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

% **Date of Decision: 25th August, 2015**

+ CRL.A. 646/2015

Titoo

..... Appellant

Through: Ms.Sahila Lamba, Amicus Curiae

versus

STATE

..... Respondent

Through: Ms.Aashaa Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J (ORAL)

1. The appellant Titoo by the impugned judgment dated 21.04.2015 has been convicted under Section 302 of the Indian Penal Code, 1860 (IPC) for murder of his mother Kiran and under Section 323 of the IPC for having caused injuries to his brother Deepak at about 10:30 AM on 08.11.2011.

2. By order on sentence dated 27.04.2015, the appellant has been sentenced to imprisonment for life, fine of Rs. 5000/- and in default of payment of fine, to undergo six months imprisonment for the offence punishable under Section 302 IPC. For the offence punishable under

Section 323 IPC, the appellant stands sentenced to undergo six months imprisonment with fine of Rs. 1000/- and in default of payment of fine to undergo two months imprisonment. Sentences are to run concurrently.

3. Having heard counsel appearing for the appellant and the Public Prosecutor we are of the opinion that the impugned judgment convicting the appellant on both accounts should be sustained.

4. Deepak (PW-4), younger brother of the appellant aged about 10-12 years, in his court deposition has stated that he was present in the house along with his mother Kiran on the date and time of occurrence. His elder brother Titoo at about 10:00AM had started demanding money from his mother, which was refused. On this Titoo became angry and started fighting with his mother and gave fist blows and then picked up a '*Belan*' (*rolling pin*) and gave her several blows with the '*Belan*' on her head. Deepak (PW-4) had tried to intervene and save his mother, on which Titoo had hit PW-4 with leg and fist blows. His younger brother Rahul, who was also present there, ran out to make a call to his father. Blood started oozing out from his mother's head and she fell unconscious. The appellant while running away took his younger sister Jyoti with him. He had narrated the incident to the police when they came to their house. In the cross-examination, PW-4 clarified that Jyoti was subsequently found at the house of their neighbour

Hemu. He also clarified that the appellant had hit him on his head with the *Belan* and blood had started oozing. He was medically examined. He had raised an alarm but no one from the neighbourhood came to their house, except one old lady whose name he did not remember. The said lady had left the place after seeing the condition of his mother. The appellant used to live with them but sometimes used to leave the house for many days. Titoo had never caused injuries or fought with the neighbours or their children earlier. Titoo would daily go for work with his father but on the said day he had not gone for work with his father.

5. Rahul (PW-9) was about eight years of age when he was examined in the court. He has stated that he was playing outside the house, while the appellant came in the house in an underwear. Titoo had injection marks on his hand and stitch marks were visible. Titoo had given beating to his mother on her chest, then on her head and stomach. He had used a '*Belan*' to beat his mother. His elder brother Deepak who also was present in the house was also beaten. He had rushed to the STD booth and informed his father on telephone that the appellant Titoo was beating his mother. Phone number of his father written on a piece of paper, was handed over to the aunty sitting in the PCO. Subsequently, he went to the house of Khem and told him that the appellant Titoo was beating his mother. Khem had asked him to sit in his

house. Police had subsequently made enquiries and recorded his statement. In his cross-examination, Rahul (PW-9) accepted that Titoo had not beaten him and also accepted that Titoo had never quarrelled with any neighbour or caused injuries to them. He denied the suggestion that he was tutored by his father to give statement against Titoo due to family dispute.

6. The aforesaid version of Rahul (PW-9) and the version of the injured eye-witness Deepak (PW-4) get confirmation and corroboration from the statement of Prem Pal (PW-2), Bimla (PW-6) and Khem singh (PW-7). Bimla (PW-6) has confirmed that Rahul (PW-9) had come to her kiryana store and had made a call on a mobile number to converse with his father. However, she could not recollect and did not depose as to the contents of the conversation. Khem Singh (PW-7) has testified that Titoo was living in the neighbourhood at a distance of 2-3 houses with his parents, brothers and sisters. He (PW-7) had met with an accident and was nursing a fractured leg. Younger brother of Titoo had come to his house and informed him that Titoo had beaten him. He had then asked the younger brother of Titoo to remain seated in his house. He had made a call to the police on number 100. In his cross-examination by the Public Prosecutor, PW-7 accepted that younger brother of Titoo had told him that Titoo had given beatings to his mother and to save his mother. In his cross-examination on behalf

