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IN THE HIGH COURT OF DELHI

Judgment reserved on : January 13, 2009

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Judgment delivered on : January 30, 2009

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CRL.A.65/2006

KISHAN @ BABLI Appellant
Through: Ms. Charu Verma, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

: PRADEEP NANDRAJOG, J.

1. On 24.06.2002 at about 9.00 A.M. a telephonic call was received by HC Ishwar Jan Rai PW-4, to the effect that two persons have been injured near Arun Hotel. Pursuant thereto, PW-4 rushed to the spot where he found two persons named Prabhu Dayal @Kalu and Bhagat Ram in an injured condition. The said injured persons were immediately removed to Lady Hardinge Hospital for medical aid. Simultaneously, wireless information regarding the said incident was sent to the police

station concerned pursuant to which, DD Entry No.10 A, Ex.PW-5/A, was recorded.

2. Taking along with them a copy of DD No.10 A, Const.Dheeraj Singh PW-5, Const.Vijender PW-8, SI Kamla Meena the SHO of the police station PW-15 and SI Arvind Kumar PW-16 went to the spot and on learning that the injured had been removed to Lady Hardinge Hospital, SI Kamla Meena accompanied by Const. Dheeraj proceeded to the hospital and on reaching there learnt that Prabhu Dayal @ Kalu (hereinafter referred to as the "Deceased") had been declared brought dead. The other injured person Bhagat Ram PW-3, was admitted in an injured condition and was fit for making a statement. SI Kamla Meena PW-15, recorded the statement Ex.PW-3/A of Bhagat Ram and made an endorsement Ex.PW-15/A thereon, and at around 11.00 A.M. handed over the same to Const. Dheeraj Singh PW-5, for registration of a FIR. Dheeraj Singh took Ex.PW-3/A to the police station and handed over the same to ASI Rajbir Singh PW-1, who recorded the FIR No.181/02, Ex.PW-1/A, at 11.20 A.M. on 24.06.2002. (A perusal of the trial court record reveals that two witnesses namely ASI Rajbir Singh and Inspector Usha Sharma have been numbered as PW-1). It may be noted here that Raju PW-2, was also at the hospital when the police reached there.

3. In his statement Ex.PW-3/A, Bhagat Ram stated that he is earning his livelihood by working as a rickshaw puller. That on 24.06.2002 at about 8.00 A.M., he along with the deceased who was his friend and Raju PW-2, who was the brother of the deceased were sitting near Govt. toilets, Arya Samaj Road, when Kishan @ Babli s/o Dayal Singh r/o 303-H, Bapa Nagar, Delhi (the accused) who was well-known to him came armed with an open knife and demanded money from the deceased for purchasing liquor. The deceased refused to give him money and asked him to depart, at which the accused got angry and said that the deceased had insulted him in front of everybody, and threatened to kill the deceased. That the accused gave a blow with a knife on the abdomen of the deceased at which the deceased fell on the ground. That when he i.e. Bhagat Ram and Raju tried to stop the accused, he gave a knife blow on the back of his i.e. Bhagat Ram's right thigh and ran away. That thereafter he informed the police about the incident over the phone at which a PCR van came to the spot and removed him and the deceased to Lady Hardinge Hospital where he learnt that the deceased had died.

4. The MLC of Bhagat Ram Ex.PW-14/A records that one injury 'CLW 3 cm X 1 cm' was noted on the right thigh.

5. Since the other injured Kalu was declared brought dead at the hospital, his body was sent to the mortuary where PW-6 Dr.Upender Kishore conducted the post-mortem on 25.06.2002 and gave his report Ex.PW-6/A which records the following external ante-mortem injuries:-

“Incised stab wound of size 2.5 x 0.8 x 13 cm. Cavity deep well shaped present in the epigastric region just adjacent to mid line on right side placed 5 cm. above the umbilicus. The one angle is more acute than the other angle, the skin subcutaneous tissue, fascia and muscle has been cut and entered the abdominal cavity, cutting the left boarder of liver. Size about 5 cms. went below the liver, cut the left regional arteries in its course the direction in its course the direction is horizontally inward and backward from right to left.” (Emphasis supplied)

6. The internal examination recorded in the post-mortem Ex.PW-6/A, is as under:-

“Abdominal cavity contains three litre of fluid and clotted blood. Massive extragavation of blood in left kidney area. Left regional artery cut as mentioned all internal organs are pale. And opined cause of death as shock due to hemorrhage as a result of injury to left regional artery produced by sharp stabbing, single edged weapon and sufficient to cause death in the ordinary course of nature. However, injury to liver can also cause death independently and collectively. All injuries are ante mortem in nature and fresh in origin. Time since death was about 30 hours.”

