

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

% Reserved on : 27.10.2009  
Date of decision : 06.11.2009

+ CRL. A. No. 515 of 2009

RANDHIR SINGH ... .. APPELLANT  
Through : Mr.S.M.Chopra, Advocate.

- V E R S U S -

STATE ... .. RESPONDENT  
Through : Mr. Sunil Sharma, Advocate.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not?  | No |
| 3. | Whether the judgment should be reported in the Digest?                    | No |

SANJAY KISHAN KAUL, J.

1. The appellant, a DTC employee, has been convicted under Section 302 of IPC vide Judgment dated 29.04.2009 and sentenced to undergo life imprisonment vide Order on Sentence dated 30.04.2009 and pay fine of Rs.3,000/- in default of which to undergo RI for one year for having committed murder of his colleague Ramesh Kumar at the work place.

2. The case of the prosecution is that on 10.10.2005, an information was received at 5 P.M. at PS Mukherjee Nagar from a PCR that there was an injured person at the BBM Marg Depot-II ('the Depot' for short) known as Central Works Shop-1. This information was recorded vide DD No.23-A and a copy of the same was sent to HC Subhash/PW19 through Ct. Ravinder/PW18 for investigation. HC Subhash/PW19 reached the spot at the battery section and found that one person whose clothes were blood stained had been caught hold by the people. Inspector P.C.Mann/PW22 and SI Rakesh Kumar had also reached the spot by that time. The blood was found lying at the spot along with a blood stained iron rod Exp-1. The appellant was the person who had been apprehended and was an employee of the battery section and was alleged to have beaten up Ramesh Kumar who had become unconscious. The statement of Ajay Kumar/PW6 was recorded at the site and in pursuance thereto, FIR No.434/2005 under Section 307 of IPC was registered by Umesh Kumar/PW8, which is ExpW8/B. The deceased survived till 29.10.2005 whereafter he passed away. The case was thereafter converted into one under Section 302 of IPC and on completion of the investigation, charge sheet was filed. The charges were framed by the learned Addl.Sessions Judge to which the appellant pleaded not guilty and claimed trial.

3. The prosecution in order to establish its case examined 22 witnesses. The witnesses, PW1, PW2, PW4 and PW13, who were employees of DTC, turned hostile though it did emerge from their testimony that the appellant and the deceased were last seen in the battery section together at about 4.45 P.M.
4. The case of the prosecution is thus based on two other eye-witnesses i.e. PW5 and PW6. Dheeraj/PW5 is the son of the deceased while Ajay Kumar/PW6 is the nephew of the deceased.
5. Learned counsel for the appellant contended that these two eye-witnesses had been introduced by the police and were never present at site. The witnesses were chance witnesses since neither of them were employed at the place of crime nor was there any occasion for them to be present at the site. Learned counsel also submitted that there is a provision of gate pass to enter the work place as has emerged from the testimony of the hostile witnesses of DTC i.e. PW1, PW2, PW4 and PW13 and the names of PW5 and PW6 are not entered in any register at the gate. A further submission in this behalf by learned counsel for the appellant is the statement of these two witnesses is an improvement over their statements given under Section 161 of Cr.P.C. and thus materially contradict their testimony recorded in the Court.
6. In view of the submissions of learned counsel for the appellant the case of the prosecution being based on the

testimonies of these two eye-witnesses i.e. PW5 and PW6, the said testimonies have to be scrutinized closely.

