

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

DECIDED ON : 14th February, 2012

+ CRL.A.No.1170/2011

YOGESHWAR @ BABLOO Appellant.

Through: Mr.Deepak Vohra, Advocate.

versus

STATE ...Respondent

Through: Mr.Sanjay Lao 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 has been preferred by appellant-Yogeshwar @ Babloo against the judgment and order on sentence dated 26.02.2011 in Sessions Case No.91/2009 of the learned Additional Sessions Judge by which he was convicted for committing offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with a fine of ₹5,000/-.

2. Criminal law was set in motion at around 11:08 P.M. on 11.08.2009 when DD Entry No.38/A was recorded by ASI Suresh Chand at PS Anand Parbat to the effect that a quarrel was going on near Ramjas Park, Baljeet Nagar, Punjabi Basti and an individual was injured in the said quarrel.

3. The investigation was assigned to ASI Suresh Chand who, with constable Surender reached the spot and was informed that the injured had already been taken to RML hospital. He (ASI Suresh Chand) obtained the MLC of Lakhan (since declared dead) at the hospital. Pradeep Sharma (PW-9), the deceased's brother made statement Ex.PW9/A to the police and informed that accused-Yogeshwar had come at Lakhan's house at about 8:00 P.M and a quarrel took place between the two there. The accused inflicted injuries on the head and thigh with an iron rod on Lakhan and he succumbed to the injuries.

4. ASI Suresh Chand made an endorsement on Pradeep Sharma's statement and sent the rukka through constable Surender for registration of the FIR No.122/2009 under Section 302 IPC. During the course of investigation, IO prepared site plan; got the site photographed; lifted the blood smeared earth from the spot; arrested the accused, recovered the weapon of offence i.e.iron rod at his instance; recorded the statements of witnesses conversant with the facts, collected the post-mortem report and sent the exhibits to FSL, Rohini for expert opinion. After conclusion of the investigations, the accused was charge-sheeted for committing offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial.

5. The prosecution examined 17 witnesses to prove the guilt of the accused. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied his hand in the crime and pleaded that he was falsely implicated by PW-9 (Pradeep Sharma) as he wanted to usurp his uncle Lakhan's jhuggi.

6. After appreciation of the evidence and considering the rival contentions of the parties, the Trial Court convicted the appellant for committing offence under Section 302 IPC. Aggrieved, the appellant has appealed to this Court.

7. During the hearing of arguments, appellant's counsel, on instructions, opted not to challenge the findings of the Trial Court to the extent the causing of injuries on the deceased's person by the appellant. It was, however, contended that the appellant had no intention to murder his uncle Lakhan as the occurrence had taken place all of a sudden in which he lost his cool and inflicted the injuries in a fit of rage. The appellant was aged 18 years at the time of incident and was not mature enough to understand the consequences of his act.

8. Learned APP argued that the injuries inflicted by the appellant on the vital organs of the deceased were intentional. Intention can develop at the spur of moment. Nature of injuries on the deceased fully proved his intention to cause his death. At the time of causing injuries the accused had declared that he will kill him.

9. We have perused the testimonies of the prosecution witnesses on record and have considered the submissions of the parties carefully.

10. In view of the concession given, we confirm the findings of the trial court where he was held liable for inflicting injuries on Lakhan.

14. This takes us to the alternative plea taken by appellant's counsel that the offence would not be murder but would be culpable homicide not amounting to murder and would fall within Exception 4 of Section 300, IPC, which reads as under:-

“300, Murder.-

Exception 1. - xxxx xxxx xxxx xxxx

Exception 2. - xxxx xxxx xxxx xxxx

Exception 3. - xxxx xxxx xxxx xxxx

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault.

15. Before proceeding further, it is desirable to highlight that the deceased and complainant-informant were the appellant's real uncles. The incident occurred at the deceased's residence when the appellant had gone to meet him.

