

Ajay @ Gadnu vs.state

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Court : Delhi

Decided On : Jul-05-2018

Appellant : Ajay @ Gadnu

Respondent : State

Judgement :

* % IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

22. 03.2018 Judgment delivered on:

05. 07.2018 + CRL.A. 358/2016 AJAY @ GADNU Appellant STATE Through: Mr.K.Singhal, Mr.Prasanna and Mr.Nishant Bhardwaj, Advocates. versus Respondent Through: Ms.Aashaa Tiwari, Additional Public Prosecutor for the State. CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MR. JUSTICE P.S.TEJI JUDGMENT P.S. TEJI, J.

1. The present appeal has been filed by the appellant-Ajay @ Gadnu under Section 374 Cr.P.C. against the judgment of conviction dated 06.04.2015 and order on sentence dated 07.04.2015 passed by learned Additional Sessions Judge-02 (Central), Tis Hazari Court, Delhi whereby Crl.A. 358/2016 Page 1 of 18 the appellant has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life and fine of Rs.25,000/- and in default of payment of fine to further undergo simple imprisonment for a period of three months for the offence under Section 302 IPC.

2. As per the case of the prosecution, on 27.04.2011, an information was received vide DD No.9A at 06.15 A.M. that a lady had been stabbed with a knife at Chinnot Basti, behind C-68 White House Hostel, Laxmanpuri Chowk and that the assailant had been caught. The said information was assigned to SI Ram Narayan, who along with Ct.Ram Gopal reached the spot and found that the injured Kalawati had been taken to the hospital along with the assailant Ajay and his brother Ramesh. On inspection of the spot, it was found that a bed was lying in the room having a blood stained bed sheet. Blood was also found lying at two spots on the floor. One blood stained knife was found behind the door of the said room. A constable was left at the spot to safeguard the same, and SI Ram Narayan reached RML Hospital and collected the MLC of Kalawati. On the MLC Ex.PW-19/A, the doctor observed an incised wound on right palm, a stab wound on right side of neck, and a stab wound in mid abdomen towards the left side with protrusion of the intestine. The patient was declared unfit for statement. Statement of the eye witness Ashok Tripathi (PW2) was recorded.

3. In his statement, Ashok Tripathi stated that in the adjoining house No.C-68, Chinnot Basti, his real uncle Shesh Dutt Tripathi along with his family, including aunt Smt.Kalawati, was residing. His uncle was living on rent on the second floor of house no.C-68. In the locality, water in the taps used to come at 06.00 a.m. and the tap was situated in the rear street. He CrI.A. 358/2016 Page 2 of 18 used to fill water and deliver it to the house of his uncle. On 27.04.2011, at about 6.00 a.m. when he went to the house of his uncle to take an empty plastic can and reached near the door, he heard the loud cry of his aunt from inside of the room. He pushed open the door of the room and found that the accused Ajay @ Gadnu was giving knife blows to Smt.Kalawati while she was lying on the ground. He raised an alarm due to which several people came there. Accused Ajay was caught and was given beatings. Meanwhile, Ramesh-younger brother of accused Ajay also came there who was also given beatings by the people. The witness found his aunt in a pool of blood. She was taken to RML Hospital in a TSR where she died. He further stated that the accused earlier also had a quarrel with the deceased on the issue of filling water.

4. On the basis of the statement of the eye witness PW2 and MLC Ex. PW19/A of the deceased, FIR Ex.PW4/A of the instant case was registered under Section 302 IPC. IO prepared the site plan and recorded the statements of the witnesses under Section 161 Cr.P.C. HC Khurshid Ali produced the accused and his brother Ramesh before the IO after their medical examination. Exhibits were lifted from the spot. The knife used to commit the offence was also lifted and seized vide Ex.PW2/B. Blood stained bed sheet was also seized vide Ex.PW2/D. Accused was arrested and his disclosure statement was recorded. Clothes of the accused which he was wearing at the time of the incident were seized vide Ex.PW22/D. Postmortem on the dead body of the deceased was got conducted and after postmortem, clothes of the deceased were seized. Blood sample of the accused was also collected. During investigation, penal Section 27 of the CrI.A. 358/2016 Page 3 of 18 Arms Act was added in the case. After completion of investigation, charge sheet was filed in the Court.

5. Charge for the offence under Section 302 IPC read with Section 27 of the Arms Act was framed against the appellant, to which he pleaded not guilty and claimed trial.

