

\$~2.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRIMINAL L.P. No. 604/2015 & CRL.M.A. No. 11523/2015**

Date of decision: 6th October, 2015

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Through Ms. Aashaa Tiwari, APP.

versus

AHMED SHAKIL AND OTHERS

..... Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J. (ORAL):

State by the present Leave to Appeal under Section 378(1)(a) of the Code of Criminal Procedure, 1973 (CrPC) impugns the judgement dated 10th February, 2015 convicting Ahmed Shakil, Ali Firoz, Sadiq and Mannan under Section 304 Part-II and Section 324 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short). The submission and contention raised by the State is that the respondents should have been convicted under Section 302 IPC for having caused homicidal death of Jagir Singh and under Section 307 IPC for attempt to murder on Malkiyat Singh (PW-9).

2. Perusal of the impugned judgment would indicate and reflect that the trial court has lucidly detailed its finding and conclusions after taking notice of the testimony of Malkiyat Singh (PW-9) and Kulbhushan @ Kake (PW-3),

who were present at Sadabahar Hotel on 2nd July, 2008 at about 8.15 P.M. The respondent-Ahmed Shakil, they assert had visited the said hotel for having meals and at that time an altercation took place. At that time while washing utensils, water had fallen on the pant worn by Ahmed Shakil, on which the later had got enraged and had slapped Kulbhushan @ Kake (PW-3). Thereupon, Malkiyat Singh (PW-9) had intervened. Ahmed Shakil had then abused Kulbhushan @ Kake (PW-3). Ahmed Shakil was asked to vacate and leave the hotel. Ahmed Shakil then left and returned with the three other respondents. Upon return, fatal injuries were inflicted on Jagir Singh.

3. The impugned judgment refers to several contentions raised by the defence, including the plea that Section 34 IPC was not attracted, but has rejected the said contentions, except that the respondents stand convicted under Section 304, Part II, instead of Section 302 IPC. Secondly, the respondents have been convicted under Section 324 IPC for the attack and injuries caused to Malkiyat Singh (PW-9), instead of Section 307 IPC.

4. The trial court in the impugned judgment has referred and accepted that the respondents had no grievance or cause against the deceased Jagir Singh in the first occurrence or even at the time of the second occurrence. Jagir Singh, brother of Malkiyat Singh (PW-9) had stopped the respondents from throwing the utensils. However, in the cross-examination Malkiyat Singh (PW-9) has accepted that no plates were broken. Malkiyat Singh (PW-9) could not remember which of the respondents had held Jagir Singh first and subsequently, or who had held deceased Jagir Singh. Kulbhushan @ Kake (PW-3) proclaimed that he had seen knives in the hands of the respondents, which were palm sized inclusive of the handle. PW-3 could not state as to whether the said knives were easily available in the market, but denied the suggestion that the said knives were available in restaurants. PW-3 affirms that no attempt to save Jagir Singh or Malkiyat Singh (PW-9). He denied the suggestion that the deceased Jagir Singh and Malkiyat Singh (PW-9) had

consumed liquor and thereafter they had quarrelled.

5. Malkiyat Singh (PW-9) in his cross-examination has however accepted that he had taken liquor, but denied the suggestion that he was “over drunk”. PW-9 has also accepted that the knife was available at the tandoor for cutting of naan. PW-9 had not seen the edge of the knife used by the respondents-accused. PW-9 has candidly accepted that he had drinks at his residence at about 6.45 P.M. Further, the respondents had caused injuries on his thighs, but no injury was caused above the belt (waist) and the respondents did not make any effort to cause injuries on his chest, abdomen or any area above his waist.

6. SI Mahavir Singh (PW-14) posted with PCR North-East Zone Delhi was one of the first police officers to interact with Malkiyat Singh (PW-9) and the deceased Jagir Singh. PW-14 voluntarily deposed that he had a feeling that both of them i.e. deceased Jagir Singh and Malkiyat Singh (PW-9) were under the influence of liquor. PW-14 has accepted as correct that he had flashed the message that Jagir Singh after the quarrel had gone to an unknown location and thereafter he came to know that labour had brought Jagir Singh to GTB Hospital. The doctors had declared him as brought dead.

7. Dr. Prabhakar Yadav (PW-7) has deposed that Dr. Amit Jain, Junior Resident had examined Malkiyat Singh (PW-9) and had recorded his MLC marked Exhibit PW-7/A. As per the MLC, Malkiyat Singh (PW-9) was conscious, oriented and his vitals were stable. MLC (ExPW-7/A) records presence of incise wound on the right thigh anteriorly of 1.5 cm and another incise wound posteriorly of 1.5 cm. The MLC (Exhibit PW-7/A) was recorded at about 11 P.M. The nature of injuries have been described as simple. The patient did not have any history of seizure, bleeding or ENT bleed.

