

**Razab Ali Vs. State**

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**Court :** Delhi

**Decided On :** Nov-25-2004

**Reported in :** 2005CriLJ1870; 115(2004)DLT400; 2005(79)DRJ235

**Judge :** T.S. Thakur and; J.P. Singh, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 148, 149, 300, 302, 304, 324 and 326; ; Arms Act - Sections 25 and 27; Code of Criminal Procedure (CrPC) - Sections 174 and 313

**Appeal No. :** Criminal Appeal No. 167 of 1998

**Appellant :** Razab Ali

**Respondent :** State

**Advocate for Def. :** Ravinder Chadha, Adv.

**Advocate for Pet/Ap. :** Sumeet Verma, Adv

**Disposition :** Appeal dismissed

**Judgement :**

**J.P. Singh, J.**

1. This appeal has been filed by Razab Ali, convicted for the offences under section 302 IPC & 25/27 Arms Act vide judgment dated 23.8.1997 and sentenced

to undergo imprisonment for life and to pay a fine of Rs. 500/- and in default to undergo RI for 3 months for the offence under section 302 IPC, as also to undergo RI for 6 months each for the offence under sections 25 & 27 Arms Act and to pay a fine of Rs. 200/- and in default to undergo further RI for one month for each section, vide order on sentence dated 27.8.1997, passed by the learned Additional Sessions Judge, Delhi.

2. We have heard Mr. Sumeet Verma, learned counsel for the appellant and Mr. Ravinder Chaddha, learned Additional Public Prosecutor and have gone through the record.

3. The facts of the case, in brief, are that on 12.8.1996 upon receipt of a telephone call from Duty Ct. Gopal Prasad of LNJP hospital, regarding admission of an unknown person (brought dead) by Ct. Veerpal, DD entry No. 18-A was recorded at PS : Jamamasjid and copy thereof was sent to SI Ranbir Singh, through Ct. Bahauri Lal. Inspector V.P. Singh also reached the hospital where the above named SI was already present. MLC of the said unknown dead person was obtained. Since no eye witness was available in the hospital, Inspector V.P. Singh along with the SI and the other staff reached the spot i.e., Subhash Park, traffic light. On the spot they found blood at two points as also a blood stained shirt hooked on the railing of the park. Ram Raksha Tewari narrated the occurrence stating that on 12.8.1996 at 7.45 P.M. he was present at his stall when two persons namely Anil (deceased) and Razab Ali (Appellant) who were pavement dwellers and drug addicts, were shouting at each other. The appellant was demanding Rs. 60/- but Anil refused to pay. This ultimately led to grappling and the appellant took out a knife from his right 'dub' (part of waist where weapon etc. can be secured/concealed under the cloth called (lungi, tehmat, etc.) 'lungi' (cloth tied around waist and wrapped around legs) and stabbed on the left side of the chest of Anil. Blood started oozing out and Anil fell down. The appellant ran away. One Ajmer who was standing nearby laid Anil on the pavement and burnt a piece of cloth and put the resulting ash of the cloth on the wound to stop the bleeding (a common accepted rustic first aid). In the meantime beat constable came and took injured Anil in a rickshaw to the hospital. On the basis of this statement, Inspector Veerpal Singh got the case registered under section 302 IPC. The said Ram

Raksha Tewari also named Ajmer and Hari Shanker besides others to be the witnesses of the occurrence. During the course of investigation crime team was summoned, photographs of the spot were taken. Blood samples and 'controlled earth' (sample soil), burnt cloth pieces and the shirt of the deceased were taken into possession. The rough site plan of the scene was prepared. Statements of the witnesses were recorded and the appellant was arrested (at 6.00 A.M. in the morning). One button actuated knife was recovered from his right 'dub'. After taking measurements, preparing the sketch of the knife and, converting the same into a parcel with the seal of VPS, the knife was taken into possession. Thereafter proceedings under section 174 Cr.P.C. were conducted and after the postmortem report was received, the exhibits of the case were got sent to FSL. On completion of investigation the case was sent for trial.

