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

DECIDED ON : 11.01.2012

+ **CRL.A.831/2011**

SUKHPAL Appellant

Through : Ms.Anu Narula, Advocate.

versus

STATE Respondent

Through : Mr.Sanjay Lao, APP.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. Appellant Sukhpal has preferred the present appeal against the judgment and order on sentence dated 21.03.2011 and 02.04.2011 respectively passed by Ld. Addl. Sessions Judge, whereby he was convicted for committing the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment with fine of ₹1000/-. The appellant was also convicted under Section 309 IPC and sentenced to undergo simple imprisonment for one year. Further, he was held guilty under Section 27 of the Arms Act and was sentenced to undergo imprisonment for three years with a fine of ₹500/-. All the aforesaid sentences were directed to run concurrently. In brief, facts of the prosecution case are as under :

2. On 07.05.2004 the appellant Sukhpal, his wife Salelta, daughter Pinki and sister-in-law Sulochna were in the factory of one Shabbir, their work place. At about 11.55 A.M. the police control room received information that two individuals had died near Swaroop Nagar, Kushik Road, Gali No.2, Near Masjid. DD entry No.9A was recorded in PS S P Badli and assigned to ASI Satpal for investigation. On reaching the spot ASI Satpal Singh found the body of a woman lying at the house of Shabbir i.e. at Gali No.2, Khadda Colony, Swaroop Nagar. He recorded the statement of Sulochna who was present at the spot. In her statement, Sulochna disclosed to the police that at about 11.00 A.M. Sukhpal was abusing his wife Salelta and threatening to kill her. Thereafter, Sukhpal pinned down Salelta and stabbed her on her neck and stomach taking out 'chura' from underneath his shirt. The appellant also stabbed himself with the said 'chura' and fell down. She raised an alarm and many people gathered there. Shabbir telephonically called the police. ASI Satpal Singh prepared rukka and got the present case registered. Necessary proceedings were conducted at the spot. Appellant was arrested and sent to hospital for his medical examination. The 'chura' was seized and a seizure memo Ex.PW6/A was prepared.

3. During investigation police recorded statements of concerned witnesses, sent the exhibits to FSL; collected the FSL report and MLCs as also post-mortem report of the deceased. After completion of the investigation, challan was filed against the appellant for the commission of offence punishable under Section 302/309 IPC in the court of Ld. M.M.

4. After appraisal of evidence proved on record and duly considering submissions of the parties, the Ld. Trial Court convicted the appellant for the aforesaid offences. Hence this appeal.

5. Ld. Counsel for the appellant urged that the prosecution failed to prove motive to commit his wife's murder. No finger prints were lifted from the

handle of the knife used in the incident. In his statement recorded under Section 313 Cr.P.C. the appellant specifically stated that one Debu had an illicit relationship with the deceased Salelta. On 07.05.2004 at about 10.00 A.M. he saw deceased talking to Debu at his work place. When he dragged his wife, Debu attacked him on the neck and other parts of his body. When the deceased tried to save him, Debu also attacked her and she succumbed to the injuries. Ld. Counsel further urged that this was not a case of murder as the incident had taken place all of a sudden, in a heat of passion.

6. Ld. Addl. PP for the State submitted that there is cogent evidence on record to establish guilt of the appellant. PW-3 Sulochna and PW-5 Pinki close relatives of the appellant and the deceased named former as perpetrator of the crime. The number of injuries inflicted by him upon vital organs of the deceased, with sharp weapon proved beyond doubt that it is a case of murder.

7. We have considered rival contentions of the parties and have examined the testimonies of prosecution witnesses minutely. The appellant did not dispute his presence at the spot at the time of occurrence. During the course of arguments, Ld. Counsel for the appellant fairly did not press the defence taken during the trial, alleging that the injuries on the deceased were inflicted by one Debu. We also do not find any substance in that defence as nothing on record shows if the deceased had any objectionable relationship with Debu or that Debu was at the spot at the time of incident. None of the witnesses including owner of the factory (Shabbir) has testified the presence of Debu at that time. No such suggestion was put to any of the witnesses regarding any altercation between the appellant and Debu.

8. We find clinching evidence against appellant to have caused injuries on the person of the deceased. PW-5 Pinki, his daughter aged about 13 years, testified against him and categorically deposed that he had stabbed her mother with a knife. No motive was imputed to the child witness for deposing

falsely against her father. PW-3 Sulochna, sister in law of the appellant, also supported the prosecution case on all material facts and implicated the appellant for causing stab injuries on the vital organs of the deceased in her presence. No material contradictions have emerged from her cross-examination. The appellant was named by this witness in her statement Ex.PW-3/A recorded at the earliest point of time. There was no major deviation in the version given by the witness in her statement Ex.PW-3/A and the one testified before the Court. The presence of this witness at the spot was not challenged. PW-6 Shabbir also supported the prosecution and corroborated the deposition of PW-3 Sulochna regarding her presence in the factory. The injuries sustained by the appellant at the spot further lends credence to the prosecution case.

9. Oral testimonies of trustworthy prosecution witnesses coupled with medical evidence on record fully prove that the appellant caused injuries to the deceased. We find no valid reason to interfere in the findings recorded by Trial Court against the appellant on this aspect.

