

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

+ **CRL.A. 238/2002**

Judgment delivered on: December 03, 2013

TAPAS

..... Appellant

Through Mr. Sumit Verma, Advocate

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through Mr. Sunil Sharma, APP for the
State

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 374 of Criminal Procedure Code, 1973 (hereinafter referred to as “Cr.P.C.”), the appellant seeks to challenge the judgment and order on sentence dated 22.08.2001 and 01.09.2001, respectively, whereby the learned Additional Sessions Judge, Delhi, has convicted the appellant for committing an offence punishable under Section 302 Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and sentenced him to undergo rigorous imprisonment for life together with imposition of fine of Rs.100/- and in default of payment of fine, the appellant was directed to undergo further rigorous imprisonment

for two days.

2. In brief the case of the prosecution is as under:-

“On 14.01.1997, Hemant (PW-2) and Suresh (PW-3) were going for a morning walk. The accused along with his two companions was standing outside the house of deceased, Surrender. At about 04:45 a.m. the PW-2 and PW-3, on noticing the accused and his companions standing outside the house of Surrender, inquired from them as to why they were standing there. The companions of the accused fled away. The accused was carrying a rexine bag. It was found to contain a stereo. The accused was then caught hold by PW-2 and PW-3. Thereafter PW-2 and PW-3 asked Surrender to come outside. When the accused could not explain his presence, he was slapped by Surrender. The accused then whipped out a knife like kirpan and gave a blow on the left side of the chest of deceased, Surrender. When the accused was about to give another blow he was overpowered by PW-2 and PW-3. The Police was informed and Surrender was immediately taken to hospital, where doctors declared him brought dead.”

3. To prove its case, the prosecution had examined in all 14 witnesses. The statement of the accused was recorded under Section 313 Cr.P.C. and in his reply he simply denied the case of the prosecution and pleaded his innocence. No evidence was led by the accused in his defence.

4. Mr. Sumit Verma, Advocate appearing for the appellant mainly addressed arguments so as to challenge the conviction of the appellant

under Section 302 IPC. The contention raised by the learned counsel for the appellant was that as per story of the prosecution itself, the appellant and the deceased were totally strangers to each other and therefore, there was no enmity between them. Learned counsel also argued that a sudden fight ensued between the appellant and the deceased and the appellant took out a knife only after he was slapped by the deceased. Learned counsel also submitted that the act of the appellant was without any premeditation or intention and the same took place on the spur of movement in the heat of passion and that too when the appellant was provoked to defend himself after he was slapped on his face by the deceased. Learned counsel also submitted that the accused was merely standing in the front of the house of the deceased and he was caught hold by two of the friends of the deceased and was forcibly dragged into the house of the deceased. Learned counsel also submitted that without there being any provocation from the side of the appellant, it was the deceased who had shown the aggression by slapping the accused finding him alone and encouraged by the presence of his two friends. In support of his arguments, learned counsel placed reliance on the following judgments:

*a. Tholan vs. State of Tamil Nadu reported
in AIR1984SC759*

b. Sasi alias Chalil Sasi vs . State of Kerala reported in (2000) 10 SCC 55.

c. Jagtar Singh Vs. State of Punjab reported in AIR 1983 SC 463

5. Based on the above submissions, learned counsel for the appellant, urged that the case of the appellant falls under Section 299 IPC and not under Section 300 IPC and consequently, is punishable under Section 304 Part II of IPC rather than under Section 302 IPC.

6. Refuting the said submissions of the learned counsel for the appellant, Mr. Sunil Sharma, learned APP for the State, submitted that the accused was standing in front of the house of the deceased on the chilly morning of 14th January, 1997 at about 4.45 a.m. after having committed an offence of theft by stealing a car stereo from a Maruti car of a resident of the same vicinity. Learned APP further submitted that PW2- Hemant Kumar and PW3- Suresh Kumar were the eye witnesses of the crime as they being the morning walkers were surprised to see the accused at such a wintry morning in front of the house of the deceased. Learned APP also submitted that the deceased had only enquired from the appellant as to why he was standing outside his house and whose car stereo he was carrying in his bag and when the accused did not give any response, then only he was slapped by the deceased, at which, the accused took out a

