

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

+ **CRL.APPL. No.246/2016**

Reserved on: 25.11.2017

Date of Decision : 16.12.2017

DEEPU

.....Appellant

Through Ms.Saahila Lamba, Adv.
DHCLSC

Versus

STATE

... Respondent

Through Mr.Amit Gupta, APP with Insp.
Rajender Singh P.S. Mayur
Vihar.

CORAM:

HON'BLE MR. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. This appeal has been filed by the appellant Deepu challenging his conviction under Section 302 of the Indian Penal Code, 1860 and under Section 25 of the Arms Act vide order dated 26th March, 2015 passed by the Additional Sessions Judge, (FTC) E-Court, Shahdara, Karkardooma Courts, Delhi in Sessions Case No.29/2012. The appellant further challenges the order dated 26th March, 2015 passed by the learned Additional Sessions Judge sentencing him with life imprisonment and with fine of Rs.10,000/- under Section 302 IPC and 3 years RI with fine of Rs.5,000/- under Section 25 of the Arms Act.

2. The case of the prosecution is that on 7th March, 2012 at around 9.40 pm, information was received at P.S. Mayur Vihar from duty Constable, LBS Hospital that Suraj Bali s/o Late Sh.Bahadur (hereinafter referred to as the deceased) has been brought dead to the hospital by his brother Charan Pal (PW-6). MLC (Ex.PW11/A) records the time of arrival as 9.55 pm. On receipt on this information, ASI Shailender Singh along with Constable Rajkumar (PW7) reached the Hospital. They met Uncles of the deceased namely Harish (PW-4) and Ashok (PW-5) as also brother of the deceased Charan Pal at the hospital. Statement of Harish was recorded wherein he has stated that on 7th March, 2012 at about 9.00 PM while taking walk after meals, he reached at 19 block chowk near the shop of Dharam Kabari at Trilok Puri and saw the appellant lifting the knife from his rehri and piercing it in the chest on the deceased, due to which the deceased fell down and started bleeding. On seeing this, public gathered at the spot. On hearing the noise, Charan Pal and Ashok Kumar also reached there. The appellant ran away from the spot. The deceased was rushed to the hospital, where he was declared brought dead. After recording the statement of Harish, ASI Shailender Kumar along with Constable Rajkumar, Harish, Ashok and Charan Pal came to the place of incident and found blood lying on the road in front of the shop of Dharam Kabari. In the meanwhile, SHO PS Mayur Vihar came to the spot. The Crime Team also came to the spot. Photographs were taken of the spot. The Crime Team inspected the body of the deceased and found deep cut wound over the right side chest of the deceased. Rukka (Ex.PW8/A) was prepared on the statement of

Harish and sent to the police station for registration of the FIR. Blood stained clothes and chappals of Harish, Ashok and Charan Pal were seized. Investigation was handed over to Inspector Amleshwar Rai (PW22) for investigation. He, along with SI Bhanu Kanwaria (PW-23) and Constable Raj Kumar went in search of the appellant. They received information that the appellant was present in his house and was about to leave. They rushed to the house of the appellant at 32/168, Trilok Puri, where he was arrested. The appellant made a disclosure statement (Ex.PW22/D) and got a knife recovered from his room lying under the TV trolley. A sketch of the knife (Ex.PW22/E) was prepared. T-shirt and lower worn by the appellant were also seized. Post mortem of the body of the deceased was conducted on 8th March, 2012 (Ex.PW13/A) and the cause of death was stated as under:-

“J-OPINION: The cause of death to the best of my knowledge and belief is haemorrhagic shock consequent upon ‘stab’ injury upon chest caused by single edged sharp cutting weapon/knife. All injuries are ante mortem in natures recent duration Injury No.1 is sufficient to cause death in ordinary cause of nature. Homicidal death.”

3. On 26th April, 2013, Dr.Vinay Kumar Singh (PW-13) gave his opinion (Ex.PW13/C) that injury Nos.1 and 2 found on the body of the deceased and cuts in the cloths could be caused by the knife recovered at the instance of the appellant. In the FSL and DNA report (Ex.PW22/K1, PW22/K-2 and PW22/K-3), it was *inter alia* opined as under:-

“RESULTS OF EXAMINATION

The alleles from the source of exhibit ‘9’ (Blood Gauze piece of deceased) are accounted in alleles from the source of exhibit ‘6a’ (T-Shirt) & exhibit ‘6b’ (Lower).

