



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

% *Decided on: September 16, 2022*

+ **CRL.A. 609/2018**

MUNINDER PANJETA

..... Appellant

Represented by: Mr.Harsh Prabhakar, Advocate
(DHCLSC) with Mr.Aditya
Vikram, Mr.Anirudh Tanwar,
Mr.Dhruv Chaudhry and
Mr.Sitaram Yadav, Advocates.

Versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr.Mukesh Kumar, APP for
the State with Inspector
Sandeep Kumar, P.S.Vasant
Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J. (ORAL)

CRL.A. 609/2018

1. By the present appeal, the appellant Muninder Panjeta challenges the impugned judgment dated 9th April 2018 convicting the appellant for offence punishable under Sections 302/34 IPC along with another co-accused Saurabh Yadav whose appeal stands abated in view of his demise, besides convicting the three other accused namely Raju Kumar, Himanshu Rathi and Charan Singh for offences punishable under Sections



323/34 IPC. The appellant was awarded sentence of imprisonment for life besides fine of ₹50,000/-, in default whereof to undergo rigorous imprisonment for one year and in case of fine amount being realized, the same was to be released to the mother of the victim vide order on sentence dated 12th April 2018.

2. As per the prosecution, the alleged incident took place at around 11.30 pm on 10th May 2010 when after a fight which ensued between some boys with Honey, the deceased who was accompanied by Jogender @ Tuli, (PW-3) and Avinash Malik (PW-10) who were later joined by Nitin Sansanwal (PW-16), cousin of the deceased Honey. It is alleged that the appellant went inside his room, brought a “chopper” (knife) from his kit as he was a student of Hotel Management and gave a stab injury on the right side chest of the deceased. It is also the case of the prosecution that the co-accused Saurabh Yadav gave an iron rod injury.

3. FIR No.125/2010 was registered at P.S. Vasant Vihar on the statement of Nitin Sansanwal who stated that he was a resident of B-27, Village Katwaria Sarai, Sangam Vihar and on the intervening night of 10th/11th May 2010 at around 11.30-11.45 pm, Joginder @ Tuli called him from his cell phone number 9711674898 on Nitin's mobile phone No. 9717558020 informing him that some boys who were often teasing the village girls, had an argument with other boys and asked Nitin Sansanwal to come immediately outside the shop of Dinesh Bansal. When Nitin Sansanwal reached outside the shop/store of Dinesh Bansal, he found his cousin brother Honey having a tussle with other boys who were residing in the next gali as tenants and those boys had threatened to kill Honey. He saw Joginder @ Tuli and Avinash trying to rescue his cousin Honey from the



hands of those boys when 7-8 boys pounced upon stating “*gaon ka bada thekedaar banta hai isse aaj maar date hain*” and immediately one short and stout boy stabbed Honey with a knife on his right side chest and another boy who had an iron rod, hit Honey on the head with the iron rod. The other boys were slapping and kicking Honey. In a little while, Honey fell down in injured condition and on seeing Honey in an injured condition, all the boys ran away into the gali adjacent to the Bansal General Store. Nitin Sansanwal picked up Honey and called people to help him remove Honey to the hospital. According to Nitin Sansanwal, Dinesh Bansal told him that the boys involved in the fight were tenants of Harish and the boy who had attacked Honey with the knife was Muninder Panjeta, the boy who gave the iron rod blow was Saurabh Yadav and the other boys were Narender, Raju Kumar, Himanshu Rathi and Charan Singh. Dinesh Bansal also told him that he was familiar to those boys as they used to purchase regularly from his store. When injured Honey was taken to Fortis Hospital by Nitin Sansanwal, the Doctor declared him brought dead.

4. After the arrest of the accused charge sheet was filed. Prosecution examined 41 witnesses. Statements of accused were recorded under Section 313 CrPC, however, they led no defence evidence. Before the Court, thus, the five eye witnesses who deposed were Harish (PW-1), Joginder @ Tuli (PW-3), Avinash (PW-10), Dinesh Bansal (PW-11) and Nitin Sansanwal (PW-16). In his testimony before the Court, Harish stated that he did not remember the exact date and month, however, on that day, he rang up the police after witnessing a quarrel between the boys i.e. Honey of Katwaria Sarai and Saurabh Yadav, Narender, Raju Kumar & some other boys. One of those boys gave a knife blow to Honey and thereafter, some of the boys



took Honey to the hospital. The police enquired from him about the incident and he narrated these facts to the police. The boys who were quarrelling with Honey were identified by him as Saurabh and Narender present in Court, however, he could not identify Raju Kumar. This witness was cross examined by learned APP by putting some leading questions on material points. Further, this witness did not identify the appellant herein as the person who gave the knife blow to the deceased.

