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

DECIDED ON : 4th September, 2012

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CRL.A.682/2009

RAMCHANDER

....Appellant

Through : Mr.A.J.Bhambhani, Advocate with
Ms.Lakshita Sethi, Ms.Bhavita Modi &
Ms.Nisha Bhambhani, Advocates.

versus

THE STATE (GOVT. OF NCT)

....Respondent

Through : Mr.Sanjay Lao, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (Open Court)

1. Ram Chander has preferred this appeal against his conviction by impugned judgment of the Additional Sessions Judge dated 24.07.2008 under Sections 302 and 307 of Indian Penal Code, 1860 (IPC) for murder of Dhunu Lal and for having caused injuries to Kamla, Ram Prasad and Makdum. By the order of sentence dated 31.07.2008, the appellant has been sentenced to Imprisonment for life for the offence under Section 302 with fine of ₹5,000/- and rigorous imprisonment for seven years with fine of ₹5,000/- for the offence under Section 307 IPC. In case of default for

payment of fine of ₹5,000/-, the appellant is to undergo Simple Imprisonment for one month.

2. Homicidal death of Dhunu Lal is established from the evidence of PW-16 (Dr.Kulbhushan Goel) who had conducted post-mortem of the body of Dhunu Lal. There were five external injuries on the dead body. Injury No.1 consisted of lacerated penetrative wound over the right side base of the neck of the size 3.4 cm X 1.8 cm X 2 cm with contused margins and which had abraded area 3 X 1.25 cm. The wound had pierced the soft tissues at the base of the right side of the neck and went downwards at an angular route to the right side of the chest cavity and had entered into the upper lobe of the right lung and came out from the middle lobe anteriorly making an exit from the lung. It fractured the sternum at fourth rib site on the right side and the third and fourth ribs. The second injury was a lacerated penetrative wound 1.25 X 0.8 cm just on the medial end of the left clavicle with contused margins and which had an abraded area of 3.5 X 1.25 cm and had fractured the underlying clavicle bone at the medial end and entered into the left chest cavity taking a downward and angular route which had pierced the left lung and fractured 1 to 6 ribs and costal cartilages. The death was caused due to asphyxia and hemorrhagic shock consequent upon bilateral chest and lung

injuries resulting into haemothorax. The injuries No.1 and 2 were caused by a moderately heavy weapon with a cutting edge which was not so sharp and were sufficient to cause death in ordinary course of nature individually or collectively. Injuries No.3 to 5 were caused by a blunt force impact.

3. Death of Dhunu Lal is also proved from the statements of PW-5 (Ram Prasad), PW-2 (Kamla) and PW-13 (Mukesh Kumar). Their statements have been referred to below while dealing with the contentions whether or not the appellant had caused the said injuries and has been rightly convicted for the offences under Section 302 and 307 IPC.

4. PW-2 (Kamla), PW-4 (Makdum) and PW-5 (Ram Prasad) were injured in the said occurrence allegedly by the appellant. They are the eye witnesses as per the prosecution case. PW-4 (Makdum) is the father of the appellant. In his statement, he had stated that on 22.07.2004 he was present with the appellant in his jhuggi. At about 11.00 P.M. there was a quarrel between him and the appellant on the question whether the appellant's wife should come back to Delhi. The appellant became angry and took out a 'getti', which is used for digging earth. He hit 'getti' on the head of PW-4 (his father) and also hit his mother with it. Thereafter, PW-4 did not support the prosecution's case and did not state that the appellant

had caused injuries on Dhunu Lal. PW-4 had stated that Dhunu Lal, the deceased who was a watchman, was sitting on the statue of George-V in the Coronation Park. He had stated that he was in his jhuggi and outside of the boundary wall of the statue of George-V. Dhunu Lal and his wife were inside the park. He however, identified the '*getti*' which was used to cause injuries as Ex.P1. He was cross-examined by the Additional Public Prosecutor but PW4 had stated that he had not told the police that the appellant had given '*getti*' blows on Dhunu Lal (deceased), his wife Kamla (PW-2) and Ram Prasad (PW-4) in his presence. He however, admitted that the Dhunu Lal died on the same night, while he was inside the boundary wall, after sustaining injuries. In the cross-examination on behalf of the appellant, PW-4 had stated that he had not seen the appellant causing injury with '*getti*' to deceased Dhunu Lal, his wife Kamla and Ram Prasad.