4. The prosecution examined 24 witnesses out of whom PWs 4 Ram Raksha Tewari, PW-6 Hari Shanker Dube, PW-16 Ajmer Singh are the public witnesses who as per the prosecution have seen the incident while PW-24 is Dr. Shashi Bhushan who prepared the MLC of Anil (deceased) and PW-14 Dr. Akash Jhanjhi is the Autopsy Surgeon and Sh. R.G.Tewari is the witness from Home Department of Delhi Administration regarding notification under Arms Act while PW-1 Sonu Kaushik is the Draftsman who prepared the scaled site plan. Remaining witnesses are the police officials concerned with various stages and aspects of investigation conducted by the police.

5. Learned counsel for the appellant has argued that as per the prosecution version there were blood stains on the knife recovered by the police while as per the FSL report there is no blood on the knife that was sent for examination which shows that the weapon of offence, has not actually been recovered and the police has falsely implicated the appellant, by planting the knife.

6. A perusal of the record shows that the knife has been recovered by the police (vide memo Ex.PW-4/G) from the possession of the appellant when he was apprehended while he was sleeping near the bushes near Subhash Park. As per this memo the knife was having blood stains. The same was converted into a parcel sealed with the seal of VPS. This parcel was deposited with PW-9 HC

Harinder Singh, MHC (M) (Moharrir Malkhana) on 13.8.1996 Along with six other parcels received from the Inspector. The IO had sent the case property including the parcel in question to the office of the FSL through PW-18 Ct. Rajbir. The said Ct. Rajbir has stated regarding receipt of 8 parcels sealed with the seal of VPS and one 'pulanda' (packet) with the seal of JPN hospital Along with an envelope sealed with the seal of Maulana Azad (Medical College) and he delivered the same in the office of FSL at Malviya Nagar. Both these witnesses have specifically stated that so long as the case property remained in their possession the same was not tampered with. The witnesses have not been cross-examined.

7. The report of FSL is available on record as Ex. PW-23/F. As per this report parcel No. 5 is containing one knife with metallic blade having rusty brownish stains and as per the opinion no blood was detected on the same. Now, in our view, simply for the reason that no blood was detected on the knife cannot be made basis for disbelieving the prosecution version. According to FSL report itself the said knife is having rusty brownish stains. A police official is neither an analyst nor an expert in the field of forensic science. The 'rusty brownish stains' on the blade of the knife had, in our view, led the police official to record the same as blood stains since the blood after drying also gives a rusty brownish colour. It has come on record that at the time of incident i.e., 7.45 P.M. on 12.8.1996 the appellant was wearing a 'lungi' and at the time of his arrest in the morning of 13.8.1996 at about 6.00 A.M. also he was wearing the 'lungi' which (lungi) was taken into possession by the police vide memo Ex.PW-4/H. As per this memo the 'lungi' was having blood stains and was taken into possession by the police. The 'lungi' (Ex.P-7) was in parcel No. 8 sent to FSL. As per forensic report the blood of Group 'B' was found on the said 'lungi'. The 'lungi-cloth' could itself rub off the blood on the knife. Moreover Dr.Akash Jhanji (PW-14), who conducted the post mortem has found that cause of death was the incised injury on the chest and the said injury was possible with knife (Ex.P-6). During the course of trial by way of suggestions to the witnesses or in the statement under section 313 Cr.P.C. the appellant has no where disputed that the 'lungi' (Ex.P-7) did not belong to him or that the blood stains on the same were not due to the fight in which Anil was stabbed. As per the FSL report the articles sent to them (belonging to the deceased) were found to have blood Group 'B' and the blood of the same group

was found on the 'lungi' (Ex.P-7). In view of the above discussion we are of the opinion that mentioning of blood stains on the knife by the IO, and the FSL reporting that no blood stains were found on the knife, will not help the appellant.

