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

+ **CRL.A. 972/2008**

% Date of Order : February 16, 2009

MAHENDER Appellant
Through: Mr. Sumeet Verma, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, 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)

Crl.M.B.No.1461/2008

During arguments in the application seeking bail it transpired that there was a possibility of the sentence being modified from that of the offence of murder to the offence of culpable homicide not amounting to murder.

For said reason with consent of learned counsel for

the appellant and the State it was decided that the main appeal itself may be heard for disposal. Since the appeal has been heard, the application seeking suspension of sentence is dismissed as infructuous.

Crl.A.No.972/2008

1. Information was received by PS Roop Nagar at 10:00 PM on 10.8.2000 that a person was lying unconscious near a lane across Shakti Nagar, Jain Mandir, Near Aggarwal Hospital. Additional SHO, Inspector Randhir Singh accompanied by SI Manoj Kumar and Const. Bhagat Singh went to the spot and at the spot met one Umrao Singh, a public witness who identified a dead body lying nearby as that of Balijour @ Panchi. He informed the police that accused Mahender had hit the deceased with brick blows and had run away from the spot.

2. The statement Ex.PW-6/A of Umrao Singh was recorded and after making an endorsement thereon, was sent to the police station for registration of the FIR. Investigation at the spot was completed in the form of recovery of a brick; the alleged weapon of offence with which the appellant had inflicted blows on the deceased. Control earth, blood stained earth was

also lifted vide memos Ex.PW-5/B to Ex.PW-5/E. The dead body was seized and sent for post-mortem. Dr. Jaiswal PW-27, conducted the post-mortem and recorded that the injuries on the person of the deceased were the result of being hit by a blunt object and that the injuries had affected the brain i.e. were craniocerebral injuries.

3. Back at the spot, a photographer was summoned who took the photographs. Site plan was prepared.

4. After a few days an application Ex.PW-27/B was submitted to Dr. Jaiswal for an opinion whether the injuries could be caused by a brick. He opined vide Ex.PW-27/B that the injuries were possibly caused by a brick.

5. Suffice would it be to state that armed with the aforesaid post-mortem report and an eye witness to the incident, namely Umrao Singh PW-6, the charge sheet was filed indicting the appellant of the offence of murdering Balijour.

6. Umrao Singh PW-6, eye witness deposed that he used to iron clothes at the *thiya* of one Balram Singh and that the deceased was a truck driver and used to sleep at the *thiya* at night as and when he was at Delhi and that the accused

Mahender used to work as a waiter in a tent house and used to visit the *thiya*. That on 11.8.2000 i.e. the date of the incident, at 10:00 PM, deceased Balijour was present at the *thiya* and the accused as also one Hari Singh came there. All of a sudden there was a quarrel. He intervened and the quarrel stopped. Hari left the place and he i.e. Umro Singh went to fetch water from a tap behind a tempo and when he returned he saw that the accused was striking the brick on the head of Balijour who was bleeding. That the accused ran away and he i.e. Umrao Singh went to a nearby chemist and informed the PCR.

7. As per the post-mortem report there are 8 ante-mortem injuries on the body of the deceased. The post-mortem report Ex.PW-27/A reveals the following 8 injuries:-

- “1. Lacerated wound with bruised margin on (R) fronto parietal region of size $2\frac{1}{2}'' \times \frac{1}{4}'' - \frac{1}{2}'' \times \frac{1}{2}''$ with bone piece driven in and crepitus felt over it.
2. Lacerated wound with bruised margin on (R) parietal region $2'' \times 1\frac{1}{2}'' \times \frac{1}{2}''$, bone piece driven in with crepitus around.
3. Lacerated wound with bruised margin just lateral to (R) eye $\frac{1}{2}'' \times \frac{1}{4}'' \times \frac{1}{4}''$.
4. Hematoma $2'' \times 2\frac{1}{2}''$ over (L) tempo parietal region with crepitus underneath it and around it.

