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

+ **CRL.A. 211/2003**

PURAN

..... Appellant

Through: Mr.M.L.Yadav, Advocate.

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL**

**JUDGMENT
26.07.2018**

VINOD GOEL, J.:

1. This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 (Cr PC) against the impugned judgment dated 31st January, 2003, passed by the Court of Learned Additional Sessions Judge, Delhi, (ASJ), in Sessions Case No.128/1999 arising out of FIR No.591/1997 at Police Station (PS) Ashok Vihar, Delhi registered under Section 302/307/354/323/34 Indian Penal Code, 1860 (IPC) convicting the appellant for the offences punishable under Section 302 of the IPC for committing the murder of Jagpal with a knife and under Section 307 of the IPC for causing injuries to Bhagwati and Ravi. By the order of sentence dated 4th February, 2003 the appellant was sentenced to undergo rigorous imprisonment (RI) for life and to pay a

fine of Rs.1,000/- and in case of default to undergo RI for six months for the offence punishable under Section 302 IPC. The appellant was also sentenced to undergo RI for five years and to pay a fine of Rs.1000/- and in case of default to undergo RI for three months for the offence punishable under Section 307 IPC. The learned ASJ directed that both the substantial sentences shall run concurrently and the appellant shall be entitled to the benefit of Section 428 Cr PC.

2. The facts of the case, as narrated by the complainant Ravi (PW18) to SI Ramphal (PW 23), have been recorded by the Trial Court in Para 1 & 2 of the impugned judgment as under:-

“I live at the address given above with my family and doing the job of screen printing. Ram Swaroop lives with his family in our neighbourhood and we had old enmity with him because six years ago Nanak and Ram Persad sons of Ram Swaroop had broken leg of my mother and had beaten my sister Chandra. Today at about 11.30 pm, I with my family was present in the house. My sister Chander Kanta @ Chandra was going outside the house for some work. Ram Persad caught hold of breast of my sister and when she raised alarm we all came out. We told Ram Persad that he should be ashamed of molesting his sister. On this an altercation started

and Ram Persad exhorted his brother and asked them to come '*Aaj Saalo Ko Khatam Kar Dete Hain*'. On which Prehlad, Puran, Tej Pal, Ram Swaroop, Vijay and Angoori came armed with danddas and Purann had brought a knife also and they all attacked us. Ram Persad, Tej Pal and Prehlad felled my father and Puran gave three knife blows on chest, abdomen and thigh and when I bent upon my father to save him then Puran gave knife blows in my back and Prehlad gave danda blows on my hand. My mother tried to separate then Puran gave knife blows in her chest and Ram Persad gave fist blow on her teeth and Ram Swaroop gave kicks and fist blows. My sister and brother Ram Gopal intervened and they were also beaten up by Ram Persad, Prehlad, Tejpai, Angoori and Vijay by dandas, kicks and fist blows. Ram Pershad tried to molest my sister and Ram Persad, Puran, Prehlad, Tejpai, Ram Swaroop, Angoori and Vijay in connivance with each other have murdered my father because of old enmity and I and my mother also have been injured by knife and dandas. This occurrence has been seen by Manish S/o Ram Singh and many other persons from neighbourhood. I, my mother along with father were taken to Hindu Rao

Hospital in PCR Van where my father was declared dead. Legal action should be taken against all aforesaid persons.”

3. On the statement of Ravi, SI Ramphal made an endorsement and sent Rukka to PS Ashok Vihar. A case was registered under Section 302/307/354/324/323/34 IPC on 19th September, 1997. Investigation was taken over by the SHO.

4. After completion of the investigation, charge sheet was filed before the Metropolitan Magistrate, who committed the case to Sessions for trial.

5. On 12th August, 1998 charges were framed against all the seven accused persons by the Ld. ASJ under Section 302/34 IPC for committing the murder of Jagpal with a knife, in furtherance of their common intention. Charges were also framed under Section 307/34 IPC for inflicting knife blows and *danda* blows on Ravi and Smt. Bhagwati, and under Section 323/34 IPC for causing hurt to Chanderkanta and Ram Gopal. The Ld. ASJ also framed substantive charges against accused Ram Prasad under Section 354 IPC for assaulting/using criminal force on Chanderkanta @ Chandra with an intention to outrage her modesty.

6. All the seven accused persons pleaded not guilty and claimed trial.

7. In order to bring home the guilt of the appellant and the other accused persons, the prosecution examined 26 witnesses in all. The statements of the accused persons were recorded separately under Section 313 Cr PC. In his statement, the appellant admitted that he had strenuous relations with the deceased i.e. Jagpal, his wife Bhagwati and other family members of the deceased. He also admitted that on 28th September, 1991, a case was registered under Section 325/323 IPC against him and co-accused (s) Ram Swaroop, Ram Prasad and Nanak on the complaint of Bhagwati (PW11), vide FIR No.341/91. He stated that he was not present at the time of the incident as he was sleeping in his home.

