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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.741/2017

Date of Judgment: 17th September, 2018

SUMIT SHARMA

...Appellant

Through: Mr. Ajay Verma, Ms Sudha Reddy
and Ms Katyayini, Advocates.

versus

STATE

...Respondent

Through: Mr. Kewal Singh Ahuja, APP for the
State

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

JUDGMENT

Dr. S. Muralidhar, J.:

1.This appeal is directed against the impugned judgment dated 19th April 2016 passed by the learned Additional Sessions Judge-III (North East), Karkardooma Courts, Delhi ('trial Court') in SC No.44923/2015 arising out of FIR No.417/2014 registered at PS Khajuri Khas convicting the Appellant for the offence under Section 302 IPC and the consequent order on sentence dated 23rd April 2016, whereby the Appellant was sentenced to rigorous imprisonment for life and a fine of Rs.500/- and in default of payment of fine, to undergo further simple imprisonment for three months.

2. The trial Court by the order dated 23rd April 2016 also referred the matter to the District Legal Services Authority ('DLSA') for determining the

compensation payable to the family of the deceased as well as making arrangements for the education of children of both the convict and the deceased.

The incident

3. The Appellant was charged with having stabbed to death Mohammad Tamanna ('the deceased') with a knife at 8:15 pm on 27th April 2014 near the Traffic Court, Pushta Road, Khajuri Khas thereby committing an offence punishable under Section 302 IPC.

4. The wife of the deceased, Urmat Khatoon (PW-5), stated that on 27th April 2014, she and the deceased was going to Khajuri Khas, Usmanpur. When they reached Khajuri Chowk at about 8:15 pm, the deceased went to hail a rickshaw. PW-5 was standing at the Khajuri Chowk and many public persons were present there. Subsequently, she heard the cries of her husband. She immediately rushed towards him and found one boy giving him knife blows on the stomach. Meanwhile, the police reached the spot and the assailant was apprehended. An ambulance also reached the spot. The deceased was taken to GTB Hospital where he received medical treatment.

5. HC Dinesh Kumar (PW-8) was on duty at the Police Control Room (PCR), North-East Zone. At 8:20 pm, one van came to him while he was in the PCR vehicle and stated that a man had been stabbed at Pushta Road near the traffic police booth. PW-8 immediately reached the spot and saw that Ct. Ravi Kant (PW-10) was holding the Appellant with his knife in hand. PW-8 also noticed the injured deceased lying on the spot. Blood was noticed on

the spot as well as on the clothes worn by the injured and the Appellant. PW-8 helped in shifting the injured to GTB Hospital.

6. PW-10 states that he was in the area of Beat No.3 known as Khajuri Chowk. At 8:15 pm, he was present near the traffic booth on Pushta Road, Khajuri Chowk when he heard the noise of a quarrel between two persons on the issue of sitting on a rickshaw. Even as he went near the rickshaw, one person took out the knife from the right side dub of his pant and gave 4-5 knife blows to the other person, as a result of which blood started oozing out from his chest and abdomen injuries. The injured tried to catch hold of the Appellant. PW-10 himself reached there and nabbed the assailant who was holding a knife. He mentioned about one lady and another person who were present there and who had witnessed the stabbing and tried to save the injured. The PCR officials then shifted the injured to the hospital.

Medical evidence

7. The MLC of the deceased (Ex.PW-13/A) shows that he was brought there on at 9:35 pm on 27th April 2014 by PW-8. It was noted that he was fit for statement. He was examined by Dr. Sachin (PW-13), who prepared the above MLC. Injuries on various parts of the body were noticed. He was referred to surgery.

8. The deceased succumbed to his injuries on 30th April 2014. His post mortem examination was conducted by Dr. Neha Gupta (PW-14). Eight injuries were noticed by her. Injury Nos.2 and 3 were abrasions on the left leg and right leg. Injury No.1 was a surgical stitched lobotomy wound present vertically over abdomen in the midline. Injury No.4 was an incised

stab wound over the left side back. Injury No.5 was an incised stab wound over the upper back. Injury No.6 was an incised stab wound present over the left shoulder with downward direction. Injury No.7 was a stab wound measuring 2 x 0.2 x 6 cm present on the left flank 18 cm from midline, cutting the skin, subcutaneous tissues and muscles of abdomen. Loops of intestine showed surgical repair. Injury No.8 was an incised stab wound measuring 2 x 0.2 x 5 cm present over left hypochondrium, 10 cm from midline, 15 cm below nipple. The directions of this wound went backward horizontally with 3 stitches *in situ*.

9. The time since death was opined as 12 hours and the cause of death as septicemic shock as a result of ante mortem injury to the abdomen produced by a sharp edged weapon. It was stated that Injury No.7 was sufficient in the ordinary course of nature to cause death. Subsequently, the knife (Ex.P1) recovered was shown to PW-14, who confirmed that the incised wounds could be caused by the said knife.

10. The charge sheet in the case was filed on 25th July 2014 and by the order dated 5th September 2014, the trial Court framed the charge against the Appellant in the manner indicated hereinbefore.

Trial

11. 18 witnesses were examined by the prosecution. This was a case based on direct eye witness testimony. The two critical eye witnesses were Ct. Ravi Kant (PW-10) and Urmat Khatoon (PW-5). Their narratives as regards the Appellant stabbing the deceased over a trivial issue of engaging the

rickshaw and then apprehending the Appellant from the spot itself were by and large consistent. These two witnesses were found to be truthful and reliable.

