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

+ **CRL.A. 1015/2010**

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Decided on: 7th January, 2013

MAHESH SINGH @ RATI RAM

..... Appellant

Through: Mr. Ajay Verma and Mr. Gaurav
Bhattacharya, Advocates.

versus

THE STATE OF THE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP for the State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MS. MUKTA GUPTA, J (ORAL)

1. By the present appeal the Appellant impugns the judgment dated 30th March, 2010 convicting the Appellant for offence under Section 304 Part-I IPC and the order on sentence dated 31st March, 2010 directing him to undergo Rigorous Imprisonment for ten years with a fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for three months.

2. Learned counsel for the Appellant contends that PW4 Ram Layak/Complainant has not supported the prosecution case. He has not stated in his testimony that he saw the Appellant stabbing the deceased. Further the presence of PW5 Laxmi Narayan is doubtful as PW4 has neither

stated in the FIR nor in his testimony before the Court concerned about the presence of PW5 Laxmi Narayan. Even PW13 ASI Rajinder Singh has not spoken about the presence of the PW5 at the spot. The defence of the Appellant is that he has been falsely implicated. In the alternate even if the testimony of PW4 and PW5 are to be accepted, at best a case for conviction under Section 304 Part-II IPC is made out and not under Section 304 Part-I and thus the conviction and sentence of the Appellant be modified accordingly. Reliance is placed on *Tholan vs. State of Tamil Nadu, 1984 (2) SCC 133* and *Ramesh Vithalrao Thakre and another vs. State of Maharashtra, 2009 (17) SCC 438*.

3. Learned APP for the State contesting the submissions of the learned counsel for the Appellant states that both PW4 and PW5 are the eye-witnesses and PW4 has stated about the entire incident. In fact, initially a quarrel took place between the deceased and the Appellant when PW4 intervened and separated them and thereafter again the Appellant attacked Rama Devi the deceased. PW4 has stated that Rama Devi cried stating that the accused was running after stabbing her. This statement of Rama Devi to PW4 is a dying declaration under Section 32 of the Indian Evidence Act, 1872 and is also relevant evidence under Section 6 of the Evidence Act. The cut marks on the clothes and deceased tallied. The Appellant was caught at the spot along with the knife. Further the blood stains on the knife recovered from the Appellant tallied with the blood group of the deceased. Moreover PW13 Rajinder Singh the investigating officer has specifically stated that he recorded the statement of the PW5 on the same day.

4. I have heard learned counsel for the parties and perused the record.

5. Briefly the case of the prosecution is that on 29th/30th September, 2009 on the basis of statement of PW4 Ram Layak, FIR No. 173/2009 was registered under Section 307 IPC wherein Ram Layak stated that he was running his tea shop at Bangla Sahib Road near Nehru Bazar Chowk, Opposite Kalawati Hospital, New Delhi. On 29th September, 2009 at about 9.30 PM the Appellant, who used to beg money under the garb of “kali mata”, came at his shop and quarreled with Rama Devi, the deceased, who used to stay on the pavement over there. PW4 intervened and separated the two of them. The two again started quarrelling on which the Appellant got enraged and stabbed the deceased on her abdomen by the knife meant for cutting vegetables. After inflicting stab injury the Appellant fled away from the spot. He was chased by PW4 and in the meantime, Constable Sandeep who was on patrolling duty came there and he handed over the custody of the Appellant along with the knife to Constable Sandeep Kumar. Rama Devi was taken to the nearby hospital in rickshaw where she succumbed to injuries on the next day. After completion of investigation, a charge sheet was filed against the Appellant under Section 302 IPC and the Appellant was tried for the said offence.

6. Before the learned Trial Court, Ram Layak/the Complainant when he appeared in the witness box stood by his statement made to the Police, however, he stated that he did not see the Appellant stabbing Rama Devi. PW4 Ram Layak stated that he intervened and separated the two, he saw the Appellant fleeing from the spot and Rama Devi crying saying that the accused was running after stabbing her. According to PW4, he chased the Appellant and caught hold of him. In the meantime, the police reached at the

spot and he handed over the Appellant along with the knife used for cutting the vegetables.

7. PW5 Laxmi Narayan in his testimony before the Court has stated that he used to prepare chapatties in front of Kalawati Hospital. On 29th September, 2009 at about 9.30 p.m. he was present at his place of work and when the Appellant came there and was standing near the tea stall of PW4 an altercation took place between the Appellant and the deceased. PW4 the tea shop owner separated both of them. Thereafter again the Appellant and the deceased started having altercation and the Appellant stabbed the deceased Rama Devi with a knife and fled away from there. Ram Layak, PW4 the tea shop owner chased the Appellant and apprehended him. In the meantime, police reached at the spot and the Appellant was handed over to the police. Rama Devi was taken to the hospital however he did not know, who took Rama Devi to the hospital. This witness emphatically stated that his statement was recorded on the same day however, in his cross-examination this witness has stated that he had not seen the Appellant stabbing the deceased and volunteered to add that he came to know about the stabbing incident when the deceased told him that she had been stabbed.

