

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 09.04.2013

CRIMINAL APPEAL NO.935/2011

HASIBUL REHMAN

..... Appellant

Through: Ms. Saahila Lamba, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through: Mr. Sanjay Lao, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SANJIV KHANNA, J. (ORAL)

1. The appellant Hasibul Rehman by the impugned judgment dated 7th December, 2010 has been convicted under Section 302 of the Indian Penal Code, 1860 for committing the murder of Tarikul on 19th February, 2007. By order of sentence dated 15th December, 2010, the appellant has been sentenced to life imprisonment along with a fine of ₹15,000/-. In default of payment of fine, the appellant is to undergo rigorous imprisonment for a period of one year.

2. On the question of involvement of the appellant in the occurrence on 19th February, 2007, we feel that there is sufficient evidence in view of the testimonies of three eye witnesses Jamirul (PW-8), Jariful (PW-17) and Mansoor Ali (PW-18). The three eyewitnesses in almost identical statements have averred that the deceased Tarikul, the appellant and three of them were residing in the same room at A-70, JJ Colony, Shakurpur, Delhi. About 8/10 days prior to the occurrence, the appellant and deceased Tarikul had quarreled as the appellant had tried to remove the pant of Tarikul, which was objected to. Thereupon, one Soni (PW-7) was called and the dispute was settled. On 19th February, 2007, PW-8 along with the deceased Tarikul returned from duty at about 9 a.m. The appellant had not gone for duty on the said date and was in the room. All the three eye witnesses went off to sleep but woke up on the hearing noise. They saw the appellant hitting a bottle on the head of deceased Tarikul. PW-8 questioned the appellant but he did not reply and ran away from there. Tarikul was taken to a doctor who stitched the wound and thereafter, Tarikul was brought back to the room. Tarikul, however, kept on vomiting and did not feel well. At 9 p.m., a call was made to Soni (PW-7), a co-villager of Tarikul, who was asked to come. Soni came there and took Tarikul to a private hospital but he could not be admitted there as Soni could not arrange for money. Tarikul was brought to

the room of one Alam. Soni then left for taking food. The condition of deceased Tarikul had deteriorated. Before Soni could come back, Tarikul expired. On return, Soni made a call to police station and informed the father of deceased Tarikul. Police came there and inquiries were made. On the basis of statement of PW-8 Jamirul, rukka Ex. PW-8/A was prepared on the basis of which FIR Ex.PW13/A was registered. The police seized two pillows and pieces of the broken bottle from the spot vide seizure memo Ex.PW8/B and Ex.PW8/C. The broken bottle pieces were produced before the court. It was found to be a bottle of Limca cold drink which was identified by the witnesses and marked as Ex.P-1. As the bottle was in pieces and it was testified that the pieces were of the same bottle, which was hit on the head of deceased Tarikul by the appellant. PW8 in his cross-examination, however, admitted that he had not told the police that the appellant had removed the pant of the deceased Tarikul. Instead, he had stated this fact to Soni (PW-7) but he did not remember if he had told the police that he has informed Soni about the same. PW-8 did not remember the name of the doctor where the deceased Tarikul was taken immediately after the injury. He did not remember whether the name of the doctor was Dr. Sanjeev Vishwas or not. He had informed the doctor that Tarikul had fallen from the stair case so that he could get treatment at the earliest. He, however, denied

the suggestion that the deceased had fallen from the staircase and sustained the head injuries. He deposed that the doctor did not make any prescription slip and was paid ₹500/- for which no receipt was issued.

3. PW-17 Jafirul has deposed that PW-8 Jamirul took the deceased Tarikul to a doctor. Thereafter they were asked to arrange money but this was not possible. Thereupon PW-8 had made a call to PW-7 Soni on the phone. He also deposed that the bottle after being hit on the head of deceased Tarikul had broken into pieces which were collected and handed over to the police.

4. PW-18 Mansoor Ali has stated that he woke up after he heard noises of breaking of bottle and saw that the deceased Tarikul bleeding from his head. The appellant was standing with a bottle in his hand. The appellant ran away from the spot and PW-8 then took Tarikul to a doctor. They tried to arrange for money but the same could not be arranged. He had also gone to his contractor/*thekedar* and asked him for money but could not get the same. At night, deceased Tarikul spoke something and died subsequently. Thereafter, the police came there. PW-18 in his cross-examination, deposed that he did not remember if he had informed the police about the earlier occurrence in which the appellant removed the pant of the deceased. He also did not remember whether he had informed the police that he had gone to his

thekedar to arrange for money. PW-18 in his cross-examination clarified that he was sleeping and woke up only after hearing the noise of breaking of the bottle and thereafter, he had seen deceased Tarikul bleeding and appellant was standing with the bottle in his hand.

