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

% *Date of decision: July 15 , 2014*

\+ **CRL.A. 654/2014**

LEELAWATI ..... Appellant
Represented by: Mr.Sumeet Verma, Adv.

versus

STATE ..... Respondent
Represented by: Mr.Varun Goswami, APP for State with Insp.S.K.Rana, PS Anand Parbat.

\+ **CRL.A. 82/2014**

MANOJ ..... Appellant
Represented by: Ms.Saahila Lamba, Adv.

versus

STATE ..... Respondent
Represented by: Mr.Varun Goswami, APP for State with Insp.S.K.Rana, PS Anand Parbat.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The two appeals are directed against the judgment dated August 03, 2013 convicting the appellants for the offence under Sections 302/34 IPC and the order on sentence dated October 11, 2013 awarding them

imprisonment for life and fine.

2. The appeals raise an issue as to the intention attributable to a blind couple.

3. The prosecution does not dispute that appellant Leelawati, who is the wife of appellant Manoj, is 100% blind. The prosecution disputes the percentage of visual disability of appellant Manoj. Whereas appellant Manoj claims to be 100% blind, the prosecution disputes said facts conceding that he is 100% blind in one eye and has a visual disability in the other as well. The prosecution has led no expert evidence on the visual impairment of Manoj. But Manoj has led defence evidence by examining DW-1, Dr.Rajesh Hans, who has proved the disability certificate Ex.DW1/A issued by Dr.M.C.Aggarwal, Consultant and HOD, Eye Department, DDU Hospital Delhi who examined the appellant Manoj on November 22, 2011. As per the certificate, the appellant suffers from 100% permanent visual disability. In the absence of any medical certificate proved by the prosecution, Ex.DW-1/A would conclude the disability of the Appellant Manoj. We hold him to be 100% visually disabled.

4. The prosecution alleges that the appellants, who were tenants and living in a room adjacent to that of the deceased Smt.Munni Devi, committed her murder on March 16, 2011 at about 2.30 PM. The role of inflicting injuries to Munni Devi by a vegetable knife has been assigned to appellant Manoj. The role assigned to appellant Leelawati is of dragging the deceased. The star witness of the prosecution case is PW-1 Sarla, daughter of Munni Devi on whose statement FIR Ex.PW-1/A was recorded. She states that on March 16, 2011, when she came to her house at about 2.30 PM for taking lunch, she saw Leelawati and Manoj drag her mother to their

room from the courtyard. Manoj was having knife used for cutting vegetables and on seeing the knife, she became perturbed. Manoj gave knife blows continuously on the face, neck and other parts of the body on her mother till the time her mother fell down on the ground unconscious. Leelawati is stated to have told Manoj "*IS BUDIYA KA KAAM TAMAAM KAR DO YE ROJANA HUME TANG KARTI HAI*". As per PW-1, the dispute between the two families was on throwing of waste, articles and vegetables peelings in front of the room of the deceased, due to which, quarrel had taken place two days prior to the incident. PW-1 raised alarm and the neighbours reached her house but before that the appellants ran away. Thus they were chased and caught by the neighbours.

5. PW-1 admits having neither informed the PCR nor accompanying her mother to the hospital as she was perturbed. PCR call was made by PW-6 Krishan Singh, the neighbour, who heard the noise in the Gali and came outside, where he found Munni Devi in a pool of blood and daughter of Munni Devi i.e. PW-1 weeping. He informed the Police and called out the neighbour PW-7 Babu Ram and both of them chased the appellants, who were running. While running, the appellant Manoj was catching hold of his wife from the one hand and in the other arm he was carrying his little daughter. They were caught near Shivram bus stand at a distance of 500 yards from the spot. PW-7 Babu Ram has also supported this version of Krishan Singh. He stated that on March 16, 2011 at about 2.30 to 2.45 PM Krishan Singh called him and when he went to the house of Munni Devi, their neighbour, she was in a pool of blood and he along with Krishan Singh chased the appellants and caught them at Shivram Park. The PCR took Munni Devi to the hospital.

6. The presence of PW-1 at her home at the time of incident is supported by her employer. PW-9, her employer, stated that he was running a factory of manufacturing lamp sets at C-48, Gali No.2, Shivram Park, which has eight employees including PW-1. He also stated that Sarla used to go for lunch to her house and on that day she had left the factory during lunch time at 1.30 PM but did not came back. According to him, the distance between the factory and the house of Sarla was about 2 minutes by walk. PW-1 has further explained this fact that on the fateful day she had reached her house for lunch at about 2.30 PM, as she had some work in the market. She saw both the appellants dragging her mother from a distance of about 4/5 feet. She stated that though she was perturbed, she raised the alarm and on hearing the cries, neighbour Krishan Singh reached on the spot. She did not intervene as she was afraid of the appellant, who was blind from one eye. The presence of PW-1 on the spot was natural and her testimony, which is corroborated by the other witnesses and the medical evidence on record, cannot be doubted.

