

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A.1727/2014**

Reserved on: 03.02.2015
Date of decision: 24.02.2015

SONU Appellant
Through: Mr. Ajay Verma, Advocate.

versus

STATE OF NCT OF DELHI Respondent
Through: Ms. Aasha Tiwari, APP along
with Inspector Sher Singh,
SHO, P.S.Burari.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR
ASHUTOSH KUMAR, J.

1. Appellant Sonu stands convicted vide impugned judgment dated 29th March, 2014 for committing murder of Chetan Pal @ Anu and for having attempted to murder Tulsi Kumar, PW.1; Rajesh Sharma, PW.5 and Kishan Singh Rawat, PW.9. Sonu has been sentenced to undergo Imprisonment for life and pay a fine of Rs.10,000/- for the offence under Section 302/34 Indian Penal Code, 1860 (IPC, for short) and Rigorous Imprisonment for 7 years and a fine of Rs.5,000/- for the offence under Section 307/34 IPC. In case of default of payment of fine, the appellant has been sentenced to undergo one year and six

months' simple imprisonment respectively.

2. The prosecution case is that on 25.5.2010, a police control room was informed that a boy was stabbed near chakku factory. A police control room van took the injured to Hindu Rao Hospital where the injured (Chetan Pal @ Anu) was declared 'brought dead'. Another information was received vide DD No.36A, pursuant to which the police officers reached the hospital and collected the MLCs of PWs.1, 5 and 9.

3. Chetan Pal @ Anu is said to have been stabbed to death.

4. PW.24, Dr. M.K. Panigrahi, Chief Medical Officer, Department of Forensic Medicines, Hindu Rao Hospital, Delhi conducted the post mortem over the dead body of Chetan Pal @ Anu on 26.5.2010 at around 2 PM and found the following external injuries:-

i) Stab wound 4cm x 1cm placed over the middle of the interior abdominal wall

ii) Lacerated wound of size 4.5cm x 2cm vertically placed on the left side of forehead

5. He opined that the death was caused due to haemorrhage and

shock, consequent to the aforesaid injuries. All the injuries were ante-mortem and recent in nature. External injury no.(i) was stated to have been caused by a sharp weapon/object which was individually sufficient in the ordinary course of nature to cause death. With respect to the injury no.(ii), PW.24 endorsed that it could have been caused by a blunt force impact with hard object/surface. The time since death was stated to be about 16 to 18 hours approximately.

6. The MLC of PW.1, Tulsi Kumar (Ex.PW.36/A) has been proved by PW.36, Dr.A.K.Khare. The MLC of PW.5, Rajesh Sharma (Ex.PW.34/A) has been proved by PW.34, Dr.J.P.N.Gupta and the MLC of PW.9, Kishan (Ex.PW.25/A) stands proved by PW.25, Dr.Priya Ranjan. PW.1 had two broken teeth in the upper jaw and two/three broken teeth in the lower jaw with a lacerated wound on the right side of scalp. PW.5, Rajesh had multiple stab injuries and a muscle deep sharp cut wound on the left leg, right neck, right lower jaw and over right bicep. PW.9 Kishan had a clean lacerated wound on the left forearm and an abrasion in the parieto occipital region.

7. In order to bring home the charges of murder and other charges against the appellant and other, 44 witnesses were examined by the

prosecution.

8. Be it noted that out of the 4 accused persons, one (I) was declared a juvenile and his case was remitted to the Juvenile Justice Board and Mohammed was declared as a proclaimed offender. He has not been arrested. The third accused; namely Amar @ Bhalla has been acquitted by judgment dated 8.12.2014 passed by a bench of this Court in Criminal Appeal No.1130/2014. The relevant portion of said judgment reads:-

“27. In view of the finding returned by us hereinabove, that as per the evidence, the aggressors were Pankaj, Tulsi, Manish, Kishan, Rajesh and Chetan, but being unarmed, the force in response by way of self defence had to be measured, and treating it to be a case where disproportionate force was used by Sonu, his act cannot make appellant vicariously liable for there is no evidence that appellant shared any common intention with Sonu. The appellant used a danda when six people assaulted Sonu, the appellant, Mohammad and ‘I’. Use of the danda by the appellant to hit Kishan and Tulsi cannot be said to be a case of excessive use of force. Injuries caused to Rajesh are by a knife and are attributable to Sonu. The learned Trial Judge has by applying Section 34 of the Penal Code made appellant liable even for said injury.

