

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

% **Reserved on: 15.07.2015**
Date of Decision: 23.07.2015

+ **CRL.A. 464/2015**

SANJAY Appellant
Through Mr. Sumeet Verma with Mr. Amit
Kala, Advs.

versus

STATE Respondent
Through Ms. Aashaa Tiwari, APP with Insp.
Usha Sharma PS Inder Puri

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R. K. GAUBA

R. K. GAUBA, J:

1. The appellant stood trial in the sessions court at New Delhi on the charge that on 18.10.2006 at about 9.15 A.M. in flat No.463, Krishi Kunj, Inderpuri, Delhi, he had committed the murder of his mother Smt. Surjania Devi, aged about 54 years, by hitting her with a *silbatta* (a club-shaped tool made of stone or mortar used for pounding or grinding substances - hereinafter referred to as “the pestle”) and *patri* (wooden plank) on her head and thereby committed the offence punishable under Section 302 of the Indian Penal Code (IPC). By judgment dated 9.2.2010 of Additional Sessions Judge, he was held guilty and convicted, as charged, primarily on the basis of evidence of Shivnath @ Shankar (PW-1), younger brother of the appellant, who was living at the relevant point of time under the same roof with the family. The learned trial judge, by her order dated 16.2.2010,

awarded imprisonment for life with fine of ₹10,000/- as punishment, also directing that in the case of default in payment of fine the convict is to further undergo simple imprisonment for six months.

2. The appeal at hand was filed more than five years after the decision of the trial court. The delay was condoned by order dated 20.4.2015 and having regard to the period of incarceration already undergone, hearing was fast-tracked.

3. We have heard learned counsel on both sides and, with their assistance, carefully perused the record.

4. The prosecution case is unfolded mainly through the testimony of Shivnath @ Shankar (PW-1) and his father Bhuttan Mehto (PW-3). Reliance is also placed on the evidence of Kamal Poddar (PW-2) and Ram Nand Rai (PW-6), both neighbours, who had converged on the scene, immediately after the occurrence, upon hearing the commotion.

5. PW-3 was working as a *beldar* (labourer) in the physiology plant of Pusa Institute. He was living at the relevant point of time in quarter No.436, Type-II, Krishi Kunj, Inderpuri, Delhi, inside which the incident took place. His family comprised of his wife Surjania Devi (“the deceased”) and their two sons Sanjay (the appellant) then aged 27 years and Shivnath @ Shankar (PW-1), then aged about 16 years. While PW-1 was studying in the Central School, Goal Market, New Delhi in 10th standard, the appellant is described as a youth, who was not gainfully engaged.

6. It is alleged that the appellant had wayward and was in the habit of pestering his parents for money for eating good food or purchasing good clothes and in the event of they refusing he would indulge in physical assaults. On 18.10.2006, in the morning, PW3 had gone for his duty at his

workplace, while PW1 had left the house for taking tuition. The appellant and the deceased alone were present in the house. PW1 returned from tuition at 09:15 AM when he saw the appellant quarrelling with mother in the inner-room. At that stage, he was holding the pestle in his hand and suddenly hit his mother with the said object on the rear side of her head making her fall down. The appellant immediately thereafter picked up a wooden plank and again hit on the mother's head causing profuse bleeding. PW1 raised alarm which attracted attention of the people in the neighbourhood who rushed to the place. In due course, PW3 also reached home on receiving information about the incident telephonically. Surjania Devi had died on the spot.

7. The record reveals that the first intimation reached in the Police Station Inder Puri (hereinafter referred to as "the Police Station") through police control room (PCR) about the quarrel at quarter No.463, Type-II, Pusa Institute near Kendriya Bhandar (hereinafter referred to as "the place of occurrence"). This was lodged as DD No.15A at 09:42 AM on 18.10.2006 (Ex.PW8/A) by ASI Satyawati (PW8), the duty officer. The matter was entrusted to SI Om Prakash Meena (PW14) who, accompanied by Constable Rajpal (PW5) proceeded to the place of occurrence, where he found the dead body lying on the floor and blood oozing out of her head. The *silbatta* (Ex.P-1) and wooden patri (Ex.P-2), both blood-stained, were lying near the dead body. The appellants and his younger brother PW1, both were present at the scene.