7. As per the post-mortem report Ex.PW-17/A, the deceased had received wounds on the neck, back of head above posterior hairline, left ear lobe, forehead, right side of head, right eye-brow and inner side and left index finger, which were stitched. As per the MLC Ex.PW-16/A, the deceased had incised wounds on the front of the neck, infra-orbital region and right side of the forehead. The deceased was admitted in the hospital on March 16, 2011 at 3.30 PM, however she passed away at 5.25 PM on the same day. The cause of death was opined to be due to shock and hemorrhage consequent upon injury No.1, which was caused by sharp object and was sufficient to cause death in the ordinary course of nature, injury

No.1 in the post-mortem report being the injury on the left side of the neck.

8. Before adverting to the appellant Manoj, it would be appropriate to deal with the role of appellant Leelawati. As per the testimony of PW-1, she saw Leelawati and Manoj drag her mother to their room. Thereafter, Manoj by a vegetable cutting knife gave blows on the face, neck and head of the deceased and thereafter exhortation is attributed to Leelawati. It is not disputed that Leelawati is totally blind and there is no evidence available that while dragging the deceased with her husband, Leelawati shared the common intention to murder the deceased. Further, no injury is attributed to have been caused by Leelawati. Admittedly, being 100% blind, she was not in a position to see that her husband was holding a knife or where he was causing injuries to Munni Devi. Exhortation attributed to Leelawati is after appellant Manoj had inflicted knife blows to the deceased. It is also not the case of PW-1 that while Manoj was giving the blows, Leelawati committed any overt act. Thus, from the statement of the witness PW-1, no common intention can be attributed to Leelawati for inflicting injuries on the deceased.

9. Concerning appellant Manoj, proceeding to analyze the evidence keeping in view the fact that he is 100% visually disabled, we factor in the fact that Manoj is earning his livelihood as a masseur and this would mean that by his sense of touch he would overcome the handicap of the loss of vision and would be able, by touching the body of a person, to be able to direct his hands towards a part of the body which he intended to touch or strike. All injuries on the person of the deceased are directed towards the eyes. It assumes importance that Manoj and Leelawati are blind. The possibility of the deceased taunting the two with reference to their handicap

infuriating Manoj to seek revenge and make their tormentor i.e. the deceased similarly handicapped strongly emerges from the manner in which Manoj has caused injuries, all directed towards the eyes of the deceased. The nature of the weapon used and the part of the body where blows are inflicted are a relevant factor to infer the intention of an accused. The totality of the circumstances would bring out that the intention of Manoj was to inflict such injuries directed towards the eyes of the deceased so as to blind her. He has used a kitchen knife, blade whereof is about 3 inches. Where injuries are followed by death, to answer the question as to what offence has been committed, it is not to be concluded by any backward reasoning as to presumable intention or knowledge from the mere fact that death is caused, what has to be seen is what degree of injury the accused actually intended and what he knew as to the probable consequences of such injury. In our opinion intention of voluntarily causing grievous hurt by a dangerous weapon and no more can be attributed to him.

10. Consequently, CRL.A.654/2014 is allowed and the impugned judgment on conviction and order on sentence are set aside. As regards CRL.A.82/2014, the conviction of the appellant Manoj is altered to one under Section 326 IPC. As regards the sentence, Manoj has been in custody now for nearly three and a half years. Though the sentence of Leelawati was suspended by this Court on May 30, 2014, however she has not furnished the bond because on being released from jail she has no body to look after her and her little daughter. The appellant Manoj prior to the incident was earning the livelihood for the family. In view of the special circumstances we intend to release the appellant Manoj on the period already undergone, which is nearly three and a half years so that Leelawati, who is a blind, and

their four year old daughter are not stranded. Thus, the sentence of Manoj is modified to the period already undergone.

11. Copy of the order be sent to the Superintendent Tihar Jail, who would release the appellants from custody forthwith, if not required in any other case. Trial Court Record be sent back.

Crl.M.B.165/2014 (suspension of sentence) in Crl.A.82/2014

In view of the order passed in the main appeal, the application is dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 15, 2014
'ga'