of appellant, PW-7 accepted that his leg was under plaster and he did not go to the spot. It was correct that Titoo had never quarrelled with him or any neighbour. Most significant and relevant is the statement of Prem Pal (PW-2), father of Titoo and husband of deceased Kiran. He was working as *Mason* and living in Delhi with his wife and five children. The appellant aged about 23 years was a gambler and used to take drugs. He used to leave the house and go missing. The appellant used to visit the house for a day or two. He had returned 3-4 days earlier after staying on his own for some time. He had asked the appellant on the morning of 08.11.2011 to go to work but the appellant had stated that he would go later. Prem Pal (PW-2) had left for work at about 9:00AM. and at about 10:28 AM, he had received a telephonic call from his son Rahul that the appellant Titoo had caused injuries to his wife and he should return home immediately. The call was made from the STD booth near their house. When he returned, he found that Kiran (the deceased) was in a pool of blood and the appellant was not present. Rahul (PW-9) was present and had narrated the occurrence to him. On the basis of the statement made by PW-2, marked Ex.PW-2/A, the *rukka* was recorded and FIR No. 302/2011, P.S. Nihal Vihar was registered. PW-2 proved the '*Belan*' marked Ex.P-1, which was taken out from the parcel with the seal of NK, FSL, Delhi.

7. The version given by Deepak (PW-4) and Rahul (PW-9), thus gets support and affirmation from the statement by Prem Pal (PW-2), Bimla (PW-6) and Khem Singh (PW-7). It is noticeably that in the present case DD No. 11A mark Ex.PW-1/A was recorded at about 10:48 AM at police station Nihal Vihar as deposed to by Head Constable Naresh Kumar (PW-1). This information was given to ASI Brahm Prakash through Ct. Mahavir. ASI Brahm Prakash (PW-10) has deposed that on 08.11.2011 he had visited the spot i.e. Gali No. 74, Shisham Wali Gali, Nihar Vihar, Delhi and on entering the room, he found a dead body of a lady. Blood was seen inside and outside the room. One '*Belan*' was lying near the dead body. He noticed broken pieces of bangles, one pair of shoes and other articles, which were lying scattered. Similar statement was made by Ct. Mahavir (PW-16). Inspector Sunil Kumar (PW-20), Investigation Officer (IO) has stated that he had lifted exhibits/ evidence from the spot including the '*Belan*' (Ex.P-1), pieces of bangles (Ex.P-4) and pair of shoes (Ex.P-6). At that time crime team was already present.

8. Photographs of the place in question were taken by Head Constable Sanjeev Kumar (PW-3) who has proved eight photographs mark Ex.PW-3/A-1 to PW-3/A-8. The negative of the said photographs were marked Ex.PW-3/B1 to B8. We would be subsequently referring to said

photographs. SI Gyan Singh (PW-8) In-charge of the Mobile Crime Team has proved the Crime team report (Ex. PW-8/A). The crime team had remained at the spot from 11:40 AM to 12:40 PM. The appellant was arrested on the next day i.e. 09.11.2011 vide arrest memo Ex. PW-10/H at about 8:20 AM. This fact is deposed to by ASI Brahm Prakash (PW-10), Ct. Mahavir (PW-16) and Inspector Sunil Kumar (PW-20).

9. Learned Amicus Curiae has submitted that in the present case the FIR was registered on the basis of the statement made by Prem Pal (PW-2) and not on the basis of the statement of Deepak (PW-4). She submits that the purported eye-witness Deepak (PW-4) was not present at the spot. It is correct that in the present case, the FIR was registered on the basis of statement made by Prem Pal (PW-2), marked Ex.PW-2/A, but this is not a good reason or justification to disbelieve that PW-4 was not present at the spot and an eye witness to the occurrence. The *rukka* specifically records that the Deepak had been taken to the hospital and was not present at the spot when statement of PW-2, marked Ex.PW-2/A, was recorded. We have on record the MLC of Deepak, Ex. PW-19/A, (wrongly mentioned as Ex.PW-18/A). Deepak was examined by Dr. Shankar (PW-19) on 08.11.2011 after he was brought to the hospital by SI Lal Chand. On examination it was observed that PW-4 had suffered injury on his right eye.

He was referred for examination by an Ophthal Senior Resident, PW-19 identified signature of his junior Dr. Anand on the MLC. PW-19 had also signed the MLC (Ex.Pw-19/A). The MLC was recorded on 11.50 AM. The FIR was registered at about 1:15 PM. Presence of Deepak (PW-4) at the spot should be accepted and should not be doubted. He had suffered injuries at the time of occurrence. He is not a chance witness and his presence is natural and normal.

