

\$~R-116

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

% *Judgment reserved on : 20.11.2015*

Judgment delivered on : 26.11.2015

+ CRL.A. 1349/2013

AMARJEET SAHNI

..... Appellant

Through

Mr. Sumeet Verma and Mr. Amit
Kala, Advs.

versus

STATE

..... Respondent

Through

Mr. Tarang Srivastava, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 25.7.2012 and 30.7.2012 respectively wherein the appellant stood convicted under Section 304 Part-I of the IPC. He had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.5000/- in default of payment of fine to undergo SI for 6 months. Benefit of Section 428 of the Cr.P.C. had been granted to the appellant.

2 Nominal roll of the appellant has been requisitioned. This reflects that as on date he has completed incarceration of 5 years and about 8 months. His jail conduct is satisfactory.

3 Learned amicus curiae for the appellant at the outset submits that this is an unfortunate dispute between the husband and wife. No motive can be attributed to the appellant; the gist of the evidence suggests that the incident had occurred at the spur of the moment. There is nothing to suggest that the parties had an estranged relationship earlier. They have a minor child who is presently being looked after by his grandparents as his mother (victim) has expired and his father (the appellant) has been incarcerated. The medical evidence also shows that there is only one injury which has been suffered by the victim. She had died within hours of her injury. The weapon of offence was also a kitchen knife. Learned amicus curiae also submits that he is not arguing on the merits of the case. His submission is that the conviction of the appellant under Section 304 Part-I of the IPC is uncalled for. At best only knowledge could have been attributed to the appellant that by his act he could have caused the death of the victim; his conviction was covered under Section 304 Part-II of the IPC. Additional submission being that in this background if his conviction is modified to a conviction under Section 304 Part-II of the IPC, the period of incarceration already suffered by the appellant be treated as the sentenced imposed upon him.

4 Arguments have been refuted.

5 Record shows that on the fateful day i.e. on the intervening night of 11-12.5.2011 the unfortunate incident had occurred. The appellant who was residing as a tenant in X-1/3-4, First Floor, Budh Vihar, Phase –I, Delhi had a quarrel with his wife pursuant to which she had suffered a stab injury. The other co-tenants had found the victim bleeding at about 4.30 a.m.; their minor child was sitting near the body of the victim and weeping. The appellant was not at the spot.

6 This version as noted supra has been corroborated by Hasina (PW-1), Urmila (PW-3), Sunil Kumar (PW-4) and Rajesh Kumar (PW-5). They were all tenants in the house and it has come in the evidence of PW-4 that on the fateful night when he was sleeping on the rooftop with his wife as it was summers. Other tenants of the house were also sleeping on the rooftop. Accused Amarjeet was sleeping with his wife and his son on the rooftop. At about 1.30-2.00 a.m. the appellant was forcing his wife downstairs to his room. He was pulling his wife but she was not interested to go downstairs. The appellant gave her beating. He forcibly took his wife downstairs; being a family matter PW-4 did not intervene. At about 4.00 a.m. on hearing noise of PW-1 it

was learnt that the victim was lying injured in a pool of blood. The appellant was not present there. This version as narrated by PW-4 has been corroborated by the other witnesses.

7 In the statement of the accused under Section 313 Cr.P.C. his submission is that he has been falsely implicated. He has admitted that he was sleeping with his wife on the rooftop and he wanted to have physical relations with her and had asked her to go downstairs but she had refused; they had a tiff on this point. The victim got infuriated and took out a kitchen knife and stabbed herself; the appellant did not take serious note of her attacking herself at that point of time.

8 The post mortem report which has been proved in the version of PW-14 (Dr.Manoj Dhingra) indicates that there was a single injury suffered by the victim which was 1.8 c.m. x 0.9 c.m. which was obliquely placed caused by a single edge sharp end present on the front chest midline which was the cause of the death of the victim who had succumbed to her injuries within hours of the attack.

9 This evidence which has come forth on the record both oral and documentary does suggest that there was a sudden quarrel between the parties. There is no other evidence which has been brought to show that

the parties had an estranged relationship. There was a sudden scuffle between the husband and wife on the fateful day and the appellant had stabbed her with a kitchen knife. This incident having occurred in the middle of the night for the reason as stated by PW-4 and corroborated by the defence of the appellant in his statement recorded under Section 313 Cr.P.C. this Court is of the view that at best what could be attributed to the appellant was a knowledge that by his act he could have caused the death of the victim. This is also for the reason that the weapon of offence (Ex.PW-19/F) shows that the length of the blade of the knife was 1.9 c.m. which was a kitchen knife. The injury was deflected and was obliquely placed on the midline chest cavity of the victim which had led to her death.

10 Learned counsel for the appellant in support of his arguments has place reliance upon the following judgments:

- i. 2010 (12) Scale Sangharaj Bhogappa Kamble Vs. State of Maharashtra;
- ii. 1969 CrI.L.J. 1172 (Vol. 75. C.N. 322) Latu Mukhi Vs. State
- iii. 1992 CRI L.J. 502 Madaiah s. State by Yelandur Police
- iv. AIR 1958 Patna 190 (V 45 C 71) Dasrath Paswan Vs. State of

Bihar

11 Section 304 Part-I of the IPC stipulates that the act by the offender is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. A single injury was suffered by the victim. The weapon of offence was a kitchen knife; it was a sudden quarrel which had led to the unfortunate incident; coupled with the fact that the parties did not have an estranged relationship prior to the incident reinforces this Court to hold that the conviction of the appellant under Section 304 Part-I of the IPC should be altered to one under Section 304 Part-II of the IPC. The conviction of the appellant is accordingly modified. He is convicted under Section 304 Part-II of the IPC.

12 The appellant has undergone incarceration of 5 years and almost 8 months. This Court is of the view that the since the appellant is a first time offender, he being in his mid thirties and his minor child is now aged about 8 years, interest of justice demands that the period of incarceration already suffered by the appellant be treated as the sentence imposed upon him.

Accordingly, appellant be released forthwith if not required in any

other case.

13 Appeal disposed of in the above terms.

14 Trial Court record be sent back.

INDERMEET KAUR, J

NOVEMBER 26, 2015
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