

\$~R-82B

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

% *Judgment reserved on : 03.12.2015*
Judgment delivered on : 11.12.2015

+ CRL.A. 824/2013

SOM NATH

..... Appellant

Through: Mr.Neeraj Kumar Sharma,
Advocate.

versus

STATE

..... Respondent

Through Mr.Tarang Srivastava, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 15.4.2013 and 25.4.2015 respectively wherein the appellant stands convicted under Section 304 Part II of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.10,000/- in default of payment of fine to undergo SI for 6 months.

2 Nominal roll of the appellant reflects that as on date he has completed incarceration of about 5 years and 7 months which includes

the remissions earned by him. His jail conduct has been satisfactory.

3 This is an unfortunate case where the appellant/accused is the son of the victim. The version of the prosecution is that he had battered his mother to death. The prosecution in support of its case has examined 24 witnesses. FIR was registered on the statement of Surjeet Kaur (PW-2). She is the daughter of the victim and the sister of the appellant. She had disclosed that her mother Amar Devi was residing along with her son (appellant) at house No.C-838, Mangol Puri, Delhi. On 03.2.2011 at about 8.45 a.m. her daughter Reeta (PW-11) received information from her mausi Pushpa (PW-12) that Amar Devi was not well. PW-2 reached the house of her mother. She was informed by a neighbor that the appellant had given beatings to their mother. There were injury marks on her face, ear and neck and her mother was crying in pain. Her condition appeared to be very serious. She was unable to speak and she pointed fingers towards the appellant by gesture indicating that he had beaten her. The appellant had beaten his mother on the issue of the house as he wanted her to sell the house. PW-2 took her mother to the hospital where she was declared dead. FIR was registered against the appellant under Section 302 of the IPC. He was subsequently convicted

under Section 304 Part II of the IPC. Apart from PW-2 her sister Pushpa (PW-12) was also examined. Reeta, the daughter of PW-2, was also examined as PW-11. She has supported the version of her mother. She stated that she received information from PW-12 that her Naani was in a serious condition. On reaching the house of her Naani she found her Naani lying in a cot and she was having injury marks on her face, throat and ear. She hardly appeared to be in a position to talk. Tears were rolling down her eyes. She gestured that she had been given beatings by the appellant. Statement of another member of the family, Rahul (son of PW-12) was also recorded; he was examined as PW-5. He also deposed that he had received information from their house maid Meena (PW-1) that their Naani was in a critical condition. The house maid (PW-1) also deposed on the same lines. She deposed that when she reached her work place at about 7.30-8.00 p.m. she saw that the victim Amar Devi was weeping and she told her that she had been given beatings by the appellant. Apart from these witnesses neighbour Kashmiri Devi (PW-8) has also been examined. She stated that on hearing the noise of crying from the house of Amar Devi she reached there and saw injury marks on the face of Amar Devi. She admitted that after

consuming liquor appellant used to quarrel with his mother and often used to beat her. She further stated that 3-4 days earlier similar kind of incident had also occurred in the house of Amar Devi. Another neighbor Harbans Lal (PW-9) was also examined. He also deposed on the same lines as that of PW-8. Apart from the witnesses of the prosecution the medical evidence which included the post mortem report Ex. PW-13/A and Ex. PW-13/B reflects seven external injuries besides various internal injuries. The MLC of the victim was prepared by Dr. Vikas Aggarwal (PW-17). The victim had been admitted in an emergent condition; she was referred to Medicine Department by Dr. Lakhwinder Kaur, CMO of SGM Hospital. PW-17 stated that the victim was unfit for statement. She was brought to the hospital by her daughter (PW-2). The victim was declared dead at about 7.15 p.m. on 03.02.2011. The cause of death was opined to be combined effect of craniocerebral damage and asphyxia consequent upon blunt force impact over head and neck.

4 Inspector Raj Kumar, Investigating Officer, was examined as PW-24. He recorded the statement of the witnesses. Viscera was sent to FSL for an examination to obtain expert opinion on the various injuries which had been suffered by the victim.

5 In the statement of the accused recorded under Section 313 Cr.P.C. he had stated that this is a case of false implication and since his sister wanted to grab the property he has been falsely implicated in the present case.

6 On behalf of the appellant the arguments propounded by learned counsel for the appellant are to the effect that this is a case of false implication. PW-12 one of the sisters of the appellant was hostile. This Court thought it fit to order production warrants for appearance of the appellant. He has been produced from custody. His sisters PW-2 and PW-12 have also been summoned in Court. The minor son of the appellant was living with PW-12, she was taking care of him. The wife of the appellant has deserted him.

7 Record establishes that the prosecution has been able to prove its case to the hilt. PW-2, the sister of the appellant and the complainant, has categorically deposed that bone of contention between the appellant and his mother was that the appellant wanted to sell the house. The mother of the appellant being a senior citizen was not agreeable to the same. On the fateful day, PW-2 was informed by her daughter Reeta (PW-11) that she had received a phone call from her Mausi Pushpa

(PW-12) that the condition of her mother Amar Devi was critical. On this information she reached the house of Amar Devi. She found that her mother was having bruises on her face, ear and neck was crying in pain. She had taken the victim to the hospital. Version of PW-2 was fully corroborated by PW-11 as also her nephew Rahul (PW-5), neighbors PW-8 and PW-9 both of whom are independent witnesses and had also deposed that the appellant used to argue with his mother on the issue to sell the house. On earlier occasions he had given beatings to her. The maid servant was examined as PW-1. She had also deposed that the appellant caused injuries upon the victim and this was told to her by Amar Devi by gestures when she reached the house i.e. the place of her work. As per the post mortem report the cause of death was a combined effect of craniocerebral damage and asphyxia consequent upon blunt force impact over head and neck. There were seven external injuries and four internal injuries which also show the manner in which the victim was bruised and battered. Contusion 8 x 7.5 cm reddish bruise present over left side of face, contusion 4 cm long and 1.5 cm wide reddish bruise present over front, middle and right side of neck along with various other injuries received by her on the frontal area of

her mouth, eye, ear coupled with the linear fracture of occipital bone and the effusion of blood over her middle and upper part of the neck muscle clearly show that the appellant was well versed with the knowledge that by his act he could kill his mother. The Trial Judge in fact has been lenient in imposing a conviction under Section 304 Part II of the IPC and attributing knowledge alone to the appellant and not intention that by his act he could have caused the death of his mother. The motive of the crime is also clear. This is also spelt out in the testimony of the prosecution witnesses.

8 In this background, this Court is not inclined in any manner to interfere with the lenient sentence which had been imposed upon the appellant for his conviction which is well founded under Section 304 Part II of the IPC.

9 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 11, 2015

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