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

% *Date of Decision : April 26, 2016*

+ **CRL.A. 158/2016**

RAVI CHHABRA @ PAWAN Appellant

Represented by: Mr.M.L.Yadav, Advocate with
Mr.N.N.Rai, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP
Insp.R.S.Meena, SHO, Janakpuri

CRL.A. 373/2016

HARSHA SINGH @ SHOBHA RANI Appellant

Represented by: Ms.Anu Narula, Advocate with
Mr.Kunal Arora, Advocate

versus

THE STATE (NCT OF DELHI) Respondent

Represented by: Mr.Varun Goswami, APP
Insp.R.S.Meena, SHO, Janakpuri

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Having heard learned counsel for the parties and having perused the evidence on record, learned counsel for the appellants states, to which

statement learned counsel for the State concedes, that the fate of the appellants would be determined with reference to the testimony of Hasan Mohammad PW-5 and the call record details concerning conversation between the appellant Ravi Chhabbra @ Pawan and the deceased as also the deceased and Hasan Mohammad; it being established through the testimony of Mahender Kaur PW-22 that the second floor of the house in the gali outside whereof dead body of the deceased Baldev Raj was found by ASI Ravi Dutt PW-18 on the intervening night of May 19, 2009 and May 20, 2009 at the midnight around 1 O'clock was let out to appellant Harsha Singh @ Shobha Rani.

2. Having perused the testimony of Hasan Mohammad PW-5, we find no infirmity therein and learned counsel for the appellants are unable to point out any. His testimony is corroborated by the call records of mobile number 9871457288 of accused Ravi Chhabbra, albeit in the name of one Sohan Singh Sisodiya and mobile number 9212538120 of the deceased Baldev Raj who was the registered subscriber of the number. The call record details of the former number being Ex.PW-20/C and CDRs Ex.PW-20/B. The call record details of the latter number are Ex.PW-21/B. The further linkage is through mobile number 9213385429 of which the registered subscriber is Hasan Mohammad. The call record details of the latter number are Ex.PW-21/D.

3. Hasan Mohammad's testimony is interesting and throws much light as to what could have happened in the fateful night. As deposed to by Hasan Mohammad he knew deceased Baldev Raj for last five years because he used to park his three wheeler outside the shop of Baldev Raj at WZ-5, Tihar Village. On May 19, 2009 at about 9:15 PM he was at the shop of Baldev

Raj watching IPL Cricket Match and at 9:30 PM Baldev Raj made a call to some person and introduced himself as Mukesh, apparent from the introductory remark : '*mein Mukesh bol raha hun*'. Simultaneously, Baldev Raj made a gesture to Hasan Mohammad to come close to his mobile phone, and as he did so Baldev Raj switched on the speaker of his mobile phone. Baldev Raj asked : '*hai koi*', to which the other person responded : '*hai*'. Baldev Raj asked : '*milwa de*', to which the caller responded : '*milwa dunga, pilani padegi*'. Baldev Raj responded that he would get the drinks but wanted to know the cost. The receiver of the call said that the charges would be ₹1,000/-, to which Baldev Raj queried whether it was for one night. The person responded that not for one night but for only once. Baldev Raj enquired whether for the whole night ₹1,500/- would suffice and switched off the speaker but kept on talking to the caller. He could hear Baldev Raj telling the caller that he would be coming to the pastry shop and would bring a half bottle of liquor with him. At the asking of Baldev Raj he accompanied Baldev to the pastry shop on the two wheeler of Baldev. On the way he asked Baldev as to whom he was talking to and Baldev told him that he was talking with a pimp (*dalal*) Pawan. (Appellant Ravi Chhabbra is also called Pawan). On the way to the pastry shop, at the request of Baldev, he purchased a half bottle of liquor and gave it to Baldev. On reaching the pastry shop accused Ravi Chhabbra came. Baldev told Ravi Chhabbra that two persons would go with him. Ravi Chhabbra said that co-accused Harsha had instructed him that no unknown person should visit her and only one person at a time could be brought to her house. Therefore Baldev left with Ravi Chhabbra telling him to stay put for 30-45 minutes. After 10 minutes he rang up Baldev who told him to wait. After another 10 minutes he rang

up and Baldev told him that he was consuming liquor with Pawan in Harsha's house. He made calls to Baldev and Baldev kept on telling him to wait. Last call between him and Baldev was at about 11:20 PM. During one call Baldev told him that Pawan was dead drunk and he was expecting some trouble. Having waited enough he left. Next day he was informed in the morning that Baldev had died.