5. Dr. Sanjeev Biswas appeared as PW-2 and has deposed that he was running a clinic at A-484, Shakurpur, Delhi. On 19th February, 2007, at about 11 a.m. one person named Tarikul was brought to his clinic by 2-3 boys. He gave first-aid and TT injection to Tarikul. He had directed that the injured should be taken to a Government Hospital but he had not prepared any prescription slip or made any entry in his register. In his cross-examination, PW-2 deposed that he did not inform the police that one injured was brought his clinic and that he did not prepare any record about giving treatment to the injured. Two-three boys, who had brought the injured, had stated that Tarikul had sustained the injuries by falling from staircase.

6. It is submitted by the Counsel for the Appellant that this averment should be accepted as correct as it was the first statement of PW-8 Jamirul to a third person. PW-8 Jamirul has also made a similar assertion. We do not think the statement of PW2 in the cross-examination to the effect that the boys who had brought the injured had stated that the injuries were sustained

by falling from the staircase should be accepted. The said version or statement by PW2 is to protect himself, who as a doctor was required by law to give proper treatment and also inform the police in case he suspected that Tarikul was injured by a third person. PW2 was protecting himself as he had not prepared any prescription slip nor made any entry in the register. The said version or statement was also made by PW-8 Jamirul but with a clear rider that it was necessary so that treatment could be made available to Tarikul at the earliest and without any delay. It appears that PW-8 wanted to avoid a police case and therefore, it was only after the death of Tariqul that a complaint was lodged before the police officials.

7. Soni has appeared as PW-7 and deposed that at 9 p.m. on 19th February, 2007 he received a telephone call from PW-8 Jamirul that Tarikul, a resident of his village, was not feeling well and has been hit by a bottle on his head by the appellant. He came there and found that the condition of the Tarikul was bad. Thereafter, he took him to Savitri Hospital but the deceased could not be admitted there as they could not pay ₹30,000/- which was demanded for treatment. Thereafter, he took deceased Tarikul to another private hospital where also a demand of ₹30,000/- was made and therefore, Tarikul could not be admitted. They brought deceased Tarikul back to the room of his brother Shakimul at about 1 a.m. and PW-7 returned to his own

room. Subsequently, he was informed that condition of Tarikul deteriorated, and before he could come back the deceased Tarikul had expired. Telephone call was made at 100 number. Thereafter, police arrived and photographs were taken. There is nothing in the cross-examination which dents the testimony of PW-7.

8. PW-26, Dr. Upender Kishore conducted the post-mortem on the dead body of the deceased on 23rd February, 2007. The post mortem report is Ex PW-10/A. PW-26 has deposed that body of Tarikul was brought for post mortem with alleged history of being attacked with a bottle by the appellant. He has further stated that the deceased had been earlier taken to Dr. Sanjeev Biswas who had stitched the wound and referred Tarikul to a higher medical center. Thereafter, the deceased was taken to Aggarwal Nursing Home, Shastri Nagar but he was not admitted there due to paucity of funds/money. Subsequently, he died at about 3 a.m. on 20th February, 2007 and his body was brought to the BJRM hospital for medico legal examination. We will refer to the injuries on the head as delineated in the post-mortem report Ex.PW10/A as well the opinion of PW-26 on the weapon of offence subsequently while dealing with the question whether the appellant should be convicted under Section 302 or Section 304 Part-I or Part-II.

9. Inspector Pradeep Kumar (PW-25) was the investigating officer of the

case. He had visited the spot in question where the incident occurred. By that time the crime team had also reached the spot. Photographs Ex.PW16/A1 to A10 (Negatives) and Ex.PW16/A11 to A20 (Positives) were taken. The crime team had already prepared report Ex.PW22/A. He prepared the scaled site plan Ex PW-25/B on the instance of PW-8 Jamirul. PW-25 has deposed that blood stained pillows and broken pieces of Limca bottle were lying at the site which were seized vide Ex PW-8/B and C. Later on, Mohd. Muslim(PW-3), father of the deceased and Tyab Ali, relative of the deceased joined the investigation and identified the dead body of Tarikul in the mortuary vide Exs PW-3/A and PW-1/A respectively. He had prepared the inquest papers and requested for post-mortem. He had also recorded the statement of Soni PW-7, Dr. Sanjiv Biswas PW-2 and the three eye witnesses namely PW-8 Jamirul, PW-17 Jariful and PW-18 Mansoor Ali.

