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

+ **CRL.A. 588/2015 & CrI.M.(Bail) 6/2018**

GURMEET SINGH @ SATPAL Appellant

Through: Mr. Chetan Lokur, Advocate.

versus

NCT OF DELHI Respondent

Through: Mr. Hirein Sharma, APP for State
with SI Ramesh Kumar, PS Sultan
Puri.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

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ORDER
14.03.2018

Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 18th March, 2015 passed by the Learned Additional Sessions Judge, North-West District, in Sessions Case No.52/2014 arising out of the FIR No. 234/2014 registered at Police Station ('PS') Sultan Puri convicting the Appellant for the offence punishable under Section 302 IPC and the order on sentence dated 20th March, 2015 whereby he was sentenced to undergo imprisonment for life with a fine of Rs.25,000/-, and in default of payment of fine to undergo simple imprisonment for three months.

2. The charge against the Appellant was that on 1st March, 2014 at around 9

am on the road near House No.D7/205, Sultan Puri, Delhi, he killed Kashi Ram (the deceased), father of Harish Chand (PW-1) by repeatedly inflicting knife blows on the abdomen and the other parts of the deceased.

The eye witness version

3. The case of the prosecution rested on the eye witness testimony of PW-1. He and the deceased used to sell *choley bhature* from a *rehdi* on the road side in front of House No.D7/205, Sultan Puri everyday from 9 am to 3 pm. They had been doing this continuously for 10 years prior to the incident, and used to remain together during these hours. The deceased was 65 years and PW-1, his son was around 28 years.

4. PW-1 stated that on 1st March, 2014 they were present with the *rehdi* on the spot at 9 am. By then they had not sold any *choley bhature* and it was 'bohni' time for them. The accused came to the *rehdi* and demanded *choley bhature*. The deceased responded to this by stating to the accused that it was time for 'bohni' and that without payment they could not serve him *choley bhature*. PW-1 narrated that even earlier the accused was in the habit of taking *choley bhature* from their *rehdi* and not paying for it. According to PW-1, the accused used to usually come to their *rehdi* under the influence of some intoxicating substance. The accused nurtured a grudge against the deceased and PW-1 since they used to demand payment from him for serving him *choley bhature*.

5. On 1st March, 2014 the accused, according to PW-1, was again under the influence of some intoxicating substance. He was not sure whether the

accused had consumed liquor or some 'goli'. When the deceased refused to serve the accused *choley bhature* without payment, the accused entered into a verbal argument with the deceased. The accused then took out a knife concealed in his pant and began inflicting knife blows on the deceased. PW-1 got scared. He called for help by shouting and calling nearby shopkeepers and other people present there. After inflicting four or five knife blows, the accused ran away. According to PW-1, when the other public persons present there tried to apprehend the accused, he waived his knife towards them and then fled from the spot.

6. The deceased fell down on the ground. With the help of public persons PW-1 took the deceased in a Three-wheeler Scooter Rikshaw ('TSR') to the Sanjay Gandhi Memorial Hospital, Mangol Puri. The deceased was later declared dead at the hospital.

Post mortem

7. The post mortem of the deceased was performed by Dr. Vivek Rawat (PW-14) on 1st March, 2014 itself. On external examination the following injuries were noticed:-

"(1) Incised wound 7x1.5 x 0.7 cm over left lateral aspect of neck, 7 cm below mastoid process.

(2) Stitched stab wound 5.5 cm long cavity deep seen lying obliquely just right lateral to umbilicus.

(3)Stitched stab wound 5.5 cm long cavity deep seen lying obliquely 3 cm right lateral to injury no.1.

(4) Stitched stab wound 5 cm long cavity deep seen lying obliquely over left infra umbilical area.

(5) Stitched stab wound 4 cm long cavity deep seen lying obliquely at the right side root of the penis.

(6) Stitched stab wound 3.5 cm long 4 cm deep seen lying obliquely over left inguinal area, at the level of femoral triangle.”

8. The cause of death of the deceased was opined as shock associated with damage to pelvic structures "under injury no. 6 which was fresh & antemortem at the time of death & is sufficient to cause death in ordinary course of nature. All injuries are caused by sharp, pointed, double edged weapon.”