5. PW-2 (Kamla) had stated that on 21.07.2004 at about 11.00 P.M. or midnight she along with her brother Ram Parsad, her two sons- Rekesh and Mukesh and her husband Dhunu Lal was present near the statue of George-V, in the Coronation Park, Delhi. Her husband was a watchman. Makdum and the appellant Ram Parsad were living in a jhuggi near the statue of George-V, Coronatin Park, Delhi and were quarrelling

with each other whether the wife of the appellant Ram Chander should be brought from her parents' house. She and her husband tried to pacify and make the appellant understand but on this the accused took out the '*getti*' and hit the head of her husband. The appellant had also given three '*getti*' blows on her husband's head, neck and other parts of body. Her husband died there. He hit the '*getti*' on lower left side of her abdomen and on the left side of her lower eye brow. The appellant also hit '*getti*' on the head of her brother, Ram Parsad. Her son Rakesh was also hit on the upper part of his back with the '*getti*'. They started running helter skelter to save themselves and informed the police on telephone No.100. The police came there and removed them i.e. she (PW-2), brother Ram Parsad (PW-5), son Rakesh and father of the appellant, Makdum (PW-4) to the hospital. She identified the '*getti*' (Ex.P1).

6. She was cross-examined but there is nothing in the cross-examination to suggest that statement made by PW-2 in her examination-in-chief was not creditable or trustworthy. As noticed below, PW-2 was one of the injured persons and the injuries suffered by her have been proved in the MLC recorded by PW-11 (Dr.D.K.Sinha). We shall refer to the MLCs together subsequently.

7. PW-5 (Ram Parsad) has made a similar statement. There was a quarrel between the appellant and the deceased Dhunu Lal on the day of occurrence in July, 2004. At that time, he was sleeping on the chabutra of the statue of the English King. He woke up at about 11.30 P.M. or midnight on hearing the quarrel. He intervened but was hit on his head by someone. He fell down on the ground and became unconscious. He regained consciousness in the hospital. Later on, he came to know Dhunu Lal died in that quarrel. He was cross-examined by the Additional Public Prosecutor. In the cross-examination, he accepted that Makdum, father of the appellant along with his wife and sons was living in jhuggi in the Coronation Park. He also stated that the appellant used to ply a rickshaw sometimes and on other occasions, he used to do labour work. He testified that at about 11.30 P.M., the appellant had caused injuries with the '*getti*' on the person of Makdum (PW-4) and on the person of his sister (PW-2) and Dhunu Lal (the deceased).

8. PW-11 (Dr.D.K.Sinha) has proved MLCs bearing Nos.6713, 6714 and 6716 issued by the Casualty Ward, Hindu Rao Hospital, Delhi which were marked Ex.PW-11/A to Ex.PW-11/C, respectively and were recorded on 22.07.2004 at 0.45 A.M. i.e. soon after midnight. They refer to history of assault and record details of the injuries suffered by PW-2,

PW-4 and PW-5. Injuries suffered have been discussed below, while examining the conviction under Section 307 IPC.

9. The post-mortem report of the deceased Dhunu Lal (Ex.PW-16/A) refers to five external injuries suffered by the deceased including the two lacerated penetrating wounds which have been stated above. The injuries have been specifically mentioned in the statement of PW-16. It is opined that the time since death was about 14 hours. The post-mortem was done on 22.07.2004 at 01.20 P.M. The post-mortem report (Ex.PW-16/A) and the MLCs (Ex.PW-11/A to Ex.PW-11/C) corroborated the statements made by PW-2, PW-4 and PW-5 about the occurrence and the time of the occurrence.