10. The moot question involved in the case is if it is a case under Section 302 IPC or under Section 304 Part-I IPC. The evidence on record is that the deceased was the appellant's wife and had seven children out of the wedlock. The appellant used to consume liquor and quarrel often with the deceased. However, there is nothing in the prosecution case if prior to the incident he had attempted to cause serious injuries to the deceased. There is no evidence on record to infer if the appellant used to keep any deadly weapon or used to threaten the deceased that he would kill her with that weapon. Apparently, no injuries were ever caused by the appellant to the deceased prior to the incident with any sharp object. Only on the day of incident, the appellant stabbed the deceased with knife Ex. P-1. The prosecution however failed to collect evidence as to from where the appellant had procured the knife Ex.P-1. Ld. Counsel for the appellant argued that the appellant picked up knife Ex.P-1

from the spot as such knives were used in performing the work at the factory of PW-6 Shabbir. We find substance in this plea as PW-5 Pinki disclosed in her deposition that her mother was doing tailoring job of rexine work. Availability of knife for tailoring rexine at the spot, thus, cannot be ruled out.

11. PW-3 Sulochna admitted that on the day of the incident the appellant was in the factory attending to his duties. Deceased and the appellant along with PW-5 Pinki had reached the factory much prior to the incident and no such stabbing incident took place just on reaching the factory. There is no evidence on record pointing to any serious quarrel between the appellant and the deceased before the incident prompting appellant to commit murder. The evidence reveals that a quarrel had started between the appellant and the deceased at about 11.30 A.M. and in that quarrel the appellant stabbed the deceased. In the statement Ex.PW-3/A, PW-3 Sulochna informed the police *“Aaj din main karib 11 baje main apne ghar se kam per aayi thi aur Sukhpal aur Salelta pahle se hi kam per maujood the kam karte-karte Sukhpal Salelta ko galiyan de raha tha aur kah raha tha ki tujhe jan se mar dunga aur **dono main kafi garma garmi ho rahi thi.**”*

12. Appellant did not abscond from the spot after inflicting injuries. He, on the contrary stabbed himself with that knife and sustained grievous injuries. He attempted to commit suicide by stabbing himself as he uttered “why he should live after death of his wife.” This reaction shows that a quarrel/fight/altercation between the appellant and deceased took place suddenly for which both the parties were more or less to be blamed. There was no previous deliberation or determination to fight. The appellant was remorseful after inflicting injuries on the deceased. It also shows his frustration/anger in which he inflicted injuries on the deceased.

13. All the above circumstances rule out that the appellant had planned the murder of the deceased and had intention to kill her. The

circumstances reveal that the occurrence had taken place all of a sudden on some trivial issue in which the appellant in a heat of passion on account of total deprivation of self control stabbed the deceased.

14. In the case of 'Maruti Shamrao Wadkar Vs. State of Maharashtra' 2004 (4) Crimes 140 Bombay High Court (DB), the appellant therein was convicted for the murder of his son and then for stabbing himself. The appellant wanted the custody of his son and in a fit of anger stabbed him and then tried to kill himself. It was held that there was no intention of the appellant to kill his son in the said overt act and the evidence on record was sufficient to show that the act by which the death was caused was done to cause bodily injury as was likely to cause death but without intention to cause death and therefore, the overt act of the appellant would be covered by provision of Section 304 Part-I IPC.

15. In the case of 'Kalu Ram Vs. State of Rajasthan' 2000 (10) SCC 324, the Supreme Court held that conduct of the accused can not be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. Para No.7 of the aforesaid judgment is as follows :-

“7. But then, what is the nature of the offence proved against him? It is an admitted case that the appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to light the matchstick. When she failed to do so he collected the matchbox and ignited one matchstick but when the flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to

bring water in an effort to rescue her. We are inclined to think that all that the accused thought of was to inflict burns to her and to frighten-her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder”.

16. In the case of 'Hari Ram Vs. State' AIR 1983 SC 185, where in the heat of an altercation between the deceased and the appellant, the appellant in order to chastise the deceased had seized a jelly and thrustured into the chest of the deceased causing instantaneous death to the latter, it was held that as the evidence did not show any intention on the part of the appellant to kill the deceased and since only one blow had been struck by the appellant upon the deceased, his conviction was altered from one under Section 302 to one under Section 304, Part-II.

17. In the present case, considering the nature of injuries and how they were caused, the weapon of assault employed in the commission of the offence and conduct of accused whereby he caused himself grievous hurt with intent to commit suicide, we are of the opinion that this is not a case of murder punishable under Section 302 IPC. However, number of injuries inflicted by the appellant on the vital parts of the deceased prove commission of offence punishable under Section 304 Part-I IPC.

18. We thus, partly allow the appeal and modify the conviction of the appellant from 302 IPC to 304 Part-I IPC. The appellant is sentenced to undergo RI for ten years for the commission of offence punishable under Section 304 (firstly) IPC.

19. The sentence of the appellant for the offence under Section 309 of the Indian Penal Code is not disturbed and stands confirmed. Both the sentences shall run concurrently.

20. The appellant shall also be entitled to set off under Section 428 of the Criminal Procedure Code.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

January 11, 2012
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