CONCLUSION

*The DNA profiling (STR analysis) performed on the exhibits provided is sufficient to conclude that DNA Profile generated from the biological stains i.e. blood stains present on the exhibit ‘6a’ (T-Shirt) & exhibit ‘6b’ (Lower) are **similar** with the DNA Profile from the source of exhibits ‘9’ (Blood Gauze piece of deceased).”*

4. Blood of the same blood group as of the deceased was also found on the clothes of Harish. As far as the knife is concerned, blood could not be detected on the same. On completion of the investigation, a charge sheet was filed against the appellant and charges under Section 302 IPC and under Section 25/27 of the Arms Act were framed against him. The appellant pleaded not guilty.

5. The prosecution examined 24 witnesses in support of its case. What is most material is the deposition of Harish (PW-4) as he is the sole eye-witness even as per the prosecution. In his statement, Harish supported the case of the prosecution and stated that on 7th March, 2012 at about 9.00 pm, after taking dinner, he came down for a walk. When he reached at the crossing of 19 Block, he saw the appellant, who is a painter and was known to him since prior to the incident and the deceased quarrelling near the shop of Dharam Kabari. He saw the appellant pick up a knife from his rehri and stab the deceased with the knife on the right side of the chest. The deceased fell down and

started bleeding. On hearing noise, Charan Pal and Ashok also reached the spot and with their help, Harish rushed the deceased to the Hospital. He was extensively cross examined by the counsel for the appellant. He deposed that his house is at 1 ½ minute walking distance from the place of incident.

6. Ashok Kumar (PW-5) deposed that on 7th March, 2012 at about 9.00 pm while he was returning after taking medicine for his daughter from the Medical Store at 33 Block, Trilok Puri, as he reached near the shop of Dharam Kabari, he saw the deceased lying on the road in a pool of blood. He also saw Harish present there. Charan Pal also reached there and they rushed the deceased to the Hospital in a TSR.

7. Charan Pal (PW-6) states that at about 9.00 pm, he was present in his jhuggi and on hearing the noise, he came out and found the deceased lying on the road and bleeding from chest near shop of Dharam Kabari. He found Harish and Ashok Kumar also present at the site.

8. Learned Additional District Judge relying upon the statements of the above three witnesses and specially that of Harish and the FSL report found the appellant guilty of the charge under section 302 IPC and Section 25 of the Arms Act.

9. Counsel for the appellant submits that barring Harish, who is the maternal Uncle of the deceased, no other eye witness to the incident was produced by the prosecution in spite of the incident is alleged to have taken place in the market and many people from the

market are stated to be present at the time of the incident. She further submits that the statement of Harish is un-reliable as he is an interested witness.

10. We are unable to accept the said argument of the counsel for the appellant. Harish in his deposition has stated that he lives in the vicinity of the place of the incident and was out to take a walk after having his meal in the night. The time of incident is 9.00 pm. There is no reason shown why he would try to implicate the appellant in the offence. There is no suggestion of any animosity between the appellant and Harish. Harish along with Charan Pal and Ashok had taken the deceased to the hospital. Their clothes had the blood stains matching with the blood group of the deceased. The statements of Charan Pal and Ashok Kumar corroborates the presence of Harish at the place and time of incident. In the cross examination of Harish, Charan Pal or Ashok, their testimonies could not be shaken. In State of *State of A.P. vs. S.Rayappa & Ors. (2006) (4) SCC 512*, the Supreme Court has rejected a similar argument of interested witnesses being produced and no independent witness being examined by the prosecution, by holding as under:-

“By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted

somehow or the other either because of animosity or some other reasons.

7. On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously.”

11. Counsel for the appellant further submits that the recovery of the knife and the blood stained cloths from the appellant cannot be believed. She submits that the incident is stated to have occurred at around 9.00 pm on 7th March, 2012, whereas the appellant was arrested on 8th March, 2012 at around 4.15 am. Therefore, in the submission of the counsel for the appellant, the appellant had sufficient time not only to throw away the knife used in the offence rather than keeping it in his own house but also at least to remove the clothes that he was wearing at the time of the incident. She submits that as no public witness was involved in the purported seizer of the clothes or the discovery of the knife, no reliance could be placed on the same for convicting the appellant.

12. We cannot accept the above submission of the counsel for the appellant. The appellant was arrested almost immediately after the incident. He may not have got an opportunity to dispose of the knife or the clothes that he was wearing at the time of the incident, however, the same cannot, in our opinion, give reason to disbelieve the witness in relation to the discovery of the knife and the seizer of the clothes from him.

