

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

% Date of Decision : 3rd February, 2010

+ **CRL.APPEAL NO.36/2005**

SHALLA LIMBU Appellant
Through: Mr.Rajesh Mahajan, Advocate

Versus

STATE OF NCT OF DELHI Respondent
Through: Ms.Richa Kapoor, A.P.P.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. As proved through the testimony of Ritika Lama PW-1 and Pankaj Lama PW-2 who are sister and brother, learned counsel for the appellant concedes that the prosecution has successfully established that the appellant

used to reside in the house of Lasang Lama, the father of Ritika and Pankaj as the appellant was the brother-in-law of Lasang Lama and that on 24.8.2002 the appellant wanted to consume liquor in the house and Ritika stopped him from consuming liquor. He rebuked her that if she spoke a word, he would kill her. Ritika threw the liquor contained in the bottle in the wash-basin in the kitchen. The appellant picked up a knife in the kitchen. Ritika ran for safety and entered the room where her father was sitting. Hearing her cries, Pankaj also ran towards the room where his father was sitting. Before Lasang Lama or Pankaj Lama could disarm the appellant, he struck a blow on the left temple of Ritika with the knife which he had picked up from the kitchen. Her father Lasang and her brother Pankaj intervened. The ire of the appellant turned towards her father Lasang Lama who was inflicted three blows with the knife. The situs of the three blows, as per the post-mortem report Ex.PW-5/A are:- (i) A wound on the left forearm anteromedially; (ii) Upper half of left forearm; and (iii) 10 cm below sternal angle and 17 cm above pubic symphysis in midline.

2. It is apparent that the first two wounds are probably defence wounds and the third is struck in the stomach region.

The third injury traversed the colon and unfortunately cut the middle colic artery resulting in excessive loss of blood resulting in the death of Lasang Lama.

3. The appellant was charge-sheeted for the offence of murdering Lasang Lama and for the offence of attempting to murder Ritika Lama.

4. The learned Trial Judge has convicted the appellant for the offence of murder and attempt to murder vide impugned judgment and order dated 5.6.2004 and vide order on sentence dated 5.7.2004 has sentenced the appellant to undergo imprisonment for life for the offence of murdering Lasang Lama and for the injury caused to Ritika Lama, in respect whereof appellant was charged for the offence of attempt to murder, with reference to the MLC of Ritika and the medical treatment given to her which showed that she had received a stab injury in the temporal region, 2 cm penetrating through the skull and the dura into the brain, the appellant has been sentenced to undergo imprisonment for 7 years.

5. It is urged by learned counsel for the appellant that the evidence inter-alia brings out that the appellant did not go to the house of his brother-in-law with any pre-mediation. The appellant used to live with the deceased where the wife and children of the deceased also used to reside. The appellant

was wanting to consume alcohol when his niece Ritika prevented him from consuming alcohol. Appellant insisted. To see that under no circumstances would the appellant drink alcohol, Ritika threw the alcohol down the drain. The appellant was overcome by a sudden and a violent passion. He picked up the knife lying in the kitchen. Apprehending danger, Ritika ran seeking safety in the room of her father. Appellant chased Ritika and gave a blow on her head with the knife in his hand. Ritika's father intervened to save her. The ire of the appellant was directed against his brother-in-law i.e. Ritika's father. Thus, counsel urges that the features to be noted are that the appellant had no animus against the deceased or his niece. Everything happened on the spur of the moment. Though there is neither a sudden or a grave provocation nor is there a sudden quarrel, but the facts show that the appellant was moved upon a sudden and a violent passion. It is in this context that the learned counsel submits that the act of the appellant attracts the offence punishable under Section 304 Part-I and not Section 302 IPC. Counsel further highlights that the target of the anger was Ritika and the deceased suffered the injuries when he intervened. Counsel highlights that the deceased was not the target of the initial assault.

6. Whenever people are overtaken by a sudden passion at a trivial incident and the acts committed by such persons result in death of a human being, Courts have found it troublesome to identify whether the offence is that of murder or of culpable homicide not amounting to murder punishable under Section 304 Part-I or Part-II thereof. The confusion has arisen in some decisions which have focused on the question as to what was the intention of the person who was overcome by a sudden violent passion. This approach has been found to be faulty and especially in cases where the anger was directed against 'A' but the injury caused was to 'B' resulting in the death of 'B'. We may note only a few decisions of the Supreme Court.