6. To prove its case, the prosecution had examined 24 witnesses, including Ashok Tripathi (PW2)-eye witness, Shesh Dutt Tripathi (PW3)- Husband of the deceased, Radhey Shyam (PW8), SI Bale Singh (PW11), and Dr.Kulbhushan (PW18).

7. After completion of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which he claimed innocence and denied the entire case of the prosecution. Despite opportunity being granted, the appellant did not choose to lead defense evidence.

8. On appreciation of evidence and material brought on record, the trial court convicted the appellant under Section 302 IPC vide impugned judgment dated 06.04.2015 and order on sentence was passed on 07.04.2015. Feeling aggrieved of the same, the appellant has preferred the instant appeal.

9. Learned counsel for the appellant submits that the appellant and the deceased were residing in the same premises as tenants, whereas PW2 was residing in the

neighbourhood. As per the version of PW2, he came to the house of the deceased at about 6.00 a.m. and saw the accused stabbing the deceased. Learned counsel argues that the statement of the appellant CrI.A. 358/2016 Page 4 of 18 recorded at the earliest in the PCR form Ex.PW23/C is the genesis of the crime, in which he stated that he was having an illicit relationship with the deceased and her husband had witnessed the same, which led to a physical fight (Maar Pitai Hogayi). However, the prosecution story states that a fight over water had taken place which led to the incident. He argued that the brother of the accused, namely, Ramesh had not been examined by the prosecution. Mr. Singhal further argued that DD No.8A Ex.PW1/A was lodged at 6.12 a.m. regarding quarrel, whereas DD No.9A Ex.PW1/B was lodged at 6.15 a.m. to the effect that a lady had been stabbed and the assailant had been caught. However, the FIR of the instant case was registered belatedly at 9.30 a.m. on the statement of PW2. He submitted that though, the finger prints were lifted from the spot by PW12, but the same have not been examined. Ld. counsel further submitted that no case of commission of murder has been made out against the accused. In the alternate, it is submitted that at the highest, a case under Section 304 Part-II IPC is made out as the fight was on a petty issue, and there was no pre- planning or intention of the accused to cause death of the deceased.

10. In support of the above contentions, Ld. counsel has placed reliance on *Rajesh @ Kalia v. State*, (CrI.A.285/ 1998 decided by this Court on 15.07.2014), *Rajesh v. State*, (CrI.A.509/2000 decided by this Court on 12.02.2016), *Krishan Kumar @ Monu v. State*, (CrI.A. 907/2012 decided by this Court on 09.09.2014), *Vidhya Rani v. State (Delhi Admn.)*, 2010 SCC OnLine Del 1011, *Budhi Singh v. State of Himachal Pradesh*, (2012) 13 SCC663 and *Anuj Kumar Tiwari v. State of the NCT of Delhi*, (CrI.A. 276/2013 decided by this Court on 18.03.2016) to argue that the offence CrI.A. 358/2016 Page 5 of 18 committed by the accused/appellant was not pre-meditated, and was a result of sudden fight on a petty issue. Ld. counsel submitted that the appellant had no intention to commit the death of the deceased, but the same was caused in a sudden spur of fight.

11. Per contra, learned APP for the State has argued that PW2 is the eye witness to the incident, who had narrated the occurrence in simple words, and there is

nothing to disbelieve the testimony of such an independent eye witness. The prosecution has successfully established its case against the accused beyond all reasonable doubts. Ld. counsel disputes the contention of the appellant that the present case falls under Section 304 Part-II, and not under Section 302 IPC. She submits that all the ingredients of Section 300 IPC have been fulfilled in the present case, and there is no basis to convert the conviction of the appellant under Section 304 Part-II, from Section 302 IPC.

12. We have heard the submissions advanced by learned counsels for the parties. We have gone through the evidence led by the parties and given our thoughtful consideration to the matter.

