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

+ **CRL.A. 25/2018**

KRISHAN KUMAR @ KISHAN GUPTA Appellant

Through: Mr. Pramod Kumar Dubey, DHCLSC
with Mr. Nishaan K. Mattoo and
Mr. Saurabh Kumar, Advocates.

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State with SI Narender, PS
Kanjhawala.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

ORDER

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12.03.2018

1. This appeal is directed against the judgment dated 29th July 2017 passed by the learned Additional Sessions Judge-04 (North-West District), Rohini Courts, Delhi in Sessions Case No.51958/2016 arising out of FIR No.275/2013 registered at Police Station ('PS') Kanjhawala, convicting the Appellant for the offence of murdering his own father, punishable under Section 302 IPC and the order on sentence dated 22nd August 2017 whereby he was sentenced to life imprisonment with fine of Rs.3,000/- and, in default of payment of fine, to undergo simple imprisonment for one month.

2. As per the amended charge dated 19th March 2014, the Appellant was charged with committing the aforementioned murder on 12th September 2013, at about 11.00 pm, at his own house in Krishan Vihar,

Mubarakpur Dabas, Delhi by giving repeated blows of *kassi (fawra)* on the neck of his father, thereby committing the aforementioned offence.

3. The prosecution's case is based on the eye-witness testimony of the Appellant's mother, Gayatri Devi (PW-2). As per her deposition, the deceased was working as a *kabadi* (junk dealer) and together they had three daughters – all of whom were married and residing in their respective marital homes – and one son, the Appellant. The Appellant is stated to have been 32 years old at the time and used to reside with his parents. He was unmarried and unemployed and would often pester his father for money.

4. PW-2 stated that at around 11.00 pm on 12th September 2013, as they were retiring for the day after having dinner, the Appellant demanded money from the deceased to which the deceased replied, "*mere pass teri sharab key liye paisay nahi hai*". The Appellant is stated to have become furious and said, "*buddhey mai aaj tera hi kaam tamam karta hun*" and thereafter brought down the *fawra* from the room and attacked the deceased on the back of the neck.

5. The post-mortem (Ex.PW-3/A) report of the deceased states, upon external examination that a "chop wound 31 x 9 cm deep upto vertebral column" was seen over "front of neck & both sides lying at the level of voice-box". Such was the impact of the blow that it left no chance for the deceased to survive. He died an instantaneous death in front of his wife (PW-2).

6. Suresh Kumar's (PW-15) residence was located on Gali No.5, which was

the *gali* immediately behind Gali No.2 on which the house of the deceased and the Appellant was located. On hearing the commotion, PW-15 rushed to Gali No.2 and saw the Appellant with a *fawra* in his hand and subsequently throwing the same into a vacant plot of land adjacent to his house. PW-15 further stated that he and PW-2 caught hold of the Appellant. PW-2 informed PW-15 that the Appellant had killed her husband (the deceased). PW-15, who was a Constable with the Delhi Police, then called the Police Control Room ('PCR') from his mobile number. The PCR van with the local police immediately reached there.

7. Sub-Inspector ('SI') Rahul Kumar (PW-21) has spoken about what transpired after the police reached the spot. He called the Crime Team to the spot. After the preparation of the *tehrir* based on the statement of PW-2 recorded by PW-21, the FIR was got registered at around 2.00 am.

8. After the arrest of the Appellant at the spot itself, the *fawra* was got recovered on his pointing out from the vacant plot adjacent to his house and a white shirt having light blue checks and trousers of almond colour having blood stains and the blood stained trousers were asked to be taken off by the Appellant and handed over to the police. These were put into a *pullanda* and sealed.

9. The bloodstains on the trousers worn by the Appellant were found to match the blood group of the deceased in terms of the FSL report (Ex.PW-22/A&B) dated 26th June 2014.

10. This turned out to be a fairly straightforward case. The eye-witness

testimony of PW-2 was not successfully shaken by the defence. It was corroborated on the essential particulars as to what transpired immediately after the incident by the deposition of PW-15. Further, the medical and forensic evidence also fully corroborated the eye-witness testimony.

11. Consequently, the trial Court had no difficulty in concluding that the Appellant was guilty of having committed the offence of murder punishable under Section 302 IPC.

12. Learned counsel for the Appellant, while not disputing the presence of the Appellant at the spot, tried to suggest that PW-2 had not actually witnessed the occurrence and came there only after the father was already lying in an injured condition. Secondly, it was submitted that no chance prints were lifted from the *fawra* which was recovered at the instance of the Appellant.

13. Thirdly, it is pointed out that there was a delay in the FIR being sent to the learned Magistrate. Although registered at 2 am on 13th September 2013, the FIR was sent to the learned Magistrate only on 17th September 2013.

14. As far as the first submission is concerned, the Court has very carefully examined the entire deposition of PW-2, including her cross-examination and is unable to agree that she was not in fact an eye-witness to the occurrence. She has spoken clearly, cogently and consistently and it is indeed extremely difficult that a mother had to bear witness to her own son murdering her husband for no justifiable reason.

15. The Court is satisfied that PW-2 has spoken the truth and that her deposition clearly proves the guilt of the Appellant for the offence committed.

16. The Court is also unable to accept the contention of non-recovery of chance prints from the *fawra* which pales into insignificance since the FSL report established that the blood stains on the trousers worn by the Appellant matched the blood group of the deceased.

17. The delay in registering the FIR and the delay in sending the FIR to the learned Magistrate could have been avoided. In the facts and circumstances of the present case, however, where the eye-witness has spoken so clearly about what transpired, the Court is unable to conclude that this delay has seriously prejudiced the case of the Appellant.

18. It was then submitted that the Court could explore whether the benefit of Sections 85 and 86 of IPC could be extended to the Appellant. This submission was made in the context that the Appellant was an alcoholic and it was on account of his being refused money by the father that he got enraged. Therefore, it was argued that he was not in his senses when he committed the offence. The MLC of the Appellant does not give any indication of his being intoxicated at the time of the incident. Therefore, this submission too is to no avail.

19. Lastly, it was submitted that the crime was committed due to grave and sudden provocation and, therefore, the Appellant should be given the benefit of Section 304 (part-I or part-II) IPC, i.e. viewing this as an offence of

culpable homicide not amounting to murder. In the present case, there was no provocation whatsoever from the father. He was merely saying that he cannot give money for the Appellant to consume alcohol.

20. The reaction of the Appellant was not only hugely disproportionate to that statement but the injury was so severe and on the most vital part of the body that the intention to commit the murder of the deceased is apparent. The manner in which the offence was committed did not pass the test of proportionality and the brutality with which the blows were inflicted on a vulnerable person made the act highly unusual. Consequently, the Court does not find the present case to be an appropriate one for granting the benefit of Section 304 IPC to the Appellant.

21. The Court is unable to discern any legal infirmity in the impugned judgment and the order on sentence of the trial Court.

22. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 12, 2018

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