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

+ CRL.A. No.747/2016 and Crl.M.(Bail)No.1472/2016

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Reserved on : 3rd October, 2016
Date of decision : 7th October, 2016

MUNNIAPPA

..... Appellant

Through: Mr. Gurvinder Singh, Adv.

versus

STATE

..... Respondent

Through: Mr. Varun Goswami, APP
for the State with SI Mukesh
Kumar from PS Bindapur.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S. TEJI

JUDGMENT

GITA MITTAL, J.

1. The instant appeal assails the judgment dated 30th of May 2016 passed by the learned Additional Sessions Judge in SC No.80/2015 arising out of FIR No.337/12 registered by P.S. Bindapur under Sections 302/34 IPC holding the appellant guilty of commission of offences punishable under Sections 302/34 IPC with which he was charged. The appellant also assails the order on sentence dated 31st of May 2016 whereby he was sentenced to undergo imprisonment for life and fine of ₹15,000/-, in default of which he was directed to undergo simple imprisonment for four

months. The benefit under Section 428 Cr.P.C. was allowed to the appellant by the trial court.

2. The genesis of the matter relates to an occurrence which had happened on the 16th of October 2012. Telephonic information was received by the police control room about a quarrel (*jhagda*) which had happened at Sector-3, Old Shiv Mandir, Near J.J. Colony, Phase-I which was conveyed to P.S. Bindapur and logged by it as DD No. 61B at about 04:30pm. (Ex.PW13/A).

3. Information thereof was given to ASI Banwari Lal (PW-13) who along with Constable Amrik Singh (PW-9) reached the site of the incident, who found that the injured person had already been removed to the Deen Dayal Upadhyaya Hospital by the PCR.

4. The police station Bindapur also received telephonic information at about 4:35 pm on the said date from Constable Yashpal who was posted at the Deen Dayal Upadhyaya Hospital that one unidentified and unknown person aged about 25 years who was involved in the quarrel at Sector-3, Phase-I, Dwarka has been admitted in an injured condition by ASI Satpal Babbar.

5. The injured was examined by Dr. Rahul Dadwal who prepared MLC No.21635/12. This information was recorded as DD No.63 (Ex.PW13/B) and ASI Banwari Lal (PW-13) was intimated about the same. ASI Banwari Lal (PW-13) proceeded to the DDU Hospital. The injured person was unconscious and he was declared unfit for statement by the doctor concerned.

6. Consequently ASI Banwari Lal returned to the spot where he met the eye-witness namely, Suresh Kumar @ Tony who was

examined as PW-1 in court. ASI Banwari Lal (PW-13) recorded his statement as a *tehrir* at the spot (Ex.PW1/A) and endorsed the *rukka* thereon (Ex.PW13/C). The same was sent through Constable Amrik Singh to the police station whereupon FIR No.337/12 was registered (Ex.PW3/B) at 1950 hrs for commission of offence under Sections 308/34 IPC which was recorded as DD No.25A. Copy of the FIR was sent to ASI Banwari Lal (PW-13).

7. The police recorded statements of the witnesses including Vishal (PW-2), a second eye-witness to the incident.

8. So far as further investigation in the case was concerned, ASI Banwari Lal (PW-13) prepared a site plan (Ex.PW1/B) on the pointing out of the complainant Suresh Kumar @ Tony (PW-1). The appellant was arrested on the same day at Macchi Market, J.J. Colony, Dwarka near Saraswati School on identification by the complainant Suresh Kumar @ Tony vide arrest memo Ex.PW1/E, witnessed by Shri Suresh Kumar @ Tony (PW-1) and Constable Amrik Singh (PW-9). Upon search of the appellant Munniappa prior to his arrest, one iron knuckle (iron punch) was recovered from the right side pocket of the pant, which he was wearing. ASI Banwari Lal (PW-13) prepared a sketch of this iron punch on plain paper in the presence of and duly witnessed by Shri Suresh Kumar @ Tony (PW-1) and Constable Amrik Singh (PW-9) and duly attested by ASI Banwari Lal (PW-13).

9. The iron knuckle was duly sealed with the seal of BL and taken into possession vide seizure memo Ex.PW1/D. The appellant also made a disclosure statement (Ex.PW1/G) pursuant

whereto he led the police to House No.A-132, Phase-I, Sector-3, J.J. Colony, Dwarka wherefrom the co-accused Ram Madan@ Munna @ Sunny was apprehended on the 17th of October 2012.

10. During inquiry, Ram Madan@ Munna @ Sunny, the co-accused was found to be a juvenile who was handed over to the concerned JWA. The appellant was produced before the concerned Metropolitan Magistrate and was sent to judicial custody.

