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

% *Date of Decision: December 23, 2017*

+ **CRL.A. 1583/2013**

MUKESH @ MUKKUAppellant
Through: Ms.Inderjeet Sidhu, Advocate.

versus

STATE Respondent
Through: Ms.Kusum Dhalla, APP for the State
with SI Sanjay Kumar, PS Old Delhi
Railway Station

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J. (ORAL)

1. The Appellant-Mukesh @ Mukku has impugned the judgment dated 03.02.2012 and the order on sentence dated 08.02.2012 passed by learned Additional Sessions Judge, Tis Hazari Courts, Delhi in Sessions Case No.71/2010 whereby he has been convicted for committing the offence punishable under Section 302 IPC and sentenced to undergo Life Imprisonment with a fine of Rs.1 Lac and, in default of payment of fine, to further undergo Simple Imprisonment for one year.
2. According to the prosecution case, on the night of 01.07.2010 at 1/4649-121B, New Modern Shahadra, the Appellant stabbed the deceased-Sanjeet with a knife, on the left side of his chest and intentionally caused his death. Pursuant to a PCR Call, DD No. 2, regarding the incident,

was recorded at PP Railway Shahdara, Police Station Railway Station Delhi Main at 12.55 a.m. on 02.07.2010, to the effect that an incident of stabbing had occurred at 1/4649-121B, New Modern Shahdara whereupon PW-13 SI Suresh along with HC Mahipal Singh reached the spot and found that the injured had been taken to GTB Hospital. When the SI reached GTB Hospital, he found that the deceased-Sanjeet had been declared 'brought dead'. Upon further investigation at the place of incident, SI Suresh met PW-1-Mukesh, who claimed to be the eye-witness of the whole incident. After his statement was recorded, a Rukka was sent by SI Suresh to the Police Station through HC Mahipal Singh based on which FIR No.88/2010 was registered under Section 302 IPC.

3. Then further investigation of the case was taken over by PW-18 Inspector Anand Singh, who after collection of evidence from the place of incident, conducted the inquest proceedings and made a request for carrying out post-mortem. As per the post-mortem report Ex.PW19/A, an incised stab wound measuring 4.3 cm x 0.2 cm was found obliquely placed over left lower chest of the deceased. The report opined that the cause of death was a haemorrhagic shock as a result of ante mortem injury to the heart produced by a sharp-edged weapon. It was further opined that the incised stab wound, was sufficient to cause death in the ordinary course of nature. On 06.08.2010, the Appellant was arrested in FIR No. 193/2010 registered under Section 25 of Arms Act at PS Karawal Nagar. Upon receipt of information regarding his arrest, the Appellant was formally arrested in the present case on 09.08.2010 after seeking permission from the Court when he appeared in pursuance to the production warrant. Thereafter, the Appellant's disclosure statement was recorded and at his

instance, the weapon of offence i.e. knife was recovered from a spot around 40-50 yards away from the place of incident. After conclusion of the investigation, a charge-sheet under Section 302 IPC was filed and the Appellant was sent to face trial. He pleaded not guilty to the charge framed for committing the offence punishable under Section 302 IPC.

4. In support of its case, the prosecution examined 19 witnesses. The Appellant claimed to be innocent and did not opt to lead evidence in his defence.

5. PW-1-Umesh, who claimed to be an eye-witness to the whole incident, stated that, on 01.07.2010 at about 10:15 pm, while he was sitting outside his house near the railway line, he saw the deceased and Appellant talking to each other just next to the railway line. He stated that he had gone to urinate and while he was standing at some distance from them, he heard the Appellant asking the deceased to return the money. However, since the deceased Sanjeet expressed his inability to return the money, the Appellant got infuriated and stabbed the deceased with a knife on the left side of his chest. PW-1 further stated that he tried to apprehend the Appellant, but was unsuccessful as the Appellant ran away very fast. He then returned to the spot, where he found the deceased- Sanjeet lying in an injured state on the railway line and therefore he along with PW-6 Satish immediately took the deceased to GTB Hospital in a rickshaw where he was declared 'brought dead'. Soon, the police reached the hospital where the Investigating Officer met PW-1 and PW-6, who took them to the place of incident. The statement of PW-1 was thereafter recorded at the spot. PW-6 Satish had seen PW-1 chasing the Appellant near the place of the

incident and had also accompanied PW-1 while taking the deceased to GTB Hospital.

