

\$~R-44 & 45

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

% *Date of Decision: October 13, 2014*

+ **CRL.A.778/2011**

GUDDU @ PANDU Appellant

Represented by: Ms.Inderjeet Sidhu, Advocate

versus

STATE NCT OF DELHI Respondent

Represented by: Mr.Lovkesh Sawhney, APP

CRL.A.556/2014

GUDDU @ PANDU Appellant

Represented by: Ms.Inderjeet Sidhu, Advocate

versus

STATE NCT OF DELHI Respondent

Represented by: Mr.Lovkesh Sawhney, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Guddu @ Pandu has been convicted vide judgment dated August 26, 2010 for having murdered Firasat Ali at Kabadi Pulia on March 02, 2009 at about 7:30 PM. Vide order on sentence dated September 01, 2010 Guddu has been sentenced to undergo imprisonment for life and to pay a fine in sum of ₹3,000/- (Rupees Three Thousand). The conviction is based on the testimony of Munawar PW-4, a friend of Firasat Ali, to which corroboration has been found from the testimony of Bishamber Dayal PW-1 and Sanoj PW-8. He challenges his conviction in Crl.A.No.778/2011.

2. Guddu has been convicted vide judgment dated August 26, 2010, for an offence under Section 25 of the Arms Act, for which, vide order on sentence dated September 01, 2010 he has been sentenced to undergo rigorous imprisonment for three years and pay fine in sum of ₹2,000/- (Rupees Two Thousand only). He challenges the said conviction in CrI.A.No.556/2014, and we note that by the time the appeal was filed, Guddu had already undergone the sentence imposed upon him.

3. We note at this stage that in CrI.A.No.778/2011, Guddu challenged the two orders convicting him in separate FIRs in respect of which two session trials were held. In said appeal an order was passed that Guddu should file an independent appeal concerning his conviction for having committed an offence punishable under Section 25 of the Arms Act and this led Guddu to file CrI.A.No.556/2014.

4. Guddu's antecedents are fairly bad. He is an accused in more than a dozen FIRs and has been convicted in half a dozen. We note said fact because it is relevant to decide the two appeals. The fact of Guddu being involved in more than a dozen offences is the likelihood of his knowledge to manipulate evidence which could be used as a plea of alibi.

5. As recorded in the MLC Ex.PW-3/A, in Guddu's trial for the offence of having murdered Firasat, Firasat S/o Habib aged 25 years was brought to the casualty of GTB Hospital, Shahdara at 8:30 PM on March 02, 2009 by Munawar. He was declared brought dead. The information of Firasat being brought to the hospital and being declared dead was conveyed by the police officer stationed at the hospital to PS Seelampur where the duty officer recorded DD No.25A. Copy thereof was entrusted to ASI Laique Ahmed, who accompanied by HC Umesh PW-10 proceeded to GTB Hospital, where

they met Munawar PW-4. As deposed to in sync by Munawar and ASI Laique Ahmed, Munawar's statement Ex.PW-4/A was recorded beneath which endorsement Ex.PW-17/A was made by ASI Laique Ahmed. FIR No.95/2009 Ex.PW-2/A was recorded at PS Seelampur for an offence under Section 302 IPC.

6. Being relevant for the discussion in the appeal, in the statement Ex.PW-4/A, Munawar has given the description of the assailant as a man aged between 25 to 26 years, wheatish in colour and of medium height; all of which conform to Munawar. In his statement he has disclosed that he and Munawar were travelling on route No.24 in an RTV and when the vehicle reached near Kabadi Pulia at around 7:15 in the evening a boy tried to pick Firasat's pocket and Firasat caught the hand of the boy, who tried to free himself from Firasat's hold, but on failing to do so, stabbed Firasat with a knife, due to the assault Firasat fell out of the RTV on to the road; the assailant fled. He took Firasat in a TSR firstly to Kamal Nursing Home nearby where the doctor told him to take Firasat to GTB Hospital.

7. Deposing as PW-4, Munawar has deposed in sync with his statement Ex.PW-4/A. He has identified Guddu as the one who had assaulted Firasat.

8. Bishamber Dayal PW-1 and Sanoj PW-8, the driver and conductor of RTV No.DL 1A 0515, have deposed in sync with each other and additionally with Munawar in so far a stabbing took place in the RTV and the victim falling on the road and the assailant fleeing. The two have naturally not identified the assailant because Bishamber was driving the RTV and was obviously looking ahead on the road and Sanoj who was at the rear, being the conductor, naturally could not see the features of the assailant with clarity because either the assailant was having his back towards him or

Firasat was blocking the view. But, the relevance of the testimony of the said two witnesses is to corroborate Munawar as regards the incident of stabbing in the RTV.

