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S-2 & 3

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

+ **CRL.A. 126/2014**

ROSHAN KHAN

..... Appellant

Through: Ms. Rakhi Dubey, Advocate

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State with
Inspector Satyapal, PS - Bharat
Nagar

+ **CRL.A. 132/2014**

BABLOO

..... Appellant

Through: Mr. Chetan Lokur, Advocate

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State with
Inspector Satyapal, PS - Bharat
Nagar

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

22.05.2018

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The appellants have preferred the aforesaid respective appeals to
assail their conviction by the trial court under Sections 302 IPC r/w Section
34 IPC for commission of the murder of Mumtaz. They also stand convicted

under Section 307 IPC on the charge of attempt to commit the murder of Mukhtar, the husband of Mumtaz. They were tried by the trial court in Sessions case No.115/2012 arising out of FIR No.171/2012 Registered at Police Station Bharat Nagar, under Sections 302/307 IPC. The appellant-Roshan Khan is the father of the injured Mukhtar and was the father-in-law of the deceased Mumtaz. The appellant- Babloo is the brother of Mukhtar and brother-in-law of the deceased Mumtaz. The facts in the case as per the case of the prosecution taken note of in the impugned judgment read as follows:

" 2. The case of the prosecution is that on 26.07.2012 at about 8.40 AM, an information was received in the Police Station Bharat Nagar regarding a quarrel in front of F-237, JJ Colony, near Bari Masjid, on which SI Mohinder Singh along with Ct. Somu reached to the spot where they came to know that the PCR officials had taken the injured to BJRM Hospital. In the meantime SHO Police Station Bharat Nagar Inspector Rajender Prashad also reached the spot. On inquiry, it was revealed that one injured Mumtaz, w/o Mukhtar and her husband Mukhtar have been shifted to BJRM hospital by PCR

officials and the two alleged assailants Babloo and his father Roshan Khan have also been removed to BJRM Hospital by another PCR officials. The eye witness namely Brij Kishore informed the police that he is running a grocery shop at Jhuggi No. N-17C/426, F Block, Wazirpur JJ Colony, Delhi and at about 8.30 AM one Mumtaz who was residing in the nearby jhuggies came to the shop of Kishan Lal and made a call at 100 number to the effect that her husband was being beaten by her father in law and brother in laws. Brij Kishore further informed the police that after making a call at 100 number Mumtaz started waiting the PCR outside the Jhuggi No. N-17C/487, Wazirpur, JJ Colony belonging to Dalip. After some time Roshan Khan (father in law of Mumtaz) and brothers in law i.e Babloo and Bobby came and started giving beatings to Mumtaz. According to Brij Kishore, Babloo was having a knife in his hand and while Roshan Khan and Bobby caught hold of Mumtaz, Babloo gave Knife blows on Mumtaz on which she fell down. He further informed the police that in the meanwhile PCR officials came to the spot on which Roshan Khan, Babloo

and Bobby tried to flee away from the spot but the PCR officials apprehended Roshan Khan and Babloo after a short chase. In the meantime Mukhtar husband of Mumtaz also came to the spot and was having injuries. Another PCR Van also came to the spot after which all of them i.e. Mumtaz, Mukhtar, Roshan Khan and Babloo were taken to BJRM Hospital."

Charges under Section 302 / 34 IPC and Section 307/34 IPC were framed against both the accused. They pleaded not guilty and the prosecution examined 28 witnesses. The defence did not lead any evidence.

On the last date, the submission of learned counsel for the appellants was that, considering the fact, that the appellants and the deceased / injured were close relations, living in the same premises; the appellants were butchers by profession and therefore, the weapon used in the commission of the offence was naturally available in their premises; the dispute arose all of a sudden on account of sharing of water in the morning, the offence in the present case would fall under exception 4 to Section 300 and Section 304 Part I, and not under Section 300 read with Section 302 IPC.

We have considered the submissions of learned counsel for the appellants and Mr. Katyal the Learned APP. The post mortem report of the

deceased shows that she suffered seven knife injuries out of which one was found to be fatal. The other injuries were not on the vital parts of the body of the deceased. The knife was recovered from the appellant- Babloo. The eye witness account given by PW-19 and PW-21 is that the accused – Babloo inflicted the knife injuries, while Roshan Khan and another juvenile Mohd. Islam @ Bobby held the deceased.

These circumstances show that the act, by which the death was caused were done with the intention of causing death, or causing such bodily injury as was likely to cause death. However, the circumstances of the case bring out that the homicide was committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel, and without the appellants having taken undue advantage or acted in a cruel or unusual manner. The presence of the weapon of offence, namely, the knife in the house of the appellants was not unusual, and it could not be said that the same was procured with pre-meditation to commit the offence, considering the fact that the appellants were in the business of butchering. It is also important to note that the injured Mukhtar was the first to be attacked, and the deceased was attacked after she exclaimed that she would call the police and got killed in the process. Thus, she was not the initial target of attack.

In these circumstances, we are of the view that the conviction of the appellants under Section 302 IPC in relation to the homicide of the deceased Mumtaz is not justified since the case is covered by *Exception 4* to Section 300 IPC. At the same time, in our view, the case squarely falls under Part I of Section 304 IPC.

It has come on record that it was Babloo who inflicted fatal blows on the deceased. Keeping in view the role played by him in the homicide of the deceased, we are of the considered view that he deserves to undergo rigorous imprisonment for a period of 9 years for the said offence. The fine imposed upon him for causing death of the deceased Mumtaz is maintained.

So far as Roshan Khan is concerned, taking into account the role played by him, we are of the view that the interest of justice would be served, if he is sentenced to 8 years of rigorous imprisonment. We maintain the fine imposed upon him in respect of the commission of homicide of the deceased Mumtaz. So far as the conviction under Section 307/34 IPC in relation to the infliction of injuries upon Mukhtar is concerned, we maintain the conviction as well as the sentence. The appellants shall be entitled to the benefit of Section 428 Cr.P.C. The sentence awarded to the appellants under Section 304 Part I and Section 307 IPC shall run concurrently.

The appeals stand disposed of in the aforesaid terms.



VIPIN SANGHI, J



P.S. TEJI, J

MAY 22, 2018
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