

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

Date of decision: 10.05.2012

+ **CRL.A. 623/2009**

SATYAM & ANR. Appellants
Through : Sh. Gaurav Duggal and Sh. Aman
Sareen, Advocates.

versus

STATE Respondent
Through : Ms. Richa Kapoor, APP.

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The present appeal is directed against the judgment and order on sentence of the learned Addl. Sessions Judge (ASJ) dated 06.07.2009 and 11.07.2009 respectively in which the present appellants were convicted for the offence under Sections 302/34 IPC and sentenced to undergo imprisonment for life.
2. The prosecution case was that during the late evening of 21.04.2006

an altercation took place between the four accused – Sumit, Gopinath, Satyam @ Sachin, Amit and the deceased. The accused as well as the deceased used to sell chicken at Block No. 17, Dakshin Puri, New Delhi. It was alleged that two days prior to the incident, Municipal Corporation of Delhi (MCD) had visited the premises and impounded certain articles which belonged to both the parties. Apparently, both the parties went together and got the articles released. Subsequently, alleged the prosecution, in the evening of 21.04.2006, the quarrel occurred. The accused alleged that Naresh, the deceased had wrongly kept a wooden log piece which belonged to them. The quarrel took a sudden turn and it was alleged that in the course of the altercation, Amit took out a knife and delivered a knife blow to Naresh. It was also alleged that the co-accused, Satyam @ Sachin assisted in the attack and caught hold of the deceased. The prosecution alleged that the incident was witnessed by Naresh's brother - Sanjay, PW-17 and Rakesh, PW-11, his brother-in-law. After receiving information, the police carried-on the investigation, during the course of which the accused were arrested. One of them, i.e. Sumit, being a juvenile, was sent to the competent authority, the Juvenile Justice Board (JJB). During the course of trial, the prosecution relied on the testimonies of 19 witnesses, besides other evidence, such as the Postmortem Report, Seizure Memos, knife – Ex.PW-1 etc. After consideration of these, the Trial Court returned the finding of guilty as far as two appellants before this Court is concerned; Gopinath, the co-accused was acquitted. The prosecution had attributed his role as one of facilitating the attack by catching hold of the complainant, PW-17.

3. At the outset, learned counsel for the appellants, after making submissions, conceded that the basic facts pertaining to the sequence of

events, i.e. the seizure of items, their release on the fateful night and the reporting to the police leading to the arrest of accused, are not disputed. He, however, contended that the conviction recorded under Section 302 IPC was not justified. Learned counsel emphasized the fact that all the ingredients spelt-out in Exception 4 to Section 300 IPC, i.e. a sudden quarrel resulting in an attack, are attracted, and thus it should have resulted in a conviction under Section 304 IPC. Learned counsel for the appellant stated that the facts of this case disclose sudden quarrel. Having regard to the fact that there was single knife injury, learned counsel emphasized that the accused could not be attributed to any cruel motive or the motive of taking undue advantage in these circumstances. Learned counsel for the State, on the other hand, urged that the attack in this case was on an unarmed person, deceased Naresh. The weapon used, a butcher's knife, was 32.5 cms long knife, sharp edge of which was to the extent of 21 cms. Once an attacker armed with such a weapon proceeds to wield it, there was no question of his being unaware of its deadly consequences. Having regard to these, learned APP submitted that this single aspect alone distinguishes the facts of this case from all others. From the above discussion, it is evident that the essential facts leading to the death of Naresh have not been disputed. The sole question which this Court has to answer is whether the conviction has to be properly returned under Section 302 IPC, as was done in the impugned judgment, or under Section 304 Part-I IPC. In this regard, the decisions of the Supreme Court are instructive. In *Tholan v. State of Tamil Nadu* 1984 (2) SCC 133, it was emphasized as under:

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12. It is equally not in dispute that appellant gave only one blow with a knife. Appellant had no quarrel or dispute with deceased Sampat. It is not shown that deceased Sampat had anything to do with the chit organised by K.G. Rajan. No malice has been alleged to have been entertained by the accused towards deceased Sampat. The incident occurred on the spur of the moment. It appears that the house of the deceased Sampat was somewhere near the house in which the organisers or at least one of them was residing. Appellant had his dispute and grievance with the organisers of the chit. It is the prosecution case that accused abused organisers of the chit. Deceased Sampat is not shown to be the organiser of the chit. Probably when the deceased Sampat told the accused not to misbehave in the presence of ladies and not to use vulgar and filthy language the appellant retorted by questioning the authority of Sampat to ask him to leave the place. Presence of Sampat is wholly accidental. Altercation with Sampat was on the spur of the moment. Even the meeting was accidental. There arose a situation in which appellant probably misguided by his own egocentric nature objected as to why Sampat should ask him to leave the place and in this background he gave one blow with a knife which landed on the right side chest of the deceased, which has proved fatal. Could the appellant be said to have committed murder! In other words, whether Part I or Part III of Section [300](#), I.P.C. would be attracted in the facts of this case. Even Mr. Rangam learned Counsel for the State of Tamil Nadu could not very seriously contend that the appellant intended to commit murder of Sampat. His submission was that at any rate appellant when he wielded a weapon like a knife and gave a blow on the chest, a vital part of the body, must have intended to cause that particular injury and this injury is objectively found by the medical evidence to be fatal and therefore Part III of Section [300](#) would be attracted. On this aspect, the decisions are legion and it is not necessary to recapitulate them here merely to cover idle parade of familiar knowledge. One can profitably refer to Jagrup Singh v. State of Haryana AIR 1981 SC 1552; Randhir Singh v. State of Punjab AIR 1982 SC 55 ; Kulwant Rai v. State of Punjab AIR