8. Another submission of the learned counsel for the appellant is that there are contradictions and discrepancies in the statements of the witnesses, therefore the case of the prosecution is doubtful. It is also pointed out that since the name of the deceased was not mentioned in the MLC, though all the public witnesses were said to be aware of his name, the involvement of the accused is an afterthought.

9. In this context it would be appropriate to go through the statements of Ct. Veerpal (PW-11), SI Ranbir Singh (PW-13), Insp. V.P. Singh (PW-23) and the three public witnesses (PW-4,6 & 16). Ct. Veerpal undisputedly while patrolling in the area found the deceased lying unconscious with stab injury. He without making any inquiries from anyone, as his foremost duty, brought him to the hospital. By this time the constable was not aware as to who the person was whom he had taken to the hospital and in the natural course the name of the injured was entered as unknown. Upon receipt of information the SI and the inspector reached the hospital, where they met Ct. Veerpal. On coming to know about the place of occurrence they reached the site and found the blood stained shirt etc. and met PW-4 Ram Raksha Tewari, who gave a detailed account of the incident thus naming the accused and the victim besides naming Hari Shanker and Ajmer Singh to be the persons who had witnessed the crime. All of them have withstood the test of cross-examination and the veracity of their version cannot be disputed. All these witnesses knew the deceased as well as the appellant. PW-4 & 6 both are 'Paan' Vendors near the spot, while PW-16 is a waiter. They all, besides others, had seen the incident but none of them are related either to the appellant or to the deceased. They obviously did not intervene because both involved persons were drug addicts and one was carrying a knife. None of them cared to chase the assailant. But after the occurrence they did, as per their wisdom, attend to the injured. There is no denial that they all had reached the spot but not at the same time and had seen the occurrence from different angles and from different distances. Something heard by one is not expected to have been heard by the other and therefore minor contradictions and discrepancies are bound to occur

but the same cannot be taken to be fatal to the prosecution case. No hostility, enmity or motive on the part of public witnesses has been brought to the notice of the court. In the statement under section 313 Cr.P.C. the appellant has stated that he was called to the police station to collect waste papers and while he was doing so he had been falsely implicated. The stand taken does not appear to be probable because the appellant is neither a previous convict nor had he any criminal antecedents nor any enmity with the police officials. Further no suggestion regarding the stand taken in the statement under section 313 Cr.P.C. had been given to the police officials when they entered the witness box.

10. It has been pointed out that there is unnecessary and inordinate delay in delivery of copy of the FIR to the 'illaqa' magistrate. A perusal of the record shows that the incident as per the statement of PW-4 had taken place at 7.45 P.M. on 12.8.1996 and as per the MLC Ex.PW-15/A, the injured was got admitted in the hospital at 8.25 P.M. and the information in this regard was recorded at police station Jama Masjid at 8.25 P.M. Upon receipt of the information of the deceased the Inspector had reached the hospital and returned to the spot where he examined the scene of crime and recorded the statement of PW-4 wherein for the first time the name of the appellant had appeared. This statement was recorded and the 'rukka' was sent at 9.35 P.M. and the FIR of the case Along with corresponding DD entry was recorded by the Duty Officer at 9.45 P.M. and copies thereof were sent to the M.M., Addl.C.P., DCP, ACP through messenger. PW-8 had recorded the FIR and at 9.45 P.M. he had given copies of the FIR to Ct.Rajpal for delivery to higher officers. The said Ct. Rajpal has admitted to have received the copies on 12.8.1996 at 10.00 P.M. for delivery to the M.M., ACP, DCP and Addl. CP and he delivered the same to the 'illaqa' Magistrate at 11.00 A.M. on 13.8.1996. Such little delay is not significant in every case. It is well established that if the police machinery moves for investigation without undue delay and hitch, the mere delay in delivery of the copy of the FIR to the 'illaqa' magistrate is not fatal to the prosecution case.

