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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
R-30

+ **CRL.A. 781/2002**

PARMANAND & ORS.

...Appellants

Through: Mr. Sanjay Mahi Tripathi and
Mr. Kamal Kant Tripathi, Advocates

versus

STATE GOVT. OF NCT OF DELHI

...Respondent

Through: Mr. Kewal Singh Ahuja, APP

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

ORDER
15.03.2018

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1. This appeal is directed against the impugned judgment dated 4th September 2002 passed by the learned Additional Sessions Judge ('ASJ'), Tis Hazari Courts, Delhi in Sessions Case No.102/2001 arising out of an FIR No.146/88 registered at Police Station ('PS') Mangolpuri, Delhi convicting the Appellants – Parmanand (Appellant No.1 – 'A-1') for the offence punishable under Section 302 Indian Penal Code ('IPC') and Hari Ram (A-2) and Nirmala (A-3) for the offences under Sections 324 and 323 IPC respectively.

2. The appeal is also directed against the order on sentence dated 6th

September, 2002 whereby A-1 was sentenced to imprisonment for life with a fine of Rs.5,000/-; and in default of payment of fine, to undergo rigorous imprisonment ('RI') for one year; A-2 was sentenced to undergo RI for two years and A-3 to undergo RI for one year.

3. It must be noticed at the outset that Appellants Parmanand and Hari Ram are brothers while Nirmala is the wife of Parmanand. They are all residents of Village Rithala, Delhi.

4. The charge against them is that on 21st May, 1988 at about 9.30 pm in village Rithala in the Harijan Basti, in the street in front of his house they attacked Shaley with sharp-edged weapons thereby causing him fatal injuries to which he ultimately succumbed four days later on 25th May, 1988. The second charge is that all of them caused simple injuries to Paley thereby committing an offence punishable under Section 324 IPC read with Section 34 IPC. The third charge is that they caused simple injuries to Smt. Omi Devi with a blunt object and thereby committed an offence punishable under Section 323 IPC read with section 34 IPC.

5. There were three eye witnesses to the incident – two of them were injured eye witnesses i.e. Paley (PW-6) and Smt. Omi Devi (PW-9). The other eye witness was Smt. Chanderwati (PW-8).

6. PW-6, the injured eye witness, is the son of the deceased. In his deposition, PW-6 stated that he and the deceased were sitting outside their house at around 9/9.30 pm on 21st May, 1988. At that time, A-1 and A-2

came there and created a '*halla*'(ruckus). A-1 was carrying a *farsa* while A-2 was carrying a '*daranti*'. Both of them shouted that they would not spare the deceased and PW-6 and would kill them. This was in the context of a long standing dispute for nearly 15 years between the families of the accused and the deceased as the accused wanted to open a door into the residential land of the deceased and convert it into a *gali* (lane).

7. As far as the actual attack is concerned, PW-6 stated that A-2 gave a blow on the left side of his chest below the shoulder with the *daranti* . A-1 gave a *farsa* blow on the head of the deceased as well as on his right hand between the thumb and index finger. Upon this, the deceased fell to the ground. Nirmala (A-3) and Ghanshyam (the father of A-1 and A-2, since expired) are stated to have thrown stones on the family of the deceased from outside their house. Omwati (PW-9), wife of Banwari Lal, who was the brother of PW-6 received a brick blow on her chest.

8. When the deceased was first brought to the hospital, he was examined by Dr. Arinjay A. Jain (PW-19). There were five injuries noticed of which one injury was an incised wound 3 x ½ inch x ½ inch on the front of forehead which was bleeding.

9. As already pointed out the deceased succumbed to the aforementioned injuries four days later. Importantly, even in his deposition, PW-6 admitted "The accused party might have also received injuries."

10. The above evidence of PW-6 has been corroborated on the material

particulars by PW-9 who added that “there was a dispute on a piece of land in front of the house and civil litigation was going on between us and the accused party and this incident was the result of the dispute over the said plot.” The third eye witness (PW-8) also corroborated the above two versions. In her cross-examination she stated that the quarrel had taken place in the courtyard of the family of the deceased.

11. The three eye witnesses having spoken consistently and with the medical evidence corroborating the ocular evidence, the trial Court had no difficulty holding A-1 guilty for the offence punishable under Section 302 IPC and A-2 and A-3 for the offences punishable under Sections 323 and 324 IPC respectively.

12. Learned counsel for the Appellants submitted that although he could not seek to challenge the finding that the deceased died a homicidal death and that the fatal injury was given by A-1 on his forehead with the *farsa*, he submitted that the death having occurred four days after the attack and there being a single fatal blow on the forehead of the deceased, the offence should be viewed as culpable homicide not amounting to murder punishable under Section 304-II IPC.

13. The Court has considered the above submissions. The medical evidence shows that there was a single injury on the forehead by a sharp-edged weapon resulting into an incised wound and the death was as a result of a single blow. Nevertheless, the death occurred four days after the incident. The fact that the family of the accused and the family of the deceased were

locked in a civil litigation over a passage into the property of the deceased has been proved by all three witnesses who witnessed the incident.

14. Therefore, all ingredients of Exception-4 to Section 300 IPC appear to have been satisfied in the present case. The fact that the accused party also received injuries, which has not been denied by PW-6, confirmed the cause of quarrel. Consequently, the Court accepts the plea of learned counsel for the Appellants that as far as A-1 is concerned, the offence proved against him is culpable homicide not amounting to murder punishable under Section 304-II IPC.

15. A-1 has already completed over five years of imprisonment and therefore the Court sentences him for the period already undergone inclusive of the default sentence, if any, on account of non-payment of fine. The bail bond and surety bonds furnished by A-1 stand discharged.

16. The Court affirms the conviction of A-2 and A-3 under Sections 324 and 323 IPC respectively. Since A-2 has already served out the sentence for the offence under Section 324 IPC, it is left unaltered. The sentence *qua* A-3 is confined to the period already undergone (inclusive of the default sentence, if any, for non-payment of fine). The bail bonds and surety bonds of A-2 and A-3 shall, therefore, also stand discharged.

17. All the Appellants will fulfil the requirement of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

18. The appeal is disposed of in above terms. The trial Court record be returned forthwith along with a certified copy of this order.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 15, 2018

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