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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. Rev. P. No.359 of 2010 & C.M. Appl. No.8823 of 2010

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26.07.2010

HIMANSHU JETLEY

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate with
Mr. M. Begum, Advocate.

Versus

STATE OF NCT OF DELHI

.....Respondent

Reserved on: 19th July, 2010
Pronounced on: July 26, 2010

JUSTICE SHIV NARAYAN DHINGRA

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?

J U D G M E N T

1. By present petition, the petitioner has assailed an order on charge dated 17th April, 2010 made by learned Additional Sessions Judge against the accused directing framing of charge under Section 302 IPC apart from other provisions of IPC.

2. The contention of counsel for the petitioner is that the material brought on record was sufficient to frame charge only under Section 304 IPC and not under Section 302 IPC and the learned Additional Sessions Judge failed to appreciate the fact that framing of charge for a graver offence, that is, 302 IPC against the accused was going to affect the prospects of obtaining bail by accused.

3. Perusal of the order passed by learned Additional Sessions Judge shows that the learned Additional Sessions Judge had meticulously gone through the facts relevant to the case and thereafter framed charge under Section 302 IPC and under Sections 392/201 and 411 IPC.

4. The brief facts are that the accused was well acquainted and friendly with the victim Ms. Veer Pal Kaur Gill @ Nicky and used to visit house of the victim who lived alone in an apartment. Dead body of the victim was found inside the room and the last person to contact her on phone and to visit the apartment was the accused. Telephone record and other technical evidence has been collected by the police to this effect. The laptop, iPod and other accessories belonging to victim and ATM Card belonging to victim of Standard Chartered Bank were recovered from the accused. The accused in order to screen himself from the punishment, after commission of offence, had put locks on the door of the room and staircase of the apartment of the victim and the dead body of victim was recovered only after foul smell started coming from the house. The accused after commission of offence had gone away to Ludhiana. An amount of Rs.15,200/- belonging to victim was also recovered from the accused.

5. The counsel relied upon postmortem report of the victim. Under column of 'Cause of death', it was stated that this was a case of cardio respiratory failure consequent of concussion of chest caused by blunt force/fist blow in front of upper chest, that is, injury No.2. Viscera of the deceased was sent for analysis. Other injuries were also present on the body of the victim. Injury Nos.1, 3 to 7 were found minor in nature that could have been incurred in scuffle. Injury No.5 could be interpreted as an injury of self-defence. Injury No.2 was the fatal injury and likely to cause death in ordinary course of nature. On the basis of this postmortem report, it is argued that only one injury caused by the accused was found sufficient to cause death in ordinary course of nature and this injury was merely a fist blow and, therefore, charge only under Section 304 IPC could have been framed.

6. While considering charge under Section 302 IPC, the intention of the accused viz-a-viz his victim is to be considered. If the court finds from the evidence *prima facie* that the intention of the accused was to kill and with that intention he had caused injuries and injuries found on body of victim were sufficient to cause death then it is a case for charge under Section 302 IPC. If the intention is not to definitely kill but the intention is to cause bodily injury which is likely to cause death or which the accused knows is likely to cause death then it is culpable homicide not amounting to murder and charge under Section 304 IPC can be framed.

7. There is fine line of distinction between Section 302 IPC and Section 304 IPC. Learned Additional Sessions Judge after considering the fact that the accused as per his own disclosure statement had taken an iron rod to strike the victim and had come inside the room and attacked the deceased first with the iron pipe and thereafter when the deceased fell down on receiving injuries with the iron pipe, accused over powered her and gave fatal blows on her chest and then to ensure that the deceased gets killed, he kept a quilt on the face of the deceased and sat on the deceased and gave blows on chest and head of the deceased. It is only after deceased stopped moving that accused removed the quilt and after confirming that she was dead, he kept iron pipe on roof of the kitchen, washed his face and locked the room and staircase. From this material having come on record, it cannot be said that the charge framed by the learned Additional Sessions Judge against the accused was not framed under proper section.

8. I find no force in the revision. The revision is hereby dismissed.

SHIV NARAYAN DHINGRA, J.

JULY 26, 2010
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