8. Dr. D. Mohanty (PW-8) with reference to MLC (Exhibit PW-7/A) of Malkiyat Singh (PW-9) has testified that the margin of wound in the MLC

was not mentioned and the injuries were not grievous as per the guidelines. He has accepted that even if Malkiyat Singh (PW-9) was not given treatment, there was no chance of his death due to injuries mentioned in Exhibit PW-7/A.

9. MLC of Jagir Singh (Exhibit PW-7/B) records that the patient was unconscious and unresponsive and pulse, BP and heart sound were not heard/recordable. ECG was flat. Jagir Singh was declared as brought dead. As per the post-mortem report marked Exhibit PW-26/A, Jagir Singh had suffered two incise wounds on his left inguinal region and left upper thigh. The first wound was sufficient to cause death in ordinary course of nature. The cause of death was haemorrhage shock due to ante mortem injury to the left femoral vessel produced by double edged sharp weapon. In his cross-examination, Dr. Arvind Kumar (PW-26), who had conducted the post-mortem on the dead body of Jagir Singh, has deposed that the deceased had suffered injuries on the left femoral vessel, hence, it was not possible that the deceased might have died due to excessive bleeding. PW-26 accepted that nothing was impossible, when it was suggested that there was possibility to stop or minimise the bleeding or instant medical aid would have saved the patient. We are conscious and aware that as per Explanation 2 to Section 299 IPC, a person who causes bodily injury is deemed to cause death although by resorting to proper remedies and skilful treatment, death could have been prevented. However, what is clearly palpable is that both the deceased Jagir Singh and Malkiyat Singh (PW-9) had not been attacked on the upper portion of their body. The injuries suffered by Malkiyat Singh (PW-9) were clearly simple. The said injuries were suffered as per Malkiyat Singh (PW-9) and Kulbhushan @ Kake (PW-3), when PW-9 had reached out to protect and save Jagir Singh. As noticed above, Malkiyat Singh (PW-9) was not attacked on his vital parts and as far as Jagir Singh is concerned, he too was not attacked on chest, abdomen and above his waist. It is apparent that there was a scuffle

and grapple in which Jagir Singh, against whom the respondents did not have any grievance, had suffered fatal injuries, as his femoral vessel got cut.

10. In the impugned judgment, the trial court has referred to the fact that the weapon of offence was not recovered and after considering the entire incident, observed that the respondents did not have requisite intention for convicting them under Section 302 IPC. We agree with the counsel for the State that intention to kill is not required under clause (3) of Section 300 IPC and intention to cause an injury, which is sufficient to cause death in ordinary course of nature will bring a case under Section 300 IPC, but in the facts of the present case, we do not think clause (3) of Section 300 would be attracted. We do not think it will be appropriate and proper to hold that the perpetrators, i.e., the respondents had intended to cause the injury actually inflicted and caused to Jagir Singh. The attempt and intention was to inflict injury on non vital part, but in the melee and grapple the injury in question was caused. The hit was not directed to the upper body of Jagir Singh. The trial court has on the said aspect relied upon a decision of the Division Bench of this Court in ***Diwan Chand and Another versus State***, (1984) Criminal Law Journal 1045, which in turn makes reference to an earlier judgment in the case of ***Paramjit Singh versus State***, (1983) 23 DLT 338. We record and note that the trial court had the benefit of recording the evidence and had seen the demeanour of the witnesses. It has taken a reasonable view of the matter after noticing that only one injury was fatal and the perpetrators, i.e., the respondents, had not intended to cause the said fatal injury. The view is plausible. The trial court has sentenced the respondents to simple imprisonment for 7 years and directed them to pay fine of Rs.5,000/- each and in default to undergo simple imprisonment for 60 days. The respondents have also been sentenced simple imprisonment for three years for the offence under Section 324 IPC and to pay the fine of Rs.2,000/- and in default undergo simple imprisonment for a period of 30 days. Keeping in view the aforesaid facts, we do not think it will

be appropriate and necessary to issue notice to the respondents.

11. Leave to Appeal is delayed by 82 days and an application for condonation of delay has been filed. However, on examination of merits, we are not inclined to issue notice on the application for condonation of delay. Accordingly, the application for condonation of delay as a sequitur will be treated as dismissed.

(SANJIV KHANNA)
JUDGE

(R.K. GAUBA)
JUDGE

OCTOBER 06, 2015
VKR