1982 SC 126 and *Hari Ram v. State of Haryana* AIR 1983 SC 185. To this list two more cases can be added: *Jagtar Singh v. State of Punjab* (1983) 2 SCC 342 and *Ram Sunder v. State of U.P.* CrI. A. No. 555/83 decided on 24-10-83. Having regard to the ratio of each of these decisions, we are satisfied that even if exception I is not attracted the requisite intention cannot be attributed to the appellant. But in the circumstances herein discussed he wielded a weapon like a knife and therefore he can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. In such a situation he would be guilty of committing an offence under Section [304](#) Part II of the Penal Code. Having regard to the circumstances of the case a sentence of 5 years would be quite adequate.

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4. In *Hem Raj v. The State (Delhi Administration)* AIR 1990 SC 2252, the injuries which the Court had to consider were as follows:

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Injury No. 3 is described as follows:

Incised punctured wound 2x1 cm. oblique 5 cm. away from mid line and 8 cm. below left nipple just inside and mid-clavicular line on the left side from the chest. The upper outer end of the injury was rounded while the lower inner end was with clean cut. Blood was coming out of it and it was chest cavity deep.

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The Court after analyses of the entire evidence, concluded as follows:

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13. In our considered view, a true and accurate version of the prosecution as to the origin and genesis of the occurrence is not brought out clearly. Nonetheless, it is inferable from the circumstances that the occurrence had happened in a spur of

moment and in the heat of passion upon a sudden quarrel. The above inference is fortified by the admission of PW-17 admitting that both the appellants and the deceased suddenly grappled each other and the entire occurrence was over within a minute. Thus, it is clear that it was during the course of the sudden quarrel the appellant gave a single stab which unfortunately landed on the chest of the deceased causing an injury which in the opinion of the Medical Officer was sufficient in the ordinary course of nature to cause death.

14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without pre-meditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither Clause I nor Clause III of Section [300](#) IPC will be attracted. We are supported in this view by a series of decisions of this Court, namely, (1) Jagrup Singh v. State of Haryana (1981) 3 SCC 616, (2) Kulwant Rai v. State of Punjab (1981) 4 SCC 245, (3) Randhir Singh v. State of Punjab (1981) 4 SCC 484, (4) Gurmail Singh v. State of Punjab (1982) 3 SCC 185 and (5) Jagtar Singh v. State of Punjab (1983) 2 SCC 342. Following the ratio of the aforementioned decisions, we hold in the present case that the offence committed by the appellant is the one punishable under Section [304](#) Part-II IPC but not under Section [302](#) IPC.

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5. In this case, the Postmortem Report (Ex.PW-15/A) (death examination) states that a single stab injury of 2.3 x 0.7 cm was discerned, placed horizontally on the right side of chest on the fifth intercostal muscle. Apparently, the depth of the knife injury was 14 cms, which affected the liver and also the diaphragm. No doubt the injury was serious and was the cause of death. The nature of the injury and the fact that it caused death almost instantaneously, however, is not determinative of whether the offence under Section 302 IPC or Section 304 IPC was made. The authorities, particularly, *Tholan (supra)* and *Hem Raj (supra)* referred to above have listed-out elaborately the previous authorities. *Hem Raj (supra)* has discussed all the previous judgments till the point of time, including those concerning death as a result of single knife injury. In this case too, the placement of the injury was on the right side of the chest. Of course, it was sufficiently deep as to result in death. We also notice that Amit was holding the knife when the quarrel started and, therefore, used it. The knife was a work tool for both Amit as well as his relatives. Having regard to all these circumstances and the fact that the accused also received injuries during what was apparently an altercation (as collective reading of deposition of PW-14 would suggest), this Court is of the opinion that the offence proved against the appellants in this case is Section-304 Part-I/34 IPC.

6. We have heard the appellants on the question of sentence. Even though we have indicated our reasons why it should be altered to one under Section-304 IPC Part-I, overall circumstances of the case are such that the justice in this case would justify sentence of 10 years' rigorous imprisonment. Other sentences imposed by the Trial Court are, however, left

undisturbed. The conviction of the appellants is altered to one under Section 304 Part-I IPC read with Section 34 IPC. Their sentence is reduced from life imprisonment to rigorous imprisonment for ten years. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

S.P.GARG, J

MAY 10, 2012
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