8. The accused persons have examined two witnesses, Puran Singh S/o Nath Ram (DW1) and Rambir (DW2) in their defence.

9. Learned counsel for the appellant argues that the Trial Court has based its findings on the depositions of Smt.Chander Kanta (PW6), Ram Gopal (PW8), Smt.Bhagwati (PW11) and Ravi (PW18). He submits that these witnesses are related to each other and to the deceased. He submits that the testimony of Manish Kumar (PW19), who did not support the case of the prosecution, has been brushed aside by the learned ASJ. He submits that a perusal of the testimony of PW19 reflects that the entire case of the prosecution is concocted and fabricated. He submits that there are material contradictions on vital points in the depositions of PW6, PW8, PW11 and PW18. He

urges that the alleged incident took place at about 11:30 pm and as PW6 has admitted in her statement that the electric poles were 4-5 houses away from her house, it is clear that there was no light at the place of occurrence and hence it was impossible for the witnesses to have identified the assailants. He submits that even the recovery of the knife was under doubtful circumstances as the knife was allegedly recovered from the kitchen, which was open and accessible to all the members of the family and no public witness was joined at the time of the alleged recovery of knife.

10. Having failed to persuade this Court with his contentions, he contends that since there was no intention on the part of the appellant to cause death of the deceased, the case should be one of Section 304 Part I of the IPC, which deals with culpable homicide not amounting to murder. He urges that the quarrel took place on the spur of the moment and the prosecution has failed to prove that the offence was committed with premeditation. He contends that the unfortunate incident took place in the heat of the moment without the appellant taking undue advantage or acting in a cruel or unusual manner and therefore, intention to cause death cannot be attributed to the appellant. He submits that there was no preparation for committing the crime as it was a household knife, which as per the case of the prosecution, the appellant was carrying.

11. Per contra, Mr.Ahuja, learned APP for the State submits that the Ld. Trial Court has rendered its findings based on a careful appreciation of the evidence and the prosecution has successfully proved its case beyond any shadow of doubt and the findings of the Ld. ASJ do not require any interference and the appeal is liable to be dismissed.

12. We have heard the Ld. counsel for the appellant and the Ld. APP for the state.

13. PW18 i.e. Ravi (complainant) testified that on 18th September, 1997 at about 11:30 pm he heard the cries of his sister, Ms.Chanderkanta @ Chandra who had gone out to fetch water to clean utensils. Upon hearing the cries, PW18 along with his family members rushed out and found that Ram Prasad had groped his sister's breast. The deceased along with his family members rebuked Ram Prasad for his conduct but Ram Prasad started abusing them and called his brothers and exhorted his brothers to finish them. He stated that the accused persons Prahlad, Tejpal, Puran, Ram Swaroop, Smt. Vijaya and Smt. Angoori came there and all of them were carrying *dandas* in their hand, except the appellant, who was carrying a knife. He stated that they all pounced on them and the accused Ram Prasad, Tejpal, Prahlad pushed his father to the ground and then the appellant stabbed his father thrice with a knife; one blow each on thigh, chest and abdomen. He further deposed that when he tried to save his

father, Puran stabbed him with a knife in his back. He stated that his mother tried to save him but the appellant stabbed her with a knife in her chest. He stated that in the meanwhile, other accused also kept assaulting him, his sister and brother with *dandas* and fist blows. He stated that one Manish (PW19) informed the police on the telephone about the incident.

14. PW18 further testified that the police arrived there and took them to the Hindu Rao Hospital where his father was declared 'brought dead'. PW18 further testified that about 8-9 years ago, the accused persons i.e. Ram Prasad and Nanak, had caused grievous injuries to his mother that fractured her leg and had also beaten his sister, Ms.Chanderkanta. PW18 further testified that he made a statement to the police Ex.PW18/A bearing his signatures at point 'A'. He stated that he was given first aid in the hospital after which he came back to his house alone. He stated that a police Head Constable came there and later on the SHO also visited the place of incident. Blood was lifted from the spot, which was seized and sealed with the seal of 'HD' vide seizure memo Ex.PW-18/B. He stated that on his instance a site plan was also prepared and photographs were taken. He further stated that the appellant i.e. Puran was arrested on 19th September, 1997, who on interrogation made a disclosure statement and got recovered a knife from the kitchen lying behind the utensils in his house. The said knife was sealed in a *pullanda* with the seal of RPF. He deposed that the recovery memo of the knife (Ex.PW18/F) bears his signatures.