7. Dheeraj/PW5 who is the son of the deceased has deposed that he along with his cousin Ajay Kumar/PW6 had gone to the office of his father (deceased) and when he reached the battery section he found that the appellant was hitting his father on his head with an iron rod. The deceased fell down on the floor and the appellant then tried to chase PW5 and PW6 but was over-powered by the other persons. PW5 and PW6 with the help of one more person assisted in lifting the deceased and put him in the CATS van which had been called in the meantime. The witness in his cross examination has stated that he was a student of 12<sup>th</sup> class and his statement had been recorded at the Depot. Learned counsel for the appellant emphasized the observations of the learned Addl.Sessions Judge who recorded the testimony of this witness to the effect that the witness was taking too much time in replying to the questions posed to him. PW5 and PW6 are stated to have started from their house at about 4.15 P.M. and reached the Depot at 4.40 P.M. He has deposed that no entry was made at the main gate. The witness has admitted that his clothes also got blood stained when he assisted in lifting his father but the clothes had not been seized by the police.
8. It may be noticed that the testimony of the hostile witnesses show that the working hours were up to 5 P.M.

and visitors required a pass to enter the work place. However, we cannot lose sight of the fact that the area where the workplace was located is not a high security area, but the object of security at the gate is to see that the ingress and egress is not unrestricted. PW5 was the son of the deceased and had come to the Depot at the closing hour. Judicial notice can be taken of the fact that in such places security is not so tight and the visiting person was the son of a workman.

9. Ajay Kumar/PW6, who is the nephew of the deceased, has given a reason for the visit to the Depot by PW5 and PW6. The deceased is stated to have called PW6 to take money from him to purchase construction material as some construction was going on in his house. He has admitted that there is a punching system maintained at the entry gate, but that he and PW5 were permitted to enter into the Depot. On enquiry, he was told to go the battery section and on reaching the same he saw that the appellant was having a iron rod in his hand and was giving blows on the head of the deceased. The appellant did make an improvement from what he had stated in his statement recorded under Section 161 of Cr.P.C. by stating that the appellant had even shown the iron rod to them. The statement of PW6 was also recorded at the Depot. PW6 correctly identified the weapon of offence being the iron rod as also the blood stained clothes of the appellant.

10. We find that ASI Mahadevan T, PW15 and HC Subhash/PW19 have testified to the presence of PW5 and PW6 at the site. The testimonies of these police witnesses who had gone to the site and who have testified to the presence of PW5 and PW6 cannot be disbelieved merely because they are police witnesses. The testimonies of PW5 and PW6 have to be read as a whole. PW5 was the son of the deceased and a class XII student. Anyone in his position would have been in a state of shock on witnessing the incident. There may be some element of padding in the testimony recorded in the court when compared to what is stated to be recorded under Section 161 of Cr.P.C. but the essential ingredient remained which was that the appellant assaulted the deceased with a iron rod which downed him to the floor and caused him bleeding and ultimately resulted in his death 18 days later. The cause of death has been opined by Dr. Anil Shandilya/ PW17 as craniocerebral damage resulted from a head injury and cumulative effect of trauma with septicemia following the injury. The said witness has proved the post mortem report as ExPW17/A and has categorically denied that septicemia would have been caused due to medical negligence. Since the defence sought to set up a case as if the injuries may have been caused by a fall because the deceased was in the habit of drinking and in this regard questions were posed to Dr. Anil Shandilya, PW17

in cross examination to advance the plea. The witness has clearly opined that though likelihood of receiving injuries on falling down on a blunt object cannot be ruled out, but all the injuries could not have been caused by such a fall. Therefore, at least some of the injuries undisputedly were caused on account of hit by the iron rod. The witness has also denied the suggestion that the injuries are not sufficient to cause death in the ordinary course of nature. The CFSL report ExPW20/D establishes the presence of blood on the iron rod and the clothes of the appellant.

11. Learned counsel for the appellant, while drawing our attention to the testimony of PW6, has laid great emphasis on the response of the said witness to the question in respect of whether he had talked to his uncle. The witness answered in the negative and thereafter volunteered "Agar mere uncle bolte to clear hi ho jata". The court question was "kya clear ho jata" to which he answered "ki unko kisne mara hai". Learned counsel thus submitted that the said witness himself was unclear as to who had caused the death of the deceased which shows that he was never an eye-witness. We are unable to accept this plea because the statement of the witness has to be read in the context of what he was saying. The witness deposed that he was not able to talk to his uncle. The reason was that his uncle could not talk. It is in this context that the witness has stated that if his uncle could

make a statement, there would be no issue that who had killed him. The statement cannot imply that the witness was unaware of who killed his uncle and that only his uncle could have disclosed this fact.

