

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

% *Judgment Reserved on : April 01, 2019*
Judgment Delivered on : April 22, 2019

+ **CRL.A. 547/2017**

RAHUL Appellant
Represented by: Mr.Sumant De and Mr.Vivek
Agarwal , Advocates

versus

STATE NCT OF DELHI Respondent
Represented by: Ms.Meenakshi Chauhan, APP for the
State with SI Pradeep Kumar, PS
Model Town

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Rahul challenges the impugned judgment dated 1st March, 2017 convicting him for the offence punishable under Section 304 Part-II IPC in FIR No. 274/2016 registered at PS Model Town and the order on sentence dated 6th March, 2017 directing him to undergo rigorous imprisonment for a period of five years.

2. Assailing the conviction, learned counsel for the appellant contends that as per the testimony of the various eye-witnesses, the deceased Arjun gave a kick blow to the appellant first which resulted in a quarrel therefore no mens rea has been established on part of the appellant. He further contends that Appellant was not the aggressor and only one blow has been attributed to the him which is not sufficient to cause multiple injuries. Reliance is placed upon the decision of the Delhi High Court reported as

2011 (1) JJC 529 Mohd. Sharif v. State.

3. Learned APP for the State on the other hand contends that there are multiple injuries on the body of the deceased as per the MLC and the injuries have been opined to be sufficient to cause death in the ordinary course of nature.

4. Process of law was set into motion on 5th May 2016 at about 12:50 A.M. when information was received regarding Arjun being admitted in Hindu Rao Hospital by his wife Baby and the doctor declaring him brought dead. Aforesaid information was recorded vide DD No.4B (Ex.PW-13/A) and was assigned to ASI Krishan Chand. He along with Ct. Trilok went to Hindu Rao Hospital. Another information was also received at about 1:42 A.M. regarding the murder of the caller's son. Aforesaid information was recorded vide DD No.5A (Ex.PW-13/B) and was assigned to Inspector Rajinder Khatri. He along with Ct. Mandeep went to Hindu Rao Hospital where he met ASI Krishan Chand who handed over the MLC of the deceased and the eyewitness to him. He recorded the statement of the eyewitness Deepak who stated that he worked as a guard at Vidhyanjali Play School CC Colony Delhi. On 4th May 2016 at around 9:30 P.M he had gone with his friend Manish to Phool Wala Park, Mahavir Vatika, SBI Colony, Delhi. On reaching there they saw Rahul S/o Sh. Pappu, Ajay, Rahul S/o Rakesh, Chandan and Arjun sitting in the park. Arjun was in an intoxicated state. Rahul S/o Pappu, Ajay, Rahul S/o Rakesh and Chandan were sitting in the park and were smoking ganja so Manish and he also started smoking ganja with them. At around 9:45 P.M., Rahul S/o Sodan (Appellant herein) who was brother in law of Arjun also came to the park to smoke ganja. Rahul S/o Sodan, started snatching the pudiya of Ganja from Rahul S/o

Rakesh so Arjun told him not to snatch the pudiya of Ganja from Rahul S/o Rakesh. On this pretext Arjun and Rahul S/o Sodan started abusing each other and Arjun gave a kick blow to his brother in law Rahul S/o Sodan and then both of them started hitting each other. When they tried to intervene and stop the fight Rahul S/o Sodan got angry and said *“Tum sab door ho jayo main aaj isse jaan se maarkar hi dum lunga, Jo isse pehle bhi mere saath jhagda karta rehta hai, aaj kuch bhi ho jaaye main isse nahi chodunga.”* While saying this he started kicking and punching Arjun recklessly. In a short while Arjun became unconscious and Rahul S/o Sodan after seeing him unconscious ran away from the place of incident. During this time Arjun’s wife Baby heard the commotion and she came inside the park and saw Arjun in an unconscious state. Baby, Manish and Deepak picked up Arjun from the park and took him to Hindu Rao Hospital in a TSR where he was admitted. The doctor checked Arjun and told them that Arjun had died. Rahul S/o Sodan got into a fight with Arjun with the intention of killing him. On the basis of the aforesaid statement (Ex.PW-2/A), FIR No. 274/2016 (Ex.PW-13/C) was registered for offence punishable under Section 302 IPC at PS Model Town

5. Thereafter, Insp. Rajender Khatri along with ASI Krishan and the complainant Deepak reached at the place of incident at Phool Wala Park, Mahavir Vatika, Model Town where he inspected the spot and prepared the site plan vide Ex.PW-2/B. He went to the house of the deceased, where he met his wife Baby and recorded her statement. Thereafter, he went back to the spot where the crime team headed by ASI Rajbir reached the spot. Ct. Vikas took photographs of the place of occurrence from different angles vide Ex.PW-9/A-1 to A-10. ASI Rajbir gave the crime team report vide

Ex.PW 15/A.