10. The FSL report Ex.PW15/A and Ex.PW15/B have been proved by V. Shankaranarayanan (PW15) who has deposed that he had given biological and serological report which bears his signature. As per the said reports, human blood was found on the pillows (Ex P-3 and P-4), the bottle and the pieces of the bottle (Ex P-1 and P-2). However, the blood group could not be ascertained on pieces of glass but blood of Group-A was found on one of the pillows.

11. In view of aforesaid findings and categorical statement of the three eyewitnesses, we are satisfied that the trial court has rightly answered the question regarding involvement of the appellant as the person who is responsible for the death of the deceased Tarikul by hitting the bottle on the head of the deceased.

12. The next question which arises for consideration is whether the appellant has rightly been convicted under Section 302 IPC or whether he should have been convicted under Section 304 Part-I or Part-II IPC. Before examining the said aspect, we would like to reproduce the statement of Dr. Upender Kishore PW-26 who had conducted the said post mortem and proved his report Ex PW-10/A. In his testimony in the court, PW26 has stated:-

“External injuries:-

1. Stitched lacerated wound of size 1.5 x 0.5 x 0.5 cm, present over the left side fronto temporal region, stitched with two sutures.

Internal Examination:-

Extravasation of blood present in the left frontal region in the scalp. Skull bone intact – NAD. Extra dural hematoma of size 8 x 4cm x 2 cm (organized clot) present on the left temporo-parietal region (about 500 ml) Brain congested, depression present in the left cerebrum, shifting of cerebrum present, contusion present at the uncus region with herniation of the tonsils, indentation present both sides of the uncus

region, sub arachnoid haemorrhage on the right hemisphere patchy, flattening of the gyri and sulci present.

All internal organs congested. Stomach empty. Abnormal smell nil, Anal canal patulous and gapy.

Cause of Death:- Cerebral damage due to compression of brain, injury ante mortem in nature and produced by blunt object, possible as suggested, sufficient to cause death in ordinary course of nature, injury is (sic) fresh in duration.”

13. PW-26 examined the broken pieces of bottle and vide subsequent opinion Ex. PW-25/H, he opined that the injury on the head could have been caused by the weapon of offence in an intact form, i.e., the unbroken glass bottle. He further deposed that the injury was sufficient to cause death in ordinary course of nature. In his cross-examination, he has stated that it could be possible but it was not necessary that in every case a bottle like Ex.PW8/C when hit on the head would result in fracture of the skull bone. He further deposed that it was not necessary that the bottle in question in all cases would break into pieces.

14. We note that in the present case the skull bone was intact and nothing abnormal was detected. Further, there was extra dural hematoma of size 8 x 4 cm x 2 cm and there was haemorrhage etc. These aspects have been mentioned under the heading Internal Examination quoted above.

15. Modi's Medical Jurisprudence and Toxicology, 23rd Edition, records that brain damage can sometimes occur even without fracture of the skull bone.

16. There is no doubt that in the present case there was only one strike and that was directed on the head of the deceased. The weapon used was a cold drink bottle. The question which arises for consideration is whether in these circumstances the appellant should be convicted under Section 302 or under Section 304 Part-I or Part-II of the IPC. The difference between the two sections with reference to Clause Thirdly of Section 300 has been lucidly and clearly explained in *Virsa Singh v. State of Punjab*, AIR 1958 SC 465, in the following words:-

“14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 “3rdly”.

15. First, it must establish, quite objectively, that a bodily injury is present.

16. Secondly, the nature of the injury must be proved. These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury that is to say that it was not accidental or unintentional or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

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23. The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.”