5. Joginder @ Tuli deposed that he was studying in 10th standard from Open School, Munirka. Muninder Panjeta, Saurabh Yadav, Himanshu Rathi and Raju Kumar used to reside near the house of the deceased Honey. Muninder Panjeta and Saurabh Yadav used to drive their motorcycles at high speed and also used to eve tease the village girls and the deceased Honey used to object to their driving motorcycles at a high speed and eve teasing the girls. On 10th May 2010, he along with Avinash and Honey went to Bansal Store and at that time, accused Muninder Panjeta, Himanshu Rathi, Raju Kumar and Charan Singh were standing there and they started abusing Honey on the old issue. After that, they returned back and while they were going from the side of Bansal Store, in the meantime, all the above-noted accused persons were still standing there. He further deposed that Muninder Panjeta, appellant herein told his associate about Honey stating "*ye gaon ka bahut daada banta hai, aaj isko dekhte hain*". Thereafter, all the accused persons started beating Honey with fists blows and leg blows. He informed Nitin Sansanwal, cousin brother of the deceased Honey that some quarrel had taken place between Honey and other accused persons. While the accused persons were beating Honey, in the meantime, Muninder Panjeta and Saurabh Yadav went towards their



room. He along with Avinash tried to rescue Honey. Accused Muninder Panjeta came back with a knife while Saurabh Yadav brought an iron rod. In the meantime, Nitin Sansanwal also reached at the spot and intervened. Joginder @ Tuli, PW-3 further deposed that firstly, the accused Saurabh Yadav gave a blow to Honey with iron rod on his head and then the accused Muninder Panjeta gave a knife blow on the right side of the chest of Honey. Thereafter, he along with Avinash and Nitin Sansanwal carried injured Honey to the hospital where the injured was declared brought dead.

6. Avinash who appeared as PW-10 deposed on the same lines as of Joginder @ Tuli and stated that on the night of 10th/11th May 2010, while he along with Joginder @ Tuli and Honey were strolling in the Goombadwali gali, accused Muninder Panjeta and his associates started abusing Honey on the earlier issue of teasing girls. They came back there after about half an hour and while strolling in front of Bansal General Store, this witness along with Joginder @ Tuli and Avinash found that accused Muninder Panjeta and his friends Himanshu Rathi, Charan Singh, Saurabh Yadav and Raju Kumar started beating Honey. In the meantime, Joginder telephoned Nitin Sansanwal who arrived there. Muninder Panjeta and his associates gave beatings to Honey and thereafter, Muninder Panjeta and Saurabh Yadav went to their rooms and Muninder Panjeta came back with a knife and the accused Saurabh Yadav returned with a rod. Accused Muninder Panjeta stabbed Honey on the right side of his chest with the knife and Saurabh Yadav gave iron rod blow to Honey on the head from back side. He became frightened and ran away from there. He returned after about 15 minutes to the place of occurrence and found Honey lying on the ground in a pool of blood. He stated that he, Nitin Sansanwal and Joginder @ Tuli lifted Honey



and took him to Fortis Hospital where he was declared brought dead. Though this witness identified Charan Singh, Raju Kumar and Muninder Panjeta, but did not identify the other accused. He was cross examined by the learned APP as also learned counsels for the accused.

7. Dinesh Bansal, PW-11 who was the owner of Bansal Store stated that on 10th May 2010 at about 10.30 pm, Honey came in front of his shop; remained there for half an hour and thereafter went away. He thereafter closed his shop and went to his house. While he was sitting for dinner, he heard some noise of quarrel from the street below his room which was on the 4th floor. He looked down from his room but could not see anything. When he came down, he saw a gathering of persons in the street and Honey lying on the ground with his face down. Thus, this witness also does not support the case of the prosecution nor identifies Muninder Panjeta as one of the assailants present over there and having stabbed the deceased.

8. Nitin Sansanwal, PW-16, as noted above, reiterated the statement made in the FIR and stated that he received a call from the mobile phone of Joginder @ Tuli that a quarrel had taken place in front of Bansal Store. After reaching there within five minutes, he saw 7-8 persons stating "*gaon ka bada thekedaar banta hai, isse aaj maar dete hain*" and beating Honey. Joginder @ Tuli who was also there tried to save Honey. He deposed that he also made efforts to save his cousin Honey. In the meantime, Muninder Panjeta gave a knife blow on the right side of chest of Honey and Saurabh Yadav gave a danda blow on the head of Honey. He deposed that others were giving kicks and fists blow to Honey. Within 5 to 10 seconds, Honey fell down. He picked up Honey with the help of Joginder @ Tuli, Avinash



and Dinesh Bansal and took him to the Fortis Hospital where he was declared brought dead.

