

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

% *Date of Judgment: 16.9.2013*

+ **CRL.A. 1154/2010**

DEVENDER @ D K Appellant

Through: Ms. Anita Abraham, Advocate.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Sunil Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J (oral)

1 On 02.4.2006, DD No.54B (Ex.PW-3/A) was recorded in the local police station P.S. Shalimar Bagh which was to the effect that at 6.37 PM on the same day at Kela Gown, Railway Colony one unknown person had received injuries who had been removed to the hospital by the PCR.

2 H.C.Mohd. Aftab (PW-17) posted in the PCR North-West Zone, Model Town had removed the injured (Sachin) to the BJRM from the aforementioned place of incident and had informed the local police pursuant to which Ex.PW-3/A had been registered.

3 Investigation was entrusted to ASI Kartar Singh (PW-10) who
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along with Constable Satender (PW-2) reached the spot. On reaching the spot they learnt that the injured had been removed to the hospital. At the hospital, the injured was examined vide MLC (Ex.PW-8/A) by Dr. Manideepa (PW-8); patient was reported dead.

4 The statement of the eye-witness Mahesh Chand Gupta (PW-1) was recorded in the hospital. The rukka (Ex. PW-16/A) was prepared at 8.40 PM by Inspector Rajender Pal (PW-16) and was handed over to PW-2 pursuant to which the FIR (Ex.PW-3/B) was registered.

5 The version of the prosecution is that the deceased Sachin was working as a driver with the family of the accused. On the fateful day i.e. 02.4.2006 at 6.15 PM the accused Devender @ DK had a fight with the deceased; this was a misunderstanding relating to the sister of the accused namely Preeti; the accused Devender along with other co-accused Rajesh, Ravinder and Kasturi Devi (the other family members of the present appellant who have since been acquitted vide the same impugned judgment) had all accosted the deceased; in this verbal duel the appellant gave knife blows to the deceased pursuant to which he died.

6 This incident was witnessed by the father of the deceased (PW-1) as also his mother Smt.Rekha (PW-4). The dead body was identified by the parents of the victim as also by his uncle Dinesh Chand examined as PW-5. The identification memo has been proved as Ex. PW-5/A.

7 Crime team was summoned to the spot. Spot was photographed; the photographs were taken by Dalbir Singh (PW-11); positives were proved as PW-11/1 to 5 and negatives were collectively proved as

Ex.PW-11/6. Blood was lifted from the spot as samples which were seized and sealed in pulandas. The site plan (Ex. PW-1/5) was prepared at the pointing out of the complainant (PW-1). The scaled site plan was thereafter prepared by Draftsman Manohar Lal (Ex.PW-14) and proved as Ex.PW-14/A.

8 The appellant was arrested and pursuant to his disclosure statement (Ex.PW-1/D) he got recovered his torn vest and shirt and also blood stained dagger under the double bed in his room. This dagger was the purported weapon of offence and sketch PW-1/H was prepared. The clothes of the accused were seized and sealed in separate pullandas vide memo Ex. PW-1/E. The subsequent opinion of the doctor on this weapon of offence was obtained.

9 The dead body was sent to the mortuary. Post mortem on the victim was conducted by PW-9 by Dr.Upender Kishore (PW-9) who had on external and internal examination noted two wounds; the details of which reads herein as under:

“(i) Incised stab would elliptical shape present over the upper outer front of left side chest placed 8 cm outer to the nipple both angle acute of size 5 x2.5 CM into cavity deep. The stab cut the skin, subcutaneous tissues, muscle of chest through the 3rd intercoastal space by cutting the second and third rib into the parenchyma left lung in the upper lobe making an incised wound of size 4 cm x 0.5 cm x 4cm, the direction of the stab was inwards, downwards and backwards from left to right.