9. Guddu did a very clever thing. To create an alibi for himself, he walked suspiciously on seeing Ct.Pawan Singh PW-1 (in the session trial pertaining to FIR No.45/2009 PS Welcome Colony) he voluntarily got himself searched at 8:15 PM on March 02, 2009, in front of Bagh Wali Masjid, Kabootar Market, Welcome Colony and got recovered the knife Ex.P-1 resulting in he being booked as an accused for having committed an offence under the Arms Act.

10. He obviously did so to have an alibi that at 8:15 PM he was in the custody of Ct.Pawan Singh. But unfortunately for Guddu, the seeds which he sowed did not germinate because a secret informer informed the Investigating Officer of FIR No.95/2009, PS Seelampur that Guddu, the person accused in FIR No.45/2009 PS Welcome Colony was the one who had stabbed Firasat Ali and thus he was arrested on March 23, 2009 in FIR No.95/2009, PS Seelampur, for the reason in FIR No.45/2009 PS Welcome Colony he was admitted to bail.

11. The place where appellant got himself voluntarily searched from Ct.Pawan Kumar i.e. Bagh Wali Masjid is about 1 km away from the Kabadi Pulia where the stabbing took place. As noted above the stabbing took place at around 7:15-7:30 PM and appellant got himself arrested at around 8:15 PM.

12. We note that pertaining to FIR No.95/2009, PS Seelampur Guddu refused to participate in the TIP.

13. Post-mortem report Ex.PW-18/A of Firasat authored by Dr.Meghali

Kelkar PW-18 evinces 17 injuries, 4 of which are incised stab wounds : injury No.4, 5, 9 and 13. The remainder are abrasions or lacerated wounds, the obvious result when Firasat fell outside the RTV on to the road. Of the three non fatal incised stab wounds, one is on the left cheek, the other is on the left ala of nose, the third is a defence injury being on the left hand. The fourth injury noted at serial No.9 is the fatal injury. The blow has been struck in the abdomen. The mesentery blood vessels and left common iliac artery have been cut. The jejunal loops at three sides have been cut. The cause of death obviously is haemorrhagic shock due to injury No.9, opined to be sufficient in the ordinary course of nature to cause death.

14. Having perused Munawar's testimony in FIR No.95/2009, PS Seelampur, we see no reason to disbelieve Munawar who, as regards the incident has been corroborated by PW-1 and PW-8. It assumes importance that soon after the incident he described the assailant to ASI Laique Ahmed in his statement Ex.PW-4/A. He has withstood the test of cross-examination. He has identified the appellant as the assailant of Firasat.

15. Learned counsel for the appellant urges that there was no intention to kill. Munawar's testimony would show that the appellant was a pickpocket. When Firasat caught the hand of the appellant as it entered Firasat's pocket, the appellant tried to free himself but could not do so. At that point of time the appellant took out the knife to stab Firasat. Counsel urges that the offence would be at best of culpable homicide not amounting to murder, punishable under Section 304 Part II IPC.

16. We do not agree. As a pickpocket, and armed with a knife, intention has to be attributed to the appellant to assault the person who would challenge him in his misadventure; as he did in the instant case when Firasat

caught appellant's hand when the appellant put it inside Firasat's pocket. The stabbing was intentional. It may be true that the appellant may not be having any specific intention to kill Firasat, but he has to be attributed the intention to cause the specific four stab injuries which he inflicted. As he stabbed Firasta intentionally in the stomach, it has to be held that the appellant caused injury No.9 with an intention of causing the specific injury. The injury has been opined to be sufficient in the ordinary course of nature to cause death.

17. Thus, we concur with the decision dated August 26, 2010 passed in Sessions Case No.99/2009 related to FIR No.95/2009, PS Seelampur that the appellant is guilty of the offence punishable under Section 302 IPC.

18. As regards the other appeal, we find that Ct.Pawan Kumar PW-1 has withstood the test of cross-examination regarding appellant being seen walking suspiciously by him and on a search the knife Ex.P-1 being recovered.

19. Appellant's conviction vide decision dated August 26, 2010 is also correct.

20. Both appeals are dismissed.

21. Two copies of this decision be sent to the Superintendent Central Jail Tihar for his record and to be supplied to the appellant.

22. TCR in both cases be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 13, 2014 /mamta