

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.02.2020

+ **CRL.A. 211/2016**

CHHOTY LAL@CHOTU

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr Sumeet Verma and Mr Mahinder Pratap Singh, Advocates with appellant from custody.

For the Respondent: Mr Amit Gupta, APP for State with Insp. Harendra Singh, PS Ashok Vihar.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning the judgment dated 02.11.2015 passed by ASJ (North-West), Rohini Courts whereby the appellant was convicted for the offence under Section 304 (Part-II) of the Indian Penal Code, 1860 (IPC). The appellant further impugns the order on sentence dated 05.11.2015, whereby he was sentenced to undergo ten years of rigorous imprisonment along with a fine of ₹30,000/- and in default of payment, to undergo three months of simple imprisonment.

2. The petitioner was prosecuted pursuant to FIR no. 126/2014 under Section 308 of the IPC, registered with PS Ashok Vihar. The case of the prosecution is that on 01.03.2014, at about 9:30 PM, the complainant had returned to her *jhuggi* after buying vegetables (*muli*) from the nearby market. On her return, she met Chotey Lal (the appellant/accused) and he demanded *muli* (radish) from her. She refused to give him the vegetable; consequently, the appellant started abusing her. In the meantime, her husband (Kishan) came out of the *jhuggi* and asked the appellant why he was abusing his wife. The appellant got annoyed and he picked up *kassi* (*phawda*), which was lying there and threatened to kill the complainant's husband – he shouted “*saale aaj main tera kaam tamaam kar deta hu*”. He followed through his threat and delivered blows on parts of his body with the *phawda*. As a result, the complainant's husband fell down on the ground. The complainant raised an alarm; however, the appellant ran away from the spot. Thereafter, someone dialed 100 and consequently, PCR came and took the complainant's husband to the hospital. The appellant was initially charged under Section 308 of the IPC. On 03.03.2014, it was informed that complainant's husband has passed away as a result of the injuries sustained by him. Accordingly, Section 302 of the IPC was added to the charges against the appellant.

3. During the course of trial, the accused (the appellant) recorded his statement under Section 313 of the CrPC in which he denied the charges against him and pleaded not guilty. A total of 29 witnesses were

examined by the prosecution and one witness (DW-1) was examined on behalf of the defence.

4. After examining the evidence as obtaining in the case, the Trial Court held that the time and place of the incident and the presence of the accused at the crime scene stood proved and there was no evidence contrary to the same. It was further proved that there was no instigation on part of the deceased or PW-26 nor did they carry any weapon with them; however, the accused had used *kassi* on the date of incident and the same was recovered at the instance of the accused. Therefore, the injuries sustained by the deceased were attributable to the blows delivered by the accused.

5. The Trial Court held that there was no enmity between the deceased and the accused and the said incident took place in the heat of the moment. Further, there was no pre-meditation on the part of the accused. Thus, it was held that there was no intention on the part of the accused to kill or cause such bodily injury as is likely to cause death; however, the accused had knowledge that such blows could probably result in fatal injuries. In the circumstances, the Trial Court was of the opinion that the accused could not be held guilty of the offence punishable under Section 302 of the IPC but the prosecution had established beyond reasonable doubt that the petitioner was guilty of culpable homicide punishable under Section 304 (Part-II) of the IPC. Accordingly, the accused was convicted for the offence under Section 304 (Part-II) of the IPC.

Evidence

6. Before proceeding further, it is relevant to briefly examine the evidence led by various witnesses.

7. Smt Vineeta Rani, the wife of the deceased Kishan and the eye-witness to the said incident, was examined as PW-26. She deposed that on the day of incident at about 9 pm, she was coming back after buying vegetables from the market. When she reached her *jhuggi*, accused Chhotu met her and asked for radish (*muli*). She refused to give the same and consequently, he started abusing her. At that time, her husband Kishan came out from the *jhuggi* and asked the accused as to why he was abusing his wife. On being asked, the accused became aggressive and lifted the *kassi* (*phawda*) and hit the same on the head of Kishan by saying that “*aaj tera murder karunga*”. The accused gave a *kassi* blow on the part of the body of Kishan and as a result, he fell down on the ground. She deposed that she started shouting and thereafter, the accused ran away from the spot. Someone made a call to the police and a police van arrived at the spot after a while.