6. In his statement under Section 313 Cr.P.C, the Appellant denied the entire incident. He stated that he did not know Sanjeet and had never met him. He only came to know about Sanjeet's death, when he was arrested in the present case. He further stated that he knew PW-1 Umesh as he had met him in Tihar Jail in 2008 and claimed that PW-1 was a police informer. He denied asking for money from Sanjeet or stabbing him. Further, when he was questioned about his arrest, he accepted that he was arrested on 06.08.2010 at PS Karawal Nagar. He, however, contended that a *desi katta* and two cartridges had been planted on him and he had been arrested in a false case registered under the Arms Act. He further stated that he was arrested in the present case on issuance of production warrants and he denied making any disclosure statement or that a knife had been recovered at his instance. When he was further questioned about PW-1 deposing against him, he stated that PW-1 was a false witness. He also pleaded that on 02.07.2010, at around 4-5 pm he was in a party in Noida where he used to work as *Safai Karamchari* and he returned to his place in Khichripur only around 7-8 pm, whereafter, he remained with his brother Kuldeep and *Bhabi* Nirmala till the next day morning.

7. After considering the testimony of the prosecution witnesses and the evidence brought on record, the learned Trial Court i.e. the learned Additional Sessions Judge found that the testimony of PW-1 was credible as it was corroborated by the statement of PW-6 Satish and also found that from a scrutiny of the site plan it was evident that PW-1 was at a close distance of around 6 meters from the spot of assault. The learned Trial

Court found the deposition of PW-1, that he had overheard the conversation and witnessed the whole incident, to be natural and believable. The Ld. Trial Court further observed that the post-mortem report also corroborated the testimony of PW-1 to the effect that the Appellant had thrust a knife into the left side of the chest of the deceased. The testimony of PW-6 was also found to be credible in light of the MLC of the deceased wherein it was mentioned that PW-6 had brought the deceased to the hospital as also from the call records of PW-6 which showed that he had dialled the number 100 twice from his phone at 10:16 and 10:22 on 01.07.2010. The Ld. Trial Court also relied on the factum of the recovery of a knife at the instance of the Appellant which, as per the opinion of the Doctor who conducted the Post Mortem, was capable of causing the fatal injury. Upon consideration of the entire facts and circumstances and finding the presence of an immediate motive, for the fatal assault, the learned Trial Court held the Appellant guilty for murder of the deceased-Sanjeet while convicting him under Section 302 of IPC sentenced him to Life Imprisonment with a fine of Rs. 1 Lac.

8. The Appellant, who is currently undergoing his sentence, is being represented by Ms. Inderjeet Sindhu, legal aid counsel appointed by Delhi High Court Legal Services Committee. Before us, Ms Sindhu contended that the Appellant is wholly innocent and has been falsely implicated and convicted by relying on the untrustworthy statement of witnesses PW-1 and PW-6. In the alternative, she submits that even on basis of the established facts, the Appellant could not have been convicted under Section 302 IPC since the incident had occurred without any enmity or premeditation and had occurred at the spur of the moment and therefore,

according to her, even if the appellant is held guilty, his case fell under the exceptions to Section 300 IPC and amounts to culpable homicide not amounting to murder which is punishable under Section 304 IPC.

9. Having considered the facts and circumstances as emerge from the record we are of the view that the prosecution case, as per which the Appellant caused the death of Sanjeet, stands proved beyond any reasonable doubt. The depositions of PW 1 -Umesh and PW 6-Satish clearly corroborate the case of the prosecution. PW1, in his testimony, has stated that he saw the entire incident from close quarters. According to him when he had gone to relieve himself just outside his house, which is close to the railway line, he heard the Appellant asking the deceased - Sanjeet to return the money which Sanjeet had not returned out of the sum of Rs. 5000/- borrowed from the Appellant. PW-1 further went on to state that he could see that when the deceased had expressed his inability to return the same, the Appellant stabbed the deceased with a knife. The site plan, Ex. PW-15/A., reveals that the spot from which PW 1 claims to have witnessed the incident is at a distance of approximately 6 metres from where the deceased was stabbed. His statement has also been buttressed by PW 6-Satish, who has stated that around 10.15 p.m., while he was going to his house along the railway line, he saw the deceased lying in a pool of blood and PW1 chasing the Appellant. Upon his return, PW1 recounted the incident to PW6 and both of them took the deceased to GTB Hospital in a 'rickshaw' where he was declared 'brought dead'. This fact is corroborated by the MLC of the deceased, Ex. PW-14/C, which clearly mentions that PW6 had brought the deceased to the hospital. Further, the call records of