6. Thereafter, he went to Hindu Rao Hospital alongwith Ct. Mandeep and prepared the inquest papers vide Ex.PW-22/B and moved an application for post mortem vide Ex.PW-22/D. The post-mortem report (Ex.PW-18/A) and one wooden box containing viscera and two envelopes containing blood gauze and clothes of deceased along with three sample seals of FM HRH were seized vide seizure memo Ex.PW-21/1, and the case property was deposited with MHC(M).

7. On 08th May 2016, the Appellant was produced in the police station by his father Sodan Singh and was arrested vide Ex.PW-21/A. His personal search was conducted vide Ex.PW-21/B and disclosure statement was recorded vide Ex.PW-21/C. He pointed out the place of occurrence vide pointing out memo Ex.PW-21/D.

8. On 11th July 2016, Insp. Rajender Khatri moved an application vide Ex.PW-22/F to autopsy surgeon enquiring whether the injury caused to the deceased was sufficient to cause death in ordinary course of nature.

9. After completion of investigation, charge sheet was filed. Vide order dated 24th November 2016, charge was framed for the offence punishable under section 302 IPC against Rahul.

10. Deepak (PW-2), complainant deposed in sync with his statement made to the police. He additionally stated that when Baby, Manish and he took Arjun outside the park, one lady doctor was just outside the park. That lady doctor examined Arjun and told them that *“isko kuch nahi hua hai, isko daru chad gayi hai, isse ghar le jao, dahi nimbu khila do theek ho jaayega”*. Arjun's wife Baby did not agree with the doctor and hence they hired a TSR and took Arjun to Hindu Rao Hospital.

11. Manish (PW-3), eye-witness corroborated the testimony of the complainant Deepak.

12. Rahul S/o Rakesh (PW-4) in his testimony stated that on 4th May 2016, he along with Rahul S/o Pappu and Ajay were sitting in the park and he had a pudiya of ganja in his pocket. At about 9:30 P.M., Arjun came to the park in an intoxicated state and started abusing them. Manish and Deepak also reached the park at that time and 4-5 minutes later Rahul S/o Sodan also came there. Deepak snatched the pudiya of ganja from him. Rahul S/o Sodan asked him not to return the pudiya of ganja to him due to which Arjun got angry with him and gave a kick blow to him due to which they started quarrelling with each other. Manish and Deepak tried to intervene in the fight due to which Arjun gave a blow to Deepak. Manish asked him to go get water and while he was on his way to get water his mother met him and took him home. At around 1:00 A.M. Arjun's relatives came to his house and informed him that Arjun had died.

13. Rahul S/o Pappu (PW-5) corroborated the testimony of the complainant Deepak. He additionally stated that when the fight broke out between Arjun and Rahul S/o Sodan, Ajay and he went to the house of Rahul S/o Sodan to inform them that their son was quarrelling in the park. While they were returning to the park with Rahul S/o Sodan's mother, they saw Rahul S/o Sodan running back from the park.

14. Ajay (PW-6) corroborated the testimony of the complainant Deepak.

15. Jagdish (PW-7), father of the deceased stated that on 5th May 2016 at about 1:00 A.M. he reached Hindu Rao Hospital on receipt of information that his son Arjun was removed to the hospital. He made a call to the police at 100 number. He stated that the body of his son was handed over to him

vide Ex.PW-7/B. He further stated that two months before the date of incident Rahul S/o Sodan had threatened to kill Arjun. In his cross-examination he stated that he did not lodge any complaint to the police or any authority with regard to the threat given to his son Arjun.

16. Baby (PW-11), wife of the deceased in her testimony stated that on 4th May 2016 at about 9:00 P.M. she and her husband were going to show her ultrasound report to the doctor and on their way to the doctor, they met Rahul S/o Sodan, Deepak, Manish, Ajay and Rahul S/o Pappu who took him along with them. While she was returning from the doctor, she heard a noise coming from Mahavir Vatika. On reaching there she saw all the boys fighting with her husband. She stated that her brother-in-law Sonu reached the park by then and they took Arjun to Hindu Rao Hospital. The doctor examined Arjun and declared him dead. She sent Sonu to her mother in law's house after which Arjun's parents came to the hospital. After arriving at the hospital her father in law sent her back home.