Other witnesses

9. PW-1 stated to have called his uncle Shambhu Dayal (PW-2) from the hospital. PW-2 also arrived at the hospital. He and PW-1 identified the deceased and after the post mortem, the body was handed over to them.

10. There was one other passerby, Sahil (PW-3), a carpenter by profession, who at 9.15 am noticed the crowd at the spot and one person lying smeared with blood on the road. From his mobile number PW-3 called the Police Control Room (‘PCR’) and the police reached the spot.

Investigation

11. The investigation of the case was handled by Inspector Ram Kishore (PW-16) who after recording the statement of PW-1 at the spot (Ex. PW-1/A) prepared the *rukka* (Ex. PW-16/A) and forwarded it through Constable

(Ct.) Ashok at 12.30 pm for being taken to the PS for registration of the FIR. PW-16 lifted the blood stains from 'near the *rehdi*, near the *naali*' with the help of two white gauzes which were sealed in different containers. PW-16 then lifted the earth control from the spot with and without blood. One blood stained slipper of the deceased was taken into possession. PW-16 prepared a rough site plan at the instance of PW-1. He stated that he made efforts to apprehend the accused on that day itself but without success.

12. PW-16 claimed that a secret informer met him, ASI Ravinder (PW-18) and Constable Yogender in the early hours of 2nd March, 2014 and gave them information that the accused was about to flee to Rajasthan by train from the Nangloi Railway Station at 7 am. The three police officers then proceeded to Nangloi Railway Station and apprehended the Appellant at around 6.30 am. After interrogation, they arrested him. The Appellant is stated to have made a disclosure as a result of which his upper track shirt, which he was wearing at the time of arrest and was blood stained, was seized. He is supposed to have led the police to a park at D-7 Block, Sultan Puri and from the corner of the park towards Aman Vihar got recovered the knife he had used in the incident. The knife was taken into possession.

The trial

13. At the end of the investigation a charge sheet was filed and charges were framed against the accused by the trial Court by an order dated 25th July, 2014 in the manner indicated. 18 witnesses were examined by the prosecution. In his statement under Section 313 Cr PC, the Appellant simply

denied all the circumstances put to him including that he had gone to the *rehdi* of the deceased and PW-1, asked for *choley bhature* and when payment was demanded had an argument with the deceased. Standard reply to all questions put to the Appellant was 'it is incorrect'. When asked if he had anything else to say, the Appellant claims to have been falsely implicated. He stated "I was a drug addict and the police officials were fed up with my presence in the locality and to get rid of me, they have falsely implicated me in the present case."

14. The Appellant examined, on his behalf, Chander Shekhar (DW-1) a Nodal officer in Bharti Airtel who brought the summon record viz., the customer application form of the registered mobile number of PW-1 and the CDRs of the said mobile for the period 28th February till 2nd March, 2014. The chart concerning the cell tower location was also produced (Ex.DW-1/B) along with a certificate under Section 65 B of the Indian Evidence Act (IEA) (EX.DW-1/E).

15. The trial Court has in the impugned judgment, after discussing the evidence, concluded that the entire testimony of PW-1 was truthful and reliable and completely corroborated by the medical and forensic evidence and was sufficient to prove the guilt of the Appellant for the offence punishable under Section 302 IPC.

16. This Court has heard the submissions of Mr. Chetan Lokur, learned counsel appearing for the Appellant and Mr. Hirein Sharma, learned APP for the State.

The evidence of PW-1

17. There is no doubt that PW-1 being the son of the deceased is an interested witness and therefore his testimony requires very careful examination. The law in this regard is well-settled. In ***Waman v. State of Maharashtra (2011) 7 SCC 295***, the Supreme Court held:

“It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

18. The line of attack on the deposition of PW-1 was that it was doubtful that he was at all present at the spot and in any event his conduct in not trying to save the deceased from the repeated knife blows of the Appellant at the spot itself and then not immediately calling the police thereafter was unnatural. The Court has carefully perused the testimony of PW-1 and particularly his replies in his cross-examination. Even in his examination in chief at one point PW-1 states as under:

“On 1.3.2014 at the time of incident when accused was fighting with my father, I was standing by their side and I was requesting the accused not to fight, but I did not know that he would inflict injury on my father. Accused used to keep mum earlier when he used to take choley bhature from our rehdi and he did not use to threaten. On the date of incident also, accused did not threaten us.”