8. In view of the testimony of PW4 and PW5 the factum of the Appellant having quarreled with Rama Devi, the deceased has been established. Further PW4 separating the two of them and the two of them quarrelling again has been established. Both PW4 and PW5 have stated they saw the Appellant running away and Rama Devi was shouting that the Appellant was running away after stabbing her. The Appellant was caught at the spot along with the knife. Even if the version of PW5 that he saw the Appellant

stabbing Rama Devi, the deceased is to be disbelieved as in his cross-examination he has stated that he did not see the Appellant stabbing Rama Devi still on the basis of remaining evidence of PW4 and PW5 including the version that they heard Rama Devi shouting that the Appellant was running after stabbing her, it is established beyond reasonable doubt that the Appellant gave one stab blow to Rama Devi in the abdomen with a vegetable knife and was immediately apprehended along with the blood stained knife. The version of PW4 and PW5 is further corroborated by the fact that as per the postmortem report Rama Devi had one stab wound of 2.8 cm x 0.5 cm on the left side of the front of abdomen and as per the FSL report the knife recovered from the Appellant had blood stains which tallied with the blood group of the deceased and the cut mark on the shirt of the deceased was possible with the knife.

9. I do not find any merit in the contention of the learned counsel for the Appellant that PW5 was not an eye witness as neither PW4 nor PW6 Constable Sandeep Kumar nor PW13 ASI Rajinder Singh the Investigating Officer have spoken about his presence at the spot on the said date. No doubt PW4 in the FIR or in his testimony before the Court has not stated about the presence of PW5 at the spot however PW13 in his statement has categorically stated that he recorded the statement of the PW5 on the same date after the incident took place at 9.30 p.m. Further PW5 was selling chapattis at the spot for the last two/three years. A perusal of the cross-examination on behalf of the Appellant shows that the entire thrust of the cross-examination is that the PW5 was running a stall at the spot of selling chapattis unauthorizedly without any license. Thus PW5 is a natural witness

and his presence at the spot cannot be denied. Further the statement of Rama Devi soon after the incident which is deposed to both by PW4 and PW5 is admissible under Section 32 of the Indian Evidence Act, 1872 and is also a relevant fact under Section 6 of Evidence Act.

10. Having come to the conclusion that the prosecution has proved beyond reasonable doubt that the Appellant caused the stab injury on the abdomen of the deceased Rama Devi resulting in her death the only point left for consideration is whether on the facts of the case the offence committed by the Appellant would fall under Section 304 Part-I IPC as held by the learned Trial Court or 304 Part-II IPC. In the present case even as per the prosecution case a quarrel suddenly took place between the Appellant and the deceased on which PW4 intervened however, thereafter again they started quarrelling. Thus the incident took place on the spur of the moment. Further the Appellant gave one stab blow to the deceased in the abdomen and that too by a vegetable knife, though the effect of the blow was that it cut the left lower liver of the deceased resulting in her death. Thus in the circumstances the Appellant can only be attributed with the knowledge that he was likely to cause an injury which was likely to cause death and thus he is guilty of committing an offence under Section 304 Part-II IPC and not 304 Part-I.

11. In *Tholan vs. State of Tamil Nadu* (supra) while dealing with the similar situation the Hon'ble Supreme Court held:

“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

Randhir Singh v. State of Punjab AIR 1982; Kulwant Rai v. State of Punjab AIR 1982 and Hari Ram v. State of Haryana AIR 1983. To this list two more cases can be added Jagtar Singh v. State of Punjab Cri. A.N. 81/83 decided on 14-2-1983 reported in MANU/SC/0105/1983 : 1983CriLJ852 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.”

12. Further In *Ramesh Vithalrao Thakre* (supra) considering a single blow on the lower abdomen it was held:

“9. There is no denying the fact that one single injury was caused to the deceased by Ramesh when Rekha intervened to save her brother Ashok from being assaulted. The primary target of Ramesh was Ashok, who got saved when Rekha received the injury on her chest. After causing the single injury to Rekha, it is the prosecution case itself, that Ramesh did not cause any other injury to Rekha nor even to Ashok, PW 1.

10. From the evidence on the record and the established circumstances, it is not possible to say with certainty that the appellant intended to cause the death of Rekha. Even though the principle contained in Section 301 IPC would be applicable to the case, it appears to us that the appellant can only be clothed with the knowledge that the injury which he was causing was likely to cause the death of Rekha but without any intention to cause her death or to cause such bodily injury as is likely to

cause death. The offence, under the circumstances, would be one which would fall under Section 304 Pt. II IPC.

11. We, accordingly set aside the conviction and sentence of Ramesh for the offence under Sections 302/34 IPC and instead find him guilty for the offence under Section 304 Pt. II IPC and sentence him to five years' rigorous imprisonment and a fine of Rs. 4000. In default of payment of fine, the appellant shall suffer rigorous imprisonment for a period of one year. The fine shall be paid within three months and on realisation shall be paid to the mother of the deceased, PW 2, Janabai.”

13. In view of the aforesaid discussion the conviction of the Appellant is modified from one under Section 304 Part-I to Section 304 Part-II and the sentence is modified from Rigorous Imprisonment for a period of ten years to that of Rigorous Imprisonment for a period of five years and a fine of Rs. 1,000/- and in default of payment of fine to undergone three months simple imprisonment.

14. Appeal is accordingly disposed of. The Appellant be informed through Superintendent, Tihar Jail.

(MUKTA GUPTA)

JANUARY 07, 2013
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