

**Sunil @ Sonu Etc.**

**v.**

**State NCT of Delhi**

(Criminal Appeal Nos. 3978-3979 of 2024)

24 September 2024

**[B.R. Gavai\* and K.V. Viswanathan, JJ.]**

### **Issue for Consideration**

Issue arose for consideration that as to whether the accused can be convicted for the offence punishable u/s.302 IPC or in the facts and circumstance of the case, the conviction needs to be altered to a lesser offence.

### **Headnotes<sup>†</sup>**

**Penal Code, 1860 – s.304 Part-I, s.302 rw s.34 – Culpable homicide not amounting to murder – Pre-existing disputes between the parties leading to verbal altercation whereafter accused persons attacked the victims with knives and dandas, resulting in death of one – FIR lodged by one of the victim as also the appellant – Conviction of the appellants-accused no. 1 and 4 for the offences punishable u/ss.302/34 and sentenced to undergo rigorous imprisonment for life – Appeal thereagainst dismissed – Correctness:**

**Held:** Prosecution proved beyond reasonable doubt that the injuries sustained by deceased were caused by the appellants and sufficient to cause death of the deceased – No interference warranted with the finding of the courts below that the appellants caused homicidal death of the victim – FIR lodged at the instance of the appellant that the victims had come to the shop of the other appellant in a heavily drunken condition, and had tried to assault the appellants – Medical certificates of appellants that they had sustained the injuries, was deposed by the IO – Also evidence of Investigating Officer that he found not only deceased but also all the accused persons admitted in the hospital and that he did not find the other victim in the said hospital – Thus, the defence of the appellants is a possible defence – Nothing on

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record to establish that there was any pre-meditation – As such, the possibility of the offence being committed by the appellants without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel cannot be ruled out – Also nothing on record to show that the appellants took undue advantage or acted in a cruel or unusual manner – Thus, appellants entitled to the benefit of doubt – Case would be covered under Part-I of s.304 – Conviction of the appellants u/s.302 altered to Part-I of s.304 – Appellants having undergone the sentence of more than 8 years without remission, sentenced to the period already undergone and to be released forthwith if not required in any other case. [Paras 9, 13, 15, 16-18]

**List of Acts**

Penal Code, 1860.

**List of Keywords**

Offence punishable u/s.302 IPC; Conviction to be altered to lesser offence; Pre-existing disputes; Verbal altercation; Injury sufficient to cause death; Homicidal death; Medical certificates; Pre-meditation; Sudden fight in heat of passion upon sudden quarrel; Undue advantage; Act in cruel or unusual manner; Benefit of doubt; Remission; Conviction u/s.302 altered to Part-I of s.304 IPC.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 3978-3979 of 2024

From the Judgment and Order dated 26.06.2023 of the High Court of Delhi at New Delhi in CRLA No. 408 and 137 of 2018

**Appearances for Parties**

Rishi Malhotra, Sr. Adv., Ms. Ambuja, S. Maini, Utkarsh Singh, Advs. for the Appellants.

Prashant Singh, Sharath Nambiar, Ayush Anand, Mukesh Kumar Maroria, Vinayak Sharma, Kartikeya Asthana, Advs. for the Respondent.

**Digital Supreme Court Reports****Judgment / Order of the Supreme Court****Judgment****B.R. Gavai, J.**

1. Leave granted.
2. The present appeals challenge the judgment and order dated 26<sup>th</sup> June 2023, passed by the Division Bench of the High Court of Delhi at New Delhi in Criminal Appeals No. 408 and 137 of 2018, wherein the Division Bench dismissed the appeals filed by the appellants Sunil @ Sonu (Accused No.1) and Nitin @ Devender (Accused No.4). By the said judgment and order, the High Court upheld the judgment and order dated 25<sup>th</sup> October 2017 rendered by the Additional Sessions Judge, North District, Rohini, Delhi (hereinafter referred to as “the trial court”) in Sessions Case No. 139 of 2017 convicting the appellants for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”). The High Court also upheld the order of sentence dated 6<sup>th</sup> November 2017 vide which the trial court had sentenced them to undergo rigorous imprisonment for life along with fine of Rs. 10,000/- each, in default whereof simple imprisonment for 1 year for the offence punishable under Section 302 read with Section 34 of IPC.
3. Shorn of details, the facts leading to the present appeals are as under:
  - 3.1 The case of the prosecution is that Rahul (PW-1) and Sachin (deceased) had pre-existing disputes with one of the present appellants Sunil @ Sonu (Accused No.1) and his brother Satish @ Chhotu (Accused No. 2). On 28<sup>th</sup> November 2016, Rahul (PW-1) along with Sachin (deceased) was walking on the road and appellant Sunil @ Sonu (Accused No.1), Satish @ Chhotu (Accused No.2), Gaurav (Accused No. 3) and the other appellant Nitin @ Devender (Accused No.4) were standing there. At about 09:15 PM, they started abusing Rahul (PW-1) and Sachin (deceased) and after a verbal altercation, all the four accused caught hold of them and started attacking them with knives and *dandas*. Sachin (deceased) tried to run, and the present appellants chased him while being armed with a knife. They caught him and inflicted knife blows. Thereafter, Shivani (PW-2) (Aunt of Rahul/PW-1) while trying to save Rahul (PW-1), saw a police official namely ASI Subhash Chandra