19. However in his entire cross-examination PW-1 has remained firm that he was present at the spot and actually witnessed the Appellant stabbing the deceased with a knife. He was consistent that five to six days prior to the

incident, on another occasion the Appellant had again come to the *rehdi*, was served *choley bhature* but did not pay for it and threatened that he would beat them '*maar dunga maar dunga*'. Neither the deceased nor PW-1 reported this incident to the police as "we were scared of the accused". PW-1 was subjected to intense cross-examination on the actual incident but was firm that he saw the Appellant inflict the knife injuries on the stomach and other parts of the body of the deceased. He further stated "accused did not conceal knife beneath his clothes at the time when he was running away from the spot" and that "he was holding knife in his hand at that time." PW-1 stated that he did not chase the Appellant and that "I was with my father. I picked up my father who had fallen on the ground by that time. Passers-by also helped me in picking my father from the ground. I do not remember the number of the auto rickshaw. Vol. I was so scared at that time that I cannot be expected to remember the auto number."

20. Indeed PW-1 seems to be of timid nature. Both the deceased and PW-1 in fact do not appear to be very courageous persons. They seem to be like two persons who had been selling *choley bhature* from the same spot for over 10 years and making a living by honest means without getting into trouble with anyone. To expect PW-1 to rush to save his father when he was being attacked by the accused with a knife would not be consistent with the above character of PW-1 who appears to get easily scared when he witnesses violence. Therefore, the Court is unable to accept the submission that it was unnatural for PW-1 not to jump in and try to rescue his father.

21. By referring to the CDRs and the cell tower location chart it was sought

to be submitted that PW-1 was perhaps not at the spot at all. Even on this aspect, PW-1 was cross-examined. This is what he has stated:

“I was carrying my mobile phone at the time of incident. My mobile number is 9810532593. From the spot I did not telephonically informed anybody from my father about the incident. I informed my uncle Shambhu Dayal about the incident from the hospital. This mobile number is in my name. Its service provider is Airtel. From the spot, I even did not inform police or anybody else. Vol. I was frightened.”

22. Indeed there are no calls made by PW-1 to the police using his mobile number as is reflected from the CDRs. It appears that some calls were received by him and then made by him immediately after the incident. It must be recalled that he called his own uncle PW-2 only from the hospital.

23. The Court has perused the cell location chart which gives the location of this mobile number of PW-1 as an address at Budh Vihar, Pooth Kalan, Delhi which admittedly is within a range of 1 ½ kilometres from the spot. Nothing much could be elicited from PW-1 on this aspect. This cell location chart does not support the argument of the Appellant that PW-1 was not present at the spot at all.

24. It was then pointed out that there is not a single member of the public and even PW-3, the passerby, who mentions about the presence of PW-1. Although there were shopkeepers in the area and a large crowd had gathered soon after the incident, it is not surprising that none of them came forward to become a witness for the prosecution. In circumstances such as these it is gratifying to note that at least one passer-by was able to give a call to the police using his mobile phone. For him not to notice PW-1 is not surprising. He was not someone who belonged to that area but was only passing by.

25. PW-1 comes across as an utterly honest witness who does not put forth a version with any embellishment whatsoever. An attempt was made in the cross-examination of PW-1 to suggest that there was blood when he lifted the deceased and put him in the TSR. PW-1 was very clear that although blood fell down in the TSR, there was no blood on his own clothes. What he says is that there was blood on his hands and feet but he then washed away the same at the hospital which again is not unnatural. Therefore, not much advantage could be taken by the accused even on this aspect. Had the clothes of PW-1 been blood stained and the prosecution had failed to seize such clothes, then, the advantage could possibly enure to the Appellant to argue that the PW-1 was not present at that spot. However, with the clear replies given by PW-1 on this aspect, it did not help the Appellant that the clothes of PW-1 were not seized by the police.

26. A piece of cloth was apparently used to staunch the cut wounds on the deceased which was not seized. Apparently, the recovery of the knife was from the public place and not in the presence of any public witnesses; no chance print was developed from the knife; the knife then sent to the FSL did not show that the blood found on it belonged to any particular group and even the track shirt worn by the Appellant which was sent to the FSL did not show the presence of any particular grouping of blood which matched that of the deceased.