9. As per the post-mortem conducted by Dr. Susheel Sharma, PW-17, one ante-mortem injury which was a stab wound of 5 cm in length with a corresponding cut on the chest as noted hereinafter was present:-

“Ante Mortem Injury

A stab wound 5 cm in length gapping, cavity deep present over right aspect of lower chest, situated 126 cm above from right heel, 48 cm below right shoulder tip and 9 cm rightward to mid line. Wound was horizontally placed, inner angle was sharp. A blood stained track was established directed upward, leftward and backward passing through fourth inter costal space and terminate in middle lobe of right lung above 1.5 cm deep. Wound track was associated with haemothorax about 1000 ml. Fluid and clotted blood. Multiple blood soaked gauze pieces were present in wound track and chest cavity suggestive of surgical intervention. Stab wound was covered with surgical bandage and about 12 c.m. in depth.

All internal organs were found pale, in stomach mucosa was pale and no abnormal smell was present.

Additional remark- cut mark on blood stained sandow baniyan was found correspond to injury No.1”.

10. As per Dr.Susheel Sharma, cause of death to the best of his knowledge was haemorrhagic shock consequent to injury No. 1 caused by pointed sharp edged long weapon and the said injury was sufficient to cause death in the ordinary course of nature, was ante-mortem in nature and fresh in duration. No subsequent opinion on the weapon of offence recovered was taken from Dr. Susheel Sharma, PW-17 but was taken from Dr. Mahesh Kumar, PW-40 who on seeing the weapon of offence recovered at the instance of appellant Muninder Punjeta opined that the injuries mentioned in



post-mortem report could be possible by alleged weapon. As per the FSL report exhibited as Exh.PW-38/A, the knife (Exh.13) recovered at the instance of the appellant as also the T-Shirt and shorts being worn by the appellant as Exh.10a and 10b had human blood of O group origin which tallied with the blood group of deceased which was also found out to be of O group.

11. Even though Harish and Dinesh Bansal have not supported the case of the prosecution to the extent of the identity of the accused, however, from the testimonies of Joginder @ Tuli, Avinash and Nitin Sansanwal, it is evident that though with regard to the iron rod blow given by Saurabh Yadav, there is no corresponding injury noted in the post mortem report, however, the alleged knife blow given by the appellant is clearly accounted for in the post mortem report on the right side of the chest, as noted above.

12. Learned counsel for the appellant has vehemently contended that even as per the prosecution case considering the fact that the appellant or his so-called associates were not the aggressors and were standing outside their own rented accommodation where the deceased and his friends came and during the quarrel, on the spur of moment before there was any time to cool passions, the appellant went inside his room, took out the knife from the kit as he was a trainee Chef and from that, he is alleged to have inflicted a single stab injury to the deceased, thus an offence punishable under Section 302 IPC will not be made out and at best, an offence under Section 304-Part I IPC would be made out. Learned counsel for the appellant has taken us through the site plan, as per which, the tenanted accommodation of the appellant is adjoining the Bansal Store, at which place, alleged incident took place and thus, it is contended the present is not a case where the appellant



or the co-accused were already armed with any weapon of offence or that they had gone to the place of the deceased and were the aggressors. It is contended that even as per the statement of the eyewitnesses, appellant and his associates were outside their own house. The deceased and his associate came to the place of the appellant, a verbal altercation took place, whereafter deceased and his associates left the place and came back after half an hour when a quarrel took place.

13. Joginder @ Tuli, PW-3 in his cross examination, admitted that deceased Honey and his residence were in another mohalla which was on the back side of mohalla of Harish where the accused were tenants and that house of Harish was in the vicinity where the incident took place. From the cross examination of this witness, it is evident that the distance from Bansal Store which is adjoining the tenanted room of the appellant and the place of incident was 2-3 yards and that the first incident of using the abusive language also took place on the same day at 11:10 pm at the same place, whereafter, the deceased and his friends had gone to their respective houses, took the food, did not apprise their parents about the first incident and then, came back to the same place.

14. Though learned APP for the State vehemently contends that from the facts noted above, an offence under Section 302 IPC is made out, however, in a catena of decisions, the Hon'ble Supreme Court and this Court have held that where a single stab injury, on a sudden quarrel in the heat of passion, on the spur of moment, has been inflicted on the victim, the same would fall within the ambit of Section 304-Part I IPC and not 302 IPC.

15. In the decision reported as (1989) 2 SCC 217 Surinder Kumar Vs. Union Territory, Chandigarh, the Hon'ble Supreme Court observed that if



on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves to be fatal, the accused would be entitled to the benefit of Exception 4 to Section 300 IPC and the offence would fall one under Section 304-Part I IPC.