PW18 proved the disclosure statement of the appellant as Ex.PW18/Q, which bears his signatures. PW18, *inter alia*, identified the clothes of appellant i.e. his pant (Ex.P16) and shirt (Ex.P17). He identified the clothes of the deceased i.e. his father Jagpal, which included a *kurta pajama*, and underwear, which are collectively Ex.P20. He identified his own clothes, which are Ex.P21 collectively. He identified clothes of his sister Chanderkanta i.e. a *shirt* Ex.P1 and a *salwar* Ex.P2. He also identified the knife (Ex.P9) which was with appellant.

15. In his cross-examination PW18 stated that the police had reached the spot after about 45 minutes but could not tell the name of the police officials. He stated that after his discharge from the hospital he went to see his mother who was lying admitted in the hospital. He also went to the mortuary. He and his brother Ram Gopal identified the dead body of their father. He stated that they had no enmity with the accused persons but neither were their relations cordial as the accused persons had broken the leg of his mother and beaten his sister. He admitted that they were not on talking terms with the accused persons. He stated that the water tap was at a distance of 20-25 paces from the door of his house and in front of the house of Chetram and Durga. He stated that he was called from his house by the police when the knife was recovered.

16. Similarly, Smt. Bhagwati (PW11) testified that on the date and time of the incident she was present in her house when her daughter

Chandrakanta @ Chandra went outside to fetch water and there the accused Ram Prasad groped her daughter's breast on which her daughter raised alarm. She and her husband went there and rescued their daughter. It was at that time that she saw the accused Ram Prasad groping the breast of her daughter. She testified that her husband, deceased Jagpal told the accused Ram Prasad that she is just like his sister and as to why he was behaving in that manner to which the accused Ram Prasad called his brothers and exhorted "*Aa jao aaj sabko maareng*". At that moment the other accused came there, and the appellant Puran was armed with a knife while the others were carrying *dandas*. She stated that her sons, Ravi (PW18) and Ram Gopal (PW8) were also present there and were beaten. She stated that the accused i.e. Prahlad caught hold of her husband from behind along with Tejpal, Ram Swaroop and Ram Prasad and then the appellant stabbed her husband with a knife in his stomach, thigh and chest. She testified that when her son Ravi tried to rescue his father, the appellant stabbed Ravi as well. She also tried to intervene during which he also stabbed in her breast. She stated that someone informed the police, who came to the spot. She along with her husband and sons was taken to the hospital where her husband was declared 'brought dead'. She was kept in the emergency ward and her x-ray was conducted. She stated that she was discharged on 20th September, 1997. She identified her clothes Ex.P10 to Ex.P13, which she was wearing at the time of the incident and were blood stained and had cut mark of knife. She stated that her son Ram Gopal and daughter Chandra also

received injuries at the hands of the accused. She stated that for the last 15 years the relations of their family with family of the appellant were tense as they had broken her teeth, hand and leg.

17. In her cross-examination she deposed that her statement was recorded by the police. She stated that the public water tap was situated outside her *jhuggi*. She stated that after about 5 minutes of the assault on her husband she became unconscious but could not tell what time it was when she came to her senses.

18. Ram Gopal (PW8) testified that their relations with the accused persons were strained as the accused i.e. Nanak and Ram Prasad had fractured the leg of his mother and broke her teeth and were requesting compromise since the case was pending in the Court. He stated that at the time of the incident he was present at H.No.WB-44, Wazirpur village where he was informed by the neighbours that a quarrel had taken place and he came to his house and saw the appellant stabbing his father with a knife. He testified that the accused(s) Prahlad, Tejpal and Ram Prasad caught hold of his father and pushed him to the ground. He testified that the accused(s) Angoori and Vijaya were having *dandas* in their hands and beating Ravi and his mother. He tried to save his brother i.e. Ravi but in the meantime, the appellant stabbed his brother in the back and thereafter, stabbed his mother in the chest with the knife. He stated that in the hospital he identified the dead body of his father Jagpal.

19. In his cross examination he stated that the house of his *Buaji* was 60/70 yd. away from his house and the quarrel had hardly started 2/4 minutes prior to his reaching the spot. He admitted that meat was prepared in his house on that day but did not know at what time his parents, brother and sister had their meal. He stated that they had thrown the bones in the dustbin and by mistake, dogs had taken bones to the courtyard of the accused persons. He denied the suggestion that they had caused injuries on Angoori, Ram Prasad, Prahlad and Vijay.