PW6's phone reflect that he had dialled the number 100 twice from his phone at 10:16 p.m. and 10.22 p.m on 01.07.2010. The Post mortem report produced before us shows that the fatal injury was a stab wound on the lower left part of the chest of the deceased which further corroborates the account of PW1 who stated that he saw the Appellant stab the deceased on the left side of the chest. These facts add further credibility to the testimony of PW1 and PW6, as per which the Appellant had stabbed the deceased with a knife which led to his death.

10. In our considered opinion, the defence has failed to refute the testimony of these two witnesses or raise any doubt as to the credibility of their version of events. Hence, the only conclusion which emerges from the evidence on record is that the Appellant had stabbed the deceased with a knife on the night of 01.07.2010 as a result of which he died.

11. Since in view of the established facts, it is proved beyond reasonable doubt that the Appellant had caused the death of Sanjeet, the only issue which arises for our consideration is whether an offence under section 302 IPC or 304 IPC is made out i.e. whether it is a case of murder or culpable homicide not amounting to murder. At this stage it would be apt to refer to the decision of the Supreme Court in the case of **Rampal Singh v. State of U.P. (2012) 8 SCC 289**, wherein the Supreme Court, while discussing the distinction between an offence of 'murder' and culpable homicide not amounting to murder', observed as under :

'16. This Court in the case of Vineet Kumar Chauhan v. State of U.P. (2007) 14 SCC 660 noticed that academic distinction between 'murder' and 'culpable homicide not amounting to murder' had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya (1976) 4 SCC 382, where it was

observed as under:

... that the safest way of approach to the interpretation and application of Section 299 and 300 of the Code is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Section 299 and 300 of the Code and the drawing support from the decisions of the court in Virsa Singh v. State of Punjab and Rajwant Singh v. State of Kerala, speaking for the court, Justice RS Sarkaria, neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the court said that wherever the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be that the accused has done an act by doing which he has caused the death of another. Two, if such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder, punishable under the First or Second part of Section 304, depending respectively, on whether this second or the third clause of Section 299 is applicable. If this question is found in the positive, but the cases come within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 of the Code. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.”

12. Since we have already examined the first stage as propounded above, let us examine the second stage, i.e. whether the act of the accused amounts

to culpable homicide as defined in Section 299 IPC. Section 299 reads as under :

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

13. Keeping in view the fact that the Appellant used a knife to stab the deceased, this Court has no hesitation in concluding that irrespective of whether or not he had the intention to cause death, he definitely had the intention of causing such bodily injury, i.e. a stab wound on the chest, that is likely to cause death. Hence, the act of the appellant is clearly covered under the ambit of Section 299 IPC and would qualify as Culpable Homicide.

14. In these circumstances it is now upon us to examine whether the incident would come within any of the exceptions to Section 300 IPC so as to decide whether the Appellant can be held guilty of an offence under Sections 302 IPC or 304 IPC. Out of the exceptions listed in the aforesaid Section, the learned counsel for the Appellant has relied only upon Exception 1 and Exception 4 to contend that the present case does not fall under section 300 IPC. We may therefore reproduce Exception 1 and Exception 4 to Section 300 IPC which read as under:-

"Exception 1.--When culpable homicide is not murder.-- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."

"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.”

15. The facts of the present case do not indicate that at any stage the appellant, upon grave and sudden provocation, had lost the power of self control and caused the death of the deceased. The eyewitness testimony does not seem to point to either a grave or sudden provocation or any act of the appellant deprived of self control. Hence Exception 1 to Section 300 IPC shall not be applicable in this case.

16. Coming now to Exception 4 which has been pressed into service by the learned counsel for the Appellant, we find that the Supreme Court, in Gurmukh Singh Vs. State of Haryana, 2009 (15) SCC 635, while discussing the question as to whether the offence therein fell under Section 302 IPC or Section 304 IPC, has identified four ingredients which need to be fulfilled for invoking the said exception which are that death should be caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. The relevant portion of the Judgment reads as under :

“20. In another case Pappu v. State of M.P. (2006) 7 SCC 391, this Court observed as under:

".....The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300

IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body it was given and several such relevant factors. Considering the factual background in the case at hand it will be appropriate to convict the appellant under Section 304 Part II IPC, instead of Section 302 IPC as has been done by the trial court and affirmed by the High Court. Custodial sentence of eight years would meet the ends of justice. The appeal is allowed to the aforesaid extent."

