

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

Judgment Reserved on: December 08, 2014

% *Judgment Delivered on: December 10, 2014*

+ **CRL.A.1431/2014**

RAKESH @ TONI Appellant
Represented by: Mr.K.Singhal, Advocate

versus

STATE NCT OF DELHI Respondent

Represented by: Mr.Varun Goswami, APP
Insp.Balbir Singh, PTC Jharoda Kalan
and SI Mahender Partap, PS Sultan
Puri

CORAM:
HON'BLE MR. JUSTICE PARDEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA
PARDEEP NANDRAJOG, J.

1. The Indian Evidence Act, 1872 has three parts. Under the heading '*Relevance of Facts*' Part-I contains sections which guide the court in determining as to which facts would be relevant at a trial to determine the facts in issue. Under the heading '*On Proof*' Part-II contains sections which guide the court in determining how relevant facts or facts in issue have to be proved, and which would include documents. It contains provisions concerning presumptions pertaining to documents. Under the heading '*Production and Effect of Evidence*' Part-III contains provisions which help the court in determining whether a burden cast on a party to prove a fact in issue has been discharged.

2. It is Part-III of the Law of Evidence which calls for a clear noting of each and every relevant fact proved at the trial, for the reason such facts

which are relevant and probabalize a fact in issue asserted by the one who affirms need to be weighed against each and every such relevant fact which deprobablizes a fact in issue. The court has to keep in mind each and every relevant fact proved while determining whether the incline has been crossed to reach the plateau of '*fact in issue being proved*'.

3. With the aforesaid preface we commence our journey in appeal, noting that vide impugned decision dated April 15, 2013, the learned Trial Judge has convicted the appellant for the offence of having murdered Suraj, using the knife Ex.P-6; and for having committed an offence punishable under Section 25/27 of the Arms Act because the blade of the knife had length of 21 cm and breadth, at the centre, of 4 cm; the knife was tapering to form a tip at the other end of the knife. Such kinds of knives were prohibited under a government notification dated February 17, 1979 No.F13/2003/78-Home(c), as per which no person could possess an open knife or a knife having mechanical device in a public place where the blade length was more than 7.62 cm.

4. The learned Trial Judge has believed the ocular version deposed to by Rajesh Kumar PW-2 and Om Prakash PW-4.

5. We therefore would be noting the testimony of the two eye witnesses of the prosecution, but before that would note that the FIR Ex.PW-14/E, has been registered on the basis of the statement Ex.PW-4/A made by Om Prakash PW-4 to Insp.Balbir Singh PW-18 at Sanjay Gandhi Memorial Hospital, Mangolpuri where, Suraj was admitted at 7:40 PM on November 27, 2010 by Ct.Manoj, as recorded in Suraj's MLC Ex.PW-7/A, proved at the trial by Dr.M.Das PW-7, the author of the MLC.

6. In the statement Ex.PW-4/A, which is in Hindi, loosely translated, Om Prakash disclosed as follows:-

“Statement made by Sh. Om Prakash @ Titu aged 39 years, S/o Late Sh. Murari Lal, R/o H.No. A-66, Gali No.2, Ratan Vihar, Delhi.

I reside at the aforesaid address as a tenant alongwith my elder brother Ramesh. I am a Rickshaw Puller and usually park my rickshaw at G-block, Shani Bazar, Near Police booth. Today i.e. on 27/11/10 at about 6:25 in the evening I went to Shani Bazar Road, Sulatanpuri alongwith my nephew Suraj, S/o Late Sh. Raju, R/o B-453 Aman Vihar, Delhi and Aunt's (Mausi) son namely Rajesh Kumar, S/o Late Sh. Atma Ram, R/o C-7/91, Sultanpuri, Delhi. I had purchased an All Out refill from one shop at Shani Bazar Road. My nephew Suraj had purchased an old black coloured sweater from Shani Bazar and wore the same. After that we all were returning to our home. On the way we sat near a toilet which was situated in front of G-block Govt. School and started smoking 'beedi'. At the same time at about 6:45 P.M. in the evening one boy namely Rakesh @ Tony, S/o Billu resident of G-Block, Sultanpuri whom we were already acquainted came to us and asked Suraj to provide him a cigarette. My nephew Suraj replied that he had Beedi not Cigarette. On this Rakesh @ Tony while hurling abuses angrily said that don't you know who I am? I will count till 3 and if you will not provide me the Cigarrete then I will do away with you. Then Tony counted till 3 and took out a knife from the right side back of his pant and stabbed my nephew Suraj on the left side of his chest. On this I hit Rakesh @ Tony with a brick which was lying over there. Tony ran away from the spot and someone called at No. 100. Police reached the spot and they took my nephew Suraj to Sanjay Gandhi Hospital Mangolpuri in Police Van. I and Rajesh too reached the hospital where the doctor declared my nephew Suraj dead. Rakesh @ Tony S/o Billu, R/o G-block Sultanpuri had murdered my nephew Suraj by stabbing him. Legal action may be initiated against aforesaid Rakesh @ Tony. You have recorded my statement and I heard the same and the same is correct.

