

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

Date of Decision: April 21, 2018

+ **CRL.A. 891/2016**

BAJRANGI NIRALA Appellant

Through: Mr. Aditya Vikram, DHCLSC &
Mr. Avinash, Advocate.

Versus

STATE Respondent

Through: Mr. Hirein Sharma, Addl. Public
Prosecutor for State with Inspector Surinder Pal
& SI Sushil of Police Station Defence Colony.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT
(ORAL)

1. Appellant was tried for committing murder of *Kundan Verma*, s/o Laxmi Prasad Bhagat, on the night intervening 9th/ 10th June, 2012, in a room of CPWD Horticulture Nursery, at Sadiq Nagar, New Delhi and upon conclusion of trial in FIR No.67/2012, registered at Police Station Defence Colony, New Delhi, he stands convicted for the offence under Section 302 IPC vide judgment of 30th March, 2016 and vide order of 11th April, 2016, he has been sentenced to imprisonment for life.

2. The substratum of prosecution case, as noticed in the impugned judgment, is as under:-

Verily, on 09.06.2012, 5/6 persons were deputed to report to Munshi Ram in order to do some work in the park of Sadiq Nagar. However, the labours arrived late at about 01.00 P.M., or so and it was decided that the scheduled work shall be started tomorrow morning. Mushy Ram handed over the keys of the store room / rest room to that group so that they may stay there overnight and start their work early in the morning presumably due to the heat being at its peak in the month of June. When Munshi Ram arrived at the nursey on the next morning i.e. 10.06.2012, he found that the iron gate was locked. He was having a duplicate key, with the help of which he opened the gate and found one of those persons who were deputed to work and permitted to stay overnight, in the pool of blood. Police arrived at the scene from the police station Defence Colony in terms of the information received and reduced the same into writing vide D.D. No. 11-A.

3. Prosecution had relied upon evidence of 30 witnesses and material evidence adverted to, is of *Monu Verma (PW-13)* and *Munshi Ram (PW-15)*. Apart from it, there is evidence of Investigating Officer - SI *Rattan Singh (PW-22)*. The medical evidence comprises of depositions of *Dr. Ravinder Shukla (PW-23)* who had prepared the MLC (*Ex.PW-23/A*) of deceased and *Dr. Sanjay Kumar-II (PW-5)*, who had conducted post-mortem of the deceased. As per the post-mortem report, the cause of death was *antemortem craniocerebral injury and its complications produced by blunt force, which is sufficient to cause death in ordinary course of nature.*

4. Weapon of offence i.e. small gas cylinder (*Ex.P1*) was recovered from the spot. The stand taken by the appellant in his statement under Section 313 Cr.P.C. before the trial court is as under:-

“I am innocent and falsely implicated in this case. I was called to the PS to make some enquiry but thereafter, I was falsely implicated in this case and then produced before the court. Infact, the police has implicated me falsely in order to solve their case.”

5. Appellant had chosen not to lead evidence in his defence.
6. At the hearing, learned counsel for appellant has endeavoured to assail the evidence of *Monu Verma (PW-13)* and *Munshi Ram (PW-15)* but in the alternative, has submitted that the incident in question was a result of a petty quarrel which took place at the spot and injury sustained by *Kundan Verma* is solitary one. According to learned counsel for appellant, *Monu Verma (PW-13)* in his evidence has clarified that the quarrel had taken place on a petty issue between him and appellant. So, it is submitted that appellant had no intention to cause death of *Kundan Verma* and offence, if any, committed by appellant comes within the ambit of Section 304-II of IPC.
7. On the contrary, learned Additional Public Prosecutor for respondent-State supports the impugned judgment and submits that offence committed by the appellant is of murder and there is ample evidence to show that he had the intention to cause death of the deceased.
8. Upon hearing learned counsel for the parties and on perusal of evidence on record, we find that *Monu Verma (PW-13)* in his evidence has categorically deposed that a quarrel had taken place on a petty issue and when the appellant had started beating *Monu Verma (PW-13)*, *Kundan Verma* had come to rescue him and thereafter, only appellant had grabbed the collar of his shirt and slapped him twice and blood started

oozing from the nose of appellant and thereafter matter was pacified and appellant as well as deceased and other persons present there, after taking meals had slept at the spot. However, this witness (PW-13) had deposed that in the intervening night of 9/10 June, 2012, he woke up on hearing the noise of quarrel and he saw that a small gas cylinder was in the hands of appellant and appellant had hit *Kundan Verma* with that gas cylinder on his head and then *Kundan Verma* had fallen down and became unconscious. Then, appellant as well as other witnesses present at the spot fled away.

9. While considering the nature of offence committed, a Division Bench of this Court in *Ajay Bind Vs. State NCT of Delhi* 2017 SCC OnLine Del 9033 has pertinently observed as under:-

“57. In this regard, we may also refer to the pronouncement of the Supreme Court reported at [Pulicherla Nagaraju @ Nagaraja Reddy vs. State of A.P.](#), (2006) 11 SCC 444 wherein it was held as follows:

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under [Section 302](#) or 304 Part I or 304 Part II. Many petty or insignificant matters -- plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder

where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under [Section 302](#), are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under [Section 302](#). The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

58. *In this regard, reference may also usefully be made to a pronouncement of the Supreme Court reported at (1997) 2*

Crimes 185 (Mad.), Samuthram @ Samudra Rajan v. State of Tamil Nadu wherein it was held as follows :

"To invoke Exception 4 to Section 300, four requirements must be satisfied, namely (i) it was a sudden fight, (ii) there is no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.... The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly;"

10. In the face of evidence of *Monu Verma (PW-13)* and *Munshi Ram (PW-15)*, we find that prosecution case stands firmly established but it is required to be seen as to what offence appellant had committed. As per the MLC (*Ex.PW-23/A*) of the deceased, there was incised wound (4*1 cm over chin) and right ear of *Kundan Verma* was partly cut. As per the post-mortem report of the deceased, the cause of death of deceased was *antemortem craniocerebrali injury and its complications produced by blunt force, which is sufficient to cause death in ordinary course of nature.*

11. Considering the fact that the incident in question had taken place on a petty issue and a solitary blow was given by appellant to the

deceased, we are of the considered opinion that the offence committed by appellant comes within the ambit of Section 304-I of IPC. Accordingly, the conviction of appellant is altered from Section 302 of IPC to Section 304-I of IPC and the sentence awarded to him is also altered from life imprisonment to rigorous imprisonment for 7 years.

12. With aforesaid modification in the impugned Judgment and order on sentence, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

(PRATHIBA M. SINGH)
JUDGE

AAPRIL 21, 2018

r/dk