Kirpan (dagger) from his pocket and gave a fatal blow on the left side chest of the deceased. Learned APP further submitted that the impact of the said blow on a vital part of the body of the deceased was so forceful that the same resulted in an immediate death. Learned APP invited attention of the Court to the post mortem report and the testimony of PW11- Dr. Lal Rozama to point out that the cause of death, as opined by the post mortem doctor was due to shock, as a result of stab injury to the heart produced by the sharp single edge weapon, which was sufficient to cause death in the ordinary course of nature. Learned APP also submitted that looking into the nature of the injury and weapon of the offence used by the appellant and also the injury being on the vital part of the body of the deceased, the appellant has been rightly convicted under section 300 IPC by the Learned Trial Court.

7. We have heard learned counsel for the appellant as well as learned Additional Public Prosecutor, perused the record and scrutinized the evidence and material on record.

8. In the present case, it has been sufficiently proved on record by the prosecution, in the testimony of Hemant Kumar (PW-2) and Suresh (PW-3), that on 14th January 1997, in the morning, two morning walkers

namely PW-2 and PW-3 got suspicious to find three persons standing near the house of their friend Surender (deceased) and when inquired as to why they were standing there, two of them ran away leaving behind the third one (Tapas), i.e., the accused. Accused, Tapas was carrying a rexine bag in his hand which contained a car stereo. The said two persons took the accused into the house of Surender Singh and they called Surender from the court yard of his house. Both of them informed Surender that this man was found in possession of a car stereo and was standing in front of his house. Surender then inquired from the accused about the said car stereo but the accused did not respond. Finding no response from the accused, Surender Singh gave a slap to him but again, no response was given by the accused. Surender Singh wanted to give another slap, but before he could have slapped, the accused took out a kirpan (dagger) from his pocket and gave a blow on the left side of chest of Surender. Surender immediately fell down on the floor and was taken to the hospital in a maruti van and in the hospital he was declared brought dead by the Doctor. As per the MLC proved on record as Ex.PW-14/G and death summary report proved on record Ex. PW-1/A, the victim was brought dead with a stab wound on left side of his chest. As per the post mortem

report proved on record as Ex.PW-11/A, in the testimony of PW-1 – Dr. Lal Rozama the following anti mortem injuries were noted by him in the report:-

“Incised stabbed wound of 2.5 cm long with gaping. The lower angle is more acute obliquely pressed on left precordium 6.5 cm from left nipple, 6.5 cm from midline and 27 cm from left iliac crest and 124 cm above left heel.

Internally the wound form an opliquetract going down ones and medically for 14 cm long with entry wound on heart. 3 cm size on left ventricle and execute of signs 2.7 cm on medical border 4 cm above tip of her”

9. The cause of death of the victim as opined by the Doctor was due to haemorrhage, shock, as a result of stab injury with a sharp edged weapon, which was sufficient to cause death in the ordinary course of nature. The weapon of offence was also shown to the said doctor and the doctor as per having seen the weapon opined that the injury mentioned in the post mortem report was possible by the weapon having a blade of 17 cms length as shown in Ex.PW-2/E.

10. The learned trial court held the appellant guilty for committing the offence of murder punishable under Section 302 of IPC, after evaluating and analysing the evidence adduced by the prosecution. So far as the findings of the Ld. Trial Court that the accused had stabbed the deceased,

we do not find any infirmity in the said decision.

11. Now dealing with the moot question raised by the counsel for the appellant whether the offence committed by the appellant would only be culpable homicide amounting to murder under Section 300 IPC or would be culpable homicide not amounting to murder, under Section 299 IPC. To deal with this question, let us first refer to the said provisions which are reproduced as under:-

“Section 300: Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-....

and

Section 299: Culpable homicide: Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

12. Since the learned Trial Court has convicted the accused under Section 300 clause firstly i.e. intentionally causing death, it is important at this stage to examine what does intention in this clause mean.