8. PW14 recorded the statement (Ex.PW1/A) of PW1 and made his endorsement (Ex.PW14/A) thereupon, describing the scene of incident as noticed by him. He dispatched his *rukka* (Ex.PW14/A) to the Police Station at 11:50 AM on the same morning, and thereupon PW8, the duty

officer, registered FIR (Ex.PW8/B) with endorsement (Ex.PW8/C) to this effect on the *rukka*. The investigation was thereafter taken over by Inspector Hans Ram (PW15), the Additional Station House Officer who had also reached the scene in the meantime. It may be added here that during the course of investigation Kamal Poddar (PW2) and Ramnand Ram (PW6) both immediate neighbours also offered their evidence, they having arrived at the scene immediately after the assault, on hearing the noise.

9. During the investigation, PW15 (the Investigation Officer) seized the pestle (Ex.P-1) and wooden plank (Ex.P-2) which statedly had been used as weapons of offence vide seizure memos (Ex.PW1/B & Ex.PW1/C). He also collected sample of blood from the scene of incident and earth control (vide memos Ex.PW1/D, Ex.PW3/A & Ex.PW1/E). The appellant was arrested as per arrest memo (Ex.PW1/F), after personal search (vide memo Ex.PW1/G).

10. The Investigating Officer (IO) called the crime team which led by Inspector Udham Singh (PW9) inspected the scene of occurrence. PW9 has proved his report (Ex.PW9/A). The crime team included photographer HC Pravir Singh (PW11) who took seven (7) photographs exposing negatives (Ex.PW11/B-1 to Ex.PW11/B-7) with the help of which he later prepared photographs (Ex.PW11/A-1 to Ex.PW11/A-7). These photographs and the crime team report together confirm the scene of crime as narrated by the IO in the *rukka* and further described in detail in the scaled site plan (Ex.PW13/A) prepared by Constable Hardeep Singh (PW13) with assistance, *inter-alia*, of the rough site plan (Ex.PW15/A) that had been prepared earlier by the Investigating Officer.

11. It is stated that shirt (Ex.P-3) on the person of the appellant was found by the Investigating Officer to be bearing the blood-stains. The said apparel was also seized (vide memo Ex.PW5/A).

12. The dead body was removed to the mortuary and, after formal identification, subjected to post-mortem examination by Dr.G. A. Sunil Kumar Sharma (PW4) who has proved his report (Ex.PW4/A).

13. The autopsy doctor noted in the post-mortem report (Ex.PW4/A) following three ante-mortem injuries :-

- (i) *Lacerated wound over the right forehead along the hair line, obliquely place, 2 cm right to midline, 4 cm above the right eyebrow, size 6 cm x 1 cm skull bone depth.*
- (ii) *Lacerated wound over the right frontal region, 4 cm below the injury no.1 along the lateral end of the right eyebrow, size 5 cm x 1 cm.-skull bone depth.*
- (iii) *Multiple superficial abrasions over right face (cheek) over an area of 2 cm. x 2 cm.*

14. The examination of head and neck had revealed as follows:-

- (i) *Diffused sub scalp haematoma over the right fronto parietal region.*
- (ii) *Skull-multiple communitated depressed fractures (severe fracture having multiple lines) underneath injury no.1 & 2 over the frontal and parietal (right) bones.*
- (iii) *Diffused Subdural and sub arachnoid haemorrhage over the right fronto- parietal region with multiple cerebral contusions over the frontal area.*

15. In the opinion of the autopsy doctor, death had occurred on account of coma due to head injury which had been caused by blunt force which was sufficient in the ordinary course of nature to cause death. The time of death assessed (24 to 36 hours prior to commencement of autopsy at 03:00 PM on 19.10.2006) would coincide with the time of the incident reported by PW1.

16. Later on 22.11.2006, the Investigating Officer submitted the pestle (Ex.PW-1) and wooden plank (Ex.P-2) before the autopsy doctor seeking his views regarding their use vis-a-vis the ante-mortem injuries suffered by the deceased. PW4 gave an affirmative opinion in such regard (vide Ex.PW4/B).

17. The exhibits including those picked up from scene of crime, the blood sample, clothing and silver necklace of the deceased preserved during autopsy, were sent to Forensic Science Laboratory (FSL). Opinion (Ex.PW15/C) of FSL shows that blood was detected on each of them except, of course, the earth control, the bloodstains on the shirt of the appellant only evincing it to be of human origin group 'O'. Though the two weapons of offence also bore blood-stains of human origin, there grouping could not be ascertained.