20. Chanderkanta (PW6) testified that on 18th September, 1997 after having their food they collected the bones in a poly-bag and threw it in a dustbin. She stated that a dog took that poly-bag to the courtyard of the accused persons and on seeing the bones, the accused(s) i.e. Prahlad and Ram Prasad started abusing as to who threw the bones there. On hearing their noise, her father came out and enquired as to what had happened. The accused persons i.e. Prahlad and Ram Prasad abused her father and asked as to who threw the bones in their courtyard. She testified that her father explained that the dog might have taken the bones there and thereafter her father removed the bones from their courtyard and came back to the house. After about 15/20 minutes she went out to purchase betel leaves when the accused Ram Prasad pounced on her and groped her breast. She testified that when she raised an alarm, her father came out of the house and told Ram Prasad to be ashamed of his behavior as she was like his sister. She stated that the accused Prahlad then called his father Ram Swaroop

and other accused. She testified that Prahlad asked the appellant to bring a knife and told him that “*In saale sabko khatam karna hai*”. She testified that appellant Puran was armed with a knife and remaining accused(s) were armed with *dandas* in their hand. She was rescued by her father Jagpal. She stated that the accused(s) Prahlad, Ram Prasad, Ram Swaroop and Tejpal caught hold of her father and struck him with *dandas* on several parts of his body. Thereafter, they pushed him to the ground where the appellant stabbed him in the chest, stomach and thigh with a knife. When her brother Ravi came to rescue her father, the appellant stabbed him in his neck near his shoulder. She stated that all the accused persons started hitting Ravi and when her mother intervened, the appellant stabbed her in the chest, nose, arm and above her wrist. She stated that Prahlad punched her brother multiple times. The teeth of her brother Ravi were broken. When she tried to save her mother, accused Angoori and Vijay struck her with *dandas*. She testified that after some time police came there. She came to know about the death of her father in the morning. Her clothes were sealed in a parcel and taken into possession vide Recovery Memo Ex.PW6/A. She testified that six years prior to the incident accused Ram Prasad and Nanak had fractured the leg of her mother, Smt.Bhagwati. She identified her *shirt* (Ex.P1) and *salwar* (Ex.P2) to be the same which she was wearing at the time of the incident. She identified the knife Ex.P9 with which appellant Puran had inflicted injuries on her father. In her cross-examination PW6 stated that she had gone out to take water to clean utensils and not for

betel leaves. She admitted that they had old enmity but denied that due to old enmity she had falsely implicated the accused persons in the case.

21. SI Ramphal (PW23) testified that he along with SI Nipun Kumar (PW15) reached the spot after recording of DD No.61B (Ex.PW19/C). He stated that the complainant Ravi was declared fit for making a statement. He recorded the statement of Ravi as Ex.PW18/A, which bears his signatures at point 'X'. He prepared a rukka, Ex.PW23/A and the remaining investigation was handed over to the SHO who had come to the hospital. He stated that MLCs were handed over to the SHO before the SHO left for the mortuary.

22. PW7 Dr.Y.C.Kaushik, CMO, Hindu Rao Hospital testified that on 19th September, 1997 he was posted in the casualty ward of the hospital where he examined the patient, Smt.Bhagwati, wife of Jagpal at 12:45 am. She had an alleged history of being stabbed. He found the following injuries on her person

- “1. Lacerated wound 0.5 cm over the bridge of the nose.
2. Incised wound 2 cm over back of the left forearm.
3. Incised wound 2.5 cm over the sterna area of the chest with 0.5 cm width at the centre.
4. Right upper canine tooth missing with active bleeding from the tooth bed.”

23. He proved the MLC of Smt. Bhagwati as Ex.PW7/A. He found that injury No.2 and 3 were caused by a sharp edged weapon and

injury No.1 and 4 by a blunt force impact. Injuries were found grievous in nature.

24. He also examined the complainant Ravi (PW18) at about 12.50 am vide MLC Ex.PW7/B and found the following simple injuries:-

- “1. Incised wound 2.2 cm long and 1 cm in max. width over right suprascapular near midline and another 0.5 cm x 0.2 cm incised wound right interscapular area.
2. Abrasion and swelling, tenderness over right forearm.”

25. Dr.C.B.Dabas (PW14), Head of the Department, Forensic Medicine, Hindu Rao Hospital, conducted post mortem examination on the deceased Jagpal on 20th September, 1997 whose body was brought by Inspector Hari Darshan of PS Ashok Vihar along with inquest papers. On examination he found the following external injuries on the body of the deceased:-

- “1) Superficial incised wound 1 into 0.1 centimeters over left side forehead.
- 2) Multiple abrasions in area of 4.5 into 4.5 centimeters on upper outer part of right arm.
- 3) Abrasions 2.5 into 0.3 centimeters over inner aspect of right forearm.
- 4) Abrasion 5.1 into 1 centimeters over inner aspect of forearm belong injury No.3.
- 5) Abrasion 4 into 3 centimeters over upper front part of right thigh.
- 6) Abrasion 0.5 into 0.3 centimeters over front of left knee.
- 7) Superficial incised wound 1 into 0.2 centimeters over middle back part of left forearm.