8. Sh Pratap, who is the brother of Kishan (the deceased) and used to reside in the above *jhuggi* cluster, was examined as PW-24. He deposed that on 01.03.2014, the wife of Kishan (PW-26) returned after purchasing vegetables. The accused had consumed alcohol and asked her to give radish (*muli*), on which she refused. The appellant/accused started abusing her (Sh Pratap’s *Bhabhi*); as a result, Kishan objected to the same and thereafter, the accused picked up a *kassi/phawra* lying

near the spot and hit on the head of Kishan, who then fell down. After a while, PCR came on the spot and took Kishan to the hospital, where he succumbed to his injuries and expired.

9. Ct Mahesh was examined as PW-12. In his cross-examination, he deposed that he along with the IO had reached BJRM hospital at about 12 midnight on 01.03.2014 and thereafter, they had reached LNJP hospital where the statement of Vinita Rani (PW-26) was recorded.

10. Ct. Dinesh was examined as PW-13 and in his cross-examination he deposed that he reached the incident spot at about 10:15-10:20 pm. Thereafter, the crime team reached the spot along with HC Mahavir at about 2 am and remained there for about 20 mins. It took them about one and a half hour in collecting the exhibits from the spot.

11. Dr. Anju Rani, who was working as a Senior Resident in Department of Forensic Medicine, MAMC, New Delhi was examined as PW-15. She deposed that on 03.03.2014, she was on duty and conducted the postmortem of the dead body of Kishan and prepared a postmortem report (Ex.PW-15/A). On examination, several injuries were found on the body such as boggy swelling over occipital region of scalp in midline (injury no.1); two contused lacerated wounds parallel to each other present over left parietal region of scalp (injury no.2); and multiple contused abrasion present over left shoulder. Moreover, some internal injuries were also found in the occipital region of scalp diffusely including a linear fracture in the right temporal bone over ear canal opening. She deposed that the death of Kishan was caused due to

cranio cerebral damage caused by injury nos. 1 and 2, which are sufficient to cause death individually as well as collectively in the ordinary course of nature. She further deposed that the injuries were fresh and caused by blunt force. Further, they were consistent with being produced with an assault.

12. CH Mahavir, who was posted at PS Ashok Vihar on the date of incident, was examined as PW-21. He deposed that on 01.03.2014, he alongwith Ct Dinesh reached the incident spot and found that the injured had already been taken to the hospital by the PCR. Thereafter, he received DD No. 81B (Ex.PW8/B) regarding admission of injured Kishan at BJRM hospital and consequently, he went to that hospital and collected the MLC of the injure Kishan. There he was informed that the injured had been taken to the LNJP hospital. Thereafter, at went back to the incident spot and called the crime team, which reached there between 2 am-2:20 am. It was further deposed that on information as received through the secret informer, they apprehended and arrested the accused on 02.03.2014 from inside the *jhuggi* of the secret informer. The personal search of the accused was conducted and his disclosure statement was recorded. Further, the weapon of offence (phawda) was recovered from inside the *jhuggi*, which was converted into parcel and sealed with the seal of RS.

13. The accused Chhote Lal's statement was recorded under section 313 of the CrPC and the said process was done is a question-answer format. The accused was not able to advance any concrete reply and his

answer to most of the questions was that he did not know about the same.