13. The most important witness of the present case is the eye witness PW2-Ashok Tripathi, who deposed that his uncle Shesh Dutt Tripathi was residing in the same locality as his neighbor along with his wife Kalawati. On 27.04.2011, as per his routine, PW2 went upstairs to the second floor of the house of the deceased for taking buckets for bringing water from the tap. When he reached in front of the door of the house of his uncle, he heard cries of his aunt Kalawati. He immediately pushed open the door and saw CrI.A. 358/2016 Page 6 of 18 that the accused Ajay @ Gadnu was stabbing Kalawati with a knife and she was lying on the floor and crying. PW2 raised an alarm, due to which, many public persons gathered at the spot. The accused was apprehended by the public and beaten up. Kalawati was lying in a pool of blood. With the help of public persons, PW2 lifted her and shifted her to Ram Manohar Lohia Hospital in a TSR where she expired. Police met him in the hospital and recorded his statement Ex.PW2/A. Thereafter, PW2 accompanied the police to the spot and one blood stained knife was found in the room. Crime team reached there and the site was got photographed. IO prepared the sketch of the knife vide Ex.PW2/B and seized the same vide memo Ex.PW2/C. The blood stained bed sheet was seized vide memo Ex.PW2/D. The blood was lifted from the room. Police prepared the site plan at his instance. The accused was handed over to the police and his brother Ramesh was also there at that time. PW2 identified the dead body vide statement Ex.PW2/E. Witness identified the accused in the Court. PW2 further identified the knife as Ex.P1 and the blood stained bed sheet seized from the spot as Ex.P2.

14. During cross-examination, PW2 stated that his uncle Shesh Dutt Tripathi resided opposite to his house in the same street. His uncle, aunt and their two children used to reside there. A tap was installed behind the house of his uncle PW3, from which PW2 used to fetch water every morning around 6.00 a.m. There was no water connection in the building. Many persons from neighbourhood were present at the time on the day of the incident. Police recorded his statement at about 6.30-7.00 a.m. Statement of his uncle was also recorded in his presence. He denied that he was not present at the house of his uncle. He admitted that his aunt was bleeding Crl.A. 358/2016 Page 7 of 18 profusely. His clothes were stained with blood at the time of lifting and shifting of his aunt. He threw his blood stained clothes prior to coming of police. Pertinently, the accused did not suggest to PW2 that the accused was having an illicit relationship with the deceased, or that the same was witnessed by PW3, and that led to a fight (maar peet) in which the deceased was stabbed. It was not even suggested to him that PW3 was at the spot when the incident took place.

15. PW3-Shesh Dutt Tripathi, husband of the deceased, deposed that on 27.04.2011 at about 6.00 a.m., he was present in the hotel and his nephew Ashok Tripathi telephonically informed him that their neighbor i.e. accused Ajay stabbed his wife with knife and his wife was taken to the hospital. PW3 immediately rushed to RML Hospital where he found his wife lying in emergency on a stretcher in a pool of blood. The police also reached the hospital. Doctors declared his wife dead. Police recorded the statement of his nephew Ashok. Thereafter, police accompanied PW3 to the spot. Blood was spotted in the room and blood was found on the bed sheet. One blood stained knife was found lying on the floor. Accused Ajay was already present there as he had been overpowered by the public persons. Crime team also inspected the spot. IO prepared the sketch vide Ex.PW2/B of the knife. The blood stained knife and blood stained bed sheet were seized vide memos Ex.PW2/C and Ex.PW2/D. Police prepared the site plan and recorded the statement of other witnesses. The blood and blood stained earth were lifted from the spot vide memos Ex.PW3/A to Ex.PW3/C. Accused was interrogated by the police and his brother Ramesh was also there. Accused was arrested by the police. He identified the dead body of Crl.A. 358/2016 Page 8 of 18 his wife vide Ex.PW3/D. PW3 identified the knife as Ex.P1 and bed sheet as

Ex.P2. PW3 correctly identified the accused during his testimony before the Court.

16. PW3 was cross examined on behalf of the accused. He, inter alia, stated that his wife was in the emergency ward when he had reached the hospital. He further stated that when he returned to his room, he found one knife in the room. He stated that no public persons who had apprehended the accused were examined in his presence. He denied the suggestion that he had falsely implicated the accused because of his enmity against him. However, he never put his defence either to PW2 or PW3. Pertinently, even PW3 was not cross examined on the lines on which Mr. Singhal has argued on the basis of the PCR Form Ex. PW23/C. The so called genesis of the case was never put to PW3. He did not state as to what was the reason for the so called enmity between him and PW3. It is equally pertinent to note that PW3 was not the one who took his wife to the hospital. It was PW2, who took her to the hospital in a TSR. This is evident from the MLC Ex.PW19/A. Thus, the recording made in the PCR Form Ex.PW23/C- on the basis of the statement of the accused, appears to be his self serving statement, which he appears to have made to create his defence.