10. Learned counsel for the appellant has drawn our attention to the post-mortem report (Ex.PW-15/A) which mentions that both eyes of the deceased were missing and this was confirmed on internal examination. Post-mortem on the dead body of Kiran was conducted by Dr. Manoj Dhingra (PW-15), who has also proved the said report. PW-15 was not cross-examined. Even the police officers i.e. SI Brahm Prakash (PW-10), Ct. Mahavir (PW-16) and SI Sunil Kumar (PW-20) were not cross-examined on the aspect of the missing eyes. PW-4 has mentioned that his mother was beaten by the '*Belan*' and several blows were given on her head. PW-4 was also given blows on the head by the same '*Belan*'. We find that Deepak (PW-4) as per the MLC marked Ex.PW19/A had suffered conjunctival hemorrhage on the right eye. This is the only injury which is mentioned in the MLC (Ex.PW-19/A). The injury was serious as is clear from the deposition of Dr. Shankar

Gupta (PW-19) who had stated that the patient was referred to an Ophthalmic Senior Resident. It is apparent to us that the appellant Titoo had given blows with the '*Belan*' on the eyes of the deceased. The photographs marked Ex.PW-3/A2, Ex.PW-3/A3, Ex.PW-3/A4 and Ex.PW-3/A6 reflect and show the extent and nature of injuries suffered and how the blood had oozed and flowed from the head and face of the deceased. It is apparent that the perpetrator had used the ends of the *Belan* to cause the injuries in the most brutal and cruel manner.

11. We, therefore, do not find any reason to disbelieve the cause of death as mentioned in this post-mortem (Ex.PW-15/A), which was, cerebral damage consequent upon blunt force impact to head. The other injuries recorded in the same post-mortem report are; contused laceration bone deep present over left side of face, lateral to left eye covering forehead and cheeks with multiple fractures of underlying facial bones; contused abrasion, soft red, over front of the left ear; and contusion red in colour lateral to the right eye. Skull bones including facial bones and base of skull were fractured on the frontal and left temporal bone areas.

12. The last contention of the learned counsel for the appellant is for converting the sentence from Section 302 IPC to Section 304, Part-I IPC. It is submitted that the appellant had not used a knife or any sharp edged

weapon and had used a *Belan*, an article used for cooking. The deceased was the mother of the appellant and as she had refused to part with money, the appellant has retaliated and caused the injuries. It is the nature and manner in which the injuries were caused, that compels and necessitates that we reject this contention. Photographs mark Ex. PW-3/A1 to A8 reflect and show the gruesome attack and the fury unleashed. A deliberate and intentional violence targeted on the head, eyes and face of the deceased was made. The blows were lethal and extremely hard as the deceased had suffered multiple fractures of underlying facial bones. Both her eyes came out. Skull bones were also fractured. Given the nature of violence, injuries caused and the area which was targeted, the appellant had been rightly convicted for under Section 300/302 IPC. The appellant had acted ruthlessly and with frightening alacrity to cause injuries on his own mother without any hesitation or mercy. The victim was a silent spectator to this barbarity and died at the spot. When his younger brother Deepak (PW-4) had tried to save their mother, he was attacked and was given blows on his eye/head.

13. We have also examined the statement made by the appellant under Section 313 Cr.P.C. and we do not find any explanation or ground for having caused said injuries. The appellant had denied most of the questions by stating that the factual assertion was incorrect and he did not know. At

the end, he proclaimed that he was innocent and had been falsely implicated.

14. We also notice with regret failure of the prosecution to investigate and bring on record the full extent of injuries suffered by Deepak (PW-4). It is noticeable that the doctor who had examined PW-4 on 08.11.2011 at 1:15 PM had opined Conjunctival hemorrhage on right eye. The MLC (ExPW-19/A) mentions that the medical condition of PW-4 should be reviewed in the medical OPD subsequently. The said papers and reports have not been placed on record.

15. We must also express our concern on another aspect. As per the prosecution version blood-stained clothes i.e. shirt and pant (Ex.P-7) worn by the appellant at the time of occurrence were seized and were sent for forensic examination. The report received from the forensic laboratory has not been placed on record and was not tendered in evidence. We had, in these circumstances, asked the public prosecutor to produce before us a copy of the said report only to ascertain whether the said report is in favour of the appellant. We have not taken the report on record and we also do not base our decision on the subject report or for that matter, recovery of the clothes allegedly worn by the appellant at the time of occurrence.

16. In view of the aforesaid position, we do not find any reason to modify the conviction of the appellant as he has been rightly convicted for murder

under Section 302 IPC and under Section 323 IPC for the injuries caused to Deepak.

17. On the question of sentence, we do not find any reason to modify the sentence but we clarify that in default of payment of fine, the appellant will undergo simple imprisonment for the period specified and Section 428 of the Criminal Code of Procedure, 1973 would apply. The appeal is disposed of.

(SANJIV KHANNA)
Judge

(R. K. GAUBA)
Judge

AUGUST 25, 2015*/mr*