

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

% *Date of Decision: 7<sup>th</sup> January, 2010*

+ **CRL.APPEAL NO.302/2002**

JAI PRAKASH .....Appellant  
Through: Mr.Rajesh Mahajan, Advocate

Versus

STATE .....Respondent  
Through: Mr.M.N.Dudeja, Advocate

**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 the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**PRADEEP NANDRAJOG, J.**(Oral)

1. At around 10:00 PM on 2.4.2000 Smt.Nirmala, the wife of the appellant was stabbed outside the house of Smt.Ram Pyari PW-3 and on said information being received by the police control room, was removed to the hospital in a PCR van by HC Ramesh Chand PW-19 who claims that on the way Ram Pyari told him that she was stabbed by her husband. SI Ran Singh PW-16 who had proceeded for investigation when said information was received at the local police station recorded the

statement Ex.PW-16/A of Nirmala as per which she was stabbed by the appellant i.e. her husband. The statement Ex.PW-16/A has resulted in the FIR being registered.

2. Dr.Shobhita Batra PW-11 had treated Nirmala at DDU Hospital casualty, where she was brought by HC Ramesh Chand and he prepared her MLC Ex.PW-11/A recording that the deceased had multiple injuries.

3. Nirmala died at around 9:00 PM on 15.4.2000 and the FIR which was registered for the offence punishable under Section 307 IPC was converted to one under Section 302 IPC.

4. The dead body of Nirmala was sent to the mortuary where Dr.M.M.Narnaware conducted the post-mortem on 17.4.2000 and prepared the report Ex.PW-4/A noting the injuries on the body of the deceased. He opined that death was due to peritonitis following the injuries. The injuries noted in the post-mortem report Ex.PW-4/A are as under:-

“1. Old stitched wound on left thigh – 2 stitches – 12.5 cms below iliac crest.

2. Old stitched wounds 10 cm lateral to injury No.3- 1 stitch.

3. Old stitched wound on upper lateral aspect of left leg. 7 cms below knee – 2 stitches.

4. Old stitched wound left lower back – 18 cms below post axillary fold – 1 stitch

5. Old stitched wound on web between left thumb and index finger – 1 stitch.
6. Scar mark of recently healed injury 3 cut medial to injury No.4 (pink coloured).
7. Old stitched wound left shoulder – 2 stitches.
8. Old stitched wound on left side of neck 5.5. cm above clavicle – 2 stitches.
9. Multiple recently healed scar marks on left side of neck left cheek left side of nose (pink coloured).”

5. At the trial Smt.Ram Pyari PW-3 outside whose house Nirmala was stabbed has deposed that Nirmala told her that her husband had stabbed her. HC Ramesh Chand PW-19 has deposed that when he removed Nirmala to the hospital, on the way she told him that her husband had stabbed him. SI Ran Singh PW-16 has deposed that he recorded the statement Ex.PW-16/A of Nirmala. Dr.M.M.Narnaware proved the post-mortem report Ex.PW-4/A and on being cross-examined stated that peritonitis means inflammation of the peritoneal cavity and that if proper medication was given or correct surgical intervention was given, the deceased could have been saved. He further stated during cross-examination that since the injuries had healed he could give no opinion whether they were

sufficient in the ordinary course of nature to cause death.  
Dr.Shobhita Batra PW-11 proved the MLC Ex.PW-11/A.

6. Sh.Rajesh Mahajan, learned counsel for the appellant very fairly concedes that the testimony of Smt.Ram Pyari PW-3 and the testimony of HC Ramesh Chand PW-19 are without any blemish and thus it stands established that the deceased made the dying declarations firstly to Ram Pyari and then to Ramesh Chand. Counsel further concedes that the testimony of SI Ran Singh establishes that the statement Ex.PW-16/A is the third dying declaration made by the deceased to SI Ran Singh and thus it stands established that the appellant who is the husband of Nirmala had assaulted her.

7. The only submission urged by learned counsel is that the injuries caused by the appellant have not been opined to be sufficient in the ordinary course of nature to cause the death of Nirmala and thus the offence committed by the appellant is punishable under Section 304 Part I IPC.