11. Learned counsel for the appellant has lastly but vehemently contended that at the most it was a case of culpable homicide not amounting to murder because the act committed was without pre-meditation. It was in a sudden fight and the

occurrence took place in the heat of passion. Further, the accused had neither taken undue advantage nor acted in a cruel and unusual manner. therefore, he is covered by exception 4 to section 300 IPC especially because the accused ran away after giving only one knife blow, though the injured had fallen down and if accused wanted he could have caused more stab injuries and only in that eventuality he could have been convicted for culpable homicide amounting to murder.

12. In support the learned counsel for the appellant has relied upon the following cases :

'Ghapoo Yadav & Ors. v. State of MP' : 2003 CriLJ1536 .

In this case Lekh Ram (PW-2) and Gopal (deceased) were sons of Ram Lal (PW-1). Accused Ghapoo Yadav is father of accused Janku Kenwal and Mangal Singh. Accused Sunder is nephew of accused Ghapoo Yadav. There was a land dispute. On measurement it was found that land belonging to accused Mangal Singh was in actual possession of Ram Lal and over that land there was a berry tree. The said tree was cut by the family members of Ram Lal which led to an altercation. The accused persons enquired from the deceased as to why they had cut down the tree though it was planted by their (accused's) family members. The deceased denied having cut the tree which led to a scuffle. Deceased was assaulted, his leg got fractured. The deceased was given 7 injuries and he died the next day. Accused persons pleaded innocence. The trial court found the accused persons guilty under Section 148/149/302 IPC. High Court also confirmed the findings. The Supreme Court observed that the earlier dispute over land had not assumed characteristics of a physical combat and the occurrence took place in the heat of passion on a sudden quarrel followed by a fight. The accused persons had caused injuries on the deceased but had not acted in a cruel and unusual manner and that being so exception 4 to Section 300 IPC was attracted and therefore the conviction was converted to Section 304-Part-I IPC.

'Sheetala Prasad @ Baba v. State' of UP : AIR 1994 SC1643 .

In the said case the prosecution witnesses, the deceased and the accused persons were related to each other. When the field of PW-1 was being irrigated the accused started diverting water to the field of another acquitted accused namely Surendra. PW-1 protested but the accused persons did not pay any heed. PW-1 called deceased for intervention but as soon as deceased arrived he was surrounded by four accused persons and at the instigation of Chote Lal and two others the appellant Sheetla Prasad @ Baba who was armed with a spear gave a spear blow to the deceased in his abdomen. Other PWs had also witnessed the occurrence. The injured person died on the way to hospital. The question was whether the accused/ appellant had intention to cause that particular injury. Held it was not established beyond doubt. Further held the appellant however had knowledge that the infliction of such an injury was likely to cause death. In the result the conviction was converted from 302 IPC to Section to 304 Part-II IPC.

'Balbir Singh v. State of Punjab' .

The appellant was convicted under Section 302 IPC. As per prosecution case four persons namely Rasal Singh, Dalip Singh, Mukhtiar Singh and Amrik Singh were returning from their fields when the appellant and the three acquitted persons assaulted Amrik Singh. The appellant gave a kirpan blow to Amrik Singh on his head. Amrik Singh fell down and became unconscious. Two lathi blows were given by the other two accused persons on his left leg. After two days Amrik Singh died. The contention raised before the Supreme Court was that the appellant could not be convicted under Section 302 IPC because it was not a case of premeditation. It was a chance meeting and only one blow was given on the head. The Supreme Court opined that it was not possible to say with certainty under what circumstances the appellant gave a kirpan blow to Amrik Singh and no attempt was made to give another blow. therefore, the injury on the head did not appear to have been caused intentionally. The Supreme Court altered the conviction from Section 302 IPC to Section 304 Part-I.

' Suraj Mal v. State of Punjab' : 1992 CriLJ520 .