7. In the meanwhile spot proceedings were conducted at the place of the occurrence on 24.6.2002. PW-15 prepared the site plan Ex.PW-15/B; recording therein the place at point 'A' where the deceased was stated to have been stabbed. Blood sample earth, sample earth control and blood sample cotton were lifted and seized vide memos Exhibits PW-2/A, PW-2/B and PW-2/C respectively. The sample of the blood and clothes of the deceased were seized vide memo Ex.PW-10/A. The sample of the blood of Bhagat Ram PW-3 and the pant which he was wearing at the time of the incident were seized vide memos Exhibits PW-9/A and Ex.PW-3/B respectively.

8. Since in his statement Ex.PW-3/A, made to PW-15, Bhagat Ram had informed that the appellant was the assailant, the police set out to apprehend the appellant. The appellant was apprehended on 28.06.2002 as per arrest memo Ex.PW-2/D. A search was conducted on the person of the appellant but no article was recovered from his possession as evidenced from personal search memo Ex.PW-2/E.

9. The appellant was interrogated by SHO Kamla Meena PW-15 in the presence of SI Arvind Kumar PW-16 and Const.Ambrish PW-13. The appellant made a disclosure

statement Ex.PW-2/F, pursuant to which the police recovered and seized vide seizure memo Ex.PW-2/I a knife at the pointing out of the appellant as also a shirt, which according to the police the appellant was wearing at the time of the incident. The sketch of the said knife Ex.PW-2/H was drawn by PW-15.

10. The seized materials were sent to the Forensic Science Laboratory for forensic examination. Vide FSL report dated 31.10.2002 human blood of 'B' group was found on the sample earth, clothes of the deceased and pant of Bhagat Ram.

11. Armed with the aforesaid material a challan was filed accusing the appellant of having murdered the deceased Kalu; causing grievous hurt to Bhagat Ram by means of a dangerous weapon; and of being in illegal and unlawful possession of a dangerous weapon. Charges were framed against the appellant for having committing offences punishable under Sections 302/324 IPC and Section 27 of the Arms Act.

12. At the trial, apart from examining afore noted police officers who were involved with the investigation who proved the receipt of initial information; the police visiting the place of the occurrence; registration of the FIR; recording statement of Bhagat Ram during investigation; disclosure statement of the accused; preparation of the plan of the site; the doctor who

conducted the post-mortem of the deceased Kalu, Bhagat Ram and Raju were examined as PW-6, PW-3 and PW-2 respectively who deposed in harmony with each other and stated facts recorded in the statement Ex.PW-3/A made by Bhagat Ram to the police pursuant where to the FIR was registered.

13. In his statement recorded under Section 313 Cr.P.C. the appellant denied everything.

14. Believing the testimony of Bhagat Ram PW-3 and Raju PW-2, in view of the post-mortem report Ex.PW-6/A of the deceased and MLC of Bhagat Ram Ex.PW-14/A, vide judgment dated 14.05.2004, the learned Trial Judge has convicted the appellant under all the charges and vide order dated 17.05.2004 has sentenced him to undergo imprisonment for life for offence punishable under Section 302 IPC; RI for two years for offence punishable under Section 324 IPC; RI for one year for offence punishable under Section 27 of Arms Act. All the sentences awarded to the appellant have been directed to run concurrently.

15. At the hearing of the appeal the first submission advanced by the learned counsel for the appellant was that the learned Trial Judge has erred in convicting the appellant on the basis of the testimony of Bhagat Ram who was a person of

questionable antecedents inasmuch as he admitted that he has been in prison many times and is a drug addict.

16. We only note the decision reported as **State of Punjab v Wassan Singh** 1981 Cri LJ (SC) 410 wherein it was observed as under:-

“27. It is true that both these witnesses are related to the deceased, and, as such, are interested witnesses. Their antecedents, also, are of a questionable nature. But their antecedents or mere interestedness was not a valid ground to reject their evidence. Persons with such antecedents are not necessarily untruthful witness. Nor mere relationship with the deceased was a good ground for discarding their testimony, when, as we have already held, their presence at the scene of occurrence was probable. All that was necessary was to scrutinise their evidence with more than ordinary care and circumspection with reference to the part or role assigned to each of the accused. An effort should have been made to sift the grain from the chaff; to accept what appeared to be true and to reject the rest. The High Court did not adopt this methodology in appreciating their evidence. Instead, it took a short-cut to disposal, and rejected their evidence wholesale against all the accused, for reasons which, as already discussed, are manifestly untenable. (Underlining emphasized)

17. In the instant case, the ocular version of Bhagat Ram PW-3 that the appellant had given a knife blow on his right thigh finds corroboration from the MLC, Ex.PW-14/A, which records that one injury 'CLW 3 cm X 1 cm' was found on his right thigh and the fact that other eye-witness Raju PW-2 has also supported the evidence of Bhagat Ram in its material particulars

has to be kept in mind. It is further relevant to note that both the witnesses were cross-examined at length but nothing tangible could be extracted to create a shadow of doubt on their testimony.