13. Counsel for the appellant lastly submits that even if the case of the prosecution is to be believed, present is a case that would fall under Exception 4 to Section 300 of the IPC. She further submits that even as per prosecution, at the time of incident Harish saw the appellant and the deceased quarrelling. He further has stated that the appellant picked up the knife from the rehri and then inflicted the fatal blow on the deceased. She submits that the above testimony would show that there was no pre meditation, it was a case of sudden fight and in the heat of the moment, the appellant having inflicted the blow, he was entitled to plead Exception 4 to Section 300 of the IPC.

Exception 4 to Section 300 is quoted hereinbelow:-

Exception 4 to Section 300 IPC.”

“300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

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.”

14. On the other hand, the learned APP submits that the post mortem report (Ex.PW13/A) clearly records the injury No.1 as sufficient to cause death in ordinary course of nature. He submits that the appellant would not be entitled to plead Exception 4 to Section 300 as the deceased was not armed. He submits that there was evidence of earlier animosity/fights between the deceased and the appellant and therefore, the appellant had committed the offence with pre-meditation.

15. We have considered the submissions made by the counsels. Though it is correct that Harish and Charan Pal have both stated about the previous quarrel between the deceased and the appellant, they have also stated that they were not aware of any previous animosity between them and the previous incidents spoken about by them were minor in nature, for which no complaint was made. Even the Additional District Judge in his impugned order has held that there was no major issue between the appellant and the deceased and there was no motive for the appellant to commit the offence. It has further come in evidence of Harish that the appellant was quarrelling with the deceased and in that quarrel, he picked up the knife from his rehri and stabbed the deceased with it. The sketch of the knife (Ex.PW22/E) indicates that it was blunt on one side and sharp on the other. The testimony of Harish indicated that this knife was not on the person of the appellant but was in the rehri. Though the post mortem indicates

two injuries on the body of the deceased, Harish has spoken about one injury being inflicted by the appellant. It is also important to note that the appellant was standing next to his rehri i.e. his place of work and it was not shown by the prosecution as to what the deceased was doing at the place of incident.

16. In ***Hemraj vs. The State (Delhi Administration)*** AIR 1990 SC 2252, Supreme Court observed as under:-

“.....it was during the course of the sudden quarrel the appellant gave a single stab which unfortunately landed on the chest of the deceased causing an injury which in the opinion of the Medical Officer was sufficient in the ordinary course of nature to cause death.

..... the occurrence had happened most unexpectedly in a sudden quarrel and without pre-meditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither Clause I nor Clause III of Section 300 IPC will be attracted.....the offence committed by the appellant is the one punishable under Section 304 Part-II IPC but not under Section 302 IPC.”

17. This Court also in *Shiv Kumar @ Nigro vs. State of Delhi* MANU /DE/0256/2015 held as under:

“32. On careful consideration of the rival contentions and the background of facts, we find merit in the plea of learned counsel for the appellant. Regarding applicability of section 304(2) IPC is concerned; we are of the opinion that the appellant’s argument in this regard has merit and deserves to be accepted. There is nothing on record to suggest that there was any enmity or motive on the part of the appellant to cause death of the deceased or to cause such injury which in ordinary course was sufficient to cause death. Therefore, the possibility of the intention to kill is ruled out. The case of the prosecution is that there was exchange of hot words and in the sudden rush of blood, the appellant took out the knife from his pant and inflicted a blow on the deceased, which blow unfortunately fell on the chest of the deceased and proved to be fatal. From the aforesaid factual matrix, it is clear that this is not a case of intention to kill and actually the fatal blow suffered by the deceased was a result of a sudden fight in the heat of passion without any premeditation. It cannot be said that the appellant had taken any undue advantage or acted in a cruel or unusual manner as he had given only a single knife blow which unfortunately fell on a vital part of the body and proved to be fatal. Thus, in our view, the case of the appellant squarely falls within the Exception 4 to Section 300 IPC.”

18. In our view, taking the totality of the circumstances and the evidence led by the prosecution, the case of the appellant falls within the Exception 4 to Section 300.

19. In view of the above, we partly allow this appeal. The conviction of the appellant under Section 302 IPC is set aside and he is convicted under section 304 Part II IPC.

20. We convert the sentence of life imprisonment imposed upon the appellant to RI for a period of 7 years while maintaining the fine of Rs.10,000/- imposed by the Additional District Judge. We further maintain the conviction and sentence of the appellant under Section 25 of the Arms Act.

21. Copy of the order to be sent to Tihar Jail for updating of records and intimation to the appellant. Trial Court Record be sent back.

NAVIN CHAWLA, J

MUKTA GUPTA, J

DECEMBER 16, 2017

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