28. Assuming it to be a case of a mutual fight, even then as per law, appellant would be liable only for what he did.

29. Thus, at best, the appellant would be liable for the injuries caused to Tulsi and Kishan which are grievous but not life threatening, but since a danda was used, at best the appellant would be liable for having committed an offence punishable under Section 325 IPC. But for the reason we

have found that the aggressors were Manish, Pankaj, Tulsi Kumar, Rajesh, Kishan and Chetan, we are constrained to give the benefit of doubt to the appellant for having acted in self defence when he, Sonu, Mohammad and 'T' were way laid by Manish, Pankaj, Tulsi Kumar, Rajesh, Kishan and Chetan. He has not exceeded the right of private defence, which Sonu may have, and we do not expand much on said aspect because we find that till date Sonu has not filed an appeal.

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32. *For the view we have taken, the appeal is allowed. The appellant is acquitted of the charge framed against him. He be set free forthwith unless required in custody in some other case; and actually we find none for the reason, the nominal roll shows that the appellant has no other case pending against him."*

9. In order to appreciate the case as against the appellant, we need to examine the PWs.1, 5, 7 and 9 first.

10. PW.1, Tulsi Kumar is an injured witness. He has deposed before the Trial Court that the deceased, PWs.5, 9, one Amit and PW.8 are his friends. On 25.5.2010 at around 8 PM, while he was sitting with his friends, namely Kishan Singh, Rajesh, Chetan Pal and Amit, another friend Manish PW.8 called him on his cell phone and informed him that he had a quarrel with some boys of Bengali Colony near Sant Nagar. Aforesaid Manish called PW.1 at Chetan Bihari

Mandir. When PW.1 confronted him as to why he was worried about the incident which took place on 24.5.2010, aforesaid Manish is said to have replied that he wanted to have a talk with the persons with whom he had quarrelled. PW.1, therefore, along with Rajesh, Kishan, Chetan went to the cross road at Sant Nagar. PW.8 Manish met them there. However, no other person was available. In the meantime, PW.1 noticed two boys and shortly thereafter one more person came. One of them, the witness later came to know was Amar, was having a danda in his hand. Amar had hit Rajesh. When Tulsi tried to save Rajesh, an associate assaulted him with an iron rod. Tulsi also received danda blows on his back. As a result, Tulsi fell down. The deceased Chetan Lal @ Anu received stab injuries in his abdomen and had tried to run away. PW.1 also ran towards another direction to save himself. PW.1 categorically deposed that the appellant Sonu had stabbed the deceased with a knife. The aforesaid witness then rushed to his house and thereafter accompanied by his father, went to the hospital. Thereafter, he found his friend Chetan @ Anu had died. The police recorded his statement in the hospital (Ex.PW.1/A). At the hospital, his MLC Ex.PW.36/A was prepared.

11. Similar statements have been given by PWs.5 (Rajesh Sharma) and 9 (Kishan), both of whom have unequivocally stated that on the call of PW.8, Manish they went to the cross road at Sant Nagar where they were assaulted. They have also specifically asserted about the appellant (Sonu) having stabbed their associate Chetan Pal @ Anu, who succumbed to the injuries.

12. On a close scrutiny of the statements of PWs.1, 5, 7 and 9, the assertion made is that PW.8, Manish had called PW.1 for speaking with the boys with whom he had quarrelled and that he wanted to settle the dispute. On such call having been made by the PW.8, PWs.1, 5, 7 and 9 along with the deceased went to the place where they were overpowered, assaulted and in the process, the appellant stabbed the deceased.

13. What was the penultimate incident leading to such an attack by the accused persons including the appellant does not become clear by their statements.

14. In fact the story begins a day earlier on 24.5.2010, when the appellant is said to have been assaulted by PW.8, PW.11 and other associates of PW.11. The occurrence in which Chetan Pal lost his life

is clearly a fall out of what had happened in the night of 24.5.2010.

15. The sequence of events is properly revealed by the evidence of PWs.8 and 11.

16. PW.8, Manish has deposed before the Court that on 24.5.2010 when he along with Pankaj were returning home, Pankaj inadvertently touched a girl who was being accompanied by her younger brother. Pankaj got into a quarrel with the brother but on the insistence of the girl, the two had left the place of occurrence. Two bystanders, who had seen the occurrence started staring at aforesaid Pankaj. This was objected to by Pankaj. This resulted in a verbal exchange between them. At the instance of Pankaj, his brother, Vicky along with his associates Kishan and Sumit came and assaulted the appellant and others with him. The appellant and his associates ran away.