10. PW-4 is the father of the appellant. He had admitted to the presence of the appellant at the spot and the fact that appellant hit '*getti*' on his head. He had however, denied that he had seen the appellant hitting Dhunu Lal (the deceased), PW-2 (Kamla) and PW-5 (Ram Parsad). PW-4 is the father of the appellant and his attempt to save and absolve his son, the appellant, for the injuries suffered by PW-2, PW-5 and Dhunu Lal is apparent and can be explained. PW-2, PW-4 and PW-5 had gone to the hospital together and were treated in the same hospital. They had all suffered external injuries in the same occurrence. They were taken to the

hospital in 659 PCR-C-61 by HC Ram Naresh Singh. Statements and testimonies of PW-2 and PW-5 are trustworthy and creditable.

11. PW-12 (HC Hoshiar Singh) in his statement has mentioned that he had received a telephone from one Ramesh who had reported that chowkidar named Dhunu Lal had been beaten up by someone in a park near Yuvraj Nagar Colony, Dhir Pur village, Delhi. PW-1 (HC Prem Dutt Sharma) had recorded FIR No.302/04 (Ex.PW-1/A) under Section 302/307 IPC on the basis of rukka sent by the Insp.P.C.Maana. PW-15 (SI Bakshish Singh) had stated that he was posted at police station Mukherjee Nagar and was on emergency duty from 08.00 P.M. to 08.00 A.M. on 21/22.07.2004. DD No.64B was recorded at 11.45 P.M. by PW-10 (Const.Randhir Singh) containing information that somebody had killed Sonnu Lal of Dhir Pur village. He accordingly reached the spot and saw a person lying dead on the chabutara. PW-21 SHO Insp.P.C.Maana (Retd.) was also present with staff. PW-21 (Insp.P.C.Maana) has stated that he had gone to the spot after handing over DD No.64B to SI Bakshish Singh. Dead body of Dhunu Lal was there. Injured Kamla (PW-2), Makdum (PW-4) and Ram Parsad (PW-5) were taken to the hospital in the PCR van. He reached the hospital after leaving the staff at the spot and collected the MLCs of the injured persons. He also recorded statement of

Kamla (PW-2) and then made an endorsement (Ex.PW-21/A) on the statement and prepared the rukka, which was sent to the police station and FIR (Ex.PW-1/A) was registered. The appellant was arrested on 22.07.2004 at about 04.15 P.M. He was apprehended from village Dhirpur, Delhi. He made a disclosure statement (Ex.PW-19/E) and '*getti*' was recovered from under a Kikar Tree in the Coronation Park. The '*getti*' was blood stained. It was seized vide memo Ex.PW-19/C. The clothes of the accused which he was wearing having blood stains were also seized vide memo Ex.PW-19/D.

12. The FSL reports are Ex.PW-17/A and Ex.PW-17/B and have been proved by Naresh Kumar, Sr.Scientific Assistant, Biology, FSL Rohini, Delhi. As per the said reports human blood was detected on '*getti*', shirts and pants, which were seized/recovered from the appellant on the basis of the statement made by him. Blood was of human origin but there was no reaction and blood group could not ascertained on the '*getti*' and shirt. In the case of pants, the blood group was ascertained as 'AB'. The blood group of the deceased as per the FSL report Ex.PW-17/B was 'AB'.

13. From the aforesaid evidence, we are of the view that the eyewitnesses PW-2 and PW-5 established the case of the prosecution

beyond doubt. PW-4, the father of the appellant has partly supported the prosecution's case. The MLCs and the post-mortem report (Ex.PW-11/A to Ex.PW-11/C and PW-16/A) supported and corroborated the prosecution version and the statements made by PW-2 and PW-5.