17. Dr. Virender Gupta (PW-1), SR Skin Department, Hindu Rao Hospital stated that on 4th May 2016 he was posted at Hindu Rao Hospital as CMO. At around 11:05 P.M., Arjun was brought to the hospital by his wife Baby. On examination he noted that Arjun was deeply comatose, motionless, pulse was not recordable, blood pressure not palpable, ECG showed flat line and no cardio-respiratory activity was noted. Bilateral pupils were fixed and dilated. He declared the patient brought dead. The body was packed and sent to the mortuary for post mortem. He prepared MLC vide Ex.PW-1/A.

18. Dr. Neha Gupta (PW-18), Department of Forensic Medicine, Hindu Rao Hospital, Delhi stated that on 5th May 2016, she conducted the post-

mortem on the body of the deceased. On examination she found the following external antemortem injuries:

- i. Reddish abrasion 4*2 cm present on medical aspect of right great toe.*
- ii. Reddish abrasion 1*0.5 cm present on left hand, 3rd knuckle*
- iii. Reddish abrasion 2*0.8 cm present on medical aspect of left foot, 13cm proximal to tip of great toe.*
- iv. Reddish Contusion 2*2 cm present on vesicular area of lower lip in midline.*
- v. Bluish Contusion with swelling, 5*4 cm present over left side face, 1 cm lateral to outer canthus of left eye at its level.*
- vi. Bluish Contusion with swelling, 5*4 cm present over left side face, 1 cm present over left side face, 1 cm lateral to outer canthus of left eye at its level.*
- vii. Bluish contusion 1*1 cm present over medial canthus of left eye.*
- viii. Reddish Scratch Abrasion 6*0.2 cm present obliquely on right side of neck; lower medial bend is 2 cm from Midline.*

19. Dr. Neha Gupta further stated that extravasation of blood was present over left temporal region with temporalis muscle hemorrhage. Subarachnoid hemorrhage was present over bilateral parieto temporal lobe, base of bilateral fronto temporal lobe and over cerebellum. She prepared the post-mortem report (Ex.PW-18/A) and opined the cause of death as shock as a result of ante mortem injury to head produced by blunt force impact. She further opined that the internal injury sustained by the deceased was sufficient to cause death in ordinary course of nature and that internal injury

(v) and (vi) cannot be sustained by a fall.

20. Dr. Prem Pal Singh (PW-16), Senior Scientific Officer (Chemistry), FSL, Rohini, Delhi stated that on 26th May 2016, he received a sealed box containing the viscera of the deceased. On the examination of the exhibits Ex. 1A, Ex. 1B were found to contain ethyl alcohol and Ex. 1C was found to contain ethyl alcohol 161.5 mg/100 ml of blood. The report was exhibited as Ex.PW-16/A.

21. Rahul in his statement recorded under Section 313 Cr.P.C. stated that when he reached the spot on the night of 4th May 2016, he saw that his brother-in-law was being harassed and beaten by Deepak, Ajay, Rahul S/o Pappu, Rahul S/o Rakesh and Manish. When he tried to stop them from hitting Arjun, they overpowered him and thereafter ran home to seek help. He had good relations with his brother-in-law. He stated that Deepak, Manish, Rahul S/o Rakesh, Rahul S/o Pappu and Ajay were drug addicts and his brother-in-law used to consume liquor and ganja with them on regular basis which resulted in some dispute and they had conspired to teach his brother-in-law a lesson.

22. Baby, wife of the deceased is the most neutral witness who has stated that besides Rahul S/o Sodan, Deepak, Manish, Ajay and Rahul S/o Pappu took her husband to the park when she was going to the doctor along with Arjun her deceased husband, thereby belying that when Deepak reached the park all others including Arjun was there, however his version that Arjun was in an intoxicated condition is corroborated by the FSL Report. From the statement of the witnesses it is apparent that the scuffle started on snatching of puidya containing charas. The external injuries on the deceased are also commensurate to a scuffle having ensued. Further the conduct of

Rahul, the appellant fleeing from the spot despite his mother-in-law Arjun getting injured is also commensurate to his guilty conduct which is spoken of by all the witnesses.

23. The appeal is disposed of upholding the conviction for offence punishable under Section 304 Part-III IPC however the sentence of the appellant is modified to the period undergone which is nearly three and a half years including remissions considering the circumstances in which the offence was conducted.

24. Copy of the judgment be sent to Superintendent Mandoli Jail for updataion of records and to release the appellant forthwith if not required in any other case.

25. TCR be returned.

(MUKTA GUPTA)
JUDGE

APRIL 22, 2019

vj