17. On the next day, as has been stated by PW.8, while he and Pankaj were returning from their shop in the evening, Pankaj received a call from his brother who warned him to come through a different street and not from the same street where the fight had taken place earlier. Following such advice, Manish and Pankaj took a different way to home. It was at that time when Pankaj left the company of

Manish and Manish made a call to PW.1 to have the dispute settled with the persons of the Bengali area. It was only after his call to PW.1 that his other friends (some of the prosecution witnesses about whom reference has been made) came, the purpose being to settle the matter with the boys, residents of Sant Nagar. Manish and his friends were later surrounded by four boys who attacked them by dandas, iron rod, knife and iron chain. It has been categorically stated by the aforesaid Manish that Amar @ Bhalla (since acquitted) was carrying a danda whereas the appellant was carrying a knife. Manish too was injured in the occurrence. The deceased was inflicted several injuries.

18. PW.11, Pankaj, another friend of Manish has stated before the Court that on 24.5.2010 while he was accompanying Manish, he accidentally touched the body of a girl, leading to a scuffle with her younger brother. The girl and her brother left the place of occurrence but because of the appellant staring at him, a fight took place in which the appellant was assaulted. It has been stated that on 25.5.2010 he left the company of Manish after taking a different street to home but in the midnight police officials came to his house and brought him to police station. It was only then that he learnt that Chetan Pal @ Anu

had expired.

19. PW.11, therefore, is not an eye witness to the occurrence, directly subject matter of the charge sheet, but the testimony is relevant as it reveals the genesis and how and why there was violence.

20. Thus, from the analysis of the deposition of the aforesaid witnesses it would become clear that on 24.5.2010 there was a fight where the appellant was assaulted. PWs.1, 5, 9 and the deceased Chetan Pal @ Anu thereafter on 25.5.2010, went in search of the other group. Testimonies of PWs.1, 5, 7, 8 and 9 and deceased had made to the place of occurrence to have the 'matter settled' with the boys with whom PWs.8, 9 and 11 had fought at an earlier occasion. But, there is no evidence on record that the aforesaid persons namely PWs.1, 5, 7, 9 and the deceased were armed in any manner.

21. The consistent evidence of the prosecution witnesses referred to above is that the appellant Sonu was armed with a knife. The possibility of the appellant having been armed with a knife as a measure for his self defence out of fear and to protect himself from persons who had assaulted him on an earlier occasion cannot be ruled out. In this context, the statements of PWs.12, 13, 14 and 15 assume

relevance.

22. PW.12 Sumit has deposed before the Court that on 25.5.2010 while he and his friend Sunil had gone to the market to buy beer, the appellant and Mohammad, brother of Imran met them. They informed him about a quarrel going on between Imran, the brother of Mohammed and few other boys. When aforesaid witness reached the place indicated, the crowd had swelled up and the witness came to learn that a boy wearing a black t-shirt had been stabbed with a knife. Since the witness had an idea that Imran was wearing a black t-shirt, he assumed that Imran has been stabbed. However, on enquiry from his father who in turn enquired from Imran, the assumption was found to be untrue.

23. What comes out clearly from his statement is that at the time when some fight was taking place, Sonu, the appellant had fled away or else how would he and Mohammad have met Sumit and informed about the dispute.

24. Testimony of PW.12 is silent and quiet on several aspects as he does not state as to whether he made any enquiries about the cause of fight and about who all were present along with Imran as participants

in the fight. Deposition by PW.12, however, does state that a stab injury was suffered. His statement does not assert or even indicate as to the absence of the appellant from the place of occurrence where the deceased received stab injuries.

25. PW.13 Ajay Kumar Rajput refers to accused Amar and Imran having requested him to keep an iron rod and chain with him. The aforesaid witness, after initial reluctance on the persuasion of another friend namely Satish, kept those articles and which articles were produced when the police came to his shop along with Imran and one another boy whose face was covered.

26. PW.14 Satish Kumar confirms about the occurrence on 24.5.2010 and the assault on the appellant by the boys who had teased the girl.

27. Manish and Pankaj, PWs.8 and 11 were obviously the persons who were involved and had teased the girl.

28. PW.15, Sunil Singh Rana has stated that he met Sonu at the house of Mehtab where he had gone to borrow money as there was a marriage in the family. He also came to know from the appellant that on the previous day he was assaulted by some persons and that if he

happens to meet them he would kill them. On the same day in the evening the appellant and one Mohammad came on motorcycle, when PW.15 saw the clothes worn by the appellant torn. He was informed by the appellant that the same set of boys had come to beat him at cross roads wherein Imran was caught by them and that PWs.15 and 16 should come immediately for help. PW.15 along with PW.12, appellant and Mohammad went to cross road where the information about a person in black t-shirt having been stabbed was gathered.

29. His statement also appears to be only partially true in as much as the reference of the fight in the evening of 24.5.2010 has not been correctly stated by him. The later part of his version does not appear to be correct as it is in complete juxtaposition to the statements by the other injured witnesses. There is no documentary proof of any injuries on the person of the accused. Had those injuries been on record also, some inference would have been drawn that there was a fight between the two groups; one group comprising the appellant, Amar and two others and the other group being of PWs.1, 5, 7, 8, 9 and the deceased.