27. All of the above factors would become relevant in a case of circumstantial evidence but where there is a reliable and truthful eye witness like PW-1 who appears to be a natural witness, the absence of other

corroborating evidence would not be fatal to the case of the prosecution.

28. The medical evidence completely corroborates the eye witness testimony. There were six extensive, deep cut wounds on the neck and abdomen area of the deceased. Basically the accused was on a stabbing spree.

29. In the circumstances the Court is unable to accept the submission of learned counsel for the Appellant that PW-1 was either not present at the spot or was not a truthful or reliable witness for the prosecution. In the considered view of the Court it is not the number of witnesses that matters but the quality of the evidence. On that yardstick the testimony of PW-1 lends assurance to the Court about the guilt of the Appellant for the killing of the deceased.

Not culpable homicide

30. It was then urged that this was an offence not of murder but of culpable homicide answering the description of Exception 4 to Section 300 IPC. which reads thus:

“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”.

31. In *Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC 217* the Supreme Court held:

"7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly....."

32. Recently in *Brij Mohan v. State* (decision dated 15th February 2018 in CrI. A. No. 170 of 2002) this Court explained:

"18. The ingredients that are required to be satisfied in order that the offence may be brought within Exception-4 to Section 300 IPC are as under:-

- (i) The crime must be committed without premeditation.
- (ii) It must be committed in a sudden fight in the heat of passion upon a sudden quarrel.
- (iii) The offender should not have taken undue advantage.
- (iv) The offender should not have acted in a cruel or unusual manner.

19. The Legislature has taken care to clarify that it is immaterial in such cases as to which party offers the provocation or commits the first assault.

20. While two of the ingredients of Exception-4 are that the killing should be without premeditation and should take place in a sudden fight upon a sudden quarrel in the heat of passion, it is not enough that if two ingredients alone are satisfied. The offenders will necessarily also have to show that they did not take undue advantage and importantly that they did not act in a cruel or unusual manner.

21. The words 'undue' to qualify 'advantage' and 'cruel or unusual' to qualify 'manner' signify proportionality. For e.g., if the victim is unarmed but the offender is armed, and is not in a position to defend himself effectively against the attack upon him by the offender with the weapon, the offender could be said to be taking undue advantage of the vulnerability of the victim. Further, when the offender is shown to have used the weapon, the Court has to further ascertain whether the offender in using such weapon acted in a cruel or unusual manner. Here the nature of the weapon, the manner in which it was wielded, the place on the body where injuries were caused and the number of the injuries would be important factors to determine if the offender acted in a cruel or unusual manner."

33. While counsel for the Appellant may be somewhat justified in contending that even from the description of the incident by PW-1 it appears that there was no premeditation, the Court is not able to accept that what happened was a 'sudden fight' as there was absolutely no provocation on the part of the deceased. All that he was asking, and in an entirely justified way, was payment for the food that he was serving the Appellant. There was an argument on this issue between the deceased and the Appellant but in the circumstances in which the argument took place, it can hardly be characterised as a 'fight'. Even if one would go to the extent of treating the verbal altercation between the deceased and the Appellant as a 'sudden fight', the two other important ingredients of Exception 4 are that the offender should not have taken undue advantage or acted in a cruel or

unusual manner. The deceased was a 65 year old man selling *choley bhature* and had no intention to harm anyone, much less the Appellant. He was clearly in a vulnerable position, his very nature was that he would get scared if he was threatened. The reaction of the Appellant was clearly disproportionate. He did not stop with the first stab wound but went on to repeatedly stab the deceased. The defence that the Appellant was intoxicated will not really help him because there is no evidence led by him to show that the intoxication was at such a level that he was not in control of his senses or was not aware of the consequences of his act. Perhaps advisedly, no such defence relating to Sections 85 and 86 of IPC was taken. If it had, the burden would have then shifted to the Appellant to make good such defence. Consequently, the Court is unable to agree with counsel for the Appellant that the offence in this case was not of murder but culpable homicide within the meaning of Exception 4 to Section 300 IPC.

34. Consequently, the Court finds no legal error in the impugned judgment of the trial Court or the consequent order on sentence.

35. The appeal and application are dismissed.

S.MURALIDHAR, J

I.S.MEHTA, J

MARCH 14, 2018
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