14. Lal Diwan, who is a *raj mistri* by profession and was working near the crime scene on the day on incident, was examined as DW-1. He deposed that the accused used to work with him as a helper and on 01.03.2014, after finishing their work at 6 pm, they went to market for purchasing ration and whiskey. Thereafter, they reached the *jhuggi* of the accused at about 9 pm. There he noticed that Kishan Lal, his brother and his wife were quarrelling with each other. He further deposed that he and the accused consumed liquor till 11 pm and thereafter, he went to his *jhuggi* to sleep and woke up at 7 am next morning.

Reasons and Conclusion

15. The testimony of PW26 (the wife of the deceased) is unambiguous. She was consistent in her description of the incident. She had testified that she was coming back from Shani Bazar at about 09:00 p.m. after purchasing radish. The appellant had asked her for some radish. She had refused and incensed by the same, the appellant had started abusing her. Her husband (since deceased) had intervened. This made the appellant more aggressive and he lifted the *kassi* (Phawda) and hit the same on the head of the deceased. She also testified that he had stated “*aaj tera murder kar dunga*”. The appellant had also given blows on the other part of the body of her husband and consequently, he had fallen down on the ground.

16. The Trial Court had rightly held that the appellant did not have any intention to commit the offence but he had full knowledge that striking a blow on the head of Kishan (deceased) could result in a fatal injury.

17. The Trial Court was not persuaded to accept the defence as raised by the appellant. The statement of the appellant was recorded under Section 313 of the Cr.P.C. and to most of the questions, he responded by saying that he did not know. He examined one Sh. Lal Dewan, defence witness (DW-1). DW-1 deposed that he was working near the scene of the crime and the appellant used to work as a helper. He stated that on the date of the incident, he along with the appellant had left his work place at 06:00 p.m. and had gone to the market for purchasing ration and whisky. He stated that he reached the *jhuggi* of the appellant at about 09:00 pm and noticed that Kishan (deceased), his wife and the brother of the deceased (Pratap) were quarrelling with each-other. He stated that he along with the appellant consumed liquor till 11:00 p.m. and thereafter, he went to sleep in his *jhuggi* and woke up at 07:00 a.m. next morning.

18. The Trial Court observed that the testimony of DW1 established that the accused was at the place of the incident at about 09:00 p.m. The remaining testimony was rightly disbelieved, as it was silent as to how and who had delivered the blows to the deceased. The Court also noticed that it was contrary to the suggestion made to PW24 (the brother of the deceased – Pratap) by the counsel for the accused. In his cross-

examination, it was suggested to him that he was not present at the spot at the relevant time.

19. In view of the evidence obtaining in this case, this Court finds no infirmity with the decision of the Trial Court in convicting the appellant for an offence punishable under Section 304 (Part II) of the IPC. The appellant is clearly guilty of such an offence, as he had the knowledge that his action was likely to cause death.

20. By an order dated 05.11.2015, the Trial Court sentenced the appellant to undergo a rigorous imprisonment for a period of ten years along with a fine of ₹30,000/-. This was the maximum sentence that could be awarded under Section 304 (Part II) of the IPC. It is noticed that the appellant was barely 20 to 21 years of age at the material time. This is considering that his nominal roll, as on 14.01.2020, notes his age as 27 years. Further, the appellant has no criminal antecedents. It is apparent that the incident had happened in a fit of rage on a very petty issue.

21. Considering the above, this Court is of the view that it is not apposite to impose the maximum sentence. The nominal roll as on 14.01.2020 indicates that the appellant had already undergone five years, ten months and twelve days of actual custody and during the period he has earned remission of one year, six months and seventeen days. As on 14.01.2020, the appellant was required to undergo two years, seven months and one day of further custody. Thus, the appellant has served almost seven and a half years of his sentence.

22. In view of the above, this Court is of the view that the sentence of the appellant be reduced to the period already served. It is so directed.

23. The petitioner would be required to pay the fine as imposed and undergo a further period of three months on failure to do so.

FEBRUARY 05, 2020
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VIBHU BAKHRU, J