

\$~1

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

+ **CRL.A. 846/2015**

SACHIN CHANDEL Appellant

Through: Mr.Ajay Verma, Advocate

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

% **05.03.2018**

1. The present appeal is directed against the judgment dated 25th March, 2015 passed by the learned Additional Sessions Judge-03 ('ASJ'-03), Central Delhi, Tis Hazari Courts in Sessions Case No.76/2013 arising from FIR No.124/2013, registered at Police Station ('PS') Kotwali, Delhi, convicting the Appellant for the offence under Section 302 IPC and further for the offences under Sections 307 IPC and 27 of the Arms Act. The appeal is also directed against the order on sentence dated 15th April, 2015 whereby for the offence under Section 302 IPC, he was sentenced to undergo Rigorous Imprisonment ('RI') for life with a fine of Rs.10,000/- ; for the offence under Section 307 IPC to undergo RI for seven years with a fine of Rs.5,000/- and for the offence under Section 27 of the Arms Act, to undergo RI for three years with a fine of Rs.3,000/- and in default of payment of the aforementioned fine amounts, to undergo six months, four months and two months Simple Imprisonment ('SI') respectively. The sentences were

directed to run concurrently.

2. The charge against the Appellant is that on 14th July, 2013 at about 9 p.m. on the main road, in front of Gauri Shankar Mandir, Chandni Chowk Road, Delhi, he stabbed Bengali Babu @ Mote (the deceased) in his stomach with a knife leading to his death thereby committing an offence punishable under Section 302 IPC. The second charge against the Appellant was that when they tried to save the deceased, the Appellant stabbed Rajesh Kumar Shah as well as Raju (PW-21) with the knife and caused them injuries thereby committing an offence punishable under Section 307 IPC. The third charge against him was that on 15th July, 2013 at 5 p.m. near parade ground he was found in possession of a knife 32.5 cms in length (the blade length being 20 cms) thereby committing an offence punishable under Section 25/27 of the Arms Act.

3. The case of the prosecution is based on the eye witness testimonies of PW-21 who was an injured witness and PWs-6 & 11 both of whom were flower sellers in the area.

4. The evidence of PW-21 was to the effect that he used to work as a *thela puller* in the cycle market. On 14th July, 2013, at around 8 pm he saw the Appellant demanding Rs.100/- from the deceased. The deceased is said to have slapped the accused on his face. Soon thereafter at around 8.30 pm, the Appellant is stated to have brought a knife from Matia Mahal and given knife blows to the deceased in front of Gauri Shankar Mandir. When PW-21 tried to rescue the deceased, the Appellant gave him three or four knife blows on his head, arm, thigh and back and also gave a knife blow to one

Rajesh.

5. The deceased when taken to the hospital and was declared 'brought dead'. As far as PW-21 is concerned, he too was admitted to the hospital but was discharged the following morning, i.e. 15th July, 2013. His statement was then recorded by the police. PW-21 then accompanied three or four police officials in the search of the Appellant who was found on 15th July 2013 sitting in the parade ground. After he was apprehended, a knife was recovered from the Appellant.

6. Although in his cross-examination, PW-21 admitted to having made some improvements about the injuries caused to him, he maintained that the Appellant did give a knife blow to the deceased as well as to PW-21 himself. The material portion of the testimony of PW-21 as regards stabbing of the deceased by the Appellant has received corroboration from two other independent eye witnesses, PW-6 and PW-11. PW-6 who was a flower seller in the area stated that he saw one person who was looking perturbed and perplexed being followed by another person, and then stabbed by that person after falling down at about 9 pm on 14th July, 2013 in front of the temple outside where he sold his flowers. He was able to identify the Appellant as the person who gave the knife blow and the other person who tried to save the deceased as Rajesh. Nothing much has come from his cross-examination to doubt the material portion of his testimony regarding his witnessing the Appellant carrying out the stabbing on the deceased.