Two brothers after taking drinks had gone to answer the call of nature when the appellant asked his brother (deceased) as to why he had decided to sell his

property. This conversation led to a quarrel. The appellant stabbed his brother once. It was held that there was a sudden quarrel, heat of passion and the other attending circumstances which caused the occurrence and therefore the case would fall under Section 304 Part-I IPC and not 302 IPC.

In the above cited cases there was a land dispute and it is well known that the agriculturists suddenly flare up in the matters of land disputes, irrigation and watering of fields and in the heat of passion fatal injuries get inflicted. The case before us, in our view, is distinguishable because the appellant had gone to the deceased with a concealed knife and with pre-meditation to settle the matter once for all.

' Jagtar Singh v. State of Punjab' : 1983 CriLJ852 .

In the said case the appellant was convicted for the offences under Section 302 & 324 IPC. Two persons namely Narender Singh (deceased) and Ramesh Kumar were passing in front of the house of Jagtar Singh (accused) when Narender Singh (deceased) was injured by the projecting 'Parnala' (piped projection in houses normally for outflow of rain water) on the house of the appellant. Narender Singh protested to the accused and asked him to raise the height of the 'Parnala'. There was exchange of abuses. Then appellant and Jogender Singh caught hold of Narender Singh and on being instigated by Joginder Singh the appellant Jagtar Singh gave one blow with knife which landed on the chest of Narender Singh who after some time succumbed to the injury. The appellant also caused injury to companion of Narender Singh. The Supreme Court opined that it could not be confidently said that the appellant intended to cause that particular injury because there was no premeditation. There was no malice. It was a chance meeting. The cause of quarrel was trivial and sudden. The appellant was a very young person and he caused that injury in the said circumstances. therefore, he could not be imputed with the intention to cause death or the intention to cause that particular fatal injury. therefore, the conviction was altered from 302 IPC to 304 Part-II IPC.

We are also of the view that in the facts and circumstances of the above case when there was simply a chance meeting which led to a sudden fight and resulted in death, exception 4 of Section 300 IPC was attracted, but in the case before us

the facts and circumstances are distinguishable because it was not a chance meeting.

'Surender Kumar v. Union Territory of Chandigarh' : 1989 CriLJ883 .

The appellant was convicted by the trial court under Section 302 IPC and his appeal was dismissed by the High Court. The Supreme Court observed that PW-2 and his brother (deceased) had a heated argument with the appellant and his brother Amrit Lal regarding return of possession of a kitchen given to them for a temporary period, on account of a marriage in their family. In the course of heated exchange PW-2 showered filthy abuses and threatened to throw out the utensils from the kitchen. Since PW-2 was uttering filthy abuses in the presence of appellant's sister. The appellant protested. The Supreme Court found that first PW-2 who was a registered bad character had taken out a pen knife from his pocket then the appellant went into adjoining kitchen and returned with a knife. therefore, a scuffle took place and when Nityanand intervened to help PW-2, he received three injuries including one in the chest. Considering the facts and circumstances of the case the Supreme Court opined that since deceased was uttering filthy abuses in the presence of appellant's sister tempers ran high. There was no previous ill will between the parties rather the relation between them were cordial. The occurrence took place in the heat of passion during a sudden quarrel without any premeditation and hence it was covered with exception 4 to Section 300 IPC. therefore, the conviction was altered from 302 IPC to 304 Part-I IPC.

This ruling, in our view, is also of no help to appellant, because the appellant had pre-planned for the final settlement and even uttered so loudly.

'Manke Ram v. State of Haryana' : 2003 CriLJ2328 .

