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

+ **CRL.A. 1114/2017 & CrI.M (Bail) No. 2155/2017**

PREM KUMAR & ORS. .... Appellants  
Through: Mr. K.Singhal Prasanna and Mr. Nishant  
Bhardwaj, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) ..... Respondent  
Through: Ms. Radhika Kolluru, APP for State.

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE I.S.MEHTA**

**ORDER**  
**05.02.2018**

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1. This appeal by the three accused is directed against the judgment dated 19<sup>th</sup> September, 2017 passed by the learned Additional Sessions Judge, North District, Rohini Courts in Sessions Case No. 20/2017 arising out of FIR No. 543/2016 registered at Police Station (PS) Samaypur Badli convicting them for the offence under Section 302 read with Section 34 IPC and the order on sentence dated 27<sup>th</sup> September, 2017 whereby for the aforementioned offence each of the accused was sentenced to imprisonment for life with fine of Rs. 35,000/- and in default of payment of such fine, to undergo simple imprisonment (SI) of one year. Of the fine amount realised, Rs. 1 lakh was directed to be paid to the parents of the deceased.

2. A call was received in the Police Control Room at around 11.34 p.m. on

15<sup>th</sup> June, 2016 that a quarrel was taking place at Bhagat Singh Park, Kaptan Chowk, Sirsapur Road Delhi. When the police reached there, they were informed that the person injured in the quarrel was Dheeraj, son of Pawan Singh, who was running an electrical appliances shop in the same area, and that he had been removed to the BSA hospital. It also noted that the injured Dheeraj was declared brought dead to the hospital.

3. The Medico Legal Certificate (MLC) of the deceased shows that he was taken to the hospital there at 12.20 am on 16<sup>th</sup> June, 2016 with the alleged history of physical assault.

4. The post-mortem of the deceased was conducted by Dr. Mukesh Kumar (PW-1) who noticed the following injuries:

“1. Lacerated wound, 4 cm x 0.5 cm x bone deep present over the left occipital area, 2 cm lateral to midline, 16 cm above both pinna.

2. Abrasion, 2.9 cm x 1.6 cm present over the left great toe near tip present.

3. Swelling of right side of the nape of the neck and lateral aspect of face present. On dissection, fracture of right side of mandible bone with effusion of blood in the surrounding tissue area present.”

5. As far as the internal examination of head and neck were concerned, the observations were as under:

“Head: On reflection of the scalp, effusion of blood was present under surface of right temporo-parietal and both occipital area scalp at places present. Linear fracture of base of the skull

present in the posterior fossa. Meninges was intact. Thin layer of subdural hemorrhage present over the right temporo-parietal, left occipital area and base of the both cerebral hemisphere present. Diffuse subarachnoid present over the both cerebral hemisphere and cerebellum. Intra ventricular hemorrhage present. Brain parenchyma was congested and weighed 1350 grams.

Neck: Extravasation of blood was seen in the soft tissue of the right side of the nape of the neck (As describe in external injury no. 3). The Larynx and pharynx were unremarkable. Tracheal mucosa was congested. Throid gland, strap muscles of neck and vessels of neck were unremarkable. Hyoid Bone and Thyroid Cartilage were intact.”

6. In the opinion column, it was stated that “death is due to head injury”. All injuries were said to be ante mortem in nature.

7. What transpired at the spot is spoken of by Ram (PW-2), the brother of the deceased who was present at the shop selling electric appliances at Bhagat Singh Park where the deceased was also present. PW-2 stated that at around 11pm on 15<sup>th</sup> June, 2016 he and the deceased were closing the shop where they noticed two boys arguing with a third boy in front of their shop. One of them was Varun, son of Prem (Accused No.2 - A-2). The other was Manoj (A-3), a cousin of A-2. Dheeraj asked them not to fight in front of their shop whereupon A-2 and A-3 started quarrelling with the deceased. A-2 then made a call to his father, Prem (A-1). Within two minutes, A-1 arrived there with a 2-1/2 feet long *danda* (wooden stick). Prem then gave the following exhortation: “*do chaar din pehle bhi Dheeraj ne tujhko (Varun) maara tha, aaj isko sabak sikha denge ye bada choudhary bana firta hai, aaj iska kaam tamam kar denge.*” Thereupon A2 and A-3 caught

hold of the deceased, while A-1 started beating the deceased on his head with the *danda*.

8. PW-2 stated that he tried to save the deceased but was pushed aside by A-1. He raised an alarm asking persons around the spot to help him upon which the three accused started running and he started chasing them. Certain others also joined PW-2 in chasing the three accused. They succeeded in apprehending all the three accused in the street itself. According to PW-2 the three accused were beaten up by the persons assembled there. Meanwhile, the police were called and deceased was removed to the BSA Hospital in the PCR van accompanied by PW-2.