30. Amar @ Bhalla, since acquitted, has been attributed with a danda by all the witnesses who have been injured in the occurrence.

He is said to have assaulted PWs.1 and 5. We have referred to the injuries of PWs.1 and 5.

31. As noted earlier, the Division Bench of this Court (Crl.A No.1130/2014 decided on 8th December, 2014) has taken into account the fact that PW.1 received injuries which could have been caused by hard and blunt substance whereas PW.5 had two injuries, one by hard and blunt substance and the other being by a sharp weapon, the sharp weapon having been attributed to the appellant only, and has come to the conclusion that at best Amar could have been held guilty for the offence under Section 325 IPC. However, keeping in view the fact that PWs.1, 5, 8, 9, 11 and the deceased were the aggressors, so benefit of doubt was given to aforesaid Amar for he ought to have acted in self defence. The Division Bench of this Court held that he did not exceed the right of private defence.

32. We are examining the case of the appellant independently of such observation made with reference to role or conduct of Amar. We have kept and noticed the findings in Crl.A No.1130/2014. The appellant was armed with a knife. The aggressors namely PWs.1, 5, 8, 9, 11 and the deceased were unarmed but much more in number than

the company of the appellant.

33. Exception 2 to Section 300 reads as hereunder:-

“Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

34. Section 96 of the IPC prescribes that nothing is an offence which is in the exercise of the right of private defence. Section 97 of the IPC states that every person has a right, subject to the restrictions contained in Section 99 to defend himself or against any offence affecting the human body and property, movable or immovable of himself or of others against any act which is an offence falling under the definition of theft, robbery, mischief, trespass etc. The right of private defence in no case can extend to inflicting of more harm what is necessary to inflict for the purpose of defence.

35. The appellant does not have the cover of the right of private

defence. The aggressors were unarmed.

36. The right of private defence of the body extends to causing death under the circumstances which can reasonably cause the apprehension of death or of grievous hurt, rape, unnatural lust or kidnapping or abduction. (Refer to Section 100 of the IPC).

37. Having thus examined the relevant provisions with respect to the right of private defence the conduct of the appellant could not be stated to be in exercise of private defence. If at all there was a presumption in his mind that he could have been overpowered and brutally assaulted leading to grievous hurt or death by the aggressors, he had the option of running away or taking shelter of public or public authorities. There is no evidence on record to suggest that he was closeted by the aggressors in such a way that he could not have escaped. The fact that he was armed with a knife and that other associates of his were having dandas, chains etc in their hands also militates against any such apprehension in the mind of the appellant that the aggressors would inflict either grievous hurt or cause his death if their action is not warded off.

38. Having said so, it becomes rather superfluous to state that the appellant exceeded the right of private defence. In the absence of accrual of any such right, the question of its excess does not arise.

39. However, considering the fact that the level of preparedness namely being armed was not such that it could be called a pre-meditated attack and the fact that the appellant or his associates did not have any idea about the aggressors approaching them, the case of the appellant would come under exception 4 to Section 300 wherein a culpable homicide is not regarded as 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.

40. The deceased suffered only one stab injury though deep enough to cause the death. Absence of any repetition of blow and minor injury on the forehead of PW.5 clearly reveal that the appellant did not take any undue advantage of his having been armed with a knife or of having acted in any cruel or unusual manner.

41. What actually was the immediate cause of the assault by the appellant and others on the aggressors is little known. But from the

totality of the circumstances, we are inclined to hold that the case of the appellant comes under the exception No.4 to Section 300.

42. Thus the appellant is guilty of culpable homicide not amounting to murder. Since he had the intention to causing such bodily injury which is likely to cause death, therefore, he is liable to be punished for culpable homicide not amounting to murder under Section 304 Part I of the IPC.

43. In the interest of justice, we deem it proper to modify the conviction of the appellant from one under Section 302 IPC with the aid of Section 34 IPC into one under Section 304 Part I of the IPC and sentence him to undergo Rigorous imprisonment for 10 years and a fine of Rs.10,000/-. In default of payment of fine, the appellant would suffer one year simple imprisonment.

44. No modification is required with respect to the conviction and sentence under Section 307/34 of the IPC.

45. While doing so we have taken note of the young age of the appellant at the time when the occurrence took place.

46. The judgment and the appeal is modified to the extent indicated above.

47. The appeal stands partly allowed with the aforesaid modification.

(ASHUTOSH KUMAR)
Judge

(SANJIV KHANNA)
Judge

FEBRUARY 24, 2015
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