

**Yogender Kumar @ Mule Vs State**

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**Court :** Delhi

**Decided On :** Jun-04-2010

**Judge :** Mr. Pradeep Nanrajog ; Mr. Suresh Kait, Advs.

**Acts :** Indian Penal Code (IPC) - Section 302

**Appeal No. :** CRL.APPEAL No.631/2010

**Appellant :** Yogender Kumar @ Mule

**Respondent :** State

**Advocate for Def. :** Mr.M.N.Dudeja, Adv.

**Advocate for Pet/Ap. :** Mr.Shahid Azad ; Mr.Rashid Hussain ; Mr.Rajesh Sehrawat ; Mr.Hariom Gautam ; Ms.Pooja Khanna, Advs.

**Judgement :**

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

**ORDER.(Oral)**

1. Const.Narender Kumar PW-14 has not been cross- examined. The photographs Ex.P-6 to Ex.P-10 taken by him conclusively establish that the scene of the crime

was inside a room in House No.7/24, Yudhisther Gali, Vishwas Nagar. The investigating officer ASI Balraj Singh PW-23 has not been cross-examined on his testimony that he prepared the site plan Ex.PW-23/C listing therein the spot where the crime was committed being spot A. Thus, learned counsel for the appellant concedes that with reference to the testimony of Ramesh Chand Gupta PW-2 and his brother Suresh Chand Gupta PW-3 who turned hostile only when they were cross- examined, keeping in view the decision of the Supreme Court reported as AIR 1991 SC 1853 Khujji v. State of MP, the inevitable conclusion which has to be drawn is that it is the appellant who struck the fatal solitary blow on the abdomen of his father and thereafter, in anger, even assaulted Ramesh Chand Gupta. The weapon was a scissor.

2. However, with reference to Ex.PW-7/A, the MLC of deceased Nepal Singh, which records that smell of alcohol was detected in the breath of Nepal Singh, learned counsel for the appellant submits that notwithstanding the family members of the deceased, who also are the family members of the appellant, turned hostile, with reference to their statements made to the police it is apparent that the assault was preceded by a verbal quarrel between the father and the son. Learned counsel points out that the appellant never came pre- armed. During the course of the verbal quarrel with his father, the appellant picked up a scissor, which was lying handy, and inflicted only one blow on the stomach of the father which unfortunately proved fatal, since, as recorded in the post- mortem report Ex.PW-13/A, the illiac artery got cut resulting in excessive bleeding. Counsel highlights that the deceased was alive when he was brought to the hospital. Efforts made to stop the bleeding failed and ultimately death took place after about 4 hours.

3. Considering that the appellant never came pre- armed and that he had a verbal altercation with his father who was drunk and during the course of the verbal altercation the appellant picked up a scissor which was lying handy in the house and inflicted only one stab blow on the person of his father it can safely be said that the only intention of the appellant was to injure his father and not to cause any specific injury, but knowledge can certainly be attributed that the appellant was likely to cause the death of the deceased i.e. the knowledge contemplated by Section 299c IPC. Alternatively, if the Fourth limb of Section 300 is attracted,

Exception 4 would also be attracted. Under either circumstance the act of the appellant would constitute the offence of culpable homicide not amounting to murder.

4. This would be pertaining to death of deceased Nepal Singh.

5. Noting that the learned Trial Judge has neither convicted the appellant nor imposed any sentence pertaining to the injuries caused to Ramesh Chand and Suresh Chand, PW-2 and PW-3 respectively, we dispose of the appeal modifying the impugned judgment and order dated 19.3.2010 and after setting aside the conviction of the appellant for the offence punishable under Section 302 IPC we convict the appellant for the offence of culpable homicide not amounting to murder pertaining to the death of his father Nepal Singh.

6. For the said offence we sentence the appellant to undergo RI for a period of 10 years.

7. Needless to state the appellant would be entitled to the benefit of Section 428 Cr.P.C. as also the remissions as per the executive policy of the State if any earned.

8. We are happy to note that the criminal administration of justice in the Union Territory of Delhi is showing good signs of revival. The incident in question took place on 8.4.2009. The committal proceedings were over by August 2009 and the matter reached the learned Additional Sessions Judge on 6.8.2009. Charge was framed on 18.8.2009 and recording of evidence, in which 26 witnesses were examined, was completed by 24.2.2010 and impugned decision was pronounced on 19.3.2010.

9. It is apparent that not only was the learned Trial Judge proactive, but even counsel rendered complete and timely assistance to the learned Judge.

10. The fast-tracking of the trial before the learned Trial Judge, with the cooperation of members of the Bar, had motivated us to be equally quick and fast. The instant appeal which came up for preliminary hearing before us on 21.5.2010 has been disposed of by us today i.e. on 4.6.2010. Needless to state we have

been able to dispose of the appeal because of the fair concession made by learned counsel for the appellant and the able assistance rendered to us with respect to the residual matter which we have been called upon to decide by learned counsel for the appellant as well as learned counsel for the State.

11. Placing on record our appreciation for members of the Bar, the appeal stands disposed as per paras 5, 6 and 7 above.

12. Since the appellant is in jail, we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar who would make necessary corrections in the jail record pertaining to the sentence which the appellant has to undergo as also for supplying the same to the appellant.

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