

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

SUBJECT : INDIAN PENAL CODE

Date of Decision : January 12, 2009

CRL.A. 355/2002

MOTI CHANDER MANDAL ..... Appellant  
Through: Ms.Charu Verma, Advocate.

versus

THE STATE ..... Respondent  
Through: Ms.Richa Kapoor, Advocate.

CRL.A. 177/2005

DEEPAK ..... Appellant  
Through: Ms.Charu Verma, Advocate.

versus

THE STATE ..... Respondent  
Through: Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG  
HON'BLE MS. JUSTICE ARUNA SURESH

PRADEEP NANDRAJOG, J. (Oral)

1. Appeal of co-accused Moti Chander Mandal is listed for hearing today along with the appeal of the accused Deepak. The Amicus Curiae appointed for Moti Chander Mandal has unfortunately not been appearing. Ms.Charu Verma, learned counsel appearing as the Amicus Curiae in the appeal filed by accused Deepak stated that she has comprehensively prepared the matter and would be in a position to argue the appeal on behalf of Moti Chander Mandal as well. By a separate order passed today we appointed Ms.Charu Verma, Advocate, as Amicus Curiae in the appeal filed by Moti Chander Mandal.

2. 17th January 1996 was the last day in the life of Jyotish Mandal. He was stabbed. The stab wound was on his back. As per the post mortem report, Ex.11/A, the exact nature and location of the injury is as under:- 5. Incised stab wound 5.5 x 2 cms margins cleanly and sharply cut present obliquely and vertically over left side of back of left abdomen, tailing of upper end present in an area of 1.5 cms. Lower end 3 cm away from mid line, upper end 5 cm from mid line, upper end 14 cms from interior angle of scapular, lower end 16 cms from iliacrest.

3. Four other injuries being abrasions were also noted on the person of Jyotish Mandal as under:- Abrasion 1.5 x 1 cm over top of head 11 cm from medial end of left eye brow on left side just near the midline. 2. Abrasions 1 x 1 cm left side forehead, 2 cms from midline and 3 cms above medial end of left eyebrow. 3. Multiple small scattered abrasions in an area of 4 x 2.5 cms over lower front of right knee. 4. Multiple abrasions in an area of 5.5 x 5 cm over lower front of left knee.

4. It is relevant to note that due to injury No.5 the left lung and the diaphragm suffered a cut due to which Jyotish Mandal died.

5. Appellants were charged with the offence of murdering Jyotish Mandal. Appellant Deepak, happens to be the son-in-law of the deceased, being married to Kamla, the daughter of the deceased. Accused Moti Mandal is stated to have facilitated the marriage of the two.

6. As per the prosecution, Deepak had a grievance against his in- laws because after his marriage with Kamla she had returned to the house of her parents and in spite of his repeatedly requesting his in-laws to send her back she was not being sent to her matrimonial house.

7. Further, case of the prosecution is that Moti Mandal and Jyotish Mandal used to vend eatables from hand-carts on the street abutting their jhuggis in Amar Jyoti Camp.

8. On the day of the incident when Jyotish Mandal was stabbed i.e. 17.1.1996, prosecution alleges that around 4.15 pm, Deepak had an altercation with his father-in-law i.e. Jyotish Mandal near the place where Jyotish Mandal and Moti Mandal had stationed their hand-carts. Moti Mandal facilitated the commission of the crime by not only exhorting Deepak but even arming him with a knife and thereafter catching hold the deceased so that Deepak could inflict the stab wound.

9. PW-1, Shakuntla, wife of the deceased, his daughter Kamla, another daughter Anima and one Sushil Kumar were stated to be the alleged eye- witnesses of the incident.

10. The weapon of offence i.e. the knife used to inflict the wound was not recovered.

11. As per the testimony of Shakuntla, Kamla and Sushil Kumar, Deepak wanted Jyotish Mandal to impress that Kamla should return to her matrimonial house and that Moti Mandal handed over a knife to Deepak and exhorted him to attack his father-in-law and that Moti Mandal caught hold of Jyotish Mandal; thereafter Deepak inflicted a knife blow on the back of Jyotish Mandal. Anima deposed at a slight variance by stating that Deepak stabbed her father in the chest and that the altercation took place between Moti Mandal and Jyotish Mandal and at that point of time Deepak was in the jhuggi of Moti Mandal and reached on

being summoned by the wife of Moti Mandal and thereafter at the exhortation by Moti Mandal he picked up the knife and stabbed her father.

12. Believing the wife and daughters of the deceased and Sushil to be truthful witnesses, learned Trial Judge has held that the prosecution has successfully established that with the intention of causing death of Jyotish Mandal, Deepak inflicted the stab wound and Moti Mandal shared the common intention and facilitated the murder. The result is the conviction of both under Section 302 read with Section 34 IPC.

13. At the hearing today, learned counsel for the appellants has drawn our attention to the testimony of Anima, PW-5 and the other eye-witnesses and has urged that there are discrepancies in the testimony.