5. Hematoma 2" x 1¼" over forehead in midline.
6. Abrasion (R) side neck lateral aspect 1½" x ½".
7. Abrasion (R) shoulder posterior lateral aspect 3" x ¼".
8. Multiple tiny abrasion 3 mm to 5 mm on (R) lateral neck lower 3rd."

8. The cause of death opined is that injury No.1, 2 and 4 are individually and collectively sufficient to cause death in ordinary course of nature.

9. Believing PW-6 that the appellant had assaulted the deceased and with reference to the post-mortem report, vide impugned judgment dated 20.10.2007, learned Trial Judge has held that the appellant is guilty of murdering the deceased.

10. Learned counsel for the appellant urges that the learned Trial Judge has not discussed as to why Section 304 IPC was not attracted. Learned counsel urges that there is no discussion by the learned Trial Judge whether the Court was holding the appellant guilty of having the intention to murder the deceased i.e. has convicted the appellant under first part of Section 300 or has convicted the appellant taking aid of part III or part IV of Section 300.

11. Learned counsel further urges that the learned Trial Court failed to appreciate the testimony of PW-6 in its proper perspective, in that, he deposed that when the appellant came with one Hari, the appellant and Balijour started quarrelling. Counsel urges that the witness never stated that the appellant initiated the quarrel. Counsel urges that the origin of the quarrel was not disclosed by Umrao Singh and hence the only possible conclusion is that a sudden quarrel took place.

12. That there is nothing to discredit Umrao Singh PW-6 is conceded by learned counsel for the appellant.

13. If we peruse the testimony of Umrao Singh, it is apparent that he has failed to disclose the origin of the quarrel. He simply deposed that all of a sudden the appellant and the deceased started quarrelling.

14. That the appellant had no intention to kill Balijour is evident from the fact that he did not bring with him any weapon of offence. Umrao Singh has not deposed that the appellant had come armed with a brick. It is apparent that while quarrelling with the deceased, the appellant picked up a brick and started hitting the deceased.

15. From the post-mortem report it is apparent that injuries 6 to 8 are abrasions. Injuries No.1 to 5 are the result of being hit by a blunt object. The blunt object, in the instant case is a brick. The injuries are directed towards the head. The result was a damage to the brain.

16. In the decision reported as AIR 1989 SC 1094 Surinder Kumar Vs. U.T.Chandigarh where 3 injuries were caused on the person of the deceased; all injuries being with a knife and directed towards a vital part of the body, namely the chest and that too the place where the heart is to be found and the neck; noting that the quarrel was sudden and the accused, in a heat of moment, picked up the weapon which is handy i.e. did not bring along with him the weapon, it cannot be said that Section 300 IPC was attracted. We may clarify that the Supreme Court held that Exception 4 to Section 300 would take said act out from the rigors of Section 300 i.e. the offence of murder and would reduce the same to the offence of culpable homicide not amounting to murder. To put it pithily the act held was an imminently dangerous act and knowledge could be attributed to the offender that by the act he would be causing death, but since the quarrel

was a sudden quarrel Exception 4 to Section 300 was held applicable. That 3 injuries were caused was held as not justifying an inference that the accused had acted in a cruel manner.

17. In said decision, holding that the offence was punishable under Section 304 Part I IPC, rigorous imprisonment for 7 years was inflicted upon the accused.

18. Taking guidance from the aforesaid decision we hold that the acts of the appellant make him liable for the offence of culpable homicide not amounting to murder and hence punishable under Section 304 Part I IPC. The appellant has already undergone imprisonment for a period of 8 years and 6 months as of today. As per the nominal roll, he would be entitled to remission of 3 months and 10 days.

19. Under the circumstances, we hold that ends of justice would be met if the appellant is sentenced to undergo imprisonment for the period already undergone.

20. The appeal is partially allowed. The appellant is convicted for the offence punishable under Section 304 Part I in FIR No.185/2000 PS: Roop Nagar. We sentence appellant to

undergo imprisonment for the period already undergone.

21. Copy of this order be sent to the Superintendent Central Jail Tihar for compliance with a direction that if the appellant is not required in any other case he be set free forthwith.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

FEBRUARY 16, 2009
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