

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**+ CRL.A. 528/2006**

Reserved on: 29.09.2015  
Date of decision: 01.10.2015

MANISH ..... Appellant

Through: Mr.G.S. Sharma, Adv.

versus

STATE ..... Respondent

Through: Ms. Alpana Pandey, APP for the State  
SI Pramod Anand, P.S. D.B.Gupta  
Road.

**CORAM:**

**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ASHUTOSH KUMAR, J.**

1. Manish(appellant) stands convicted for murder of Appu Kumar under Section 304 Part-II with the aid of Section 34 of the Indian Penal Code (for short 'IPC') and has been sentenced to undergo Rigorous Imprisonment for five years, fine of Rs.2,000/- and in default of payment of fine, Rigorous Imprisonment for a period of two months, by the judgment and order of conviction dated 31.5.2006/2.6.2006 passed by Additional Sessions Judge, Delhi in connection with F.I.R. No.206/2003 (P.S. D.B.G. Road); Sessions Case No.104/2005.

2. Virender Kumar (PW-1), who is the brother of deceased, has alleged that his brother Appu Kumar did not come home till about 11:50 p.m. on 8.7.2003. In the mid night, he heard the cry of his

brother in the street. On coming out, he saw that Deepak and Rohit who were his neighbours, had caught hold of his brother and were abusing him. Manish (appellant) was assaulting his brother by means of legs and fists. When Virender Kumar (PW-1) went to the rescue of his brother, the accused persons including the appellant gave a push to his brother. His brother fell down on a wooden cart and was injured in his head. Miscreant ran away from the spot.

3. Virender Kumar (PW-1) has further stated that he brought his brother to RML Hospital, where the Doctor declared him “brought dead”. The police had come to the place of occurrence where he gave his statement (Ex.PW-1/A). PW-1 identified the dead body of his brother and also received the body of his brother after post mortem examination.

4. Dr.Anil Kumar (PW-4) conducted the post mortem examination on the body of the deceased. Following external injuries were found on the person of the deceased:-

(i) Abrasion 1x1 cm over the right side of forehead, 2x5 c.m. above the right eyebrow.

(ii) Abrasion 2x1 c.m. over the right side of face, 1 c.m. below the right eye.

(iii) Contusion with swelling 3x2 c.m. over the left side of the head just above the right ear.

5. PW-4 has deposed that internal examination of the scalp showed extra vasation of blood over right frontal and left temporal region. There was subdural hemorrhage over the right parieto temporal lobes. Patchy hemorrhage was present over both cerebral

hemispheres. PW-4 has opined that death was caused due to cerebral damage consequent upon blunt force impact on the head. He has further deposed that injuries No.(i), (ii) & (iii) which are in the nature of abrasion and contusion, were sufficient in the ordinary course of nature to cause death as they were external manifestation of internal injuries of brain. He has proved the post mortem report (Ex.PW-4/A).

6. Dr.Poonam Saraf (PW-6) has testified to have examined the deceased and declared him brought dead vide MLC (Ex. PW-6/A).

7. Thus from the deposition of the PWs 4 & 6, it becomes apparent that the deceased died a homicidal death. The cause of death is due to cerebral damage which is because of blunt force impact on head.

8. From the deposition of Virender Kumar (PW-1), what stands further established is that only the appellant was assaulting the deceased by means of fists and legs when the deceased was immobilized by other accused persons, namely, Deepak and Rohit who had allegedly caught hold of the hands of the deceased. When PW-1 came to the rescue of his brother, a push was given to the deceased which made the deceased fall on a wooden cart leading to the fatal injuries. Thus, admittedly, the injuries suffered by the deceased on his head was because of the push which was given by all the three accused persons.

9. Learned counsel for the appellant submits that the absence of any weapon in the hands of the appellant or any other accused persons, goes a long way to show that there was no intention on the part of either the appellant or other accused persons to kill the

deceased or to inflict such bodily injury upon him which would have caused his death.

10. Assuming but not admitting, it has been argued, that the allegations of giving a push to the deceased is accepted to be ex-facie true, then also, for the lack of requisite intention and knowledge, there could be no conviction under Section 304 Part-II of the IPC read with Section 34 of the IPC. Section 304 of the IPC reads as hereunder:-

**“ Section 304. Punishment for culpable homicide not amounting to murder.-**Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

11. From the facts of the case, it becomes apparent that there was no intention to cause death. No knowledge also could be attributed to the appellant that giving a push to a person is likely to cause death or such bodily injury which may lead to death. Thus, in the absence of either the knowledge and intention which are the prerequisites for attracting the ingredients of the offence under Section 304 of the IPC, the conviction of the appellant under the aforesaid Section is unwarranted.