7. PW-11 (Bunty) was another flower seller in the area. He too was able to correctly identify the Appellant as the person whom he saw stab the

deceased outside the Gauri Shankar Mandir at around 9 pm on 14th July, 2013. The contradictions that were elicited in his cross-examination were not material enough to shake his testimony as regards the actual incident.

8. Consequently, the Court agrees with the Trial Court that the eye witness testimonies proved the case of the prosecution against the Appellant, in so far as his being the person who caused the fatal knife blow to the deceased is concerned.

9. The question next is whether as pleaded by learned counsel for the Appellant, the offence falls under culpable homicide not amounting to murder punishable under Section 304 (Part-II) IPC. According to learned counsel for the Appellant, the collective reading of the depositions of PWs 6, 11 and 21 make it clear that there was an altercation between the Appellant and the deceased and the deceased slapped the Appellant which led to the Appellant coming back with the knife to attack to the deceased. On reading of the testimonies of all the above three eye witnesses, the fact that there was a sudden quarrel which led to the stabbing of the deceased by the Appellant becomes apparent. It is further submitted that since there was a single injury on the abdomen of the deceased, it could not be said that the Appellant intended to cause an injury likely to result in the death of the deceased and, therefore, at the highest it can be an offence punishable under Part-II of Section 304 IPC.

10. The Court is unable to agree with the above submissions for the following reasons:

- (i) No doubt, there was a provocation from the side of the

deceased, with the deceased having slapped the Appellant for demanding a sum of Rs.100/- from him.

- (ii) From the depositions of PWs 6, 11 and 21, it does appear that this was the immediate cause for the Appellant to go and fetch a knife and then stab the deceased.
- (iii) Therefore, the time gap was short enough for the offence to be characterized as one taking place in a sudden quarrel in the heat of passion attracting Exception-4 to Section 300 IPC. Since it was a single stab blow, it is possible to characterise the offence as one of culpable homicide not amounting to murder.

11. However, the Court is unable to agree with the learned counsel for the Appellant that the Appellant did not intend to cause an injury to the deceased which was likely to result in his death. By all accounts, the stab injury in the abdomen was to such an extent that the intestines of the deceased were protruding from the cut wound and this has been fully corroborated by the medical evidence. It cannot be disputed that the knife blow, even if it was a single blow, was on a vital part of the body and, therefore, it cannot possibly be said that the Appellant did not intend that the injuries inflicted would likely cause the death of the deceased.

12. Consequently, the Court holds that the Appellant would be liable for the offence punishable under Section 304 (Part-I) IPC and be sentenced accordingly. The conviction of the Appellant for the offence under Section 302 IPC is converted to the offence punishable under Section 304 (Part-I) IPC.

13. The Appellant was less than 20 years of age at the time of the offence. He has completed around 5 years and four months of actual imprisonment as of date. It appears that the Appellant has no other pending case against him and his jail conduct has also been satisfactory.

14. In the circumstances, the Appellant is sentenced to seven years rigorous imprisonment for the offence under Section 304 (Part-I) IPC with the fine amount of Rs.10,000/- as awarded by the trial Court and the default sentence to undergo SI for six months being unaltered.

15. Turning now to the offence under Section 307 IPC, looking at the nature of the injuries upon PW-21, his MLC shows that there were four incised wounds. While three of them are on the right elbow, back of the right shoulder and the right wrist, one was extending from the eyebrow to the forehead. The offence is accordingly converted from Section 307 IPC to one under Section 326 IPC and the sentence awarded to the Appellant for the said offence is confined to the period already undergone by him. The fine amount of Rs.5,000/- and the default sentence awarded by the trial Court, i.e. of four months simple imprisonment are left unaltered.

16. The conviction of the Appellant for the offence under Section 27 of the Arms Act and the sentence for the same, along with the fine amount in default of sentence, are left unaltered.

17. The appeal is disposed of in the above terms.

Crl. M.(Bail) 267/2018 (suspension of sentence)

18. Since the appeal itself has been finally heard and disposed of, this application does not survive for consideration and the same stands disposed of accordingly.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 05, 2018

dc