16. In the decision reported as (2002) 3 SCC 327 Sukhbir Singh Vs. State of Haryana, the Hon'ble Supreme Court, held that in a case where time gap between the quarrel and the fight was stated to be of few minutes only, and there being no sufficient lapse of time between the quarrel and the fight, the occurrence would qualify as "sudden" within the meaning of Exception 4 to Section 300 IPC. Para 18 and 19 of the said judgment read as under:-

"18. In the instant case, concededly, there was no enmity between the parties and there is no allegation of the prosecution that before the occurrence, the appellant and others had premeditated. As noticed earlier, occurrence took place when Sukhbir Singh got mud splashes on account of sweeping of the street by Ram Niwas and a quarrel ensued. The deceased gave slaps to the appellant for no fault of his. The quarrel appeared to be sudden, on account of heat of passion. The accused went home and came armed in the company of others though without telling them his intention to commit the ultimate crime of murder. The time gap between the quarrel and the fight is stated to be few minutes only. According to Gulab Singh (PW10) when Sukhbir Singh was passing in the street and some mud got splashed on his clothes, he abused Ram Niwas. They both grappled with each other whereupon Lachhman (deceased) intervened and separated them. Accused Sukhbir had abused Lachhman who gave him two slaps. The said accused thereafter went to his home after stating that he would teach him a lesson for the slaps which had been given to him. After some time he, along with other accused persons, came at the spot and the fight took place. His own house is at a different place. There is a street in between his house and the house of Lachhman (deceased). On the northern side of his house, the house of the



appellant is situated. Similarly Ram Niwas (PW11) has stated that after the quarrel the accused went towards his house and within a few minutes he came back with other accused persons. It is, therefore, probable that there was no sufficient lapse of time between the quarrel and the fight which means that the occurrence was "sudden" within the meaning of Exception 4 of Section 300 IPC.

19. The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner”.

17. Hon’ble Supreme Court in the decision reported as AIR 1978 SC 315 State of H.P. Vs. Wazir Chand and Others, dealing with the issue of sudden fight between two groups wherein victim in such fight was vitally wounded by the accused by knife, held that the case falls in Exception 4 to Section 300 IPC as there was no pre-meditation. It was held:-



"...Therefore, when Parshottam Lal appeared there was a sudden fight upon a sudden quarrel flowing from the earlier incident and in this both sides attacked each other. All the ingredients to attract Exception 4 to Section 300, I.P.C. are established. There is no premeditation. Parshottam Lal left the theatre and came over there. There was a fight that ensued in a sudden quarrel. The previous incident between Om Parkash alias Pashi and accused No. 3 Joginder was the cause and in that heat of passion and sudden quarrel parties grappled and attacked each other and it cannot be said in the circumstances that any undue advantage was taken. It may be recalled here that Parshottam Lal was a hefty well built fellow and if accused No. 1 alone was to attack him he could not have escaped with few abrasions. Therefore, all the ingredients to attract Exception 4 of Section 300, I.P.C. are fully established.

26. As injury No. 1 was fatal in the ordinary course of nature and accused No. 1 had wielded a dangerous weapon and caused an injury on the vital part of the body and the blows were repeated inasmuch as four injuries were caused the offence but for the application of Exception 4 would be one under Section 302, I.P.C. but as Exception 4 is attracted, it would be reduced to Section 304, Part I, I.P.C. and the conviction of accused No. 1 would be modified to one under Section 304, Part I, I.P.C. maintaining the sentence as awarded by the High Court as in our opinion that is adequate."

18. Considering the law laid by the Hon'ble Supreme Court and the facts noted above, this Court finds that the prosecution has proved beyond reasonable doubt that after an altercation, when the deceased and associates came back to the place where the appellant was standing and while kicks and fist blows were being given appellant went inside his room, got a knife from his kit and inflicted single stab blow on the right side of the chest, which as per the decisions of the Hon'ble Supreme Court noted above, would fall within the ambit of Exception 4 to Section 300 IPC and thus, the



appellant is liable to be convicted for offence punishable under Section 304 Part-I IPC and not Section 302 IPC.

19. Consequently, the conviction of the appellant is modified to one from offence punishable under Section 302 IPC to one under Section 304 Part-I IPC.

20. As per the nominal roll on record, the appellant has undergone sentence of imprisonment of nearly 11 years 7 months including remission and thus, sentence of the appellant is modified to the period already undergone.

21. Appeal is accordingly disposed of.

22. Appellant is directed to be released forthwith, if not required in any other case.

23. Order be uploaded on the website of this Court and be also sent to the Superintendent Tihar Jail for updation of records and compliance.

CRL.M.B. 694/2022

In view of the order passed in the appeal, the application is disposed of as infructuous.

MUKTA GUPTA, J.

ANISH DAYAL, J.

SEPTEMBER 16, 2022

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