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Decided on: 6th December, 2010

..... Petitioner

Through: Mr. B.S. Rana & Mr. Pawan Sehrawat,
Advocates

versus

STATE

Through: Mr. Manoj Ohri, A.P.P.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. By this appeal, the Appellant challenges his conviction for offence punishable under Section 304 Part (II) IPC and the order of sentence directing him to undergo rigorous imprisonment for a period of three years and to pay a

fine of ₹10,000/- and in default of payment of fine to further undergo rigorous imprisonment for three months.

2. Briefly, the prosecution case is that, on 31st December, 1996 at about 10.30 p.m. when Hansraj, son of the deceased and complainant was coming by his scooter, the Appellant stopped him and a quarrel took place between them. On hearing the noise of quarrel, besides one or two other persons, his parents also reached there who separated PW 9 Hansraj from the clutches of the Appellant and took him towards one side. On this, the Appellant gave a fist blow on the chest of his father due to which he fell down and became unconscious. He was taken to the hospital where he was declared brought dead. On the information being sent to the police, statement of Smt. Dalip Kaur PW 8 the wife of deceased was recorded on the basis of which an FIR was registered. After completion of investigation on a charge-sheet being filed, the Appellant was charged for offence punishable under Section 304 IPC.

3. Learned counsel for the Appellant assailing the judgment contends that the only role assigned to the Appellant is giving one fist blow on the chest of the deceased. In the MLC Ex. PW5/A the deceased was stated to be brought dead on 31st December, 1996 at 11.23 p.m. and there was no external sign of

any injury. As per the postmortem report, Ex. PW6/A the cause of death was due to “Acute Myocardial Ischaemia(heart attack) subsequent to Aortic Valve Stenosis & Fresh Blood Clots present in the Right Coronary Artery”. The mode of death was due to natural disease process. It is stated that since the deceased died of natural death, no case for conviction for an offence under Section 304 Part (II) IPC is made out.

4. Learned APP, on the other hand, contends that in view of the testimony of PW 6 Smt. Dilip Kaur, the complainant and wife of the deceased and PW9, Hans Raj, son of the deceased, it is proved beyond reasonable doubt that the Appellant gave a fist blow on the chest of the deceased resulting in his death.

5. I have heard the learned counsel for the parties. The testimony of PW 8, the complainant who is the wife of the deceased and PW9 Hansraj, son of the deceased proves that there was a quarrel on the 31st December, 1996 at about 10:30 p.m. between the Appellant and PW9. When the deceased intervened the Appellant gave a fist blow on the chest of the deceased, due to which he fell down and became unconscious. Nothing contrary has been elicited in the cross-examination of these witnesses on this count.

6. The moot issue would however be whether in such a case, the Appellant can be convicted for an offence punishable under Section 304 Part(II) IPC.

As per the opinion of the PW 6, the doctor who conducted the postmortem, the deceased died due to “Acute Myocardial Ischaemia(heart attack) subsequent to Aortic Valve Stenosis & Fresh Blood Clots present in the Right Coronary Artery”. The mode of death is opined as natural death process. Moreover, PW8 Dilip Kaur in her cross-examination has admitted that her husband was a heart patient. This court in Mohammad Sharif vs. State, Crl. Appeal 468 of 1999 has dealt with the issue whether on such facts the offence would fall within the ambit of 304 or 325 or 323 IPC.

7. On the facts of the present case, the Appellant cannot be attributed with any intention or knowledge to cause an injury that is likely to cause death. The death in the present case has been opined to be natural due to disease process. Moreover, one single blow on the chest region which is covered with ribcage in the attending circumstances, cannot be said to be with the intention or knowledge of causing grievous hurt.

8. The conviction of the Appellant is thus altered to one for an offence punishable under Section 323 IPC. The sentence that can be awarded for an offence punishable under Section 323 IPC is rigorous imprisonment upto one year or with fine or both. The Appellant has already undergone a sentence of more than one month. As the Appellant is not involved in any other case and

considering that the incident is 14 years old, it would be appropriate to modify the sentence of the Appellant to the period already undergone.

9. The appeal is, accordingly, disposed of by modifying the conviction of the Appellant to one for an offence punishable under Section 323 IPC and sentence of rigorous imprisonment for the period already undergone. The Appellant, who is presently in judicial custody, be released forthwith.

(MUKTA GUPTA)
JUDGE

DECEMBER 06, 2010
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