18. Against the above backdrop, the prosecution rested its case wholly on the eye-witness account of PW1, seeking corroboration to his word from the testimony of PW2 and PW6, the two neighbours who had come in on the close heels of the assault.

19. Noticeably, the appellant in his statement under Section 313 Cr.P.C. did not dispute the evidence of the prosecution except for the role attributed to him, his plea being of innocence and false implication. He stated that at the time of the incident he was sleeping and would not know as to who had killed his mother. He denied that his shirt was bloodstained.

20. The fact that Surjania Devi died a homicidal death cannot be disputed. The evidence of PW1, PW2, PW3 & PW6 collectively leaves no room for doubt that she was living with the family in the house where her dead body, lying in pool of blood, was found by the police. The post-mortem examination report clearly shows that death took place on account

of she being hit with heavy objects, *inter-alia*, on her right forehead and right frontal region, causing multiple fractures in the skull. The head injuries had resulted in coma to which she succumbed. Given the nature of injuries, they had been produced by the assailant intentionally. Since the injuries were sufficient in the ordinary course of nature to cause death, the case would fall in the category of culpable homicide as defined in Section 299 IPC.

21. PW1 has deposed confirming the entire sequence of events as reported by him on the date of incident. He testified that when he had returned from tuition at 09:15 AM, he saw the appellant grappling with the mother pulling her hair and even while he was trying to stop him, the appellant had picked up the pestle (Ex.P-1) and used it to hit on her head followed by beating given with the help of the wooden plank (Ex.P-2) causing her death on the spot. The PW2 & PW6 corroborate his word in material particulars by affirming that when they had rushed to the house in question, they had found the deceased lying on the floor with blood coming out of her head. They had found both the PW1 and the appellant at home.

22. All the four witnesses viz. PW1, PW2, PW3 & PW6 were subjected to cross-examination but nothing substantial came out so as to discredit any of them. In our evaluation, the learned trial court has rightly believed these witnesses, particularly PW1, to conclude that the homicidal injuries were inflicted intentionally by the appellant.

23. The only argument raised on behalf of the appellant is that the incident had occurred in the heat of moment and, therefore, the case should fall under the second part of Section 304 IPC i.e. for the offence of culpable homicide not amounting to murder. The learned *amicus curiae* pointed out that the record indicates that the appellant has been a case of

psychiatric condition for which he had been receiving treatment. He argued that since the appellant had made no effort to abscond, as he was apprehended from the house where neighbours (PW2 & PW6) had seen him standing calmly in the balcony, it must be inferred that death was never intended. Relying on judgments in *Surinder Kumar v. Union Territory, Chandigarh* [AIR 1989 SC 1094], *Golla Yelugu Govindu v. State of A. P.* [AIR 2008 SC 1842], *Vishnu Mohan Vs. State (NCT of Delhi)* [2001 (2) JCC [Delhi] 159] and *Mahender Vs. State*, [2009 [2] JCC 895] the learned *amicus curiae* urged that conviction may be converted from one under Section 302 IPC to Section 304 (Part-II) IPC and the term/rigour of sentence be reduced.

24. We have given our anxious considerations to the submissions made but find no reasons to disturb the conclusions reached by the learned trial court.

25. The facts of the four cases cited at bar are distinguishable. In *Surinder Kumar (supra)*, there had been a heated argument between two sets of brothers. The brother of the deceased had become abusive giving the provocation due to which the convict got enraged to the extent that he brought out a knife and committed the fatal assault. In *Golla Yelugu Govindu (supra)*, a sudden quarrel in the dead of night, in the presence of children, had prompted the convict-husband, a drug addict, to attack his wife with a sickle hacking her to death. In *Mahender (supra)*, the evidence was hazy as to how the quarrel had begun. The evidence only indicated it to be a sudden quarrel. The conviction under first part of Section 304 IPC was upheld in these cases in such circumstances.