12. The last plea of learned counsel for the appellant was that if the story of the prosecution is to be believed, it is not a case covered by Section 302 of IPC since it arose on the spur of the moment. The weapon of offence was part of the contraption at site. There was no past animosity proved between the appellant and the deceased and in fact the first call at the PCR from a cellphone number reported about drunken brawl. There has been no undue advantage taken by the appellant. To substantiate his contention, learned counsel for the appellant referred to the observations of the Supreme Court in Arumugam v. State; AIR 2009 SC 331, A.Maharaja v.State of Tamil Nadu; AIR 2009 SC 480 and Baij Nath v. State of Uttar Pradesh; AIR 2009 SC 426.
13. Arumugam v. State's case (supra) has a bearing in the present case for more reason than one. In fact, it supports the plea of the prosecution insofar as believing the testimony of the relatives of the deceased is concerned. The plea that the witness being a close relative implied that the testimony carried low credibility was negated. The Supreme Court simultaneously discussed the applicability of fourth exception to Section 300 of IPC, which reads as under:



**“Section 300. Murder**

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Exception 4-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.”

and observed that it was not sufficient to show that there was a sudden quarrel and there was no premeditation, but that it must be further shown that the offender had not taken any undue advantage of or acted in a cruel or unusual manner. In the facts of the case where the appellant had stabbed the deceased in the course of a sudden quarrel, the conviction was made under Section 304 Part I and not under section 302 of IPC.

14. In Baij Nath v. State of Uttar Pradesh's case (supra) a lathi blow was given on the head of the deceased resulting in his death and considering the nature of injury and weapon used, the accused was convicted under Section 304 Part I of IPC for a period of seven years.
15. In A.Maharaja v.State of Tamil Nadu's case (supra) a sudden fight about cutting of trees by the deceased and the accused and thereupon snatching the cutting instrument from the deceased and inflicting cut on the neck and shoulders, conviction was altered to Section 304 Part I of IPC imposing a sentence of 10 years.
16. The evidence brought on record in the present case shows that there was no past animosity between the

appellant and the deceased, both used to work in the same division and the appellant was not carrying any weapon at the time of the incident. Even as per the prosecution case, some altercation ensued though the details of the same are not available from the testimony of the witnesses. This resulted in the appellant snatching an iron rod which was a part of the contraption at the site and using the same as the weapon of offence inflicted injuries on the head of the deceased which were sufficient in the ordinary course of nature to have caused death of a person. The death was not immediate but the deceased survived for a period of 18 days before he succumbed to the injuries. During this period, he apparently never gained consciousness and thus no dying declaration could be recorded.

17. We are thus inclined to accept the plea of the learned counsel for the appellant that the present case falls within the fourth exception to Section 300 of IPC as it was a consequence of an impromptu quarrel, reasons of which are not known, at the end of the day at the work place. There was no premeditated intention to cause death specially as the weapon of offence was part of the contraption at the work place and not an arm or knife. The appellant cannot be said to have taken any undue advantage of or acted in a cruel or unusual manner.
18. We feel that the present case is one under Section 304 Part II of the IPC as the intention to cause death cannot

be deciphered though the act was certainly done with the knowledge that it was likely to cause death or cause such bodily injury as is likely to cause death.

19. We find that in the given facts of the case, sentence of five years imprisonment would suffice while sustaining the fine imposed by the Trial Court. The order of conviction and sentence accordingly stand modified and the appeal is partly allowed to the aforesaid extent.
20. The appellant is directed to surrender before the concerned jail authorities within a week from today and serve the remaining part of the sentence.
21. A copy of the judgment be immediately sent to the concerned jail authorities.

SANJAY KISHAN KAUL, J.

NOVEMBER 06 2009  
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AJIT BHARIHOKE, J.