

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

Date of Decision: May 05, 2018

+ **CRL.A. 244/2002**

BALJEET SINGH

..... Appellant

Through: Mr. Sumeet Verma and Ms. Preeti
Jakhar, Advocates

versus

STATE

.....Respondent

Through: Mr. Hirein Sharma, Additional
Public Prosecutor with SI Munna Kumar, P.S.
Delhi Cantt.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT
(ORAL)

1. Appellant, alongwith *Smt.Bimla*, *Smt. Rajoo* and *Rahul*, was tried for the offences under Sections 302/212/34 of IPC on the allegation of murdering *Jagdish* on 22nd February, 1996 at about 05:45 P.M. near *Jhuggi No.170/78, Village Jharoda, Pakki Lane* by inflicting knife injury on the person of *Jagdish*. Trial court has relied upon the evidence of wife of the deceased; *Rakesh (PW-6)*, who claims to be an eye-witness, and other evidence on record to convict appellant for the offence under Section 302 of IPC, but has extended benefit of doubt to co-accused of appellant. However, appellant's co-accused-*Rajoo* and *Bimla* have been convicted under Section 323 of IPC and have been sentenced by trial

court to the period already undergone by them. Vide impugned order of 21st September, 2001, appellant has been sentenced to imprisonment for life and fine of ₹5,000/- for the offence under Section 302 of IPC. In default of payment of fine, trial court has ordered that appellant shall suffer simple imprisonment for three years. The facts, as noticed in impugned judgment, are as under: -

“Precisely, the brief facts of the case are that on 22.2.96 insp. V.K. Kalia, SHO P. S. Delhi Cantt. alongwith Head Constable was busy in supervising security arrangement in the area of PS Dahula Kuan and at about 1820 hours he received a wireless message from South West District Control Room that Jagdish Pehalwan had been stabbed. Thereafter, SHO, directed duty officer to send SI N.R. Nair to the spot. The duty officer handed over DD No. 56B to SI N.R. Nair who alongwith Const. Brij Mohan reached at the spot and found that Jagdish was lying on the road in the pool of blood. Smt. Leela Devi, wife of injured met with the IO and got recorded her statement. In her statement she has stated that about nice months ago, Baljeet alongwith his wife Bimla, his brother Veer Singh and Raghunath had burnt their jhuggi and her husband had reported the matter to the police and police arrested all the four abovesaid persons and due to this reason Baljeet was enimical towards them. Today at about 6.00 p.m. when her husband came to home after purchasing milk, Baljeet came there and started abusing them. They came out from the house and her husband told to Baljeet not to abuse them. In the meanwhile, Rajoo sister of Baljeet and his wife Bimla also came there and started abusing them and told to kill Jagdish. On this, Baljeet brought a knife from his house and Rajoo and Bimla started pelting stones on them. They sustained injuries and Baljeet also stabbed her husband on his chest. Blood was oozing out and he fell down on the ground. When she was going to report the matter with the police, Rajoo and Bimla stopped her forcibly. When she reached at the body of her husband again at that time he was dead. Baljeet, Rajoo and

Bimla ran away from there alongwith the knife. Legal action be taken against all the accused persons as they had killed her husband due to enimity. Thereafter, SI N.R. Nair got registered the case U/S 302/34 IPC. Further investigation was handed over to Insp. V.K. Kalia. During the investigation, Insp. V.K. Kalia inspected the spot, prepared the site plan, got the spot photographed, sent the dead body to the mortuary of Safdarjung hospital, called the crime team at the spot, taken into possession from the spot the blood of deceased, blood stained control sample of earth, controlled sample of earth, recorded the statement of witnesses, arrested the accused persons from the house of Rahul and IO also arrested Rahul as he gave shelter to accused persons Baljeet, Rajoo and Bimla. On 24.2.98 the post mortem on the dead body was conducted and after the post mortem the dead body was handed over to the relatives of the deceased. During investigation, the knife was also seized by the IO and the knife was sent to FSL aloongwith exhibit for analysis and after completion of investigation, the challan was filed in the court against the accused persons.”

2. While entertaining this appeal, the sentence awarded to appellant was suspended vide order of 10th September, 2002 as by then, appellant had undergone six years of imprisonment. The stand of appellant before trial court was of denial and no evidence was led by appellant. The weapon of offence, i.e. bloodstained knife, has been recovered at the instance of appellant.

3. Learned counsel for appellant has rightly not assailed impugned judgment on merits, as upon perusal of evidence on record, we find that the prosecution case stands firmly established. However, it is yet to be seen as to what is the nature of offence committed. The precise submission of learned counsel for appellant is that instant case is of giving solitary blow to deceased and that appellant was not carrying any

knife at the time of this accident and so, it cannot be presumed that appellant had an intention to cause death of *Jagdish*. Learned counsel for appellant submits that as per Nominal Roll of appellant, he had undergone sentence of 6 years, 9 months and 14 days as on 31st August, 2002. Our attention of this Court is drawn by learned counsel for appellant to order of 2nd December, 2002 whereby the amount of surety bond was reduced to ₹5,000/- and thereafter only, appellant had come out of jail and as per appellant's counsel, by then appellant had undergone imprisonment of more than seven years.

4. Learned counsel for appellant relies upon Supreme Court's decision in *Pappu Alias Hari Om v. State of Madhya Pradesh*, (2009) 11 SCC 472 to submit that in a case of single injury, the conviction has been altered from Section 302 to Section 304 Part II of IPC and the sentence has been reduced from '*imprisonment for life*' to '*custodial sentence of 8 years*'. So, it is submitted on behalf of appellant that in the instant case, the sentence awarded to appellant deserves to be reduced to the period already undergone by him as his conduct in jail has been '*good*' and because he has no previous involvement in any other criminal case.

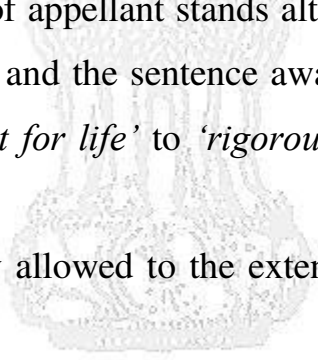
5. On the contrary, learned Additional Public Prosecutor for respondent-State supports impugned judgment and order of sentence and submits that appellant had the intention to cause death of *Jagdish* (*deceased*) and so, decision relied upon by appellant's counsel is of no avail to the case of appellant and thus, the sentence awarded to appellant deserves to be maintained.

6. After having heard both the sides and on perusal of evidence on record and the decision cited, we find that instant case is of causing of

solitary injury on the left side of the chest with a knife to deceased on account of a quarrel. In a somewhat similar case of *Pappu (supra)*, accused had fired a single shot on the chest of deceased, as a consequence of exchange of hot words and Supreme Court had altered the conviction from Section 302 to Section 304 Part II of IPC and also reduced the sentence awarded to accused from '*imprisonment for life*' to '*rigorous imprisonment for eight years*'.

7. In the facts and circumstances of this case and in view of afore-referred precedent, we are inclined to alter the conviction of appellant from Section 302 to 304 Part II of IPC and to reduce the sentence of '*imprisonment for life*' to '*rigorous imprisonment for eight years*'. Consequently, conviction of appellant stands altered from Section 302 to Section 304 Part II of IPC and the sentence awarded to appellant is also altered from '*imprisonment for life*' to '*rigorous imprisonment for eight years*'.

8. This appeal is partly allowed to the extent indicated above and is disposed of as such.


(SUNIL GAUR)
JUDGE

(NAVIN CHAWLA)
JUDGE

MAY 05, 2018

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