16. It is crystal clear from the testimony of PW-9 (Pradeep Sharma) that Lakhan was a habitual drinker and on the day of incident, the accused had reached his house at about 11:00 P.M. where Lakhan had served food and liquor to him. Indisputedly, an altercation took place between the two (*unmein tu tu mein mein hone lagi*) at the time of consuming liquor. After coming to know about the altercation, PW-9 (Pradeep Sharma) reached the spot, intervened and pacified them. Meanwhile, the accused caused injuries to the deceased which proved fatal. After inflicting injuries, the accused did not attempt to flee and the police arrested him at the spot. The appellant had not come with any deadly weapon in his possession. There was no initial hostility between the two as he was offered a meal in the house. Both enjoyed liquor together. These circumstances show that the accused had no previous

intention to cause harm to the deceased. The injuries were inflicted with an iron rod already lying in the deceased's room. It appears that in the sudden quarrel/altercation over some trivial matter, in a fit of rage, the accused, a young boy aged 18 /19 years lost his self control and inflicted injuries on his uncle. There is nothing to infer that there was any prior enmity or that any serious quarrel had taken place earlier between the two. Pradeep Sharma's intervention did not deter the appellant and despite his attempt to pacify deceased not to quarrel with the appellant, he inflicted injuries on his person.

17. The injuries sustained by the deceased have been observed in the MLC (Ex.PW1/A) as under:

- (i) *Lacerated injury of about 3 inches x 1 inch over face extended from medial ends of left eyebrow to the side of nose.*
- (ii) *Left eye damaged.*
- (iii) *A puncture wound on the anterior aspect of right lower third of thigh.*

18. As per the post-mortem report Ex.PW-2/A Dr.Amit Sharma (PW-2) opined the following four external injuries on the deceased:-

- (i) *Contused lacerated wound 5 cm x .5cm x bone deep present over left aspect of nose commencing just medial to the inner end of left eyebrow and extending up to left side of face, 1.5 cm below left eye. The nasal bone, left orbital plate, cribriform plate and left side of frontal bone underneath the injury shows multiple fractures with diffusion of blood in the surrounding tissues. The wound extends into left eye causing its complete damage.*
- (ii) *Stitches joining the upper and lower eye lids of left eye.*
- (iii) *Contusion 5cm x 4 cm, reddish and swelling present over right side of face with underlying fracture of right maxilla bone.*

(iv) An oval shaped lacerated wound .5 cm x .2cm x muscle deep with contused margins present over outer front of right thigh, 10 cm above the knee.

19. The injuries referred above were not thus on vital organs of the deceased.

20. PW-9 himself deposed that the accused inflicted injuries as he had felt insulted. Exchange of hot words between the two seems to have provoked the accused to retaliate.

21. We see no evidence that the appellant had taken undue advantage or acted in a cruel or unusual manner. He did not abscond from the spot and even suffered injuries as reflected in MLC (Ex.PW1/A) which remained unexplained. Possibility of the accused receiving injuries in the quarrel cannot be ruled out.

22. 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 had taken 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 the 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.

23. 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 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 left ear of the deceased causing severe bleeding injuries. It resulted in the death of the lady. The appellant therein 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.

24. In the latest case decided by this Court in CrI.A.No.134/2009 titled as *Jagtar Singh @ Jagga @ Ganja Vs.State of Delhi*, 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 pointed 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. It was held that though the appellant inflicted several blows some of which were fatal, it is clear that he did not set out with a pre-mediated intention to kill the deceased. The facts clearly established an offence under Section 304 Part-I, IPC in which intention

was to cause such bodily injuries as would have resulted in death in the ordinary course of nature.

25. 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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26. 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 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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27. 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 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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28. Considering the facts and circumstances of the case; relationship between the accused and the deceased, nature of injuries inflicted; nature of weapon used, conduct of the accused before and after the incident; and the sudden altercation and exchange of hot words; we are of the view that the accused had no intention to murder his uncle. The occurrence took place without premeditation in the heat of passion upon a sudden quarrel. It is thus a case of culpable homicide not amounting to murder within the ambit of Exception 4 of Section 300 IPC. We are not in agreement with the counsel that it is a case which will fall under Section 304, Part II IPC. The appellant certainly knew, even if it is assumed that it was not intended to cause death, they inflicting injuries with iron rod would result in causing such bodily injuries as were likely to cause death. We are of the view that the appellant be punished under Section 304 Part I, IPC.

29. We notice that the appellant has already remained in custody for more than 2 years; he is a relative of the deceased and complainant; he was about 18/19 years of age on the day of incident and had even claimed himself juvenile, we are of the view, that ends of justice would be met if the appellant is sentenced to undergo RI for seven years for committing

offence under Section 304, Part I IPC. Accordingly, his conviction for murder is set aside and he is convicted for committing culpable homicide not amounting to murder in view of Exception 4 of Section 300, IPC and is sentenced to undergo RI for seven years under Section 304 Part I IPC. The appeal is allowed to that extent.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

FEBRUARY 14th, 2012

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