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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 674/2007

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Date of Order : February 09, 2009

PREM CHAND

..... Appellant

Through: Mr. Anil Soni, Advocate

versus

STATE

..... Respondent

Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

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

1. Indeed, learned counsel for the appellant has, after making very feverish submissions on merits, restricted

arguments on whether the appellant could be convicted for the offence of murder and hence punishment awarded under Section 302 IPC or whether the conviction has to be for the offence of culpable homicide not amounting to murder and hence punishment awarded under Section 304 IPC.

2. The reason why learned counsel for the appellant has made restricted submissions is the fact that the dead body of Smt. Sudershan Pahuja was recovered from the house of the appellant. The body had been concealed in a trunk which was placed in the kitchen of the house.

3. The recovery of the body has been proved by PW-7, PW-11, PW-12, PW-13, PW-17, PW-19 and PW-21. Indeed, the photographs taken by PW-7 being Ex.PW-7/A to Ex.PW-7/K negatives whereof are PW-7/1 to Ex.PW-7/10 are indisputably the kitchen of the house of the appellant.

4. That the deceased had gone to the house of the appellant stands proved by the testimony of her son Harish Pahuja PW-1, his wife Rubi Pahuja PW-5 as also Parminder Singh PW-3 who have deposed that the deceased Smt. Sudershan Pal had gone to the house of the appellant to collect Rs.20,000/-

which she had loaned to the mother of the appellant.

5. Case of the prosecution is that the deceased had loaned Rs.20,000/- to Sumitra, the mother of the appellant, and on 17.2.2001 had gone to the house of the appellant to receive back the said money. Needless to state, the mother of the appellant was residing with him. Since the deceased did not return home till late afternoon, hence her son and her daughter-in-law were naturally alarmed. Harish Pahuja the son of the deceased and his friend Parminder Singh went to the house of the appellant but found the same locked. Since the deceased did not return home and could not be located even by late evening, the son i.e. Harish Pahuja lodged a missing person's complaint, Ex.PW-10/A, informing that his mother had gone to the house of the appellant. This led the police to track down the appellant and his mother. Since their house was locked, from the neighbours they learnt that a daughter of the appellant was married and was residing some where at Tughlak Road, New Delhi. The police located the house of the daughter of the appellant, where they met Deepa, the youngest daughter of the appellant, then aged about 8-9 years, who informed the police

that the deceased had come to their house at 5628/78, Regar Pura, Karol Bagh and had demanded Rs.20,000/- from her grandmother. Her grandmother did not pay the money. The deceased bit her grand-mother and on seeing this her father got enraged and picked up an iron rod and repeatedly hit the deceased on the face and the skull. That the deceased died. That her father and her grand-mother cleaned the blood stains from the floor and put the body inside a trunk and put the trunk in the kitchen. She was sent to the house of her sister. Her father and her grandmother went away.

6. On the basis of the said statement, Ex.PW-2/A, made by Deepa, the police went to the house of the appellant. Indeed, from the kitchen, a trunk was found and on it being opened, the dead body of the deceased was recovered.

7. After the appellant was apprehended he made a disclosure statement and got recovered the weapon of offence which he had used to inflict injuries on the deceased.

8. We note that Deepa who was examined as PW-2 turned hostile and refused having made any statement to the police.

9. The deposition of young Deepa in Court is belied from the fact that when her grand-mother, who was also apprehended, was sent for medical examination, as per MLC Ex.PW-20/A the doctor noted that she had a bite mark on the under-side of the left arm and bruises on the arm. Sumitra, the grand-mother of Deepa has not explained the said bite mark injury on her fore-arm and this gives credence to the statement made by Deepa which ultimately led the police to recover the dead body of the deceased from the house of the appellant.

10. Indeed, in view of the afore-noted over whelming evidence, coupled with the fact that the injuries on the body of the deceased being 12 in number, as per the MLC Ex.PW-8/A; injuries being fatal and by no stretch of imagination can any one argue that he who inflicts said injury does not intend to cause the death of the victim, learned counsel did not venture much into the evidence.

11. The 12 injuries on the deceased are as under:-

“1. CLW 11 x 2 x bone deep cms over left side forehead starting from the outer end of the left eyebrow going upwards, outwards and backwards upto a point 4 cms above the top of left ear pinna.