(ii) Incised wound of size 5x3 cm x4 cm present over the upper inner aspect of left arm, 15 cm above the elbow joint going subcutaneous into the axillary fossa with exit wound of size 5x3 cm and then entered the left side cavity of chest making stab would of size 5x2.5 cm x cavity deep with angle acute penetrate

the chest cavity by cutting the skin, subcutaneous tissue, muscle of chest through the fifth inter costal space by cutting the fourth and fifth rib and into the parenchyma of lungs at the lower lobe of size 3 cm x.5 cm x 3 cm. The direction of the stab was inwards slightly upwards and backwards from left to right. The two wounds communicate to each other (the axillary artery was also cut with the muscles and subcutaneous tissue through the injury in axilla.)

(iii) Cause of death- Shock due to haemorrhage as a result of ante mortem injuries to the left lung produced by sharp cutting/stabbing double edge weapon sufficient to cause death in ordinary course of nature. Time since death was 40 to 42 hour."

10 The doctor also gave his subsequent opinion on the weapon of offence (Ex. PW-9/B) opining that the aforementioned injuries could have been caused by the weapon i.e. the dagger (Ex.P1) which had been shown to the doctor.

11 CFSL vide its report dated 05.6.2006 Ex.PX had opined blood group A both on the dagger (Ex.P1) as also on the clothes of the accused which was also the blood group of the deceased.

12 The other accused persons i.e. Ravinder @ Rinku, Raju @ Rajesh and Kasturi Devi had also been arrested but the impugned judgment had acquitted the aforementioned three persons noting that their names had figured only in the supplementary statement of the eye-witness (PW-1) and as such their involvement in the offence being doubtful; benefit of doubt had been afforded to them and they have been acquitted. Thus the details relating to investigation qua them have not been adverted to.

13 This was the sum total of the evidence which had been collected

by the prosecution against the present appellant.

14 In the statement of the appellant recorded under Section 313 of the Cr. P.C. he had pleaded innocence; his case was that he is innocent and he has been falsely implicated in the present case; the witnesses are interested and they have deposed with ulterior motives.

15 No evidence was led in defence.

16 On behalf of the appellant, arguments have been addressed in detail. However, after further arguments, learned counsel for the appellant states that she is not challenging the conviction on merits. This is under instructions from the appellant, she only prays for leniency in sentence.

17 On this count attention has been drawn to the post mortem report; submission being that the injuries which were noted on the person of the deceased were only two in number; both of them evidenced that they were quick successive blows which have been inflicted in a heat of passion upon the victim. There was no premeditated plan or intent to kill the deceased. The tiff even as per the case of the prosecution was on a petty matter i.e. on the issue of the alleged relationship of Preeti, the sister of the appellant with the victim; the motive has also not been spelt out properly by the prosecution. Submission being that the appellant should not have been convicted for the offence under Section 302 of the IPC; at best the appellant could be convicted for the offence under Section 304 Part I of the IPC. To support her stand, she has relied upon a judgment of the Apex Court reported as (2002) 3 SCC 327

Sukhbir Singh Vs. State of Haryana . Submission being that in this case when the injuries had been inflicted upon a non-vital part of the body and the appellant not having acted in a cruel and unusual manner the benefit of Section 304 Part I of the IPC had been afforded to him.

18 Arguments have been countered. On the point of sentence, learned public prosecutor submits that the injuries cannot be termed to be on a non-vital part of the body; both the injuries had pierced the left lung of the victim which had led to his death. Submission being that the judgment calls for no interference.

19 On the perusal of the record and in view of the limited issue to be answered by this Court, the eye-witness account which has been depicted in the version of PW-1 coupled with medical evidence which is the post mortem report would be relevant.

20 Testimony of PW-1 evidences that the appellant had given a “couple of blows on the left arm near the shoulder of his son” i.e. upon the deceased; PW-1 tried to stop him but he was pushed back; he was then hit by a brick by the appellant. No further role has been attributed to the appellant of inflicting any further injuries upon the victim thereafter.