17. The incident of stabbing of the deceased with a knife by the accused and his identity as the assailant has duly been established from the testimony of PW2- Ashok Tripathi. He categorically stated that when he went near the door of the room of his aunt, he heard her cries. When he went inside the room, he saw the accused giving knife blows to her by laying her on the floor of the room. It has also come in the evidence that the accused was CrI.A. 358/2016 Page 9 of 18 apprehended at the spot and the knife was seized from the spot itself, which further corroborates the case of the prosecution. PW2 further corroborates the fact that when he went to his house from the hospital along with the police, he found the accused present there having been apprehended by the public persons, which further proves the presence of the accused at the spot. In our view, the testimony of PW2 is natural and trustworthy and the appellant has failed to dent his testimony.

18. PW8-Radhey Shyam, owner of House Nos.C-67, 68 and 69, Chinnaught Basti deposed that he had rented out house no.C-67 and C-68. Deceased Kalawati

used to reside at Second Floor of C-68 and accused Ajay @ Gadnu was residing at the third floor of C-68. On the day of the incident, he came to know from other tenants that Kalawati was stabbed and she was removed to hospital and accused Ajay was caught held by other tenants. From the testimony of PW8, it stands duly established that both deceased and the accused used to reside in the same premises, though on different floors as tenants.

19. The presence of accused at the spot at the time of the incident has further been corroborated by PW11-SI Bale Singh. PW11 deposed that on the intervening night of 26-27.04.2011, his duty was on PCR Van as Incharge from 8.00 p.m. to 8.00 a.m. At about 6.30 a.m. of 27.04.2011, an information was received from HC Ramzan Ali of PCR that injured had to be shifted to hospital from C-68, Chinnaut Basti, Laxman Puri. Accordingly, PW11 along with staff reached and removed accused Ajay and his brother Ramesh as they were beaten up by the public to Lady Harding Hospital. So, from the testimony of PW11 also, the testimony of PW2 has CrI.A. 358/2016 Page 10 of 18 duly been corroborated that after the incident, the accused and his brother were beaten up by the public and when PCR Incharge (PW11) reached the spot, he removed both of them to the hospital which prove his presence at the spot.

20. PW13-HC Ramzan Ali deposed that on the intervening night of 26-27.04.2011, he was posted on PCR motorcycle along with Ct.Shashi Pal. On 27.04.2011 at about 6.15 a.m., on receipt of information, they went to the spot and came to know that a quarrel had taken place at C-68, First Floor. They came to know that a lady had received a stab injury and was taken to hospital. At the spot, one Gadnu and his brother Ramesh were found, having been apprehended by the public persons and they were given beatings. Upon inquiry, they came to know that Gadnu stabbed that lady. So, the statement of PW13 further establishes the presence of accused at the spot at the time of the incident.

21. The postmortem on the dead body of the deceased was conducted by Dr.Kulbhushan (PW18). PW18 deposed that on 27.04.2011 at about 2.50 p.m., he conducted the postmortem on the dead body of Kalawati. The body was received with the alleged history of sustaining stab injury. On examination, PW18 found (1)

cut throat wound of length 4 cm, gaping 1.5 cm., obliquely horizontal, clean cut margin present over front of neck, 6cm below mentum, 6cm above supra sterna notch. The left end is 0.5cm lateral to the mid line, the right end 4.5cm right to midline. In the wound, subcutaneous tissue, underline muscles and trachea was cut at the level of second tracheal ring. The trachea cut on all sides except the small part of posterior wall; (2) Stab wound of length 3.6 cm, gaping 0.5 cm., obliquely Crl.A. 358/2016 Page 11 of 18 transverse with protrusion of part of large intestine (2x1cm) and part of omentum (6x4cm) with faecal matter present over left side of upper abdominal wall, 8.5cm upper and lateral to umbilicus, 14.5cm above to left anterior superior iliac spine, 2cm lateral to the mid line going till posterior abdominal wall. Though, intestine was cut about length of 0.5 cm, mesentery was also cut. On dissection of wound, the track was found cutting the subcutaneous tissue and muscles of abdominal wall in the direction of backward and straight then in to abdominal cavity and reached upto posterior abdominal wall at left para vertebral region where a cut wound of length 1.5cm found; (3) Incised wound of length 3.5 cm over hypothenal eminence of right hand gaping 0.2cm., beveling towards upper end, transversely placed; (4) Incised wound of length 2.2 cm over base of right index finger outer aspect, beveling towards upper end, obliquely placed. As per the opinion of the doctor, cause of the death was shock and hemorrhage as a result of ante-mortem injuries. Injury no.1 and 2 were opined to be sufficient to cause death individually in ordinary course of nature. All the injuries were opined to be caused by a sharp edged weapon and ante-mortem in nature. He proved the postmortem report vide Ex.PW18/A.