- 8) Multiple abrasions in area of 7 into 6 centimeters over back of left elbow.
- 9) Abrasion 2 into 1 centimeters on top of left shoulder.
- 10) Multiple abrasions in area of 3 into 3 centimeters over back of left shoulder.
- 11) One stabbed wound 2.5 into 0.8 centimeters placed obliquely in front of chest lower part 13 centimeters below and medial to left nipple and under 12 centimeters above left heel. The upper angle of the wound was found in lower angle by acute. The margin were clean cut.
- 12) One stab wound 2.4 into 0.7 centimeters place horrigently on left side front of abdomen. 5 centimeters outer to umbilicus and 98 centimeters about left heel. Out angle of the wound was round and inner angle was acute.
- 13) Stab wound 2.2 into 0.5 centimeters placed horigently over lower abdomen on right side near mid line. Right angle of the wound was round. Medial angle was acute. Margins were clean cut. Wound was located 85 centimeters above right heel.”

26. On internal examination, with regard to injury No.11 on the chest of the deceased he observed that the injury had entered the chest cavity after cutting through the xiphoid process and muscles and penetrating through under line fascie and entered the pericardium then penetrating into right ventricle of the heart making a cut of 4 into 1.5 cm and ending in the posterior wall of right ventricle. He reported that the depth of injury was 4 cm, which travelled from front to behind. Further, he stated that both the lungs were intact. Regarding injury No.12 he found that it entered the abdomen cavity after cutting

through the abdominal muscles and peritoneum and then the lower part of the greater curvature of stomach cutting across posterior wall. The depth of the injury was 14 cm and was directed backward, inward and upward. He also found injury No.13 penetrated in the abdomen muscles in the upward direction to length of 7 cm and did not enter the abdominal cavity. In his opinion death took place due to cardiac tamponade consequent to injury No.11. He further found that injury No.1, 7, 11, 12 and 13 were caused by sharp edged weapon and remaining were caused by a blunt force impact with a hard surface or object. He stated that all the injuries were ante mortem and recent. He opined that injury No.11 was sufficient to cause death in the ordinary course of nature. The approximate time of death was 11-12 hours prior to the examination. He proved the postmortem report Ex.PW-14/A.

27. He further testified that on 3rd November, 1997 after examining the knife in question and clothes of the deceased and on perusal of the post mortem report he opined that injury No.1, 7, 11, 12 and 13 could have been caused by a sharp edged weapon like the one examined by him.

28. PW26 Inspector Hari Dutt, PS Ashok Vihar (I.O.), testified that on the intervening night of 18/19th September, 1997, he received information regarding a quarrel that had taken place at *Jhuggi* No.138, Wazirpur, and an entry in daily diary was made in the register vide

Ex.PW1/A. On receiving further information regarding the quarrel, entry DD No.61B was made and the copy of the same is Ex.PW9/C. He stated that SI Ramphal went to the place of occurrence and informed him about the death of Jagpal at Hindu Rao Hospital. He testified that he went to Hindu Rao Hospital and met SI Ramphal who briefed him about the progress of the case and informed that *rukka* had already been sent by him. SI Ramphal handed over the MLCs of the injured persons and PW26 took over the investigation of the case. He prepared an Inquest Report Ex.PW26/A and got the body of deceased Jagpal identified by his sons Ravi and Ram Gopal. He apprehended the accused persons namely Ram Prasad, Angoori, Smt.Vijay and Prahlad in the hospital and went to the spot along with the apprehended persons and PW18, where HC Vijay Kumar was present. The photographer had taken photographs of the place of occurrence. He prepared the site plan Ex.PW26/C. Ms.Chanderkanta (PW6) also met him at the spot where he recorded her statement and thereafter she rushed to hospital as her mother was in a serious condition. He lifted the blood stained samples from floor and sealed the same in a *pullanda* with the seal of HD vide seizure memo Ex.PW18/B. He also recorded the statement of the public witness Manish (PW19). He stated that the complainant Ravi informed him that the appellant was coming from the side of Sindhi Dharamshala. He stated that on seeing them, the appellant tried to run away. SI Ramphal chased the appellant and apprehended him and brought him to the spot where the appellant made a disclosure statement. The blood stained clothes worn by the

complainant were sealed and seized vide Ex.PW18/C. He collected MLC of Chanderkanta from Hindu Rao Hospital. Thereafter, Ravi, Ram Gopal and Chanderkanta came to the police station and Chanderkanta produced her blood stained clothes which were seized and sealed. He collected the FSL report Ex.PW26/H and Ex.PW26/J. He stated that the appellant led the police party to his own house and got recovered a knife which was hidden behind the utensils in the kitchen. He prepared a sketch of the knife and sealed it with the seal of RPS and seized it vide memo Ex.PW18/G. Post mortem of the deceased was conducted on the same day. Injured Bhagwati was discharged from the hospital on 27th September, 1997. He went to her house and collected her blood stained clothes, which were sealed in the *pullanda* and were seized.

