

R-56

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

% *Date of Decision : 31.07.2009*

+ **CRL.APPEAL NO.357/2001**

PHOOL BAGH SINGH Appellant
Through: Mr. Apoorv Sarvaria, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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

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

1. Mr.Apoorv Sarvaria Amicus Curiae appointed on behalf of the appellant in the preceding session states that he has gone through the file and is prepared to argue the appeal.
2. Vide impugned judgment and order dated 19.4.2001, the appellant has been convicted for the offence of murdering Roshan Lal.
3. As per the prosecution PW-6, son of Roshan Lal is an eye witness to the murder of his father.
4. We note that the First Information Report was lodged at the police station pursuant to the statement Ex.PW-

6/A made by Narender Sharma PW-6.

5. The incident took place at 9:00 PM. Evidenced by the endorsement Ex.PW-9/B under the statement Ex.PW-6/A, the tehrir was dispatched from the spot at 12:20 in the middle of the night.

6. The fact that Narender Sharma met the investigating officer at the spot soon after the incident lays credence to the assertion of Narender Sharma that he was in the company of his father when the crime was committed.

7. Narender Sharma PW-6 has stood by his statement Ex.PW-6/A when he deposed in Court.

8. Nothing has been shown to us with respect to the cross examination of Narender Sharma wherefrom it can be gathered that Narender Sharma is not a credible witness.

9. We proceed to note the eye witness account of Narender Sharma.

10. As per him his father Roshan Lal was engaged in dairy in the name "Tau Ghee Dairy" at Sukhbir Nagar Delhi and he i.e Narender Sharma was an accountant in Apex Public School, Sant Nagar, Burari. One Sukhbir Singh also called as Chairman was having a farmhouse near their dairy. Subhash, Phool Bagh Singh @ Nanhe and Azad used to live in the office at the farmhouse and used to purchase milk from the dairy of his father. Payment used to be made by Sukhbir for the milk

purchased. On 16.3.1997 at about 8:30 PM he and his father were present at the dairy. Accused came to the dairy and told his father to settle the account for the milk purchased in the office of Sukhbir. He and his father went with the accused to the office of Sukhbir who was not present. He i.e. Narender Sharma asked accused as to why he had called them by telling lie that Sukhbir wanted to settle the account. At this Nanhe i.e. the accused got infuriated and utter: "*kuttoo main tumhara sada sada ke liye hisaab kar deta hoon*". Thereafter Nanhe threw him i.e Narender Sharma on the ground and before he could get up, the accused lifted a brick and hit his father on his head. His father fell down. Beating continued. Nanhe ran away.

11. The post-mortem Ex.PW-16/A of the deceased shows three lacerated wounds. The first is over the right side vertex above the right ear pinna. The second is a wound above the left eyebrow. The third is a lacerated wound over the right side upper occipital region.

12. We note that there are two other injuries being an abrasion and a swelling. The said two injuries are obviously mild.

13. The cause of death opined is cranio cerebral injuries. The likely weapon of offence opined to be is a blunt weapon like a brick or a stone.

14. Learned counsel for the appellant has made a neat and a crisp submission. Counsel urges that from the testimony of PW-6 it is apparent that the appellant nurtured no grievance against the deceased when he met the deceased and told him to come to the office of Sukhbir and settle his account. Counsel urges that since Sukhbir was not present in his office and PW-6 and his father accused the appellant of being a liar, that the appellant got infuriated on being labeled a liar. Counsel urges that it is apparent that the accused is a short-tempered person and took it as an insult on being called a liar and to give an outlet to his anger, hit the deceased with a brick. Counsel urges that under the circumstances, offence which can be made out is an offence punishable under Section 304 Part II IPC. Alternatively, counsel urges that at best the offence which stands made out is the offence punishable under Section 304 Part I IPC.

15. Learned counsel has cited to us a decision reported as 2008 (6) SCALE 433 Kesar Singh & Ors. Vs. State of Haryana and with reference thereto has submitted that the Supreme Court alter the conviction for the offence under Section 304 Part II IPC to the offence punishable under Section 304 Part I IPC but interestingly reduce the sentence from 8 years to 5 years.

16. Keeping in view the testimony of PW-6 it is

apparent that the appellant did not have any animosity against the deceased and what trigger his act was the utterance of PW-6 and the deceased that the appellant was a liar. The weapon of offence is a common object i.e. a brick lying at the farmhouse of Sukhbir. It thus cannot be said that the appellant had an intention to cause the death of the deceased. It is apparent that the intention of the appellant was to cause injury to the deceased.

17. Question which arises now for consideration is what level of knowledge can be attributed to the appellant as the likely consequences of his act.

18. As held in Kesar Singh's case (supra), knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activities and summoned up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself.

19. Pertaining to knowledge which can be attributed to the accused i.e. whether it is the knowledge contemplated by the last clause of Section 299 or the knowledge contemplated by Section 300 fourthly, what has to be looked at is whether the act is of a kind where knowledge can be imputed knowing

that the act is likely to cause death or the knowledge is of the act being so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death. Meaning thereby, the probability of the death if it attains near certainty would attract Section 300 fourthly, whereas the probability of death not reach near certainty and remaining only within the realm of "likely" would attract lesser culpability.

20. It is settled law that where a case falls under Section 299 IPC it would attract punishment under Section 304 IPC.

21. What breaks the deadlock between Part I and Part II of Section 304 IPC? We take guidance from the decision of the Supreme Court reported as 1976 (4) SCC 382 State of Andhra Pradesh Vs. Rayavarapu Punnayya & Anr. In para 21 it was observed as under:-

"21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for

considering the operation of Section 300, Penal Code is reached. This is [the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.”

22. A skull is a vital part of the body and if one hits thrice towards the skull and manages one blow with a brick on the occipital region and one on the temporal region and the third in the forehead, as held in Kesar Singh's case (supra) the offence would attract punishment under Section 304 Part I.

23. We hold that the acts of the appellant attract punishment under Section 304 Part I IPC.

24. On the issue of sentence, we note that when admitted to bail vide order dated 8.4.2003, the appellant had already undergone imprisonment for a period of 6 years and 1 month. He had earned a remission of 5 months.

25. The appellant has no record of previous convictions. There is no record of his being involved in criminal activities save and except the solitary instance which has resulted in a

criminal prosecution against him, being the instant prosecution.

26. Noting the sentence inflicted in Kesar Singh's case (supra) being 5 years imprisonment for the offence punishable under Section 304 Part I, in the peculiar facts of this case as noted above, we are of the opinion that the sentence which should be imposed is for the period already undergone.

27. The appeal is partially allowed. The impugned judgment and order dated 19.4.2001 convicting the appellant for the offence punishable under Section 302 IPC is modified, in that, the appellant is convicted for an offence punishable under Section 304 Part I IPC and is sentenced to undergo imprisonment for the period already undergone.

28. In view of the sentence imposed upon the appellant his bail bonds and surety bonds stand discharged.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JULY 31, 2009
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