13. Intention is a desire of a person to bring about a particular result. It is a degree above knowledge. While assessing such cases involving

intention, we must keep in mind the distinction between knowledge and intention. The distinction between the terms 'knowledge' and 'intention' again is a difference of degrees. Knowledge means consciousness or realization or understanding. Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact.

14. Since it is an element of mind, it has to be examined by the conduct of the person in the particular circumstances. A test of an ordinary person has to be conducted to examine whether a person doing a particular act had the intention to do that act or not i.e. if an ordinary

person would have acted, in those set of circumstances in the manner the accused did, can we attribute intention to him.

15. In the case of **Jai Prakash vs. State (Delhi Administration)** reported in **1991(1)SCALE114**, the Hon'ble Supreme Court while distinguishing intention and knowledge, held as under:

“The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances such as the weapon used the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.”

The Court further observed thus at pages 42-43:-

It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, 'intention' is a conscious state in which mental faculties are aroused into activity and

*summoned into action for the purpose of achieving a conceived end. it means shaping of one's conduct so as to bring about a certain event. Therefore, in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. In Clause Thirdly the words "intended to be inflicted" are significant. As noted already, when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in **Virsa Singh's case** (supra), the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused. In some cases, an explanation may be there by the accused like exercise of right of private defence or the circumstances also may indicate the same. Likewise there may be circumstances in some cases which attract the first exception. In such cases different considerations arise and the court has to*

decide whether the accused is entitled to the benefit of the exception, though the prosecution established that one or the other clauses of Section 300 IPC is attracted. In the present enquiry we need not advert to that aspect since we are concerned only with scope of Clause Thirdly of Section 300 IPC."

16. Adverting back to the facts of the present case, let us again recapitulate as to how and in what manner and under what circumstances murder of deceased had taken place at the hands of the appellant. In the present case, although the accused had committed a theft with his two other companions, however after committing the theft they all were plainly standing outside the house of the deceased. Therefore the transaction in so far as the offence of theft is concerned was over till that time. PW-2 and PW-3, being suspicious to see these three persons standing outside the house of their friend, Surender, came to them and enquired from them as to why they all were standing there. Since they had committed theft, inside their heart they must be having an anxiety or fear of being caught and that was the reason, probably, why all of them tried to run away. However, fortunately or unfortunately only two of them could succeed in making their escape good and the accused, Tapas was caught by PW-2 and PW-3. After catching the accused, PW-3 and PW-2, forcefully took him in the courtyard of their friend, deceased in the

present case, and asked the deceased to come down. When the deceased came down, he enquired from the accused as to what was he doing outside his house, however the accused did not respond. Since the accused did not reply, the deceased got aggressive and gave a slap on his face. Thus the accused who was already forcefully brought inside by PW-2 and PW-3 and who got a slap also from the deceased was apprehending a fear of hurt from all of them and therefore in that fear, he took out a knife from his pocket and gave a blow in the left side of the chest of the deceased which eventually caused death of the deceased. However it shall be noted that there was neither any premeditation on the part of the accused nor there was any previous enmity between the accused and the deceased, rather all that happened was on a spur of moment and that too after the deceased showed the aggression to the accused, who was already facing a fear of being caught. In view of the above we find it difficult to attribute the intention on the accused.

17. In the matter of *Jagtar Singh Vs. State of Punjab* reported in **AIR 1983 SC 463** the facts of the case were that deceased with one of his friend was proceeding towards some Cinema. When they were passing in front of the house of the appellant-accused Jagtar Singh,

deceased Narendar Singh was injured by the projecting parnala of the house of the appellant. Deceased Narinder Singh protested to the accused and asked him to raise the height of the parnala. There was exchange of abuses. In this background, appellant and Joginder Singh caught hold of Narinder Singh and on being instigated by Joginder Singh, the appellant Jagtar Singh gave one blow with knife which landed on the left side of the chest of deceased Narinder Singh. After some time Narinder Singh succumbed to his injury. The appellant has also caused injury to the companion of deceased Narinder Singh. Undoubtedly, P.W. 2 Dr. H.S. Gill opined that the blow on the chest pierced deep inside the chest cavity resulting in the injury to the heart and this injury was sufficient in the ordinary course of nature to cause death. However, the Hon'ble Apex Court in that case held as under:

“The question is whether in the circumstance in which the appellant gave a blow with a knife on the chest, he could be said to have intended to cause death or he could be imputed the intention to cause that particular injury which has proved fatal ? The circumstances in which the incident occurred would clearly negative any suggestion of premeditation. It was in a sudden quarrel to some extent provoked by the deceased, that the appellant gave one blow with a knife. Could it be said that para 3 of Section 300 is attracted. We have considerable doubt about the conclusion reached by the High Court. We cannot confidently say that the

appellant intended to cause that particular injury which is shown to have caused death. There was no pre-meditation. There was no malice. The meeting was a chance meeting. The cause of quarrel though trivial was just sudden and in this background the appellant, a very young man gave one blow. He could not be imputed with the intention to cause death or the intention to cause that particular injury which has proved fatal. The next question is what offence the appellant is shown to have committed ? In a trivial quarrel the appellant wielded a weapon like a knife. The incident occurred around 45 noon. The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. Therefore, the appellant is shown to have committed an offence under Section 304 Part II of the I.P.C. and a sentence of imprisonment for 5 years will meet the ends of justice.”

18. In the matter of ***Kulwant Singh vs. State of Punjab*** reported in **AIR 1982 SC 126** wherein the accused gave one blow with a dagger and the blow landed in the epigastria area. The deceased succumbed to the injury. The learned trial Court found that the accused committed the offence without any premeditation. The learned Judge also found that there was no prior enmity. He also recorded that a short, quarrel preceded the assault. However learned trial Court convicted the appellant for an offence under Section 302 Penal Code and sentenced

him to suffer imprisonment for life. When the matter was before the High Court it was urged that in the circumstances of the case part I of Section 300 would not be attracted because it cannot be said that the accused had the intention to commit the murder of the deceased. The Hon'ble Supreme Court held as under:

“More often, a suggestion is made that the case would be covered by part 3 of Section 300 Penal Code in that not only the accused intended to inflict that particular injury but the injury intended to be inflicted was by objective medical test found to be sufficient in the ordinary course of nature to cause death. The question is in the circumstances in which the offence came to be committed, could it ever be said that the accused intended to inflict that injury which proved to be fatal. To repeat, there was an altercation. There was no premeditation. It was something like hit and run. In such a case, part 3 of Section 300 would not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the circumstances herein discussed, it would appear that the accused inflicted an injury which he knew to be -likely to cause death and the case would accordingly fall under Section 304 Part II Penal Code.”

19. In the matter of *Jagrup vs. State of Haryana* reported in **AIR1981SC1552**, wherein on the fateful evening the marriage of one Tej Kaur was performed. Shortly thereafter, the appellant Jagrup Singh armed with a gandhala, his brothers Billaaur Singh armed with a gandasas

and Jarmail Singh and Waryam Singh armed with lathies emerged suddenly and made a joint assault on the deceased Chanan Singh and the three eyewitnesses, Gurdev Singh, PW 10, Sukhdev Singh, PW 11 and Makhan Singh, PW 12. The deceased along with the three eyewitnesses was rushed to the Rural Dispensary, Rori where they were examined at 6 pm by Dr. Bishnoi, PW 3, who found that the deceased had a lacerated wound 9cm x 1 1/2cm bone deep on the right parietal region, 9 cm away from the tip of right pinna; margins of wound were red, irregular and were bleeding on touch; direction of wound was anterior-posterior. The deceased succumbed to the injuries. Doctor who performed an autopsy on the dead body of the deceased. In his opinion, the death of the deceased was due to cerebral compression as a result of the head injury which was sufficient in the ordinary course of nature to cause death. In the background of these facts, the Hon'ble Supreme Court held as under:

“In our judgment, the High Court having held that it was more probable that the appellant Jagrup Singh had also attended the marriage as the collateral, but something happened on the spur of the moment which resulted in the infliction of the injury by Jagrup Singh on the person of the deceased Chanan Singh which resulted in his death, manifestly erred in applying Clause Thirdly of Section 300 of the Code. On the

finding that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without pre-meditation and in a sudden fight, it cannot be said that the accused intended to kill the deceased. The result, therefore, is that the conviction of the appellant under Section 302 is altered to one under Section 304, Part II of the Indian Penal Code. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years.”