22. The testimony of PW18 and the postmortem report Ex.PW18/A of the deceased further corroborates the case of the prosecution that the death of the deceased had caused due to stab wounds caused by a sharp edged weapon and injuries sustained on the neck and abdomen were the cause of death of the deceased. Thus, it is proved beyond reasonable doubt that the death of the deceased was a homicidal one. If we read the opinion of the doctor, postmortem report Ex.PW18/A and the testimony of PW2, there is Crl.A. 358/2016 Page 12 of 18 no doubt in reaching a conclusion that the accused gave knife blows to the deceased which resulted into her death.

23. Next point of argument advanced by the learned counsel for the appellant is that Ramesh-brother of the appellant was present at the spot, but he was not made a witness by the prosecution which creates doubt about the prosecution story. On going through the evidence, we find that after the commission of the offence, the appellant was caught at the spot by the public persons and was given beating. It has also come on record that, in the meanwhile, Ramesh-brother of the appellant came at the spot and the public persons also gave him beatings. Though, it has come on record that Ramesh was present at the spot, but in our view no adverse inference can be drawn for his non-examination by the prosecution. The incident was witnessed by the eye witness (PW2) and his testimony is found to be reliable, which alone can be made the basis to convict the appellant. It is a settled proposition of law as pronounced in the case of Kuna @ Sanjaya Behera v. State of Odisha 2017, SCC OnLine SC1336 that conviction can be based on the testimony of a single eye witness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence that is important. Ramesh was not a witness to the offence. He came out of his room after the stabbing had taken place and when the accused was being beaten. Ramesh too was beaten by the public. Thus, there was no purpose of examining him as prosecution witness. Nothing prevented the accused from examining him in his defence if he so desired, to establish this defence. He has not chosen to do so. CrI.A. 358/2016 Page 13 of 18 24. The submission of Mr. Singhal that DD No.8A (Ex.PW-1/A) lodged at 06:12 a.m. was only regarding a quarrel, whereas DD No.9A (Ex.PW- 1/B) lodged at 06:15 a.m. was regarding stabbing of a lady and the catching of the assailant, is neither here nor there. Obviously, the first complaint vide DD No.8A apparently was when commotion created after the stabbing had taken place and while the accused was being beaten. Only 3 minutes later, the cause of the said quarrel i.e., stabbing was reported to the police vide DD No.9A (Ex.PW-1/B). We do not find any inconsistency in the manner in which the said DD entries were recorded. To us, they appear to be natural. Thus, we reject the submission of Mr. Singhal premised on the said DD entries.

25. The submission of Mr. Singhal that the FIR was registered belatedly at 09:30 a.m. on the statement of PW-2 also has no merit. PW-2 had rushed the deceased to the hospital. PW-3 had also reached there. The MLC (Ex.19/A) shows that the

deceased was alive when she was taken to the hospital. The death summary (Ex.PW-20/B) shows that the deceased passed away at 07:30 a.m. The statement of PW-2 under Section 161 Cr.P.C. (Ex.PW-2/A) was recorded after her death at 07:30 a.m. The same explains the registration of the FIR at 09:30 a.m. In these circumstances, it cannot be said that the FIR is belated. We, therefore, reject this submission of Mr. Singhal.

26. Learned counsel for the appellant argued that though the finger prints from the knife were lifted by the finger print expert (PW12), but the same were not sent for examination. This is, undoubtedly, a failure on the part of the prosecution, but, in our view, the said lapse cannot be said to be fatal to CrI.A. 358/2016 Page 14 of 18 the entire case of the prosecution when the involvement of the appellant in the commission of homicide of the deceased has duly been established from: (i) the testimony of eye witness (PW2);(ii) recovery of knife from the spot; (iii) post mortem report Ex.PW18/A, and; (iv) subsequent opinion of the doctor vide Ex.PW18/C.

