

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

% ***Date of Decision : February 17, 2018***

+ **CRL.A. 510/2017**

SANTOSH KUMAR SINGH @ GOVINDA Appellant
Through: Mr.Sumit Verma, Advocate from DHCLSC

versus

STATE Respondent
Through: Mr.Amit Ahlawat, APP for State with
Inspector R.C.Dahiya, PS Sarai Rohilla

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT
ORAL

SUNIL GAUR, J.

1. The impugned judgment of 21st October, 2016 holds appellant guilty of the offence of murder while acquitting his co-accused Ashu and vide impugned order of 10th November 2016, the appellant has been sentenced to imprisonment for life and fine with default clause.
2. The crux of the prosecution case as noticed in the opening paragraph of the impugned judgment is as under:-

“Prosecution’s case is that deceased and accused persons were vagabonds. On 12.05.2014, in Banderwala Park, accused Ashu quarreled with deceased Shravan and

deceased took Shankar's crutch and started beating Ashu. Ashu ran away from the spot. Later on the same day, both accused persons again quarreled with deceased and repeatedly stabbed deceased with a broken bottle. Deceased was bleeding and ran out of the park towards Police Post, where he fell down and was unable to speak. One public person and a Police official were present at the police post, who informed the PCR. PCR took injured to the hospital, where his MLC was prepared, but injured could not recover and died in the hospital. IO reached the hospital and collected his MLC. Dead body was preserved in the mortuary. IO went to the spot and found blood scattered at various places, also found broken beer bottle and slippers on the spot. The same were seized. IO found one eye witness, who was residing outside the park and recorded his statement. He disclosed that two accused were involved in the offence and had assaulted deceased. Accused were not found. It was however revealed that accused Ashu was injured in a prior quarrel with deceased and had been admitted in the hospital. The said information was recorded as DD and IO of the said case collected his MLC, but could not find him and delivered the said DD and MLC of accused Ashu was handed to the IO of present case. On identification of eye witness, both accused were arrested. Details of deceased were not available. IO made efforts to ascertain his details but was unable to find any. Eye witness also disclosed that deceased was Muslim by religion but had a tattoo of "Jai Mata Di" on his hand. Postmortem was conducted and exhibits were deposited in the Malkhana and later sent to the FSL. Dead body was handed over to the Delhi Wakf Board for last rites. After completion of investigation, chargesheet was filed. Subsequently, FSL report were obtained and filed."

3. As per the prosecution case, this incident was witnessed by Shankar @ Bengali, (PW-3) and Chhote Singh, (PW-8). The medical evidence comprises of deposition of Dr.Pankaj Kumar, (PW-6) who had proved the

MLC of the deceased. The post mortem report of the deceased has been reproduced in the impugned judgment. As per the MLC of the deceased, he had sustained two knife blows on the neck, one on the cheek and one lacerated wound on the left side of the abdomen and also an abrasion on the left side of the abdomen. A punctured lacerated wound suffered by the deceased on the left side of his neck measured 4 cm x 1 cm x 3.5 cm proved to be fatal. On the basis of the evidence led by the prosecution, Trial Court has convicted and sentenced the appellant as noted herein above.

4. Learned counsel for appellant, at the outset, submits that the instant case is of appellant exceeding his right of private defence. To submit so, the attention of this Court is drawn to the deposition of eye witnesses-PW-3 and PW-8 to point out that as per the ocular version put forth by these two eye witnesses, deceased had chased the appellant and in order to save himself, appellant had picked up a beer bottle from the park and had tried to resist the deceased and in the process, deceased was grievously injured and that appellant had not intended to cause death of the deceased. So, it is submitted that the offence committed by appellant is not of murder as appellant is fully covered by second and fourth exception to Section 300 of IPC. Reliance is placed upon Supreme Court's decision in *Surinder Kumar Vs. Union Territory, Chandigarh*, AIR 1989 SC 1094, and the decision of a Division Bench of this Court in *Krishan Kumar @ Monu; Anil Kumar Vs. State*, 2014 Law Suit (Del) 3399 to submit that the conviction of appellant deserves to be altered from Section 302 to Section 304 Part II of IPC. It is submitted that appellant is in custody for the about last four years and in the circumstances of this case, the sentence awarded to appellant deserves to be reduced to the period already undergone by him as on the day of incident,

appellant was aged about 21 years and that appellant is not involved in any other case and his conduct in jail is satisfactory.

5. On the contrary, learned Additional Public Prosecutor for respondent-State vehemently supports the conviction and sentence awarded to appellant and submits that no case for alteration of nature of offence or the sentence is made out.

6. Upon hearing and on scrutiny of the evidence on record, we do find that the prosecution case is firmly established and it is quite evident that appellant had exceeded his right of private defence. It is so said because the evidence on record reveals that at the time of this incident, deceased was chasing appellant and to save himself, appellant had picked up a beer bottle and on the spur of the moment had caused injuries to the deceased. It is not the number of injuries which have to be counted, to come to a conclusion whether right of private defence has been exceeded or not. The circumstances leading to the incident have to be seen in a broad perspective and the right of self defence is not required to be weighed in golden scales. The parameters governing right of private defence as reiterated by Supreme Court in *Suresh Singhal Vs. State (Delhi Administration)* (2017) 2 SCC 737 and *Darshan Singh Vs. State of Punjab & Anr.* (2010) 2 SCC 333 are as under:-

“(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) *A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.*

(iv) *The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.*

(v) *It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.*

(vi) *In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.*

(vii) *It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.*

(viii) *The accused need not prove the existence of the right of private defence beyond reasonable doubt.*

(ix) *The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.*

(x) *A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”*

7. We have analyzed the evidence on record in light of the parameters laid down by Supreme Court in *Darshan Singh* (supra) and thereupon scrutiny of the ocular version of this incident, we are persuaded to hold that appellant had exceeded the right of private defence which was indeed available to him. Pertinently, a lacerated wound on the neck of deceased

had proved fatal. The evidence on record does not reveal that appellant had acted in a cruel manner in causing injuries to the deceased. The circumstances of this case persuade us to hold that the offence committed by the appellant does not come in the ambit of Section 302 of IPC but falls under Section 304 Part I of IPC.

8. In light of the aforesaid, the conviction of the appellant stands altered from Section 302 to Section 304 Part I of IPC. The sentence awarded to appellant is accordingly altered from imprisonment for life to rigorous imprisonment for 7 years while the sentence of fine with default clause is maintained.

9. This appeal is accordingly allowed to the extent indicated above.

(SUNIL GAUR)
JUDGE

(PRATHIBA M. SINGH)
JUDGE

FEBRUARY 17, 2018
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