20. In the matter of **Tholan** (*Supra*) the facts of the case were that appellant came near the house of deceased Sampat complaining against the organisers of the chit. At that time he was in front of the house of one Palaniammal, who on hearing the shouts of the appellant asked him to go away. The appellant in turn abused Palaniammal. At that time deceased Sampat came out of his house and cautioned appellant not to indulge in abusive language, as the ladies were present and told him to go away. The appellant questioned the authority of the deceased to ask him to go away. Both were remonstrating with each other when appellant took out a knife from his waist and stabbed deceased Sampat on the right side of his chest and pushed the deceased to a distance of 25 feet and left him there and went away. Sampat succumbed to his injury. The cause of death was stated to be shock and haemorrhage on account of the stab injury and the corresponding internal injury to vital organs

like the heart and the lung. This injury in the opinion of the Medical Officer was sufficient in the ordinary course of nature to cause death.

However, the Hon'ble Supreme Court held as under:

“It is equally not in dispute that appellant gave only one blow with a knife. Appellant had no quarrel or dispute with deceased. It is not shown that deceased 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. The incident occurred on the spur of the moment. It appears that the house of the deceased 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 is not shown to be the organiser of the chit. Probably when the deceased 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. 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.”

21. Further in the matter of *Sasi alias Chalil Sasi vs . State of Kerala* reported in (2000) 10 SCC 55, some of the accused had sustained some injuries but they were so negligible and insignificant that the prosecution could not be said to be obliged to explain those injuries. The question was whether the blow given by the accused was done with the intention of causing the death of the deceased. The Hon’ble Supreme Court held as under:

“Though the accused had given one blow on the vital organ of the body it cannot be held that he inflicted the blow with the intention of causing death and consequently the offence should be one under Part II of Section 304 IPC and not under Part I. The appellant is convicted under Section 304 Part II and sentenced to Rigorous imprisonment for four years.”

22. In the present case although the appellant had given a blow to the deceased which proved fatal, but it was sufficiently proved on record that there was no premeditation and no malice. The accused met the deceased accidentally. The accused was already under the fear of being caught and he was forcefully dragged inside by the friends of the deceased in the house of the deceased. Even after coming in the house he did not show any violence. It was only after the aggression shown by the deceased that the accused took out a knife from his pocket and stabbed in the left side of the chest of the accused. All that happened was on the spur of moment. As said by the Hon'ble Apex Court in the matter of **Kulwant Singh** (*supra*) it is a matter of hit and run.

23. In the view of these facts and circumstances and the legal position discussed above, we are not convinced that the accused had the intention to cause death of the deceased. However, since the accused was already carrying knife in his pocket therefore he can be attributed with the knowledge that by stabbing with such a weapon 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 299 of the Indian Penal Code.

24. In the view of the aforesaid, the judgment and the order of the learned Additional Sessions Judge dated 22.08.2001 and 01.09.2001, respectively, convicting the appellant for the offence punishable under Section 302 IPC is modified to the extent that the appellant is convicted under Section 304 Part II IPC. As per the nominal role placed on record the accused remained in judicial custody for a period of 6 years 10 months 11 days which includes the remission period earned by him and the date i.e. 12th November 2003 when he was granted regular bail the total period the appellant spent in jail comes to more than seven years.

25. Taking into consideration the period of incarceration already spent by the appellant in jail, the appeal filed by the appellant is partly allowed and the sentence of life imprisonment as awarded by the Ld. Trial court is converted to the period of sentence already undergone by him.

26. It is ordered accordingly.

KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

DECEMBER 03, 2013

v/pkb

CRL.A. 238/2002