12. The prosecution in support of his case, has examined seven witnesses. ASI Anand Mani (PW-2) has proved the carbon copy of the FIR (Ex.PW-2/A). Constable Mahender Singh (PW-3) has proved DD No.4 (Ex.PW-3/A), Constable Ramesh Chander (PW-5) has deposed that he joined the investigation with the I.O. of the case. He has deposed that he accompanied the I.O. Ashok Kumar (PW-7) to the RML Hospital and thereafter took the Rukka to the police station and got the case registered. In his presence, PW-7(I.O.) prepared the site plan and seized the wooden cart on which the deceased had fallen. He has testified to the fact that the appellant was arrested on the same day (Arrest Memo Ex.PW-5/A). The personal search of appellant was also conducted (Ex.PW-5/B). The deposition of the aforesaid witnesses read with the testimonies of PWs 1, 4 & 6, however, establish the fact that the deceased was assaulted by means of fists and legs by the appellant and he was also given a push leading to his fall on a wooden cart which ultimately proved to be his nemesis.

13. The judgment and order of conviction has been assailed on the ground that no incident of quarrel had taken place and the appellant has been implicated only due to previous enmity. It has been further submitted that Virender Kumar (PW-1) is not the brother of the deceased and he had also not seen the occurrence. It has been contended on behalf of the appellant that the deceased was a habitual drunkard. On the fateful night, he hurt himself in a state of intoxication.

14. Lastly, it has been submitted that the Trial Court has not appreciated the testimonies of the defence witnesses in correct perspective.

15. The Trial Court has rightly rejected the aforesaid contentions of the appellant. There is nothing on record to suggest that Virender Kumar (PW-1) is not the brother of the deceased and that he has not seen the occurrence. The clear and cogent testimony of PW-1 makes it very obvious that an occurrence of assault took place in the street, when the deceased was injured and he was taken by PW-1 to the hospital for treatment. But as ill luck would have it, the deceased was declared brought dead.

16. No suggestion has been given to the witnesses regarding PW-1 not being the brother of the deceased. No evidence also has been led with respect to enmity of the appellant with PW-1 or the deceased.

17. The defence witnesses have, in unison stated that they learnt that the deceased, in a drunken condition had struck against a wooden cart and had died. If the DWs 3 & 4 had seen occurrence, they should have approached the investigating agency and ought to have made it known that the appellant has been falsely implicated.

18. Neither the post mortem report nor the MLC discloses that the deceased was intoxicated prior to his death. Such contention of the appellant, therefore, that the death was because of the deceased banging himself against a wooden object in a state of intoxication, is without any substance.

19. It is true that no public person has been made to join the investigation or has been put forward as a witness during trial. The

conviction of the appellant is based on the solitary testimony of the brother of the deceased.

20. There is no rule of law that no conviction could be recorded in the absence of public witnesses or on the testimony of solitary witness. It is only a rule of prudence that public persons should be made to join investigation. Conviction could be recorded on the solitary testimony of a witness provided that the deposition of the solitary witnesses is free of all doubts and is trustworthy and reliable.

21. A criminal court is not required to pick up only lapses in investigation and criticize the investigating agency. Despite faulty investigation, criminal justice could be salvaged if the courts are careful in scrutinizing the deposition of witnesses and analyzing the circumstances under which the occurrence took place.

22. What strikes this Court is that no motive has been assigned by the prosecution for assaulting the deceased. Though motive does not play any relevant part in a murder case, nonetheless for analyzing as well as assessing the intention of the wrong doer, the genesis of the occurrence, but not motive would be relevant. The evidence with respect to the genesis is completely missing.

23. Admittedly, none of the accused persons were armed with any weapon. The external injuries on the person of the deceased also do not reflect that the deceased was brutally assaulted. The injuries suffered by the deceased are in the nature of abrasion and contusion. The death has been caused because of internal injury caused in the head and that too, because of deceased having fallen on a wooden cart after he was pushed. In such a situation, it is difficult to fathom the

requisite intention of the appellant in causing the death of the deceased.

24. Thus, for the reasons stated, the conviction and sentence of the appellant under Section 304 Part-II with the aid of Section 34 of the IPC, does not appear to be warranted in the facts of this case.

25. The conviction and sentence of the appellant is therefore set aside.

26. The appellant has definitely assaulted the deceased causing grievous hurt to him on his head, though without intention of causing his death or such bodily injury which could lead to his death. The appellant is, therefore, is liable and is hereby convicted for the offence under Section 325 of the IPC and is sentenced to the period which he has already undergone (over six months).

27. The appeal is partially allowed.

**ASHUTOSH KUMAR, J**

**OCTOBER 01, 2015**  
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