11. It appears that the injured person succumbed to his injuries in the DDU Hospital at 1:05 am on 18th October, 2012 and information about his death was telephonically conveyed to the P.S. Bindapur at about 3:15am on the 18th of October 2012. This information was recorded by the duty officer vide DD No.6A (Ex.PW13/E). The information was given to the duty officer concerned and a separate entry was recorded as DD No.6B with regard thereto (Ex.PW14/A). The information was given to SHO as well who instructed the investigating officer ASI Banwari Lal (PW-13) to get effected the identification of the deceased.

12. Consequently, Section 302 IPC was substituted in the FIR instead of Section 308 IPC (Ex.PW13/E) and further investigation of the case was entrusted to Inspector Surender Kumar (the then SHO of P.S. Bindapur).

13. The dead body was identified by one Daya Ram on the 21st of October 2012 as belonging to his son namely, Dev Narain vide the statement Ex.PW14/B which was given to the SHO Inspector Surender Kumar (PW-14).

14. Inspector Surender Kumar (PW-14) prepared the requisite

documents for inquest and also requested the doctors for a post mortem examination on the dead body of the deceased Dev Narain. The post mortem on the body of the deceased was conducted by Dr. Shalini Girdhar (PW-6) which started at about 12:15 pm on the 21st of October 2012 and completed at about 1:15 pm. The post-mortem report has been proved on record as Ex.PW6/A. As per the post-mortem report, the doctor noted the following injuries :

“EXTERNAL EXAMINATION : External Injuries:-

1. **Stitched wound 4cm in length present on the rt side of scalp 8cm from rt mastoid process 2cm from rt fronto parietal region.**
2. **Contusion present below the rt eye.**

INTERNAL EXAMINATION

A-HEAD

A- Scalp : Subscalp haematoma present on fronto parietal region on rt side of size 3 cm x 5 cm.

B- Skull : Fracture of rt middle cranial fossa with associated haematoma

C- Brain, Meninges & Vessels : Diffuse Subarachnoid and subdural haemotoma present all over the brain about 150 ml.

D- Base of skull : NAD

NECK

1. Hyoid Bone/Thyroid Cartilage/Cricoid Cartilage/Tracheal Rings & Mucosa/Any Foreign Body in Trachea : **NAD.**

2. CHEST (THORAX)

1. Ribs and Chest Wall : **NAD**
2. Oesophagus : **NAD**
3. Pleural Cavities : **NAD**
4. Lungs : **Rt lung adherent to chest wall. Left lung – NAD**
5. Heart and pericardial sac : **All chamber of heart empty.**

6. Large blood vessels : NAD.

ABDOMEN

1. Abdominal wall : NAD

2. Peritoneal Cavity : NAD

3. Stomach : NAD”

15. So far as the cause of death is concerned, the doctor opined the same as “*due to coma due to head injury caused by blunt force which is sufficient to cause death in ordinary course of nature*”. The time since death was opined as “*approx three days and twelve hours prior to commencement of post-mortem examination*”.

16. After completion of the investigation, the chargesheet under Section 173 Cr.P.C. was filed in the court. On consideration of the matter, the matter was committed to the Court of Sessions for trial in accordance with law. After considering the matter, by an order dated 14th February, 2013, the Sessions Court framed charges against the appellant for commission of offence punishable under Section 302/34 IPC.

17. The appellant pleaded not guilty and claimed trial. The prosecution examined 17 witnesses in support of its case. The evidence recorded against the appellant was put to the appellant and he was given an opportunity to explain the same under Section 313 of the Cr.P.C. After consideration of the entire evidence led by the prosecution, by the judgment dated 30th May, 2016 the trial court found the appellant guilty of commission of offences with which he was charged and sentenced him, as noted above.

18. We have heard learned counsel for the parties at great length and have been carefully taken though the record of the case.

19. Before us, the learned counsel for the appellant would contend that the impugned judgment had failed to consider that the incident was a result of a fight on the 16th of October 2012 between three or four people who were drinking together. In this context, learned counsel would draw our attention to the MLC No.21635 of the deceased (Ex.PW12/A) wherein the doctor has noted the presence of smell of alcohol from the deceased. The doctor has noted the source of injuries as physical assault upon the injured person. On preliminary examination, the doctor has noted the presence of a clear lacerated wound of about 5cmx0.5cm and some other injuries.