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(PW-15) passing by and after stopping him took him to the place of the incident. On seeing them, the accused persons ran away.

- 3.2 The police were called, and two separate PCR vans took Rahul (PW-1) and Sachin (deceased) to the hospital. Thereafter, SI Suresh (PW-19) arrived at the spot. Rahul (PW-1) could not be found, and Sachin (deceased) was found unfit to give a statement. A search was conducted for Rahul (PW-1) but he could not be found. Thereafter, Rahul (PW-1) himself arrived at the Police Station on 29<sup>th</sup> November 2016 at about 11:45 PM and his statement was recorded. Subsequently, a First Information Report (hereinafter referred to as "FIR") No. 667 of 2016 was registered at P.S. Jahangir Puri, District North West, Delhi on 30<sup>th</sup> November 2016 against three out of the four accused persons for offences punishable under Section 307 read with Section 34 of IPC based on the written statement of Rahul (PW-1) narrating the whole incident from his point of view.
- 3.3 The search for the accused persons began and all the four accused were found behind PRAYAS Home, EE Block, Jahangir Puri. All four were arrested and their disclosure statements were recorded.
- 3.4 On 2<sup>nd</sup> December 2016, information was received that Sachin (deceased) had died during treatment and the charge for offence punishable under Section 302 read with Section 34 of IPC was added.
- 3.5 The post-mortem of Sachin (deceased) was conducted by Dr. Arun Kumar (PW-8), and as per the post-mortem report the cause of death was opined to be septicemic shock consequent upon compartment syndrome and infection of left lower limb as a result of ante mortem injury to left thigh produced by pointed sharp edged object.
- 3.6 The medical examination of Rahul (PW-1) was conducted on 30<sup>th</sup> November 2016 by Dr. Avinash Tripathi (PW-9) and the existence of abrasions were found and it was opined that Rahul had sustained simple injuries.
- 3.7 On completion of the investigation, charge-sheet was filed by the Investigating Officer Inspector Ajay Kumar (PW-23). Charges were framed against the accused persons Satish @ Chhotu and Gaurav Kumar for offences punishable under Section 308 read with Section 34 of IPC and the present appellants were

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charged for offences punishable under Section 302 read with Section 34 of IPC.

- 3.8 In order to substantiate its charges levelled against the accused persons, the prosecution examined 23 witnesses and on the other hand, to rebut the case of the prosecution, the defense examined 3 witnesses.
- 3.9 After the evidence of the prosecution was completed, one of the appellants Sunil @ Sonu (Accused No.1) gave his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") and denied all charges. He further stated that the present FIR was registered as a counterblast to an earlier FIR (No. 664 of 2016 lodged at P.S. Jahangir Puri, District North West, Delhi) for offences punishable under Section 307 read with Section 34 of IPC registered by appellant Sunil @ Sonu (Accused No.1) himself and where Rahul (PW-1) is an accused person. It was further stated that Shivani (PW-2) is an interested witness being the aunt of Rahul and that she is trying to save him from the earlier FIR by helping him take revenge through the present FIR.
- 3.10 At the conclusion of the trial, the trial court convicted the present appellants (Accused No. 1 and 4) for offences punishable under Section 302 read with Section 34 of IPC and convicted Satish @ Chhotu (Accused No. 2) and Gaurav Kumar (Accused No. 3) for offences punishable under Section 323 read with Section 34 of IPC. The trial court vide a separate order dated 6<sup>th</sup> November 2017 sentenced the present appellants to rigorous imprisonment for life with fine of Rs. 10,000/- each in default to undergo further simple imprisonment for 1 year for the offences punishable under Section 302 read with Section 34 of IPC.
- 3.11 Being aggrieved thereby, the present appellants preferred criminal appeals before the High Court challenging the orders of conviction and sentence awarded by the trial court. The High Court vide the common impugned judgment and order dismissed the appeals and affirmed the conviction and sentence awarded by the trial court.
- 3.12 Being aggrieved thereby, the present appeals.
4. We have heard Shri Rishi Malhotra, learned Senior Counsel appearing on behalf of the appellants and Shri Prashant Singh, learned counsel appearing on behalf of the respondent-State.