9. PW-2 was subjected to extensive cross-examination. He was confronted with the statement made to the police during investigation under Section 161 Cr PC. The so called improvements that could be elicited from him were only to the effect that when he asked for help, he did not specifically mention the names of his friends Manish and Nitesh but he had told the police that he had asked for them by raising an alarm. The second improvement was that although he did not tell the police in the first instance that A-2 & A-3 were holding either arm of the deceased, he did say that they had held him by force. These were certainly not material improvements which could raise doubts about the veracity of PW-2's testimony. Importantly, there was no cross-examination of the witness regarding the exhortation given by A-1 which has been referred to hereinbefore.

10. There were other eye-witnesses i.e. Malkhan (PW-5), Baare Lal (PW-6) and Manish (PW-8). All these witnesses supported the prosecution. Kali Charan (PW-9) was not an eye witness but arrived at the spot soon after the deceased was found there in an injured condition. There is nothing material elicited in their cross-examination which raised any serious doubts over the manner in which the incident took place. It is clear that all three accused were present at the spot; that they were the aggressors; that A-1 wielded the *danda* while A-2 and A-3 held the deceased by force. All these witnesses have consistently spoken about the three accused being chased and apprehended in the street itself.

11. Sachin, PW-11 has corroborated the version of PW-2 on an important aspect about there having been a quarrel between the deceased and A-2 (Varun) before the fateful day as well.

12. Faced with the above direct evidence in the form of the testimonies of the eye witnesses, Mr. Singhal, learned counsel for the Appellants could not persuade the Court that the incident did not happen in the manner described or that the roles attributed to the three accused by these eye-witnesses were in any manner unbelievable. Mr. Singhal, however, sought to bring the case within the Exception 4 to Section 300 IPC. He argued that this was a case of culpable homicide not amounting to murder. It was sought to be urged by Mr. Singhal that there was no intention to cause death because after all what was brought to the spot by A-1 was a non-lethal weapon like a *danda*. He further sought to urge that A-2 and A-3 could not be said to have shared common intention with A-1 to cause the fatal injury to the deceased. He

therefore urged that the offence was one punishable under Part II of Section 304 IPC.

13. This Court has also heard the submissions of Ms. Radhika Kolluru, APP appearing for the State on this aspect.

14. Examining the nature of injuries suffered as has been noticed herein before, it is seen that there was one fatal injury to the head caused with the *danda* which resulted in fracture on the base of the skull and subdural haemorrhage present over the right temporo-parietal and left occipital area as well as the base of both the cerebral hemisphere and cerebellum. This head injury was so serious that the death of the deceased was almost instantaneous.

15. The Court is unable to agree with the submission that this would be a case covered under Part II of Section 304 IPC. The provocation in the present case was the intervention by the deceased in the quarrel that was taking place between A-2 and A-3 on the one hand and some other third boy on the other. It is true that the quarrel in the first instance was not with the deceased. However, it appears that the arrival of A- 1 on the spot was as a result of the call made by A-2 to him. The fact that A-1 arrived soon thereafter on the spot armed with a danda reveals that he came with the intention of causing injuries to the deceased. And then he straightaway began attacking the deceased on his head. Had he not been armed, and had he not hit the deceased, who was himself unarmed, on the head it might have been possible to contend that there was no intention on the part of A-1

to cause a fatal injury. However, the eye witness account speaks to the contrary.

16. However, from the sequence of events as narrated by the prosecution, and as spoken of by the eye witnesses, the Court is persuaded that crime was culpable homicide not amounting to murder. It falls under Exception 4 to Section 300 IPC. In other words, the crime was committed by the three accused without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel. The three accused stopped their assault after the single fatal blow to the head of the deceased. All three then ran away. It therefore cannot be said that they acted in a cruel or an unusual manner. The Court is therefore persuaded that the offence for which the accused should be punished is not murder punishable under Section 302 IPC but culpable homicide punishable under Part I of Section 304 IPC.

17. The Court is satisfied that as far as A-2 and A-3 are concerned, although they themselves may not have wielded the weapon, their role in holding down the deceased by force and facilitating his being fatally struck by A-1 has been proved beyond reasonable doubt. A-2 and A-3 did share a common intention with A-1 at that moment to inflict a head injury with the *danda* which they knew would in all probability result in his death. They would therefore also be liable for the offence under Section 304 Part I IPC read with Section 34 IPC.

18. Coming to the question of sentence, as far as A-1 is concerned, the Court is satisfied that he should be awarded the maximum alternative

sentence to the one of imprisonment for life. Accordingly in modification of the order on sentence of the trial Court the Court sentences A-1 to e. rigorous imprisonment (RI) for ten years.

19. As far as A-2 and A-3 are concerned, taking into account their age, the fact that there is no other pending case against them and that their overall conduct in jail has been satisfactory, the Court sentences them to RI for 7 years. The fine amount as awarded to A-1 to A-3 by the trial Court and the default sentences in case of non- payment of the fine is left undisturbed. The impugned judgment dated 19<sup>th</sup> September, 2017 and the order on sentence dated 29<sup>th</sup> September, 2017 of the trial Court shall stand modified in the above manner.

20. The appeal and pending application are disposed of.

21. The trial Court record be returned forthwith together with a certified copy of this judgment.

**S. MURALIDHAR, J.**

**I.S. MEHTA, J.**

**FEBRUARY 05, 2018**

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