4. The testimony of Hasan Mohammad is fully corroborated from the call detail records Ex.PW-20/C, Ex.PW-21/B and Ex.PW-21/D.

5. Now, from the testimony of Hasan Mohammad it is clear that co-accused Harsha was making money by entertaining men and Pawan was the pimp. The innuendo in the conversation between Hasan Mohammad and Baldev is apparent to a reader, and we need not elaborate any further save and except to bring out that the rate discussed was for the deceased to spend the entire night with Harsha or for a one time act of sexual gratification.

6. The call record details we have noted hereinabove fully corroborate Hasan Mohammad's testimony, who even otherwise had withstood the test of cross examination and we see no reason to disbelieve him.

7. From the scene of the crime human hair were lifted but could not be connected to the deceased on account of DNA not being generated, but the same is evidence of a scuffle having taken place.

8. The post-mortem report, Ex.PW-19/A, prepared by Dr.Sandeep Seotra PW-19 suggests a scuffle on account of nail marks with bruises present on the dorsal aspect of the left arm, laceration in middle part of little finger of right hand, abrasion on right side forehead of the deceased. The injury on the right side of the skull, with the external feature being *avalasion of skin* on the right side of skull with fracture of the skull inside establishes a

blunt object being hit on the head of the deceased causing instant death for the reason the 2nd to the 7th rib on the left and the right side being fractured have been opined to be post the death and obviously are the result when the dead body hit the street below after it was thrown from the balcony of the second floor.

9. It is apparent that the deceased was hit with a blunt object, in the instant case a *tawa*, and thereafter the body thrown from the second floor to the street abutting the house.

10. As we have noted above, in his testimony Hasan Mohammad said that during one conversation the deceased Baldev told him that Pawan was dead drunk and therefore he was expecting some trouble. Thus we have proof of the fact that before Baldev was fatally injured, Ravi Chhabbra @ Pawan was dead drunk. One can therefore safely infer that after Baldev Raj was fatally hit on the head and fell down, the place being the second floor of the building, in a drunken stupor Ravi alone could not have lifted and thrown Baldev on to the lane from the balcony and two people were required.

11. It is apparent that something happened at the spur of the moment and a *tawa* i.e. a handy object was picked up and struck on the head of the deceased.

12. Presence of both accused in the house being established, the two not rendering any satisfactory explanation, the only inference has to be that the two accused participated in the crime.

13. The injuries on the ribs being post-mortem and the cause of death being the ante-mortem injuries on the skull, we have to look to the testimony of Mohammad Hasan and therefrom it is apparent that Harsha was entertaining men for money and Ravi Chhabbra @ Pawan was a pimp. The

rate for entire night with Harsha was not fixed, but for one act of sexual gratification the rate was ₹1,000/-. No motive is alleged. Hasan Mohammad's testimony shows that acting as a pimp, Ravi Chhabbra took the deceased to the house of Harsha for the deceased to satisfy his lust. There was a drinking session. Ravi Chhabbra got dead drunk. Something happened at the spur of the moment. There was a scuffle. A handy object in the flat : '*a tawa*' was picked up and was struck on the head of the deceased : only one blow. Therefore, it has to be held that the act of the accused would not constitute the offence of murder. The offence would be of culpable homicide not amounting to murder punishable under Section 304 Part II IPC. (We highlight that the cause of death is not due to the deceased, when alive, being thrown from the second floor. The cause of death is the injury on the skull. Realizing that they had killed the deceased the accused threw his body on the street hoping that they may escape the long hands of the law).

14. The appeals are accordingly partially allowed. Conviction of the appellants for the offence of murder is altered to of having committed an offence punishable under Section 304 Part II IPC. The conviction for the offence punishable under Section 201 IPC is maintained against both, with additional reason that Ravi Chhabbra also destroyed the sim card of his mobile phone number and obviously to screen himself from the offence of causing homicidal death of the deceased. Maintaining the sentence to undergo imprisonment with fine in sum of ₹2,000/- and in default to undergo simple imprisonment for one month for the offence punishable under Section 201 IPC and directing the sentence to run concurrently, for the offence punishable under Section 304 Part II IPC, noting that both

appellants have undergone an actual sentence of 6 years and 8 months as of today and have earned remissions as well and their conduct in the jail has been satisfactory, we sentence them to undergo imprisonment for the offence punishable under Section 304 Part II IPC for the period already undergone.

15. The appellants shall be set free forthwith unless required in some other offence.

16. Three copies of the decision be sent to the Superintendent Central Jail Tihar; one each to be supplied to both appellants and the third for the jail record.

17. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 26, 2016

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