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

\+ **CRL.A. 48/2003**

SURINDER KUMAR ..... Appellant

Through: Mr. Mukesh Kalia & Mr. M.L.Yadav, Advocates.

versus

STATE ..... Respondent

Through: Mr. Kewal Singh Ahuja, APP.

\+ **CRL.A. 68/2003**

HARI OM ..... Appellant

Through: Mr. Mukesh Kalia & Mr. M.L. Yadav, Advocates.

versus

STATE ..... Respondent

Through: Mr. Kewal Singh Ahuja, APP.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

JUDGMENT

% **12.07.2018**

1. These appeals are directed against the judgment dated 4th January 2003 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.102/1996 arising out of FIR No.64/1988 registered at PS Sameypur Badli convicting Hari Om (Appellant in Crl.A.No.68/2003) and Surinder Kumar (Appellant in Crl.A.48/2003) for the offences punishable under Section 302/34 IPC for the death of Sushila and also for the offences under Section 324/34 IPC for causing knife injuries to Rajinder Kumar (PW1), the husband of the deceased.

2. The appeals are also directed against the order on sentenced dated 6th January 2003 whereby, for the offence punishable under Section 302/34 IPC, both Appellants were each sentenced to imprisonment for life and fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year and for the offence punishable under Section 324/34 IPC, they were sentenced to rigorous imprisonment for 3 years. Both sentences were directed to run concurrently.

3. At the outset, it requires to be noticed that there were four accused, viz. Doja Ram (A-1), Surinder (A-2), Narinder (A-3), and Hari Om (A-4), who were charged under Section 302/34 IPC for committing the murder of the deceased in furtherance of their common intention by inflicting knife injuries on her person at about 9:30 pm on 29th March 1988 at H.No.37/2, Gali No.13, village Sameypur. They were also charged under Section 307/34 IPC with having caused injuries on the persons of Mahenderi (PW-10), Khazano (PW-2), Rajinder (PW-1) and, Ram Charan (PW-8) with *lathis* in furtherance of their common intention and with such intention or knowledge that under the circumstances, had they died, the accused persons would have been guilty of the offence of murder.

4. By the impugned judgment, A-2 and A4 were convicted for the offences under Sections 302/34 IPC and Sections 324/34 IPC and sentenced in the manner noticed hereinbefore. A-1 was found guilty for the offence under Section 323 IPC and was sentenced to the period already undergone by him. A-3 was found guilty for the offence under Sections 324 and 326 IPC. He was sentenced to undergo three years of rigorous imprisonment for the

offence under Section 324 IPC. For the offence under Section 326 IPC, A-3 was sentenced to under rigorous imprisonment for the period already undergone along with fine of Rs.1,000/- and in default of payment of fine, to undergo rigorous imprisonment for one month. With both sentences being directed to run concurrently, he too was set at liberty having already served his sentence. Thus, only A-2 and A-4 have come before this Court in appeal.

5. The important eye-witnesses with respect to the prosecution's case under Section 302 IPC are the injured witnesses, PW-1, PW-2, and PW-10. PW-1 stated that there was an ongoing dispute of about a year and half between his father, Ram Charan (PW-8), and his uncle (A-1) over an intervening wall between their houses. On the fateful day, at around 9:30 pm, when the victim party was present in their house, A-1 came there and called PW-8 outside the house. Once PWs- 1 and 8 went outside, A-1 is said to have exhorted, "*pakro, roz roz ka jhagra khatam karna hai".* According to PW-1, A-1 was armed with a *lathi* whereas A-2 and A-3 were armed with knives and A-4 was armed with an iron rod.

6. PW-1 goes on to state that A-1 gave *lathi* blows to the legs of PW-8. He also stated that A-3 caught hold of him before correcting himself to clarify that it was, in fact, A-4 who had caught hold of him. A-2 purportedly gave knife blows to PW-1's shoulders and back. Upon hearing the commotion, his wife Sushila (deceased), his sister-in-law PW-10, and his mother PW-2 came there. A-1 is then purported to have said, "*inhe pakro aaj inhe khatam kar ke hi jana hai*". Upon hearing this, A-4 is said to have caught hold of the deceased while A-2 gave her knife blows to the chest. She started bleeding

and fell on the ground. A-3 is then stated to have attacked PWs 2 and 10 with his knife. It is stated by PW-1 that a large number of people in the *mohalla* witnessed all of this including one Ramesh S/o Chander Singh. The accused then fled the spot. Likewise, it has come in the testimonies of PWs 2 and 10 that A-4 caught hold of the deceased while A-2 gave her knife blows to the chest.

7. The post-mortem examination of the deceased was performed by Dr. L.T. Ramani (PW-16). There were 4 incised wounds and one bruise. It was opined that injury No.1, which was an incised stab wound on the left side of the front of the chest, was sufficient in the ordinary course of nature to cause death.

8. Learned counsel for the Appellants urges that the incident was essentially a quarrel between two families and the attack took place in the spur of the moment. The case of the prosecution itself is that Champa, the wife of A-1, had thrown garbage in front of the house of PW-8 to which his wife PW-2 took umbrage. An altercation took place between Champa and PW-2. This was followed by the incident which saw A-1 armed with a *lathi*, A-2 and A3 armed with knives, and A-4 armed with the iron rod go the house of PW-8 and attack him and his family.

9. It emerges from the record that the attack by A-1 and his sons was aimed at PW-8 who they called out for from outside his house. It cannot be said that the deceased was the target of the attackers. It is only when she came out of the house upon hearing the commotion that she was held by A-4 and dealt knife blows by A-2. The attack on PW-1 too was carried out with A-4

holding him and A-2 inflicting knife blows on his person. Thus, it is evident that A-4 did not actually attack anyone with a weapon but had only held PW-1 and the deceased while they were being attacked. This Court finds merit in the contention of the learned defence counsel that, as regards A-4, he could not be said to have shared the intention of A-2 who was attacking the deceased with a knife. Thus, his conviction under Section 302 IPC with the aid of Section 34 IPC is not justified.

10. As far as A-2 is concerned, the Court is unable to accept the plea of the learned defence counsel that the offence would fall within the purview of Section 304, Part II IPC. The Court agrees with the evidence led by the prosecution but also notes that the scuffle took place in the heat of passion and on the spur of the moment. The attack was certainly not a premeditated one and it is evident that Sushila was not the intended target of the attack but happened to receive the fatal blows as she intervened in the scuffle. In that view of the matter, this Court is of the opinion that the offence committed by A-2 would fall within the purview of Section 304, Part I IPC.

11. As far as the sentence is concerned, the Court is informed that A-2 has already served more than 7 years of his sentence. For the offence under Section 326 IPC, A-4 has already served more than 5 years of his sentence. In the circumstances, the Court orders as follows:

(i) Both A-2 and A-4 are acquitted of the offence under Section 302/34 IPC;

(ii) A-2 is convicted for the offence under Section 304, Part I IPC;

(iii) The convictions of A-2 and A-4 for the offences under Section 324/34

and 326 IPC are not interfered with and are hereby affirmed;

(iv) For the offence under Section 326 IPC, both A-2 and A-4 are sentenced to the periods of imprisonment already undergone by each of them.

(v) For the offence under Section 304, Part I IPC, A-2 is sentenced to the period of imprisonment already undergone by him.

12. In that view of the matter, the bail bonds and surety bonds furnished by A-2 and A-4 are hereby discharged. The appeals are disposed of in the above terms. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 12, 2018
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