8. A perusal of the injuries as per the post-mortem report of the deceased shows that injury No.6 is a scar mark near injury No.3 and injury No.4. It is apparent that injury No.6 is an old injury and not related to the assault. Injury No.1, 2, and 3 are on the left thigh and the left leg. Injury No.4 is on the

lower back. Injury No.5 appears to be a defence injury being on the web of the left thumb and the index finger. Injury No.7 is on the left shoulder and injury No.8 is on the left side of the neck. Injury No.9 appears to be the result of a firm grip by the hand on the neck of the deceased. Thus, only 7 injuries have been inflicted with a sharp edged weapon. 3 out of 7 are on the left thigh and the left leg, 1 is on the lower back, 1 injury is a defence injury. 2 injuries i.e. injury No.7 and 8 are directed towards the neck and the shoulder.

9. On being cross-examined the doctor who conducted the post-mortem clearly stated that he could give no opinion regarding the seriousness of the injuries and also stated that with proper medical or surgical intervention the deceased could have been saved. We note that SI Ran Singh PW-16 stated during cross examination that he made no attempt to get the statement of Nirmala attested by any doctor because the doctor was expecting that Nirmala would survive. He stated that Nirmala died all of a sudden.

10. As noted in the decision reported as 1998 SCC (Cri) 898 State of Rajasthan Vs. Kalu peritonitis can set in due to surgical complications.

11. Medical Jurisprudence guides us that peritonitis means the peritoneum being affected due to puss formation. It is in this context that the testimony of the doctor who conducted the post-mortem during cross-examination assumes importance.

12. The deceased died after 13 days. The MLC shows that the wounds she received were varying in depth of 0.5 cm to 1.5 cm i.e. they were not very deep. The weapon of offence got recovered by the appellant after his arrest is a kitchen knife with a blade of 4 inches and thickness of 1 cm. The MLC and the post-mortem report show an indiscriminate assault not directed towards any specific part of the body. The assault took place in the dark.

13. It has always vexed Courts when intention has to be inferred from wanton acts. In the decision reported as AIR 2003 SC 209 *Shanmugham @ Kulandaivelu Vs. State of Tamilnadu* 6 stab wounds as under:-

“1. A 4 cms stitch wound on the right side chest.

2. 4 cms below the 1st wound in the back side of the wound there was a 6 cm length stitch wound.

3. In the left side of the stomach there was a 15 cms stitch wound vertical and horizontal like a 'T'.

4. A 1 cm length stitch wound between the right thigh and the genitals.

5. There is a tear wound in a size of 4 x 1 x 4 cm on the left ear.

6. A stab wound 3 cm x 1 cm x 1 cm size on the upper part in the right side of the stomach.”

were held to be indicative of an intention to cause mere injuries and not death more so when the assault took place it was dark. Since the injuries in said case were not opined to be sufficient in the ordinary course of nature to cause death, it was held that the acts of Shanmugham would constitute the offence punishable under Section 304 Part I IPC and not offence punishable under Section 302 IPC. The result was that the appeal was partially allowed and Shanmugham was sentenced to undergo RI for 10 years.

14. In the decision reported as 2007 (6) SCALE Sunder Lal Vs. State of Rajasthan, the acts of indiscriminately injuring the deceased i.e. a wanton assault, in the absence of any evidence that the resultant injuries were sufficient in the ordinary course of nature to cause death, were held to be an offence punishable under Section 304 Part I IPC.

15. In the decision reported as 2008 (10) SCALE 315 Kandaswamy Vs. State of TN the acts of indiscriminately cutting

the deceased, in the absence of any evidence that the injuries caused were sufficient in the ordinary course of nature to cause death, were held to be an act punishable under Section 304 Part I IPC.

16. In all the aforesaid 3 decisions sentence imposed was to undergo RI for 10 years.

17. We partially allow the appeal and set aside the conviction of the appellant for the offence punishable under Section 302 IPC. We hold the appellant guilty for having committed an offence punishable under Section 304 Part I IPC and sentence him to undergo rigorous imprisonment for 10 years. We further direct that the appellant shall be entitled to the benefit of Section 428 Cr.P.C.

18. Since the appellant is in jail we direct that a copy of this order be sent to the Superintendent Central Jail Tihar for necessary action and to be made available to the appellant.

**(PRADEEP NANDRAJOG)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

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