27. It has come in evidence that the knife Ex.P1 was recovered from the spot and seized vide seizure memo Ex.PW2/C by the IO Insp.Kushal Singh (PW23) in the presence of witnesses Ashok Tripathi (PW2), Shesh Dutt Tripathi (PW3) and SI Mohit Yadav (PW22). The seizure memo Ex.PW2/C of the blood stained knife shows that it was seized from near the wooden door of the room wherein the deceased was stabbed with the same. The eye witness (PW2) and PW3-husband of the deceased duly identified the knife as Ex.P1, and have categorically stated that it was seized from the spot by the IO and they witnessed the same by putting their signatures on the seizure memo. The seizure memo Ex.PW2/C further shows that the signature of PW2 appeared at point A, signature of PW3 appeared at point B, and signature of SI Mohit Yadav appeared at point X. Thus, the recovery of knife from the spot has duly been established.

28. It has come in the testimony of Dr.Kulbhushan (PW18)- who conducted the postmortem on the dead body of the deceased, that on 19.05.2011, two sealed parcels were produced before him. One of the parcels contained five clothes i.e. reddish blouse, white bra, reddish white navy blue printed saree, one purple

petticoat and one light brown underwear. He found blood stains over blouse and saree. Three cut marks were found on the saree. The second parcel was found containing one knife. He CrI.A. 358/2016 Page 15 of 18 prepared sketch Ex.PW18/B of the knife. PW18 opined that the cuts corresponding to injury on the body of the deceased were present on the saree of the deceased. So far as the weapon i.e. knife is concerned, PW18 opined that injuries on the body of the deceased and cuts on the clothing could be caused by the said weapon. He proved his subsequent opinion vide Ex.PW18/C.

29. The subsequent opinion Ex.PW18/C, coupled with the testimony of PW18, further corroborates that the knife recovered from the spot was the same knife with which injuries were caused on the person of the deceased, which was the cause of her death.

30. Lastly, it is argued by the learned counsel for the appellant that if the case of the prosecution is believed to be true, then also the present case does not fall within Section 302 IPC, and that it falls under Section 304 Part-II IPC, as there was no pre-meditation on the part of the appellant to commit the murder of the deceased.

31. We are not agreeable with this contention of the appellant. For invoking the exception 4 of the Section 302 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel, without the offender having taken undue advantage and not having acted in a cruel or unusual manner. The said exception can be pressed into service if the death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage, or acting in a cruel or unusual manner; and (d) the fight must have been with the person killed. CrI.A. 358/2016 Page 16 of 18 32. To bring a case within Exception 4, all the above ingredients must be satisfied. It is not sufficient to show that there was a sudden quarrel, and there was no premeditation. It must further be shown that the offender has not taken undue advantage, or acted in cruel or unusual manner. The expression undue advantage as used in the provision means unfair advantage. (See Parkash Chand v. State of H.P., (2004) 11SCC381.

33. The conduct of the accused would be judged upon examination of the weapon used, the size of it- in some cases, force with which the blow was given, part of the body on which it was given, and other such relevant factors.

34. In the instant case, it has come on record that the deceased was given four knife blows by the appellant, i.e. one cut wound on the neck, one stab wound on the abdomen, one incised wound on the right hand, and one incised wound on right index finger. Neck and abdomen are the vital organs of the body. The severity of blow given on the neck was such that subcutaneous tissue, underline muscles and trachea was cut at the level of second tracheal ring. Severity of blow given on the abdomen was such that there was protrusion of a part of large intestine and part of omentum with faecal matter. The incident took place in the room of the deceased, and not in the room of the accused or in a common area. Thus, the accused went to the room of the deceased and used the deadly weapon. The same is also reflective of his intent to fatally injure the deceased. The weapon of offence itself was not any ordinary kitchen knife, since its blade was 18.2 cms in length & its width near the handle was 3.6 cms, as is evident from the sketch of the recovered knife (Ex.PW-2/B). Crl.A. 358/2016 Page 17 of 18 35. In our view, keeping in view the evidence discussed above, the present case does not fall under exception 4 to Section 300. It is thus, not covered by Section 304IPC.

36. In view of the totality of our discussion, we are of the view that the appellant has failed to make out any ground to disturb his conviction and sentence. Rather, the evidence brought on record i.e. testimony of the eye witness which has duly been corroborated by the recovery of knife, postmortem report of the deceased and the subsequent opinion of the doctor with regard to use of the knife, duly establishes the case of the prosecution against the appellant that he has committed the murder of the deceased. We do not find any illegality or infirmity in the impugned judgment of conviction. Consequently, the judgment of conviction passed by the trial court is upheld and the sentence passed is sustained.

37. Appeal is accordingly dismissed. P.S. TEJI, J VIPIN SANGHI, J JULY05 2018
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