14. We note that PW-1, the wife of the deceased, his daughter Kamla, PW-2 as also Sushil Kumar, PW-6, have corroborated each other with respect to the origin of the fight and the manner in which the deceased was injured. We note that PW-5, Anima, aged 13 years when she deposed on 23.9.1997, being less than 12 years when the incident took place, on account of her immaturity may have fantasized certain facts while speaking about the incident which she claims to have witnessed. We note that PW-5, Anima has deposed about the presence of her mother and her sister which lends assurance to the testimony of the two of being present and having witnessed the incident. She has also corroborated the two with respect to Moti exhorting Deepak to assault her father and arming him with a knife as also catching hold hand of her father upon which Deepak inflicted the knife blow. To put it pithily, on material aspects she has spoken in harmony with her mother, her sister and Sushil. The discrepancy pertains to the stage at which Deepak reached the site. The variation which she has made in her testimony is that when Moti Mandal and Jyotish Mandal had an altercation, wife of Moti summoned Deepak and thereafter Deepak took the knife from the hand-cart of Moti to inflict the wound on the person of Jyotish Mandal. 15. Having perused the testimony of PW-1, PW-2, PW-5 and PW-6; noting the consistency in the testimony of PW-1, PW-2 and PW-6 we are satisfied that the variations, as noted above, is not fatal to the case of the prosecution.

16. We thus concur with the finding of fact recorded by the learned Trial Judge as to the incident and the manner in which the deceased suffered the stab wound at the hands of Deepak; facilitated by Moti; both sharing the common intention to injure the deceased.

17. However, the question which needs to be considered more deeply is whether the evidence establishes the intention of both to cause the death of Jyotish Mandal.

18. The difference between culpable homicide amounting to murder and culpable homicide not amounting to murder is relatable to the degree and extent of intention or knowledge viewed in the light of the facts and circumstances of each case. The distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder has been repeatedly shown with the help of the following table first drawn in the case of State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. AIR 1977 SC 45 Section 299 Section 300 A person commits culpable homicide Subject to certain exceptions if the act by which the death is culpable homicide is murder caused is done - if the act by which the death is caused is done - INTENTION (a) with the intention of causing (1) with the intention of death; or causing death; or (b) with the intention of causing (2) with the intention of such bodily injury as is likely causing such bodily injury to cause death; or as the offender knows to be likely to cause the death of the person to whom the harm is caused; or (3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or KNOWLEDGE (c) with the knowledge that the act 4) with the knowledge that is likely to cause death. the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

19. If we peruse the testimony of PW-1, PW-2 and PW-6 we note that an altercation took place when Deepak wanted the deceased, his father-in-law, to pressurize Kamla to return to her matrimonial home. It is relevant to note that Deepak did not come armed. As per the prosecution, during the course of altercation, Moti exhaulted Deepak Maar Saale ko. It be

noted that the exhaltation was not Mar de jaan se saale ko. Now, Maar saale ko could well mean, Give a beating to the fellow. It could well mean, Kill the fellow.

20. In the absence of any other further exhaltation it would be unsafe to impute the exhaltation to mean to finish off the deceased.

21. The fact that a solitary stab wound was inflicted on the deceased is also relevant to gather the intention of the assailant.

22. As per the prosecution, the deceased was held by Moti Mandal. This gave more than ample chance to Deepak to inflict more than one stab wound if indeed the intention was to finish off the deceased.

23. Looking further, we find that the stab blow, as evidenced from the post mortem report of the deceased, contents whereof have been noted in paras 2 and 3 above, has been directed to a non-vital part of the body. The blow has been directed at the back; that too towards the lower portion of the back. Unfortunately, evidenced from the wound resulting from the stab, there was a cut in the left lung and the diaphragm in continuation to the injury No.5 i.e. the stab wound.

24. In the decision reported as Laxman Kalu Nikalje Vs. The State of Maharashtra AIR 1968 SC 1390, one blow was given with a knife on the shoulder of the deceased. Death was caused because the auxiliary artery and veins got cut, causing shock and hemorrhage leading to death. It was held that it could not be presumed from the given facts that the accused came with the intention of causing death or wanted to cause the specific injury i.e. cut the auxiliary artery and veins. In the decision reported as Gokul Parashram Patil Vs. State of Maharashtra AIR1981 SC 1441 a single blow was given with a knife on the left clavicle - a non vital part of the body- as a result the superior vena cava was cut, the damage so caused was sufficient to cause death in the ordinary course of nature. The Supreme Court observed that it would be too much to say that the accused knew that the superior vena cava would be cut as a result of that wound. In the decision reported as Smt. Sandhya Jadhav Vs. State of Maharashtra (2006)

4 SCC 653, a single blow was inflicted with a knife on the back of the deceased while he interfered in a fight between the accused and another person. The Court held that the case was covered by Exception 4 to Section 300 IPC and that the offence established was under Section 304 Part-II IPC.

25. In the instant case, as noted above, the injury which has caused the death of the deceased is not directed towards any vital part of the body. There is no evidence on record that Deepak intended to cause the specific injury which has been caused. In that view of the matter case is made out for conviction of the appellants under Section 304 Part-II.

26. Appellant Moti Mandal has already under-gone jail term of 7 years and 8 months. Appellant Deepak has under-gone a jail term of 6 years and 8 months. 27. We dispose of both the appeals by partially allowing the same. We alter the conviction of the appellants from under Section 302/34 IPC to Section 304 Part-II read with Section 34 IPC.

28. We sentence the appellants to under-go imprisonment for the term they have already under-gone.

Sd./-  
PRADEEP NANDRAJOG, J.

Sd./-  
ARUNA SURESH, J.

JANUARY 12, 2009