29. In his cross examination he stated that he had not joined any independent witness while preparing the memos at the spot. He admitted that the room, from where the knife was recovered, was found closed from outside but was not locked. He admitted that anyone could have opened the door of the room from where the knife was recovered. He admitted that the incident had taken place in front of the house of the appellant and the accused. He testified that the place where the incident took place was a *kuchha* floor but claimed that there were marble slabs placed near the hand-pump where the occurrence took place. He stated that the area of about 2/3 feet around the hand-pump was made of bricks. He denied the suggestion that

some outsiders had assaulted the injured persons or that accused persons had come to the spot to save the complainant and his family and in the process they also sustained injuries. He denied that the outsiders hurled brickbats, stone pieces etc. in the house of the accused persons. He admitted that there was enmity between the complainant and the accused persons.

30. While appreciating the evidence, the Ld. ASJ noticed that there was no inconsistency in the deposition of Ravi (PW18) who testified that Ram Prasad had exhorted his brothers to come and finish the complainant's family. He noticed that in the cross-examination of PW18 no suggestion was given that the accused persons had not come there and assaulted the deceased and other persons with *dandas* and knife. He further noticed that the occurrence was not denied wholeheartedly as much as it was suggested to PW18 in his cross examination that some of the accused persons had come from one direction and some from the other direction. The Ld. ASJ noticed that it was suggested that all the accused persons had *dandas* and thereby denied that the appellant was armed with a knife. He noticed that the defence raised by the accused persons, including the appellant in their statements under Section 313 Cr PC was also not put to PW18 and it was not suggested that the accused persons i.e. Tejpal and Puran were not present at the spot.

31. The Ld. ASJ found that the deposition of PW8 Ram Gopal was on all counts consistent with his previous statements except on one count. In his statement he stated that the accused Tejpal had stabbed his mother, Bhagwati multiple times with a knife but in his cross examination he testified that his mother was stabbed by the appellant which is the case of the prosecution. The Ld. ASJ noticed that the other witness Smt.Bhagwati (PW11) has also deposed as per the case of the prosecution. The Ld. ASJ has also noticed that the deposition of the witnesses was recorded after a lapse of about 2 years and it is difficult to remember minor details of the quarrel. The Ld. ASJ also found that the deposition of Chanderkanta (PW6) was consistent on material particulars of the prosecution case. He observed that even though the testimony of PW6 is at variance on some points with the statement recorded under Section 161 Cr PC, it is not sufficient to make her an unreliable witness. He rejected the contention of the defence counsel that there was no light at the place of incident and the witness could not have identified the assailants. He noticed that PW6 had stated in her deposition that there were electricity poles 4/5 houses away from her house but there was no street light. The Ld. ASJ has rightly relied upon the judgment of the Hon'ble Supreme Court in ***Lakhan Saho etc. vs. State of Bihar & Anr. (2000) 9 SCC 82***, holding that sufficiency of light cannot be questioned when the accused(s) were known. The Ld. ASJ noticed from the evidence that the accused persons were not only known to the witnesses but they were related to each other as wife of the accused, Ram Swaroop is the

real sister of the wife of the deceased. A simple glimpse or silhouette would have enabled the witnesses to recognize the assailants.

32. We found that there has been consistency in the statement of injured eye-witnesses PW18, PW11, PW8 and PW6 and they have corroborated the statement of each other on material points and proved the case of the prosecution. We are not persuaded with the arguments of learned counsel for the appellant to disagree with the findings of learned ASJ. Moreover, it is already noticed that from the line of the cross examination of PW 18, PW 11, PW 8, PW 6 and PW 26, the accused persons have not disputed their presence at the spot at the time of incident. Therefore, the identity of the assailants at the spot cannot be disputed.

33. The Trial Court while relying upon the judgment of the Apex Court in *Matadin & Anr. vs. State of Maharashtra (1998) 7 SCC 216*, held therein that exhortation “*Aao aaj salo ko khatam kar dete hai.*” means to kill a person but it can also mean to beat a person. It is noticed that though it has been proved that Ram Prasad exhorted his brothers to finish the complainant party but that does not point towards a shared common intention, so as to attract Section 34 of the IPC for offence punishable under Sections 302/307 of the IPC even though the occurrence suddenly took an ugly turn and the appellant used a knife, which resulted in the death of the deceased Jagpal. The Trial Court has come to the conclusion that only the appellant

assaulted the deceased, Smt. Bhagwati and Ravi with a knife and it cannot be said that the other accused persons have shared a common intention with the appellant to use a knife to injure someone.

34. On the point of recovery of the knife, the Trial Court has rightly observed that the recovery of the weapon of the offence does not play any major role in the prosecution case since direct evidence in the form of deposition of the injured eye-witnesses is available.