18. The second submission advanced by the learned counsel for the appellant was that the appellant only inflicted a solitary knife blow on the abdomen of the deceased and hence can only be attributed with intention to cause an injury which was likely to cause death and not with an intention to cause the death of the deceased or an injury sufficient in the ordinary course of nature to cause death. Hence, counsel urged that at best it was a case of culpable homicide not amounting to murder.

19. If, as a result of a solitary blow by a weapon of offence the victim is done to death, the question as to whether the offence falls under Section 302 or Section 304 IPC admits of no straight answer. Pertaining to a homicidal death, if the facts proved by the prosecution bring the case within the ambit of any of the four clauses of Section 300 IPC, the offence would be murder. If the case cannot be encompassed by any of the aforesaid four clauses, the offence would be culpable homicide not amounting to murder.

20. The legal position relating to cases of solitary blow was succinctly stated by the Supreme Court in the decision reported as **Jagrup Singh v State of Haryana** 1981 CriLJ 1136 (SC) in following words:-

“6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under S.304. Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either Clause Firstly or Clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.”

21. In the decision reported as **State of Karnataka v Vedanayagam** 1995 (1) SCC 326, the facts were that the accused, shouting “you have defamed me. I would not leave you. I will kill”; stabbed the deceased on the left side of the chest as a result whereof the deceased died. There was neither a quarrel nor a fight between the deceased and the accused. The words uttered by the accused followed by the attack on the left side of the chest of the deceased was held to clearly indicate that he intended to cause that particular injury which

was objectively found to be sufficient in the ordinary course of nature to cause death. It was held that the accused intended to cause that particular injury on the chest which proved fatal and, therefore, Clause (3) of Section 300 IPC, was clearly attracted. In the decision reported as **Aditya Mahapatra v State of Orissa** 1980 Cri LJ 1475, a single stab blow in the chest of the deceased; penetrating to a depth 1-3/4, piercing the left lung, cutting the fourth rib was found indicative of the fact that considerable force had been used and the offence was held to be of murder.

22. Thus it cannot be said as a rule of universal application that whenever a single blow is inflicted and death results, the charge of murder cannot be sustained. It would depend upon the facts of each case. The nature of the weapon used; if a knife or a dagger, the size of the blade thereof; the part of the body i.e. vital or not towards which the blow is directed; the ferocity of the attack and the back drawn facts in which the assault was committed are all relevant facts to determine the intention of the accused.

23. Ex.PW-2/H is the sketch of the knife used by the appellant for stabbing the deceased and Bhagat Ram PW-3. The knife is S-shaped. The total length of the knife is 24.6 cm; length

of the blade is 11.6 cm; width of the blade is 2 cm; length of the handle is 11 cm; the length of metal strip connecting the blade with the handle is 2 cm. It is no ordinary kitchen knife. It is more akin to a dagger.

24. Ex.PW-6/A, the post-mortem report of the deceased, evidences that the appellant had struck the deceased on a vital part of his body i.e. the abdomen and pierced a vital body organ, the liver. The ferocity of the blow or its intensity can be gauged from the fact that the knife penetrated to a depth of 13 cm; piercing the liver and cut the left arteries of the liver. Another pointer indicating that considerable force was used by the appellant is the fact that not only the blade but even a portion of the handle of the knife penetrated inside the body of the deceased for the reason the length of the blade is only 11 cm but the injury has traversed a distance of 13 cms.

25. It is also relevant to note that it has come in evidence against the appellant that he had tried to extort money from the deceased and when the deceased refused to part with money, stating that he would teach him a lesson, the appellant stabbed the deceased. That the appellant even inflicted a knife injury on Bhagat Ram who tried to intervene

and save the deceased also evidenced the intention of the appellant to give effect to the consequences of his acts.

26. A mild attempt was made to urge that the evidence shows that the appellant only intended to extort some money to buy liquor and thus it cannot be said that he approached the deceased with an intention to kill him. The plea is neither here nor there. It is settled law that where a person primarily intends the commission of a particular offence, say robbery; but is armed and uses the weapon of offence if obstructed in the act to rob, an intention to use force to achieve robbery and in said act to overcome resistance at all costs can be inferred. If during the act of committing robbery, on facing resistance, injury is inflicted on a person who obstructs the robbery and the injury is sufficient in the ordinary course of nature to cause death, the charge of murder would stand.

27. We find no merits in the appeal. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 30, 2009
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