14. Learned counsel for the appellant had submitted that the appellant did not have intention or desire to commit the offence under Section 302 IPC. He has submitted that the allegations made by the prosecution witnesses especially by PW-4 (Makdum), suggest that the offence would fall under Section 304 part-II. He has relied upon the decision of the Supreme Court in the case of '*Vineet Kumar Chauhan vs. State of Uttar Pradesh*' (2007) 14 SCC 660. In the said decision reference has been made to the decisions of the Supreme Court in '*Virsa Singh vs. State of Punjab*' AIR 1958 SC 465 and '*Rajwant Singh vs. State of Kerala*' AIR 1966 SC 1874 and the distinction between the two Sections has been elucidated as under:

"16. The academic distinction between "murder" and "culpable homicide not amounting to murder" has been vividly brought out by this Court in State of A.P.v. Rayavarapu Punnayya. It has been observed that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in Virsa

Singh v. State of Punjab and Rajwant Singh v. State of Kerala, speaking for the Court, R.S.Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that 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 IPC, 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 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.”

15. In the case of *Vineet Kumar Chauhan* (supra), the Supreme Court noticed that there was no enmity between the parties and the prosecution had not alleged that before the occurrence the accused had premeditated the crime of murder. A sudden quarrel had taken between

the accused and the son of the deceased and on account of heat of passion, the accused went home, took out his father's revolver and started firing indiscriminately, and unfortunately one of the bullets hit the deceased on his chin and he died.

16. In the present case, we have referred to the injuries which were suffered by the deceased Dhunu Lal. The post-mortem report (Ex.PW-16/A), in the present case, highlights five injuries and details the first two injuries which were sufficient to cause death in the ordinary course of nature, individually and collectively. It is not a case of a single or one blow but multiple blows. PW-2 (Kamla) had stated that the appellant had given three blows with 'getti' on the body and vital parts of the deceased Dhunu Lal. In addition, we find that injuries were also suffered by PW-2 (Kamla), PW-5 (Ram Parsad) and PW-4 (Makdum). There was no provocation by the deceased, PW-2 or PW-5. The appellant had not sustained any injury. The deceased had died at the spot itself. The blows in question were by a sharp edged weapon and had caused the external and the internal injuries, which have been indicated and mentioned above. In the present case, we are satisfied that the intention to cause injuries at vital parts of the body was present. The appellant has been rightly convicted under Section 302 IPC.

17. The second issue pertains to the injuries suffered by PW-2, PW-4 and PW-5 and whether the conviction of the appellant under Section 307 IPC is justified. The MLCs (Ex.PW-11/A to Ex.PW-11/C) record that the injuries suffered by PW-5 (Ram Parsad) were dangerous. He had suffered a lacerated wound over head around the right parietal region of about 6 cm. X 2 cm. The bone was exposed and there was bleeding. It is mentioned that the patient was drowsy and was not responding to visible command. However, the MLC does not show that Ram Parsad was admitted in the hospital for treatment or observation. PW-4 (Makdum) had received wound over right parietal temporal region on the head and was bleeding. In addition, he had a lacerated wound over the left forearm which was also bleeding. There was swelling on the left arm upper part. The patient was conscious, co-operative and oriented. PW-2 (Kamla) had a lacerated wound over the forehead near the left eye and was bleeding. The wound has been described as simple. It is apparent that the aforesaid three witnesses were discharged from the hospital after first aid and were not admitted. Considering the nature of injuries suffered by three of them, we feel that the conviction of the appellant under Section 307 IPC is not correct and he is convicted under Section 325 IPC. The conviction of the appellant, to this extent, stands modified.

18. For the offence under Section 325 IPC, the appellant will undergo rigorous imprisonment for a period of three years and shall also pay a fine of ₹5,000/-. In default of payment of fine, he will further undergo simple imprisonment for one month. We confirm the sentence of imprisonment for life and fine of ₹5,000/- for the offence under Section 302 IPC. In default of payment of fine, the appellant will undergo simple imprisonment for one month.

19. The appeal is disposed of in the above terms.

(SANJIV KHANNA)
JUDGE

(S.P.GARG)
JUDGE

SEPTEMBER 04, 2012

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