of charge, are very necessary to infer the intention. The fact that he was declared 'brought dead' is an additional circumstance to gather the intention behind the assault.

10. At the stage of framing of charge, the Court has to consider the material placed before it and even a grave suspicion which has not been properly explained, would be sufficient to frame the charge and proceeding with the trial.

11. A bare reading of Section 227 and 228 Cr.P.C. together makes it clear that at the initial stage, the court is not required to meticulously judge the truth, veracity and effect of evidence which the prosecution wants to adduce. The Court is also not to see that there is sufficient ground for

conviction of the accused for which he has been charged. The consideration that has to be kept in mind is whether there is a strong suspicion for presuming that the accused has committed the offence for which he has been charged. At that stage on the basis of the material adduced by the prosecution, the Court could form an opinion that the accused might have committed the offence for which has been charged, though for conviction the conclusion is required to be proved beyond reasonable doubt and on the basis of ocular evidence and post-mortem report, to come to the conclusion whether the offence proved against the accused is under Section 302 IPC or some other lesser offence.

12. So far as the judgment **Gokul Parashram Patil**(supra) relied upon by learned counsel for the petitioner is concerned, it pertains to the merits of case as after the conclusion of the evidence, the appellant was convicted under Section 302 IPC. The relevant portion of the said judgment is under:-

“When the solitary blow given by the accused to the deceased was on the left clavicle a non-vital part-and the accused did not know that the superior venacava would be cut as a result of that wound, the injury though sufficient in the ordinary course of nature to cause death was not one intended by the accused. Thus, to such a case illustration (c) to Section 300 Thirdly was not attracted. Accordingly, accused could be convicted not under S.302 but under S.304 Part II. A sentence of 5 years’ R.I. held, would meet the ends of justice under the circumstances of the case.”

13. There cannot be any dispute regarding the legal proposition laid down in the judgment **Union of India v. Prafulla Kumar Samal**(supra). The Court was supposed to consider the material produced before it to frame the

charge and the accused has rightly been charged for having committed the offence punishable under Section 302/34 IPC.

14. Finding no illegality or infirmity in the impugned order, Revision Petition is hereby dismissed. No order as to cost.

PRATIBHA RANI, J.

APRIL 18, 2012

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