2. CLW stellate shape shaped 3 x 1.5 x bone deep cm over middle of forehead, 0.5 cm above the root of the nose.
3. CLW 5.1.8 x bone deep cm obliquely placed over right side forehead 1.2 cm above the right eyebrow.
4. CLW 3 x 1.5 x bone deep cm over middle of forehead 1 cm above the injury no.3.
5. CLW 3.8 x 0.8 x bone deep cm over left side forehead 2 cm above and lateral to injury no.4.
6. CLW 2.5 x 0.7 x bone deep cm over right side face 2 cm left in front of right ear.
7. CLW 1 x 0.3 x bone deep cm over left side chin 1 cm left to mid line.
8. CLW 7 x 6 x bone deep cm stellate cells over right side temporo parietal region 2 cm above the top of right ear pinna and 3 cm above and outer to injury no.3. Flapping of the skin margin present.
9. CLW 11 x 2.8 x bone deep cm over right temporo parietal region 1.5 cm below injury no.8. Flapping of the skin margin present.
10. CLW 5 x 0.8 x bone deep cm over right temporo parietal region 3 cm behind injury no.9.
11. CLW 3.6 x 0.8 x bone deep cm over right temporo parietal region below injury no.10.
12. CLW 6.8 x 1.9 x bone deep cm over right temporal region 4 cm behind the lower end of injury no.9."

12. Indeed, the weapon of offence has been recovered pursuant to the disclosure statement of the appellant and on his pointing out.

13. Learned counsel for the appellant urges that the evidence establishes that the deceased bit the mother of the appellant who was aged 85 years. At that, the appellant attacked the victim. Submission made is that Exception 1 to Section 300 is attracted, for the reason, a son who sees his 85 year old mother being attacked is bound to get provoked. Thus, counsel urges that it is a case of a sudden and a grave provocation.

14. Learned counsel draws our attention to the fact that the deceased was aged 60 years. Counsel does so to bring home the point that where a 60 year old woman attacks a woman aged 85 years in the presence of the son of the latter, it would not be a simple case of an old woman attacking another old woman. It would be a case of an old woman attacking a very old woman and hence would provoke the son of the latter.

15. Learned counsel for the State does not dispute that a son who sees his 85 year old mother being attacked, and in fact

bitten, by a woman aged 60 years, would get provoked, but urges that this would not justify 12 blows directed towards the head and the face of the deceased.

16. Exception 1 to Section 300 of the Indian Penal Code reduced the culpability of a homicide which otherwise is murder if the offender is deprived of the power of self-control due to a grave and a sudden provocation. Thus, it is apparent that a person who loses self-control on a sudden and grave provocation would be presumed to be a person without an intention to murder, because of the reason, the condition precedent for a person to form an intention to cause murder is a mind capable of taking decisions.

17. This in turn means that the intensity of the acts done by such a person i.e. a person who is deprived of the power of self-control due to a grave and a sudden provocation would be irrelevant save and except to determine whether the acts attract the first part or the second part of Section 304 IPC.

18. Indeed, in the decision reported as 1998 (4) SCC 336 State of U.P. Vs. Lakhmi where blows with a phalli (a spade-like agricultural implement) were inflicted on the head of the

deceased and the skull was smashed; noting that there was a sudden and a grave provocation, the Supreme Court converted the conviction from under Section 302 to Section 304 Part 1 IPC.

19. We accordingly allow the appeal in part.

20. The impugned judgment dated 24.1.2006 and the order of sentence dated 6.2.2006, in so far it has convicted the appellant for the offence of murder, are set aside and the appellant is held guilty of the offence punishable under Section 304 Part 1 IPC.

21. The appellant is directed to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for a period of 3 months.

22. The conviction of the appellant and the sentence for the offence punishable under Section 201 IPC is maintained; with a clarification that both sentences shall run concurrently.

23. Before concluding we may note that the mother of the appellant was acquitted of the charge of murder but has been convicted for the offence punishable under Section 201 IPC. She has not filed any appeal; probably for the reason by

the time the sentence was awarded she had already undergone the period of incarceration.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

FEBRUARY 09, 2009
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