21. In the instant case, the occurrence had taken place at the spur of the moment. Only the appellant Gurmukh Singh inflicted a single lathi blow. The other accused have not indulged in any overt act. There was no intention or pre-meditation in the mind of the appellant to inflict such injuries to the deceased as were likely to cause death in the ordinary course of nature.

22. On consideration of the entire evidence including the medical evidence, we are clearly of the view that the

conviction of the appellant cannot be sustained under section 302 IPC, but the appropriate section under which the appellant ought to be convicted is section 304 Part II IPC."

17. Further, this court in the case of Jarnail Singh vs. State (NCT of Delhi) Crl. Appeal No. 132 Of 1997, while examining similar circumstances of death caused by a single stab wound, examined the application of Exception 4 to Section 300 IPC and made the following observations in its judgement delivered on 27.01.2010:

"9. On careful consideration of the rival contentions and the background of facts, we find merit in the plea of learned counsel for the appellant. 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 on the relevant night at about 11.00 PM, the deceased along with PW-1 and PW-2 was standing in the 'gali' in front of his house. On seeing the appellant coming back from the direction of the school, the deceased enquired from him about the reason for his roaming around in the area. This enraged the appellant, who retorted that it was not of any concern of the deceased. This resulted in exchange of hot words and in the sudden rush of blood, the appellant took out the knife from right side of the belt of his pant and inflicted a blow on the deceased, which blow unfortunately fell on the chest of the deceased and proved to be fatal. When PW-1 Balraj tried to help the deceased, the appellant gave him a knife blow on his waist resulting in a simple injury to him. 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 pre-meditation. 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..."

18. From the facts as established on record, we are of the view that the ingredients of Exception 4 are satisfied in the instant case. The prosecution has not been able to demonstrate any animosity or premeditation in the actions of the Appellant. Mere presence of a knife on the appellant cannot impute premeditation on his part. PW 1 has stated in his cross examination that Appellant was a 'Bad Character' of Khichripur, hence the possession of a knife can be reasonably attributed to various other factors and not a premeditated intention to cause the death of the deceased. As per the statement of PW-1 there was a quarrel between the appellant and the deceased regarding some money that appellant had loaned to the deceased which he was unable to pay back. It was during this quarrel that the Appellant took out a knife and stabbed the deceased on his chest, which injury proved to be fatal. Further, in the instant case the Appellant inflicted a single stab wound, which clearly appears to be an act done at the spur of the moment without any premeditation. There were no further injuries inflicted on the deceased and hence it cannot be stated that the Appellant had acted in a cruel or unusual manner. Though it cannot be said that whenever the death is on account of a single blow, the offence is one of 'culpable homicide not amounting to murder' and not of 'murder', this fact, when weighed with the other facts and circumstances of the case, becomes a factor in deciding whether the offence falls under the Exceptions to Section 300 IPC.

19. Hence, the facts before us do not point to a calculated or pre-

meditated intent on part of the Appellant to kill the deceased. Clearly, this is not a case for conviction under Section 302 IPC. In view of the contentions put forth before us and the factual background, we find that Exception 4 to Section 300 would be applicable to the present case. It would, therefore, be appropriate to convict the accused under Section 304 Part I IPC.

20. In view of the above discussion, the Appeal is entitled to succeed in part. The appellant's conviction under Section 302, IPC is altered to Section 304 Part I, IPC. His sentence is therefore modified; instead of life imprisonment, he shall serve rigorous imprisonment for ten years. The sentence of fine is also modified to the extent that fine of ₹1 lakh is reduced to ₹50,000/- and in default of payment of fine, he shall undergo SI for three months.

21. The Appeal is allowed in above terms.

22. A copy of the order be sent through the Jail Superintendent for information and updation of the record.

23. Trial Court Record be sent back along with copy of this order.

(REKHA PALLI)
JUDGE

(PRATIBHA RANI)
JUDGE

DECEMBER 23, 2017

kg/sr