RTI *LTI*
Om Prakash @ Titu''

7. As per the statement, Om Prakash was in the company of his cousin brother Rajesh PW-2 and nephew Suraj (deceased), at 6:25 PM on November 27, 2010. The three were returning from Shani Bazar. He i.e. Om Prakash had purchased a bottle of All Out liquid and Suraj had purchased an old sweater. They were accosted by the appellant whom they knew prior to the incident. The appellant was a bully. He demanded a cigarette from Suraj, who replied that he was having only a bidi with him. The appellant wanted to know from Suraj whether he was aware of his might and threatened Suraj that it would be the end of Suraj if he did not provide him with a cigarette. Like a bully giving a challenge the appellant said that he would count upto three. Suraj could not produce the cigarette. The appellant took out a knife from the right side pocket of his pant and attacked Suraj on the chest. Om Prakesh picked up a brick and threw the same at the appellant who ran away.

8. Deposing as PW-4, Om Prakash has deposed in complete sync with his statement Ex.PW-4/A. Rajesh Kumar, appearing as PW-2, had deposed in harmony. In other words, Om Prakash and Rajesh have corroborated each other.

9. The learned Trial Judge, after noting the testimony of Om Prakash PW-4 and Rajesh Kumar PW-2, has found that the two have substantially stated the facts, in fact exactly stated the facts, disclosed soon after the incident by Om Prakash to Insp.Balbir Singh PW-14. The learned Trial Judge has noted that both witnesses have successfully withstood the test of cross-examination.

10. But what the learned Trial Judge has overlooked is something very vital to the case of the appellant, which as we would be noting hereinafter, would reduce the gravity of the wrong committed by the appellant.

11. The same is the recording contained in the form Ex.PW-15/A

maintained at the Police Control Room and the MLC of the appellant which for reasons unknown was withheld from the Court. During arguments in the appeal on December 08, 2014, the case diary was produced before us and it contained the MLC of the appellant, who was taken by Ct.Bijender at 2:15 AM on April 28, 2010 to Sanjay Gandhi Memorial Hospital Mangolpuri. This was soon after the appellant was arrested. As per the MLC the appellant had : (i) a linear abrasion on the right lip, (ii) superficial abrasion on right lip, and (iii) bruise on right shoulder.

12. As deposed to by W/Ct.Soni Kumari PW-15, she was on duty at the Police Control Room from 2:00 PM to 8:00 PM on November 27, 2010. At 7:02 PM an informant rang up the No.100 to inform that somebody was stabbed at Sultanpuri Main Shani Bazar Road, near Primary School. She entered said information in the Police Control Room form. The computer generated PCR form is Ex.PW-15/A. It is apparent that the PCR form was being maintained electronically and copy of what was entered by W/Ct.Soni Kumari was fed by her in the computer.

13. A word needs to be spoken regarding entries made in the PCR form. It does not end merely by recording the information that an informant has informed something which would require the police to take action. It also records that the information has been flashed over the wireless. It also records whatever is conveyed by the In-charge of the nearest PCR Van which reaches the spot.

14. Ex.PW-15/A records that as the information was flashed over the wireless, of an informant informing that a person has been stabbed at Sultanpuri Main Bazar Road, near Primary School, the PCR van 'Libra-39' relayed the following information:-

*“LEFT FROM BUTH VIHAR NALA 27/11/2010 19:11:01 TFC
HAVE HI JA RAHYA HI 27/11/2010 19:21:32 RCD 12M INKO*

LEKAR HOSP JA RAHYA HI BAAKI HALAT BAAD ME 27/11/2010 19:41:41. INJURED SURAJ S/O RAJU AGE 30 YRS R/O GALI NO.2 RATAN VIHAR KO HUM LE KAR SG HOSPITAL AAYE JISKO CHEST PAR DIL KE PAS EK CHAKU LAGA THA JISE DOCTOR SAHAB NE DEAD DECLARE KAR DIYA. USKA MAMA MANOJ SATH HAI JISNE BATAY KI SURAJ AUR USKA MAMA TITU BAHAR ROAD PAR DUKAN SE ALL OUT LENE GAYE THE JO KISI U/K PERSON SE SURAJ KI TAKKER HO GAYI AUR WO PARSON SURAJ KO CHAKU MAAR KAR BHAG GAYA JISKA HULIA NAHI MALUM SHO WITH STAFF MAUKA PAR 27/11/2010 19:50:49 SURAJ AUR USKI JIS AADMI SE TAKKAR HUI DONO HI PAIDAL THE”