17. In other words under clause Thirdly of Section 300, culpable homicide is murder if two conditions are satisfied that (a) the act which causes death was done with the intention of causing the bodily injury inflicted and (b) the

injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

18. The difference between Section 299 and Section 300 IPC has been elucidated and tabulated in *State of U.P. v. Virendra Prasad* (2004) 9 SCC

37 in the following manner:-

“7. The academic distinction between “murder” and “culpable homicide not amounting to murder” has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

<i>Section 299</i>	<i>Section 300</i>
A person commits culpable homicide if the act by which the death is caused is done—	Subject to certain exceptions culpable homicide is murder, if the act by which the death is caused is done—

Intention

(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

Knowledge

c) with the knowledge that the act is likely to cause death. (4) with the knowledge that the act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

8. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the “intention to cause death” is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

9. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the

assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.”

19. In the present case we have no doubt that the appellant had intention of causing the injury by hitting the bottle on the head. We further note that a mere fact that there was only one injury on the head by itself as an isolated circumstance cannot be a ground to hold that appellant had not intended to commit murder but only culpable homicide not amounting to murder

punishable under Section 304 Part-I or Part-II IPC. However, there are several facts and reasons why we feel that the appellant should be convicted under Section 304 Part-II and not under Section 302 IPC. They are enumerated as under:-

- a) A cold drink bottle was used to strike at the head;
- b) The occurrence had taken place in the morning in the house/room where knife and other sharp instruments were available but were not used;
- c) Skull bone was intact and not fractured;
- d) From the statements of the eye witnesses PW-8 Jamirul, PW-17 Jariful, PW-18 Mansoor Ali and PW-7 Soni, it appears that the injury was serious but was not treated /considered to be life threatening. The deceased Tarikul was initially taken to Dr. Sanjeev Biswas (PW-2) who gave him two stitches and thereafter, the deceased Tarikul was brought back to the room. His condition kept on deteriorating. Tariqul died after some time. PW-2's version that he had directed PW-8 Jamirul to take Tariqul for intensive treatment to a government hospital is not supported and accepted by PW-8 in his testimony.
- e) The cold drink bottle is blunt and round in shape. It is generally not perceived and recorded as an instrument or weapon which can or is likely to cause death with a degree of certainty when it is hit on the head of a person with force.

20. In the present case, it cannot be said that hitting a cold drink bottle on the head should lead to an inference that the appellant had intended to cause bodily injuries which were sufficient in ordinary course of nature to cause

death. It is rather difficult to visualize and accept that a person would die from injuries caused when a cold drink bottle is hit on his head. Injuries can be caused in such cases, but the degree of probability of death is not sufficiently or most possible. It is rather remote. High probability associated and required in cases under Section 300 IPC is missing. However, the appellant can definitely be attributed with the intention to cause injuries which may or are likely to cause death. We do not think the motive as alleged would be itself justifies and mandates treating the offence as under Section 300 Clause 3. Motive may be the cause for hitting the bottle but does not compel us to hold that the case would fall under Section 300 IPC. The quarrel had taken place about 8/10 days before. We have taken cumulative effect of the facts established and proved.

21. The view we have taken finds support and affirmation in ***Jagrup Singh vs. The State of Haryana, AIR 1981 SC 1552***. In the said case there was solitary blow from the blunt side of the gandhala on the head of the deceased. Relying upon ***Virsa Singh (supra)***, The Supreme Court held :-

“9. Looking at the totality of the evidence, it would not be possible to come to the conclusion that when the appellant struck the deceased with the blunt side of the *gandhala*, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. A *gandhala* is a common agricultural implement consisting of a flat, rectangular iron strip,

three sides of which are blunt, embedded in a wooden handle. The length of the iron strip is in continuation of the wooden handle and the end portion is sharp, which is used to dig holes in the earth to set up fencing on embankments in the field. If a man is hit with the blunt side on the head with sufficient force, it is bound to cause, as here, death. There can be no doubt that it was used with certain amount of force because there was cerebral compression. But that by itself is not sufficient to raise an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. He could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. The matter, therefore, does not fall within clause Thirdly of Section 300 of the Code.”

22. In *Palaru vs. State of Madhya Pradesh*, AIR 1993 SC 1487 the accused had inflicted a single blow by a tabbal, a blunt agricultural equipment, which was not a deadly weapon. The conviction was converted from 302 IPC to 304, Part-II of IPC keeping in view the circumstances that accused was not armed with the deadly weapon as such and being an agriculturalist he must have been carrying the tabbal in his hands when he hit the deceased.