35. The question for consideration before us is whether the conviction of the appellant under Section 302 IPC is sustainable or whether the case of the appellant falls within the purview of Section 304 of the Indian Penal Code as urged by the learned counsel for the appellant.

36. In view of the same, the next question for consideration is whether the evidence brought on record by the prosecution, establishes against the appellant a case of 'murder' or a case of 'culpable homicide not amounting to murder'. It would be relevant to advert to Exception No. 4 to Section 300 of IPC which reads as under:-

"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.

Explanation - It is immaterial in such cases which party offers the provocation or commits the first assault."

37. Under Exception 4, as mentioned above, death of a person would not be considered 'murder' if it is committed without any premeditation in a sudden fight in the heat of passion and without the offender having taken the undue advantage or having acted in a cruel or unusual manner. The explanation to Exception 4 provides that it is immaterial as to which party offers provocation or commits the first assault.

38. The Ld. counsel for the appellant submits that even though the two parties had strained relations with each other and were not on talking terms, the evidence on record is sufficient to show that the appellant had no intention to cause the death of the deceased; as per the case of the prosecution at the exhortation of Ram Prasad, the appellant along with the other accused persons came at the spot and barring the appellant, who was carrying a knife, everyone else was carrying *dandas*. He contends that the unfortunate incident took place in the heat of the moment and the appellant had not taken undue advantage or acted in a cruel or unusual manner and therefore intention to cause death cannot be attributed to the appellant.

39. Section 304 of the IPC provides the punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death then the punishment may extend up to imprisonment for life. On the other hand, Part II of Section 304 provides that if the offending act is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death then the punishment may extend to imprisonment for 10 years.

40. In *Sukhbir Singh vs. State of Haryana* (2002) 1 SCR 1152, wherein two blows were inflicted by the appellant by use of *bhala* on the upper body portion of the chest of the deceased, the Hon'ble Supreme Court has opined as under:-

“19. The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given, the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the

appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the CrI. A. 465/2015 Page 13 of 19 purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner.”

(Emphasis Supplied)

41. In a case decided by this Court in CrI. A. No. 134/2009 titled as **Jagtar Singh @ Jagga @ Ganja vs. State of Delhi, 2012 SCC OnLine Del 507** there were two injuries on the neck and two in the chest of the deceased, caused by a sharp edged weapon. There were other minor injuries and abrasions; in all there were nine injuries. According to the doctor who conducted the post mortem of the deceased, the shock caused as a result of the injuries to the neck and chest was sufficient to cause death in the ordinary course of nature. The surrounding circumstances in the case pointed to some previous quarrel between the deceased and the appellant; the latter was agitated and confronted the deceased in the first part of the incident on the day of occurrence. It was held by this Court that though the appellant inflicted several blows, some of which were fatal, it is clear that he did not set out with a premeditated intention to kill the deceased. The facts

clearly established an offence under Section 304 Part I of the Indian Penal Code in which there was no intention to cause such bodily injuries as would have resulted in death in the ordinary course of nature.

42. Very recently Hon'ble Supreme Court held in **Criminal Appeal No.663/2018** titled *Tula Ram vs. The State of Madhya Pradesh*, decided on 2nd May, 2018, wherein an altercation took place on 9th June 2002 between Ram Nath and Raju and in the midst of that quarrel, they were joined by others including Tula Ram, uncle of Raju who came with a *ballam*, a wooden bamboo stick with a spear attached at the end. During the course of altercation, which turned violent, Tula Ram pierced Bhadri Lodhi with the *ballam* on the left side of his chest and he fell down. Bhadri Lodhi was declared dead. The Hon'ble Supreme Court has held that the intention to cause death must not be readily inferred. The Hon'ble Supreme Court explained that Section 299 of IPC explains 'culpable homicide' as causing death by doing an act with an intention of causing death, or with an intention of causing such bodily injury as is likely to cause death or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death or the likelihood of causing death while the third category confines itself to the knowledge that the act complained of is likely to cause death. Relevant paragraphs being paragraphs 10, 11, 13, 14, 15 read as under:-

“ 10. Recently in Surain Singh v. State of Punjab it was observed that: “The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders 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 IPC..... 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 a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

11. The facts of the present case indicate that all the ingredients of Exception 4 to Section 300 of the IPC are present. The fight was sudden and not premeditated likely to cause death.

12.....

13. The intention to cause death must not be readily inferred. We are afraid that both the Trial Court as well as the High Court have, on the basis of the mere fact that Tularam pierced the chest of Bhadri Lodhi with a ballam, assumed that he intended to

cause the death of Bhadri Lodhi. There is nothing on the record to suggest such an intention and none of the witnesses have given any indication of Tularam's intention to cause the death of Bhadri Lodhi. It is quite clear that during the altercation Tularam did pierce the chest of Bhadri Lodhi but the intention to kill him is not apparent. However, Tularam must be attributed with the knowledge that piercing the left side of the chest with a spear would result in a bodily injury that is likely to cause death.