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5. Shri Malhotra, learned Senior Counsel appearing on behalf of the appellants submitted that the learned trial court has erred in convicting the appellants and the High Court has also erred in affirming the said conviction. Shri Malhotra submitted that there is an inordinate delay in lodging the FIR which is not explained by the prosecution. It is submitted that although Rahul (PW-1) was present with the deceased Sachin at the time of the occurrence, he has lodged the FIR only on the next day. It is submitted that there are material contradictions in the testimony of Rahul (PW-1). The learned Senior Counsel further submitted that insofar as Shivani (PW-2) is concerned, she is an interested witness. It is submitted that Shivani (PW-2), in her cross-examination, has admitted that she did not tell the police in her statement about the accused persons causing injuries to deceased Sachin and Rahul (PW-1). Shri Malhotra further submitted that with respect to the same incident, a cross FIR being No. 664/2016 was already registered by the appellant Sunil @ Sonu on 29<sup>th</sup> November 2016 which was much prior in point of time. It is submitted that, in the said incident, both the appellants Sunil @ Sonu and Nitin @ Devender had received severe injuries. It is submitted that both the courts below have failed to take into consideration that the prosecution has failed to explain the injuries sustained by the appellants. The learned Senior Counsel therefore submitted that the order of conviction as recorded by the trial court and affirmed by the High Court is not sustainable in law.
6. In the alternative, Shri Malhotra submitted that since the prosecution has failed to explain the injuries sustained by the appellants, the prosecution has suppressed the real genesis of the incident. It is therefore submitted that the conviction under Section 302 of the IPC would not be sustainable and the same would be at the most under Part-I or II of Section 304 of IPC.
7. Shri Prashant Singh, learned counsel appearing on behalf of the respondent-State, on the contrary, submitted that the trial court and the High Court have concurrently, upon correct appreciation of evidence, found that the prosecution has proved the case beyond reasonable doubt and as such, the judgment and order of conviction and sentence warrants no interference.
8. With the assistance of the learned counsel for the parties, we have perused the materials placed on record.

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9. From the evidence of Dr. Arun Kumar (PW-8) who conducted the post-mortem as well as the evidence of Rahul (PW-1) and Shivani (PW-2), we find that the prosecution has proved beyond reasonable doubt that the injuries which were sustained by deceased Sachin were caused by the appellants and injury No. 13 was sufficient to cause death of deceased Sachin. As such, we find that no interference would be warranted with the finding of the trial court and the High Court that the appellants have caused homicidal death of deceased Sachin.
10. The next question that arises for consideration is as to whether the accused can be convicted for the offence punishable under Section 302 of IPC or in the facts and circumstance of the case, the conviction needs to be altered to a lesser offence.
11. According to Rahul (PW-1), on the date of the incident i.e. 28<sup>th</sup> November 2016 at around 8:45-9:00 PM, when he was talking to Shivani (PW-2), the accused persons came there and started arguing with deceased Sachin. He stated that accused Gaurav @ Bakra started abusing deceased Sachin and when they both (Rahul (PW-1) and deceased Sachin) objected to this, the accused persons caught hold of deceased Sachin. When the said witness attempted to save deceased Sachin, the accused persons hit him with *danda* on his head. Then, accused Nitin @ Devender pulled out a knife from his possession. On seeing this, deceased Sachin started running to save himself. However, accused persons caught deceased Sachin at the *pulia* of *gandanala* at Block-EE and started giving knife blows to him. At that time, a police official was passing from the street on motor-cycle and Shivani (PW-2) stood before his motor-cycle and stopped him. Shivani (PW-2) brought the police official to the place where deceased Sachin was being beaten up. On seeing the said police official, all the four accused ran away. Shivani (PW-2) made calls on No. 100 and after some time, a PCR van reached the spot. Thereafter, deceased Sachin and Rahul (PW-1) were taken to the hospital.
12. It is to be noted that, though the incident was alleged to have taken place on the night of 28<sup>th</sup> November 2016, the FIR was lodged on 30<sup>th</sup> November 2016 i.e. after more than 24 hours. Though Rahul (PW-1) has tried to give an explanation that after he had been taken to BJRM Hospital, he left the said hospital in order to search for his friend deceased Sachin and thereafter he fell unconscious; the said explanation does not appear to be plausible inasmuch as the

