

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

% *Date of Decision : March 11, 2016*

+ **CRL.A.221/2016**

MURLI THAKUR @ MURLI SHARMAAppellant
Represented by: Mr.Harsh Prabhakar, Advocate

versus

STATERespondent
Represented by: Mr.Varun Goswami, APP with
Insp.Sube Singh, PS Inder Puri

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE A.K.PATHAK

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant assails the judgment dated May 15, 2010 convicting him for the offences punishable under Section 302 IPC as also Section 307 IPC. He also challenges the order on sentence dated May 19, 2010 passed by the learned Additional Sessions Judge, Dwarka - New Delhi sentencing him to undergo imprisonment for life and pay fine in sum of ₹1,000/- for the offence punishable under Section 302 IPC and to undergo rigorous imprisonment for a period of 10 years and pay fine in sum of ₹1,000/- for the offence punishable under Section 307 IPC. Benefit of Section 428 Cr.P.C. has been granted and sentences have been directed to run concurrently.

2. The finding of guilt has been returned by the learned Trial Court in wake of the incriminatory circumstances held proved and concatenated in

paragraph 23 of the impugned judgment. At the outset, we coalesce the said circumstances before embarking on our journey.

- i. Eye-witness account emerging in form of testimony of Pramod Sharma (PW-5), elder brother of Ram Parvesh- the 'deceased'.
- ii. Medical evidence indicating the injuries suffered by Pramod Sharma (PW-5) that were opined to be dangerous, thus lending implicit assurance to the presence of the said witness at the *locus in quo*/scene of crime.
- iii. Unchallenged testimony of Amar Singh (PW-7), resident of the locality, who witnessed the appellant grappling with Pramod Sharma (PW-5) and having a knife (Ex.P-1) in his hand. The deposition of Abdul Aziz (PW-1), another resident of the locality, also substantially corroborates the version of Amar Singh (PW-7).
- iv. The factum of the appellant having been apprehended at the spot itself wearing clothes stained with human blood (Group 'B').
- v. Recovery of a knife (Ex.P-1) from the possession of the appellant. Upon forensic analysis the said knife was found stained with human blood (Group 'B'). Further, Dr.Alexander (PW-4) who performed the autopsy opined that the injuries found upon the body of the deceased could have been caused by the said knife.
- vi. Admission by the appellant of being present at the spot of occurrence in his statement recorded in terms of Section 313 Cr.P.C. and consequent failure to render an acceptable explanation.
- vii. Unequivocal medical evidence establishing homicidal death of the deceased that has not been disputed.

3. The learned counsel appearing on behalf of the appellant fairly restricted the ambit of his submissions on the pivotal issue of applicability of Section 302 IPC in the facts of the present case and did

not lay serious challenge to the overwhelming evidence led by the prosecution in support of the circumstances delineated by us above.

4. We have bestowed careful consideration to the rival submissions advanced at the bar and proceed to examine the issue of applicability of Section 302 IPC in the factual conspectus of the case at hand.

5. The prosecution evidence unravels that the unfortunate incident transpired in the early morning hours of April 08, 2005 at around 5:45 AM when the appellant is stated to have delivered a solitary stab blow to the deceased by using a vegetable knife that was already lying in the room wherein they were earlier sleeping together. Perusal of the Post-Mortem Report (Ex.PW-4/A) reveals that the said wound was located on the left infraclavicular region of the left chest and the weapon entered into the pleural cavity while puncturing the arch of the aorta and upper lobe of the left lung. No other injury was found upon the body of the deceased.

6. It would be pertinent to highlight that the prosecution could not establish any motive behind commission of the offence and rather it is evident from the testimony of Pramod Sharma (PW-5) that the parties were on cordial terms as the appellant frequently visited their room.

7. It also assumes significance that the medical examination of the appellant conducted at Dr.Ram Manohar Lohia Hospital on the date of incident itself reveals that the appellant was observed to be injured and blood stained marks were found on the left eye lid, nose and below the right eye. The prosecution has not explained the injuries upon the appellant. The injuries suggest that the appellant was involved in a 'mutual-fight' with the deceased and his brother Pramod Sharma (PW-5) at their room in the process of which he also got hurt. We are not oblivious to the instinctive human tendency of the witnesses to suppress

the role played by them in the quarrel and paint an exaggerated picture of unilateral unprovoked assault having been unleashed upon them.

8. The absence of any evidence of prior-enmity/motive strongly probablizes that a quarrel suddenly erupted at the spur of the moment without any premeditation.

9. The fact that a single knife blow was inflicted upon the deceased, in conjunction with other attending circumstances including the appellant having suffered injuries himself, evidences that the appellant did not take undue advantage or act in a cruel/unusual manner. As highlighted by us earlier, the weapon used was an ordinary vegetable knife that was available in the room of the deceased and unfortunately fell in hands of the appellant during the brawl. It is not the case of the prosecution that the appellant contrived to carry the said knife before hand or he especially went outside to procure the same allowing passions to cool in the interregnum.

10. During course of arguments the learned counsel for appellant aptly placed reliance upon the decision of the Supreme Court reported as (2008) 11 SCC 637 Shambhoo Singh v. State of Rajasthan. A careful analysis of the said judgment would reveal that in consequence of a quarrel emanating from a land dispute, the accused inflicted two knife blows on the chest and one knife blow on the abdominal region of the deceased. Furthermore, injuries were also caused to the mother and elder brother of the deceased. The Court while elaborating upon the operation of Exception 4 to Section 300 IPC took into consideration the fact that the parties had worked themselves into a furry on account of verbal altercations. It was observed that appropriate conviction would lie under Section 304 Part (I) IPC. Custodial sentence of ten years imprisonment was awarded.

11. In order to buttress his submissions the learned counsel for the appellant also placed reliance upon another decision of the Supreme Court reported as (2011) 2 SCC 123 Mangesh v. State of Maharashtra wherein it was held that even though an injury may be caused on the vital part of the body, however, it must also be borne in mind that when a person loses his sense he may act violently and that by itself may not be a ground to be considered against him while determining the nature of offence. In the said case three stab wounds were inflicted by the accused upon the deceased and the fatal injury was located on the left side of the chest. The Supreme Court also observed that the knife blow was not delivered by the appellant with full force otherwise the injury would be more than just 'cavity deep'. Resultantly, the Court altered the conviction from Section 302 IPC to one under Section 304 Part (I) IPC and imposed a sentence of ten years imprisonment.

12. We may pause to notice that even in the present case the solitary injury found upon the body of the deceased is located on left side of the chest and has been observed by the doctor to be 'cavity deep'. Thus the dictum in the above cited pronouncements would be squarely applicable to the instant case and render valuable assistance.

13. In view of the discussion comprised in the preceding paragraphs, while maintaining the conviction of the appellant for the offence punishable under Section 307 IPC we dispose the present appeal by altering the conviction of the appellant from one under Section 302 IPC to Section 304 Part (I) IPC. The nominal roll reveals that the appellant has already undergone incarceration for a period of approximately ten years eleven months without remission. We are therefore inclined to sentence the appellant to the period already undergone by him in custody.

14. The appellant is lodged in Central Jail No.5, Tihar. Copy of this decision be sent to the Superintendent of Prison - Central Jail No.5, Tihar and he is directed to release the appellant forthwith, unless required in connection with any other case.

15. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(A.K.PATHAK)
JUDGE

MARCH 11, 2016
mamta