15. A perusal of the information relayed contemporaneously to the Police Control Room and recorded in the PCR Form would reveal that W/Ct.Soni Kumari has recorded that injured Suraj S/o Raju was accompanied by his maternal uncle Manoj who informed that Suraj and his maternal uncle Titu had gone to purchase All Out when somebody stabbed Suraj. That Suraj and the man who stabbed him were on foot and had collided with each other.

16. Entries in the Police Control Room form are cryptic because there is hardly any time for the In-charge of the Police Control Room van to re-dictate what was conveyed and there is hardly any time for the operator to seek clarifications. Information received, with its accompanying aberrations, are recorded in the PCR form, but it contains vital information, as in the present case. The accompanying aberration in the instant case is a reference to Manoj as the maternal uncle of Suraj. Manoj referred to in the information recorded is not the maternal uncle of Suraj. He is Ct.Manoj Kumar PW-12, who in his deposition has stated that the area in question where the incident took place fell in his beat and that he was on patrolling duty when he learnt about a stabbing incident at Shani Bazar near Primary School and he reached the spot. He saw Suraj lying in an injured condition.

A PCR van reached. He removed the injured in the PCR van to the hospital. One Om Prakash and another person whose name he did not remember accompanied them. The person Om Prakash referred to in his testimony by Ct.Manoj is Om Prakash PW-4, the maternal uncle of the deceased and his pet name is Titu. The reference in the information recorded in the PCR form to Titu is to Om Prakash. It is apparent that it was Om Prakash who told Ct.Manoj as to what had happened because Ct.Manoj was the first police officer to reach the spot. As Ct.Manoj, Om Prakash, Rajesh Kumar and the deceased were travelling in the Police Control Room van to take the deceased to the hospital, Ct.Vinod passed on the information to the In-charge of the PCR van '*Libra-39*', who in turn conveyed the same to W/Ct.Soni Kumari. When information is relayed from person to person there is bound to be discrepancies here and there. But at its core, the vital information conveyed is that Om Prakash and Rajesh Kumar were in the company of the deceased when the deceased collided with the assailant who then stabbed the deceased. Om Prakash and Rajesh Kumar would thus be natural witnesses to the incident.

17. It is apparent that the incident did not take place as deposed to by Om Prakash and Rajesh. They exaggerated, as if the appellant was a bully. They did not tell the truth concerning the origin of the incident; which they conveyed to Ct.Manoj who in turn told the same to the In-charge of the PCR van '*Libra-39*' and in turn what got conveyed to the Police Control Room : that the unfortunate incident was the result of the deceased colliding on the road with the appellant and something getting triggered off which infuriated the appellant to stab the deceased.

18. The post-mortem report Ex.PW-5/A of the deceased shows that two superficial incised wounds were inflicted, one each on the left and right buttock, and one on the left side of the chest near the nipple. Directed

downwards and inwards, penetrating through the intercostals space, cutting between the fifth and the sixth rib, the weapon of offence pierced the left lung, the left side of pericardium and the left diaphragm. It is not difficult for even a layman to guess as to why Suraj died. It is obvious that the left pericardium of the heart, the left lung and the left side of the diaphragm which were cut caused instant death.

19. In his statement Ex.PW-4/A Om Prakash has said that after appellant stabbed his nephew Suraj, he hit appellant with a brick which was lying nearby at which the appellant ran away. He has said so in his testimony in Court and so has Rajesh Kumar. This claim of Om Prakash conflicts with the unproved MLC of the appellant which is lying in the case diary, and of which we take judicial notice. If hit by a brick before he ran away, the appellant would have been detected with a blunt force impact injury i.e. contusion and not bruises and abrasions. As we have noted in paragraph 11 above appellant's MLC shows that he had a linear abrasion on the right lip, a superficial abrasion on the right lip and a bruise on the right shoulder. The three injuries suggest that as the appellant was moving briskly in a crowded place and so was the deceased; the two walking towards each other, and as they collided the appellant tripped and fell down; and this explains the linear abrasion and the superficial abrasion on the right lip and a bruise on the right shoulder. It is the natural tendency of a person or his friend to underplay the contributory part of the role played by a person in a drama if the drama results in a tragedy and simultaneously exaggerates the contributory part of the role played by the antagonist. In the instant case the recording in the PCR form Ex.PW-15/A and the unproved MLC of the appellant have told to us what actually happened and the same belies the version of the two eye witnesses that the origin of the assault was the act of bullying by the appellant. The appellant is not a bully. He is an ordinary human being with

all associated follies of a human being. He got angry when the deceased collided with him and he fell down.