26. The learned *amicus curiae* has relied heavily on the case of *Vishnu Mohan (supra)*. It was also a case where the convicted appellant was

accused of the murder of his mother. The cause of death was manual strangulation. The motive proved was that the convict intended to snatch money and gold ornaments from the deceased. Proof was adduced that the convict was addicted to drugs and required money to fulfil his urge. The evidence showed that he had remained in the room where the killing took place even after the occurrence. The case of the prosecution about the death having been intentionally caused was rejected through following observations :-

“From the facts as discussed above it cannot be said that the accused had the intention to inflict such injuries as would cause her death. It is not prosecution’s case that the appellant had pre-meditated to cause death. The accused in order to snatch money and the gold ornaments of his mother did the act. He had no intention that this act of his was in all probability caused the death of his mother. Hence, the special knowledge of causing death cannot be attributed to the accused. It is quite obvious from the circumstances of this case that the intention of the appellant could only have been to threaten or silence his mother so that he could steal money from her store or remove her gold ornaments in order to buy the drugs and in doing so he put pressure on the neck which caused her death. ”

27. The conviction for the offence under Section 302 IPC was modified to one under Section 304 (Part-II) IPC for the following reasons :-

“Having come to the conclusion that there was no intention to cause death even if knowledge is imputed to the accused still he cannot be convicted under Section 302 IPC. Reliance in this regard can be placed on the decision of Supreme Court in the case of State of Madhya Pradesh vs. Jhaddu & Ors. JT 1990 (4) SC 57 wherein it was held that when there is no intention to kill, but the accused could be imputed with the knowledge that death was the likely result and therefore the conviction of the accused under Section 304 Part II IPC was affirmed in the said case. Similarly in the case of Madanlal v. State of Punjab 1992 Supp (2) SCC 233, the motive of the crime was that the accused was hungry for three days and when he demanded food from the deceased ‘Sewadar’ of the ‘Dera’ where free food was being served, the deceased refused and consequently,

the accused, in a fit of anger, attacked the deceased. Court held that the offence would be covered under Section 304 (II) IPC instead of 302. In the present case also from the facts which have come on record it is apparent that the accused was drug addict. He must be in need of money that is why four or five days before the incident he came back home. Earlier whenever he was refused money he used to quarrel with his mother. This time he wanted to silence his mother in order to rob her of her gold ornaments and valuables, least realising that he had killed her. But this does not prove that he had any intention to kill her. His intention at best could be to take her jewellery or take money from her locker. Therefore, the case at best can be covered under Section 304, Part II IPC instead of Section 302 IPC.

28. We find no similarity between the cases cited at bar on one hand and the case of the appellant on the other. Unlike the case of *Vishnu Mohan* (supra), death here has been caused by assault on the head region, a vital part with the help of pestle. The said blow with heavy object was followed by another assault again aimed at head with help of wooden plank. The autopsy report clearly shows that the impact of both the assaults was such as resulted in multiple fractures in the skull.

29. The basic motive of the appellant here may be similar to the motive of the convict in the case of *Vishnu Mohan* (supra). But, that alone cannot mean that this case is to be treated alike. There may not have been an intention to cause death but definitely it is a case where the bodily injuries on the head, which were intentionally caused. There is no doubt that the said injuries were sufficient in the ordinary course of nature to cause death. Therefore, the case of appellant would squarely stand covered by the “thirdly” clause of Section 300 IPC, rendering it a case of culpable homicide amounting to murder.

30. The argument of the appellant that fourth exception to Section 300 IPC would apply does not appeal to us. Mere strong remark of PW-1 about

earlier behavioural problem does not make out or establish the exception. The jail record showing behavioural problem pertains to the health issues arising during incarceration. There is no evidence indicating that assault occurred in the course of sudden fight or in the heat of passion upon a sudden quarrel. The evidence of PW1 proves that the appellant was in the habit of demanding money and when refused, he would have no qualms even in beating up his parents. Having hit his mother with the pestle, making her fall down with the bleeding head injury, he would not stop. He went ahead to pick up the wooden plank and continued with the assault aiming the blow at head region. The mother had fallen down immediately upon the first hit. She was lying helpless with profuse bleeding from her fractured skull. The continued assault upon her with the wooden plank, in such circumstances, was nothing but taking undue advantage, and acting in a cruel manner, as if the intention was not to spare her any chance.

31. For the foregoing reasons, we reject the plea for the conviction to be reduced from the charge of murder under Section 302 IPC to that of culpable homicide not amounting to murder punishable under Section 304 IPC.

32. In view of the above, the appeal must fail. It is dismissed.

33. The appellant be informed of the result through the Superintendent Jail, and a copy of this judgment be delivered to him.

(R. K. GAUBA)
Judge

(SANJIV KHANNA)
Judge

JULY 23, 2015/vld/ss