23. Similarly in *Panchaiah and Others vs. State of Karnataka*, AIR 1994 SC 963 conviction was altered from Section 302/34 IPC to Section 304, Part II read with Section 34 of IPC. In the said case the injuries caused on the head of the deceased was serious/grave and other injuries suffered by the deceased were only bruises and abrasions. It was noticed that clubs and

cycle chain were used and no other deadly weapon was used by the assailants.

24. In *Sarup Singh vs. State of Haryana*, AIR 1995 SC 2452, the Court again converted the conviction from Section 302 IPC to Section 304, Part II IPC. A single injury was inflicted on the head of the deceased by use of hammer. After referring to the medical report in the form of post-mortem examination, the cause of death was opined as hydrocephalus and septicemia. The doctor had found a fracture in the bone of the right temporo-parietal region of the deceased. It was observed that the appellant i.e. the accused could be clothed with the knowledge that the injury that he had caused to the deceased by hitting the hammer on his head, a vital part of the body, was likely to cause death, though without any intention to cause death or such injury was sufficient to cause death in the ordinary course of nature.

25. In *State of Punjab vs. Tejinder Singh and Anr.*, AIR 1995 SC 2466 the accused were armed with gandasas. The death occurred because of gandasa blows. From the nature of injuries it was concluded that the accused had used both the sharp and blunt edge of the gandasa. There were multiple injuries on non-vital parts but one was on the head, which was muscle deep. It was observed that if the accused really wanted to commit murder, they would have not used the blunt edge and the task would have

been expedited by use of the sharp edge. Keeping these aspects in mind, the conviction was converted into Section 304, Part I.

26. We must note the contention raised by the appellant which was painstakingly highlighted to us. The deceased Tarikul was taken to two hospitals but could not be admitted there as necessary funds or money could not be arranged. The Amicus Curiae had urged that in case the deceased was provided with timely and proper/appropriate medical treatment, death may not have occurred. However, the said argument has to be rejected in light of Explanation 2 of Section 299 IPC which for the sake of convenience is reproduced below:-

“Explanation 2. – Where death is caused by bodily injury, the person who cause such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.”

27. We, however, express our anguish and distress that the deceased who had suffered the severe/ grave injuries and hanging between life and death was not given admission and treatment in the two hospitals where he was taken for treatment. In *Parmanand Katara v. Union of India*, (1989) 4 SCC 286, Supreme Court has observed:-

“7. There can be no second opinion that preservation of human life is of paramount importance. That is so

on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.

8. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis that position. A doctor at the government hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.”

(emphasis supplied)

28. The hospitals and nursing homes are under an obligation to admit and provide proper and necessary aid/treatment to an injured person. Ethically, socially and morally, turning away a patient in a serious condition for failure to deposit money cannot be accepted as a justification as nursing homes and hospitals owe a duty towards the society. The social and moral obligation

should be embraced by the hospitals in such situations. Many of them claim themselves to be philanthropic institutions established for charitable purposes. Further there is need and necessity for the Government of NCT of Delhi and the Central Government to disseminate and circulate clear information/instructions to the hospitals and nursing homes to provide medical aid and necessary treatment to such injured patients in cases where emergent treatment would avert grave consequences. Instructions should also be issued that, if required and necessary, such patients should be transported under medical attention to hospitals where they can be provided with proper medical aid. From the facts in the present case, one can easily comprehend and understand the sheer frustration and helplessness of PW-8 Jamirul, PW-17 Jafirul, PW-18 Mansoor Ali and PW-7 Soni who took the injured Tarikul to two different hospitals but could not secure admission because they could not arrange for ₹30,000/- without benefit and advantage of medical attention which was available yet beyond “reach”.

29. The last question relates to the quantum of sentence. Here we note one factor which goes against the appellant. The appellant ran away from the spot and did not participate or ensure that any medical aid was provided to the deceased Tarikul. But perhaps he did not visualize or understand the gravity. At the same time it is noticed that the appellant has already suffered

incarceration for nearly 6 years. We also note that at the time of occurrence, he was about 19 years of age.

30. Keeping in mind the said aspect, we feel that the rigorous imprisonment of seven years and fine of ₹3,000/- would meet the ends of justice. In default of payment of fine, the appellant will further undergo simple imprisonment for three months. The appeal is disposed of.

31. Copy of this judgment will be sent to The Secretary (Law), Government of NCT of Delhi and Secretary (Health), Ministry of Health, Government of India.

SANJIV KHANNA, J.

SIDDHARTH MRIDUL, J.

APRIL 09, 2013

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