The appellant was recently promoted as Assistant Sub-Inspector. He invited his neighbour Head Constable (HC) Suraj Mal for a drink. When both of them were having drinks PW-5 nephew of the deceased entered the room and asked Suraj Mal to get up so that they could have their dinner. HC Suraj Mal wanted to leave but the appellant got annoyed and abused Suraj Mal in filthy language to which Suraj Mal objected. The appellant got further annoyed, picked up his service

revolver and fired two shots at Suraj Mal one bullet entered the right side of neck and the second hit the left side of the thigh. There was grappling as well between the two. It was urged before the Supreme Court that even if the prosecution case was accepted the appellant could be held guilty only under Section 304 Part-II IPC and the lower courts had erred in convicting him under Section 302 IPC. The Supreme Court opined that the parties had a drinking session which was interrupted by PW-5. This gave rise to a sudden fight and in the heat of passion, the appellant picked up service revolver and fired twice. Keeping in view that both the parties had taken drinks, revolver was lying nearby, there was physical fight. It was not a planned attack by the appellant, the conviction was altered from Section 302 IPC to Section 304 Part-II IPC.

We are of the view that the facts and circumstances in the case before us are distinguishable. The appellant before us had loudly declared that he shall definitely settle the matter, then took out the knife and stabbed almost in the heart of the victim.

'Prakash Chand v. State of Himachal Pradesh' reported in 2004 (6) SCA 495.

The killing of real younger brother took place over a petty matter because dogs of accused had entered the kitchen of the deceased. When the deceased protested a verbal altercation took place upon which the appellant-accused went to his room, took out his gun and fired at the deceased from a distance of about 35 ft. The pellets landed in the chest of the deceased. It was held that the death took place during the course of a sudden quarrel. The shot was fired from a distance of about 35 ft. which shows that there was no intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. The Supreme Court altered the conviction from Section 302 IPC to Section 304 Part-I IPC.

In this case also it was sudden fight, the gun was lying in the house and a shot from 35 feet need not necessarily had hit the target, but the facts and circumstances in the case before us are distinguishable as we shall be referring to below.

The learned Additional Public Prosecutor has drawn our attention to the case titled

'Mahesh Balmiki vs. State of Madhya Pradesh' reported in 2000 SSC 178.

It was a case of single knife blow on the left side of the chest. The accused and his associates had called the deceased. The accused stabbed in the left side of the chest while the other three associates held the deceased. The Supreme Court while discussing the case of a single blow held as under : 'Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him.'

13. As discussed above, we are unable to agree with the contentions of the learned counsel for the appellant, because the appellant is proved to have been carrying a knife in the 'dub' of his 'lungi' before he started demanding Rs. 60/- from unarmed Anil (deceased). He kept the knife in a concealed manner and on refusal by Anil, there was grappling, then he took out the knife and stabbed Anil on the left side of the chest (everybody knows where the heart is in the body) and then bolted from the spot. He did all this in the presence of several persons who are eye witnesses. May be in the alarm, hue and cry raised by the injured and the public he thought it better to escape rather than inflict more injuries but the point is that the accused had come armed while the opposite party (Anil) was unarmed. The accused was in advantageous position at the time of picking up quarrel and grappling. If he intended to simply injure Anil he could have attacked at any other peripheral and not such a vital part of the body but he decidedly aimed at the heart of Anil. Above all, the appellant uttered the following words before starting the quarrel 'Aaj veh (the accused) is baat kaa faislaa kar ke rahega aur bina 60/- rupey liye veh (the accused) usey (deceased) jaane nahien dega'. (Today he (accused) will determinedly decide the matter and would not allow him (Anil-deceased) to go,

without taking Rs. 60/- from him (Anil, deceased).

14. Considering all the facts and circumstances of this case, we are of the opinion that appellant took undue advantage of the weapon in his possession which he was carrying in a concealed manner and he acted in a cruel manner because it was only a matter of Rs. 60/- and to stab a person in the left side of the chest for Rs. 60/-, in our view is a very cruel and a very unusual act. therefore, in our opinion, exception 4 of Section 300 IPC does not come to the rescue of the appellant.

15. We consequently uphold the conviction and the order on sentence under Section 302 IPC as well as under Sections 25 & 27 of the Arms Act and dismiss the appeal.

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