21 The post mortem report has evidenced two injuries upon the victim (they have been noted supra); they corroborate the version of the eye-witness; they are two knife blows which had been inflicted on the left upper part of the victim; as per the eye-witness account these blows were inflicted on the left arm near the shoulder of the victim; they had pierced the left lung of the deceased and had ultimately led to his death.

22 The tiff even as per PW-1 was on the issue of Preeti; whether the deceased Sachin treated her as his sister or not; which had become the cause of the eruption of the quarrel.

23 This ocular testimony coupled with the medical evidence substantiates the submission of the learned counsel for the appellant that this quarrel had erupted suddenly in a heat of moment; it was in a sudden fit of passion that the appellant had thereafter inflicted two knife blows upon the victim; these injuries were also not on any vital part of the body of the victim. Unfortunately, they had pierced the left lung of the victim which had ultimately led to his death. Thus in these circumstances, the intent or premeditated plan to commit the murder of the victim does not arise.

24 Section 300 of the IPC reads as under:

“300. Murder- 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”

25 There are four exceptions contained in this provision of law. The Fourth exception has been relied upon by the learned counsel for the appellant. Exception IV to Section 300 reads herein as under:

“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 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.”

26 To avail of the benefit of Exception IV to Section 300, the

defence is required to probabalize that the offence was committed without any premeditation in a sudden fight in the heat of passion upon a sudden quarrel and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of premeditation and on account of total deprivation of self-control but on account of heat of passion, the offence was committed which, normally a man of sobriety would not resort to. Sudden fight though not defined under the Act, implies a mutual provocation. This has been so held by the Supreme Court in the Case of Sukhbir Singh (supra).

27 Applying this test to the facts of the instant case, admittedly the quarrel had erupted suddenly on the issue of Preeti; whether the deceased treated her as a sister or not? The testimony of PW-1 had established this. Further testimony of PW-1 is to the effect that two knife blows had been inflicted on the left arm of the victim near his shoulder. PW-1 intervened; he was also attacked by a brick. It is not the case of PW-1 that any further blows were inflicted upon the victim. The infliction of these two blows and the nature of their injuries proves that the intention of the appellant was not to cause the murder of the victim; it was not a premeditated act; the appellant had in fact neither acted in a cruel or in an unusual manner. In fact both the injuries resulting in the death of the victim cannot be termed either as cruel or unusual for the purpose of not availing the benefit of Exception IV to Section 300 of the IPC to the appellant. After the victim had fallen down no further injury was inflicted upon him.

28 All these factors show that this quarrel had erupted in a heat of

passion and thus there is no reason for the court not to accord the appellant the benefit of Exception IV to Section 300 of the IPC. In the facts of the instant case, the appellant is accordingly convicted under Section 304 Part –I of the IPC.

29 The appellant is under judicial custody. His latest nominal roll (dated 30.4.2013) reflects that he has already undergone incarceration for about eight years and two months which includes the period of remission earned by him. Keeping in view the fact that this offence is of the year 2006 as also the fact that the appellant is young in years, he being 19 years of age on the date of the offence and approximately in his late 20s by now; it would be a fit case for the release of the appellant for the period already undergone by him.

30 We are informed that the appellant is being represented by a legal aid counsel; he is stated to be not in a financial position to pay the fine of Rs.1,00,000/- which had been imposed upon him in terms of the impugned judgment and sentence. We accordingly reduce the fine from Rs.1,00,000/- to Rs.50,000/-. This fine amount shall be paid to the legal heirs of the victim Sachin. The fine shall be deposited before the Investigating Officer within a period of one week from today. The Investigating Officer who is present in the Court ensures that the fine will be remitted to the legal heirs of the victim. On the payment of fine the appellant shall be released forthwith if not required in any other case.

31 With these directions, the appeal stands disposed of.

32 Copy of this order be sent to the concerned Jail Superintendent for
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intimation and compliance.

INDERMEET KAUR, J

KAILASH GAMBHIR, J

SEPTEMBER16, 2013

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