7. Peeping into the past, in the decision reported as 1995 Cri.L.J. 2907 Ramesh Vithalrao Thakre & Anr. vs. State of Maharashtra, the target of the assault was Ashok PW-1, the brother of the deceased Rekha. There was evidence of past enmity between Ramesh i.e. Appellant No.1 and Ashok PW-1. Ramesh and his friends came to the house of Ashok and abused him. Thereafter an attempt was made to assault Ashok. Rekha intervened and received a fatal stab injury on her lower abdomen (pubic region). Interestingly, similar

situate is the injury in the instant case. It was held, in para 7, as under:-

“7. There is no denying the fact that one single injury was caused to the deceased by Ramesh when Rekha intervened to save her brother Ashok being assaulted. The primary target of Ramesh was Ashok, who got saved when Rekha received the injury on her chest. After causing the single injury to Rekha, it is the prosecution case itself, that Ramesh did not cause any other injury to Rekha nor even to Ashok, PW-1. From the evidence on the record and the established circumstances, it is not possible to say with certainty that the appellant intended to cause the death of Rekha. Even though the principle contained in Section 301 IPC would be applicable to the case, it appears to us that the appellant can only be clothed with the knowledge that the injury which he was causing was likely to cause the death of Rekha but without any intention to cause her death or to cause such bodily injury as is likely to cause death. The offence, under the circumstances, would be one which would fall under Section 304 Part II IPC.”

8. In the decision reported as AIR 1968 SC 867 Harjinder Singh vs. Delhi Administration, Harjinder Singh had a quarrel over water with Dalip Kumar PW-12 on 31.1.1962. There was a fight in which Harjinder was worsted. He left threatening that he would teach Dalip a lesson of his life. Harjinder returned with Amarjit, his brother to the house of Dalip. Dalip was pulled out of the house into the lane and was beaten. Deceased Keval Kumar, brother of Dalip intervened and at that stage Harjinder took out a knife and inflicted two

stab wounds on Kewal. One of the two stab wounds inflicted in the chest region cut the femoral artery and vein resulting in excessive blood loss and death of Kewal.

9. Noting aforesaid facts, in para 9, it was held that under the circumstances it cannot be said that the accused intended to inflict any specific injury on Kewal, who received the injury which proved fatal when he intervened. It was held that no doubt the injury caused was on a vulnerable part of the body and knowledge had to be attributed to the person causing the injuries, of the consequences of his act holding that it was a case of an injury likely to cause death and not a case of an injury which in all probability would cause death, conviction sustained was for the offence punishable under Section 304 Part-I IPC.

10. We may add an explanation to the decision in Harjinder Singh's case (supra). In a case where the target of assault is 'A' but 'B' intervenes and receives an injury, it may be a situation akin to a transferred malice, but strictly may not be attracting the principles of transferred malice. In such cases, it may be difficult to hold that the act of the accused attracts Section 300 thirdly. The deadlock would have to be resolved with reference to Section 300 fourthly and the last limb of Section 299 IPC i.e. by looking at the injury and see

whether the injury was of a nature that it could be classified as an injury 'likely to cause death' or the injury was of a nature that it has to be classified as 'an injury which in all probability would cause death' i.e. whether the injury attracts Section 299(c) or Section 300 fourthly.

11. In the decision reported as 2005 CrL.L.J. 4130 Thankachan vs. State of Kerala, the target of assault was the father. The son intervened. Injury inflicted by the chopper was on the leg. Death was due to excessive bleeding. Since the deceased was not the object of the assault the issue was resolved with reference to whether the injury was likely to cause death or whether the injury was of a kind that in all probability death would have resulted from the injury. It was held that the offence made out was not of murder but culpable homicide not amounting to murder punishable under Part-II of Section 304 IPC.

12. We need not multiply.

13. We hold that the facts of the instant case make out commission of offence punishable under Section 304 Part-I IPC. We partially allow the appeal. Conviction of the appellant for the offence of murder of Lasang Lama is set aside. Pertaining to the death of Lasang Lama the appellant is convicted for the offence of culpable homicide not amounting to murder

punishable under Section 304 Part-I IPC. For the said offence committed by the appellant we sentence him to undergo rigorous imprisonment for a period of 10 years.

14. Conviction of the appellant for the offence of attempt to murder Ritika and the relatable sentence thereto is confirmed.

15. We direct that both sentences shall run concurrently. We further direct that the appellant shall be entitled to the benefit of Section 428 Cr.P.C.

16. Since the appellant is in jail we direct that a copy of the present decision be sent to the Superintendent, Central Jail, Tihar for necessary action and to be made available to the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

FEBRUARY 03, 2010
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