20. But, learned counsel for the State would urge that even then the appellant would be proved to be a person with a short temper and this would be no justification for him to stab the deceased. Learned counsel would further urge that the fact that the appellant was carrying a knife with a blade of 21 cm is a proof that he was a person with a bad character.

21. Life in the slums and unauthorized colonies in Delhi is harsh. Far from quickening the conscience, soften the heart or enlighten the mind, the environment of the slums and unauthorized colonies brutalizes the conscience, toughens the heart and darkens the mind of the inhabitant. Many of this crowd do not even get one chance to become better. Born in poisoned atmosphere and educated in circumstances which render rationality and impossibility, the reaction of these helpless beings has not to be measured at par with those who are blessed with the power of rationality which comes through education. Criminal law does not punish a wrong doer for the act alone unless it is accompanied by the negative mens rea (except for offences which are made absolute). Why is it so? The belief is that the consciousness with which human beings are blessed acts as a mirror before the action contemplated in the mind is given effect to by the act and thus the blessed human being can see in the mirror of his conscious the result of his act before the act is committed. But what about those who are deprived of their consciousness? We leave the question open for an academic debate, but revert immediately to the point from where we made a slight deviation. We were dealing with the argument of the counsel for the State that the fact that the appellant was carrying a knife proves him to be evil. With crime aplenty in the slums and the unauthorized colonies, regretfully we note, that the situation is akin to the wild west of the 16th century. One has to be armed to

protect oneself. The appellant would be a person in said category. There is no evidence of his brush with the criminal law in the past. Instant incident is the solitary one in his life. It is thus not a case where one can say that the appellant was carrying a knife to use it against the deceased. His encounter with the deceased on the street was a chance encounter when the appellant and the deceased collided with each other. There may have been some expletives used by both. Everything happened all of a sudden during a chance encounter and without any motive or premeditation.

22. Thus, the act of the appellant would constitute the offence of culpable homicide not amounting to murder punishable under Section 304-I IPC.

23. Before passing an order on sentence, we would be failing if we do not write the unwritten part of the actual story which transpired on the day of the incident and which was the cause of what angered the appellant. We are writing this paragraph to bring home the point that a little sympathetic ear to the accused or his relatives who are present in the Court during criminal trial may help the Court in illuminating dark areas. During hearing of the appeal the parents of the appellant were present in Court and told us that the engagement of appellant's elder brother was fixed for November 27, 2010. The guests had to be served meals. The deceased had been sent by them to bring cooked dal and vegetables from the market, but he never returned home. Instead the police came. Learned counsel for the State on instruction concedes that appellant's father helped the Investigating Officer to locate the appellant who was hiding in fear nearby. This explains what otherwise would be a disproportionate reaction to two persons colliding on the street. As the deceased and the appellant collided resulting in the appellant tripping and falling on the street, the containers in which he was carrying the cooked dal and the cooked vegetables fell down on the street : the food stuff got contaminated. The engagement ceremony scheduled to end with a meal got

dampened. The appellant reacted under the impulse of these enwombing facts. Had the learned Trial Judge known said fact and had cared to read the contents of the PCR form Ex.PW-15/A and had taken on record the MLC of the appellant, we are sure that the learned Trial Judge would not have treated the appellant to be a brute. The learned Trial Judge would not have treated the appellant as an extortionist and addicted to smoking and alcohol.

24. We dispose of the appeal partially allowing the same by convicting the appellant for causing homicidal death of Suraj not amounting to murder and holding the appellant liable to be punished under Section 304-I IPC we sentence the appellant to undergo rigorous imprisonment for a period of 10 years and pay fine in sum of ₹2,000/-, in default of payment of fine to undergo simple imprisonment for one month.

25. TCR be returned.

26. Two copies of the present decision be sent to the Superintendent Central Jail Tihar, one for his record and the other to be supplied to the appellant.

(PARDEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

DECEMBER 10, 2014
mamta/rk