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record would show that deceased Sachin had already been taken to BJRM Hospital. If that be so, then the conduct of Rahul (PW-1) in leaving the BJRM Hospital in search of deceased Sachin appears to be strange. It can further be seen that, though in the statement recorded under Section 161 Cr.P.C., Rahul (PW-1) admitted that he and deceased Sachin had consumed liquor, he has denied the same in his cross-examination. Rahul (PW-1) has admitted that there is one case registered against him for the offence punishable under Section 307 of IPC with respect to the present incident. It is further to be noted that though in his examination-in-chief, Rahul (PW-1) tried to give explanation that he could not lodge the FIR expeditiously since he fell unconscious, he admitted in his cross-examination that he regained consciousness in the morning of the next day. Then the question is what prevented him from lodging the FIR till 21:15 hours. Shivani (PW-2) also deposed almost to the same effect. There are various contradictions in her deposition. She also admitted that Rahul (PW-1) was also arrested by the police and that she gave her statement after Rahul (PW-1) was arrested by the police.

13. In the FIR lodged at the instance of appellant Sunil @ Sonu, it is stated that Rahul (PW-1) and deceased Sachin had come to the shop of Satish in a heavily drunken condition, and they had tried to assault the appellants. The medical certificates of appellants Sunil @ Sonu and Nitin @ Devender would show that they had sustained the following injuries:

**“Injuries sustained by appellant Sunil @ Sonu:**

- 1) Pain and bleeding from Right side of parietal region.
- 2) Abrasions on middle finger of the right hand.

**Injuries sustained by appellant Nitin @ Devender**

- 1) Incised contused lacerated wound on parietal region of size 3 x 1 x 0.5 cm.
- 2) Abrasion over left side of abdomen of size 3 x 0.5 cm.”

14. Undisputedly, the said injuries are not explained by the prosecution.
15. The defence of the accused persons is specific that, it is the deceased Sachin and Rahul (PW-1) had come in a drunken condition at the shop of Satish and they started abusing and assaulting the appellants. The evidence of SI Suresh, Investigating Officer (PW-19) would reveal that when he visited the BJRM Hospital on 28<sup>th</sup> November 2016,



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he found not only deceased Sachin but also found all the accused persons admitted in the said hospital. He has also admitted that he did not find Rahul (PW-1) in the said hospital. SI Rakesh Kumar (DW-3), who is an IO in FIR No. 664/2016 which was registered at the instance of appellant Sunil @ Sonu, also deposed that all the accused persons were medically examined and had received injuries which were exhibited vide Ex.DW-3/A to Ex.DW-3/D. It can thus clearly be seen that the defence of the appellants is a possible defence. There is a possibility of deceased Sachin and Rahul (PW-1) coming to the shop of Satish and a fight taking place between the two groups. There is nothing on record to establish that there was any pre-meditation. As such, we find that the possibility of the offence being committed by the appellants without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel cannot be ruled out. There is nothing on record to show that the appellants have taken undue advantage or acted in a cruel or unusual manner.

16. In that view of the matter, we are of the considered opinion that the appellants are entitled to the benefit of doubt. We find that the present case would be covered under Part-I of Section 304 of IPC and as such, the conviction under Section 302 of IPC would not be tenable.
17. The appellants have undergone the sentence of more than 8 years without remission. We are therefore inclined to partly allow the appeals.
18. In the result, we pass the following order:
  - (i) The appeals are partly allowed;
  - (ii) The conviction of the appellants under Section 302 of IPC is altered to Part-I of Section 304 of IPC;
  - (iii) The appellants are sentenced to the period already undergone and are directed to be released forthwith if not required in any other case.
19. Pending application(s), if any, shall stand disposed of.

*Result of the Case:* Appeals partly allowed.