14. In view of the evidence on record, we are satisfied that the ingredients of murder as explained in Section 300 of the IPC are missing in this case. The intention of Tularam was to cause bodily injury to Bhadri Lodhi and piercing the chest of Bhadri Lodhi with a spear was such an injury that could possibly cause his death. This knowledge must be attributed to Tularam.

15. Under the circumstances, the conviction of Tularam of an offence punishable under Section 302 of the IPC is set aside but he is convicted of an offence punishable under the second part of Section 304 of the IPC. The appellant has been behind bars for almost 14 years. His sentence is altered to the period of incarceration he has already undergone. He be released forthwith.”

43. The Trial Court by its impugned judgment held that all the accused persons did not share a common intention so as to attract Section 34 of the IPC punishable under Section 302/307 of the IPC by observing as under:-

“104. ... In the present case, it has not been proved that either Ram Persad or accused Prehlad had

exhorted others to finish the complainant party so certainly I find force in the contention of Ld. Counsel for the accused that all the accused persons did not share common intention so as to attract Section 34 IPC for offence punishable under Section 302/307 IPC. The occurrence though started suddenly took an ugly turn and accused Puran used knife which resulted in death of Jagpal.”

44. As per the evidence on record, daughter of the deceased, Ms.Chanderkanta @ Chandra (PW6) had gone outside the home to fetch water, where accused Ram Prasad groped her breast and as she raised an alarm, her brother Ravi (PW18) and father deceased Jagpal, her mother Bhagwati and brother Ram Gopal came out of their house where the deceased told Ram Prasad that Chanderkanta is just like his sister and he should not have behaved in this manner. Thereupon the accused Ram Prasad called his brothers including the appellant yelling “*Aao aaj salo ko khatam kar dete hai.*” Following his exhortation all the accused persons came with *dandas*, except the appellant who came with a kitchen knife. This in itself is indicative of the fact that there was no premeditation to kill the deceased Jagpal. Though the medical evidence suggests that the deceased has suffered three stab injuries on chest and abdomen, it is not indicative of any premeditated preparation or planning that could have been done by the appellant to kill the deceased or anyone else. Though the appellant inflicted three knife blows on the person of the deceased, as per the medical examination injury No.2 proved to be fatal. The Trial Court has also

observed in Para 104 of its Judgment as referred here-in-before that the accused did not share a common intention to attract S. 34 of the IPC and the occurrence took an ugly turn and the appellant used a knife, which resulted in the death of the deceased Jagpal.

45. Having considered the law laid down by the Hon'ble Supreme Court and by this Court in the above said cases we are of the considered view that the evidence adduced by the prosecution falls short of bringing the case within the ambit of Section 302 of IPC. We find that the offence committed by the appellant is covered by Section 304 Part I of the IPC. The prosecution has failed to prove that there was any intention of the appellant to cause the death of the deceased. The aforesaid facts when analysed in conjunction with the attending circumstances strongly dispel the possibility that the appellant harboured an intention to kill the deceased.

46. We are of the firm opinion that the conviction of the appellant may be altered from Section 302/307 of IPC to one under Section 304 Part I and Section 307 thereof.

47. It is informed during the course of the arguments that the appellant has undergone imprisonment for more than 5 years and 9 months. He was ordered to be released on bail by the order of this Court dated 7th November, 2003. We are of the opinion that the ends of justice would be met if we modify the sentence awarded to the

appellant and sentence him to undergo rigorous imprisonment for the period already undergone by him. However, the fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered.

48. Appeal is partly allowed and the order of conviction and sentence are modified in the above terms. The bail bonds and surety bonds furnished by the appellant stand discharged. He shall fulfill the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record (TCR) be sent back together with a certified copy of the judgment. Copy of this judgment be sent to the concerned Jail Superintendent for updating the jail record.

49. The court finds that the trial Court has not awarded any compensation to the victims and legal representatives of the deceased under Section 357 of Cr.P.C. Meanwhile Section 357A Cr.P.C. has been incorporated w.e.f. 31.12.2009 and pursuant thereto the State Government has framed Victim Compensation Scheme.

50. Therefore, we direct the Delhi State Legal Services Authority ('DSLISA') in terms of Section 357A (5) Cr.PC to forthwith undertake an inquiry and within two months award and ensure disbursement of the appropriate compensation to the family of the victim in terms thereof.

51. For this purpose, a certified copy of this judgment shall be delivered forthwith to the Secretary, DSLSA with a further direction to submit a compliance report to this Court within three months from the date of receipt of the certified copy of this judgment. If no such compliance is forthcoming within the time stipulated, the Registry will place a note before the Court for further directions.

VINOD GOEL, J.

S. MURALIDHAR, J.

JULY 26, 2018
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