12. The other factor that weighed with the trial Court in finding the Appellant guilty, was that the Appellant was apprehended at the spot with the weapon of offence. The FSL report (Ex.PW-16/B1) confirmed that the blood on the knife was of human origin but the blood group could not be determined. Blood was also found on the shirt and pant (Ex.3a and Ex.3b), but the blood group could not be found.

13. The trial Court came to the conclusion that PW-10 had no interest except that he was a protector of the law. PW-10 apprehended the Appellant at the spot along with the knife soon after the Appellant had stabbed the deceased. The facts spoken to by PWs 5 and 6, both of whom were related to the deceased, had been duly corroborated by other witnesses and therefore, they could not be said to be planted witnesses.

14. The trial Court also rejected the argument that there were any material contradictions in the testimonies of the eye witnesses. Further, the dying declaration of the deceased (Ex.PW-15/A), which also constituted the *rukka*, disclosed all the material facts including the reason for the dispute, the attack on him by the Appellant, the apprehension of the Appellant, and his handing over to the police. This dying declaration was recorded on 27th April 2014 itself by ASI Vijender (PW-18). This had been duly corroborated by other eye witnesses. The medical and forensic evidence had also proved that it was the Appellant who committed the offence. The trial

Court held that the identity of the Appellant also had been proved beyond doubt as was his arrest and recovery.

15. When it came to the motive for commission of the offence, the trial Court held that PWs 5 and 10 had duly proved that the cause of the dispute was on account of sitting in a rickshaw. The defence arguments were then considered one by one and rejected. The trial Court held the Appellant was guilty of the offence punishable under Section 302 IPC and proceeded to sentence him accordingly.

16. This Court has heard the submissions of Mr. Ajay Verma, learned counsel appearing for Appellant, and Mr. Kewal Singh Ahuja, learned APP for the State.

Culpability of the Appellant

17. The eye witness testimonies of PWs 5 and 10 have proved beyond reasonable doubt that there was an altercation between the Appellant and the deceased over the trivial issue of engaging a rickshaw and about who should sit first on the rickshaw. The fact of the presence of the Appellant at the spot, his entering into the above altercation with the deceased, and his pulling out a knife and stabbing the deceased multiple times have all been spoken to clearly and cogently by PWs 5 and 10 without any serious challenge to their testimonies.

18. In the considered view of the Court, the two eye witnesses and in particular, PW-10, are both truthful and reliable and their testimonies can safely constitute the basis for holding the Appellant responsible for the

killing of the deceased.

19. Nevertheless, even the dying declaration of the deceased recorded by PW-18 was corroborated fully by the medical and forensic evidence and leaves no manner of doubt that the deceased died on account of the knife attack on him by the Appellant.

Nature of the offence

20. The only issue that remains to be considered is the nature of the offence and whether it satisfies the ingredients of Section 304 IPC, i.e. culpable homicide not amounting to murder, and for that purpose, whether it falls within any of the exceptions to Section 300 IPC.

21. In the present case, the post mortem report shows multiple stab wounds over several portions of the body with one of them on the left flank being the fatal one. The Court therefore does not agree with the contention of the learned counsel of the Appellant that the present case is of an attack made with the knowledge that it is likely to cause death but without the intention to cause death and that the offence thus committed by the Appellant was covered by Section 304(II) IPC. Given that the fatal knife blow was on a vital organ it cannot be said that the Appellant did not intend to commit the crime. It is clear that he had both the knowledge that the knife is capable of causing fatal injuries and the intention to do so, given that the fatal injury was only the vital part of the body of the deceased.

22. At the same time, the Court finds merit in the plea of the counsel for the Appellant that the ingredients of Exception 4 to Section 300 IPC stand

fulfilled in the present case. The law in relation to the applicability of Exception 4 to Section 300 was explained by the Supreme Court in ***Ghapoo Yadav v. State of M.P. (2003) 3 SCC 528*** in the following words:

“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 the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. 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".”

23. In ***Surinder Kumar v. Union Territory, Chandigarh (1989) 2 SCC 217***, the Supreme Court held that if on a sudden quarrel a person in the heat of the moment picked up a weapon lying handy and caused injuries, one of which was fatal, such person could have the benefit of Exception 4, provided he did not act in a cruel manner. It was observed:

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was 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 cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. 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...”

24. The quarrel in the present case took place over a trivial dispute that arose on account of who would ride a particular rickshaw. Therefore, the crime was clearly not pre-meditated. The Appellant and the deceased were complete strangers to each other. The other ingredient of Exception 4 to Section 300 IPC is that the crime must have been committed in the heat of passion – which in the present case it was. At the same time, it cannot be said that any particular advantage was taken by the Appellant or that the Appellant acted in a cruel and unusual manner. The location of the fatal injury, on a vital part of the deceased, disentitles the accused to claim that he did not intend to kill the deceased. Consequently, the Court is satisfied that the ingredients for converting the charge for murder punishable under Section 302 IPC to one of culpable homicide not amounting to murder punishable under Section 304(I) IPC stand fulfilled in the present case.

25. For the aforementioned reasons, this Court converts the conviction of the Appellant from the offence punishable under Section 302 IPC to one punishable under Section 304(I) IPC.

Sentence

26. Now turning to the question of sentence, it is seen that the Appellant

does not have any previous criminal record. He belongs to the economically weaker section and at the time of the crime was the sole bread earner of a family comprising his wife and child. In the circumstances, the Court modifies the sentence of life imprisonment awarded to the Appellant by the trial Court to one of rigorous imprisonment for eight years, with the fine amount and default sentence remaining unchanged.

27. The trial Court's order on conviction and on sentence shall stand modified accordingly. The appeal is disposed of in the above terms. The trial Court record be sent back forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 17, 2018

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