20. This submission of learned counsel for the appellant however, is not borne out from the eye-witness account on record. We find that appearing as PW-1, Suresh Kumar @ Tony has explained the fact that he was running a business under the name and style of Chhaydi Properties at C-158, Phase-I, J.J. Colony, Sector-3, Dwarka, Delhi. Suresh Kumar @ Tony (PW-1) has stated that at about 4:20 pm, he had seen the appellant and his associate Munna @ Sunny, both resident of the same locality i.e. Phase-I, J.J. Colony, Sector-3, Dwarka, giving fist blows to one rickshaw puller opposite the shop of Vishal tent house. Suresh Kumar @ Tony (PW-1) has clearly stated that the appellant was wearing an iron knuckle in his hand and that he had caused head injuries to the rickshaw puller with this knuckle while Munna @ Sunny had caused injuries with fist and blows. As per PW-1, the rickshaw puller had received injuries on his head, mouth, face,

neck and also on his stomach. The public which had gathered had rescued the rickshaw puller from the appellant and his co-accused and that upon seeing the crowd which had gathered, both the accused persons had run away from the spot.

21. Suresh Kumar @ Tony (PW-1) claimed that he had informed the police control room and that the PCR Van officials had taken the rickshaw puller to the hospital. PW-1 had confirmed the fact that he had given the statement (Ex.PW1/A) to ASI Banwari Lal (PW-13) of P.S. Bindapur. He has also supported the testimony of PW-13 with regard to the investigation which he had undertaken including the arrest of the appellant, his making the disclosure statement, search, recovery of the iron knuckle at his instance and several other aspects, noted by us above.

22. It has next been contended by Mr. Gurvinder Singh, learned counsel for the appellant that the recovered knuckle was not sent for a forensic examination to the Forensic Science Laboratory.

23. Our attention has been drawn to the opinion sought by the investigating officer from Dr. Shalini Girdhar (PW-6) as to whether the knuckle could have caused the injuries on the person of the deceased. The doctor has tendered her opinion in writing which was proved in her evidence as Ex.PW6/B. The knuckle was produced in a sealed *pulanda* having four seals of BL on it. The *pulanda* contained the iron knuckle and the doctor has carefully drawn the pictorial representation of the weapon in the opinion itself carefully noting the measurements. After considering the records of the post-mortem as well as the weapon, Dr. Shalini

Girdhar (PW-6) has clearly opined that the injuries mentioned in the post-mortem report could be produced by the weapon shown to her or by a similar weapon. The weapon was re-sealed and handed over to the Investigating Officer along with sample of seal.

24. We are therefore, of the view that the oral testimony of the eye-witnesses, Suresh Kumar @ Tony (PW-1) and Vishal (PW-2), are clearly corroborated on all material aspects by the evidence of Dr. Shalini Girdhar (PW-6) who had conducted the post-mortem.

25. Mr. Gurvinder Singh, learned counsel for the appellant has tried to draw benefit from the statement of Dr. Shalini Girdhar (PW-6) in her cross-examination where she had stated that she could not say that there were any inflicted wounds by the weapon as shown in Ex.PW6/B because when she received the dead body, the wounds were in stitched form. There was only a stitched wound on the right side of scalp.

In our view, this does not in any manner distract us from the doctor's opinion to the effect that the wounds on the deceased would be possible by the iron knuckle which had been seized from the appellant.

26. So far as failure of the investigating agency to send the iron knuckle for a forensic examination and the failure to note blood thereon is concerned, the same is in the nature of a lapse on the part of the investigating agency. However, in the instant case, we have the direct and unchallenged testimony of eye-witnesses who have categorically deposed that the appellant used to carry an iron knuckle and that he had actually beaten the deceased with the iron

knuckle.

27. We don't find any conflict between the ocular and medical evidence. Even if it could be contended that there was conflict between the doctor's evidence with regard to the weapon and the ocular evidence placed before the court, the ocular evidence shall prevail unless the medical evidence rules out completely the ocular evidence from being true. It is not so in the present case. The ocular evidence is clear and unshaken and proves the commission of the offence by the appellant beyond any doubt.

28. Mr. Gurvinder Singh, learned counsel for the appellant has placed reliance on the pronouncement of the Supreme Court reported at *AIR 2015 SC (Crl.) 73, Ananda Pujara v. State of Karnataka* that if there is uncertainty in the case about the cause of death, the accused would be entitled to the benefit of doubt. It is contended that in the present case there is doubt about the cause of death and therefore, the appellant is entitled to the benefit of doubt and deserves to be acquitted.

This submission is completely unfounded inasmuch as there is no manner of doubt in the present case that the deceased had died as a result of the fatal injuries inflicted upon him by the appellant.

The principle laid down in this judgment has no application to the present case.

29. Our attention has also been drawn to the testimony of Vishal (PW-2), who was the owner of Vishal Tent House being run on the ground floor of the premises which also housed his residence. This

witness has corroborated the testimony of Suresh Kumar @ Tony (PW-1) on all scores. Vishal (PW-2) has also correctly identified the appellant in the court as the person who was beating up the rickshaw puller in front of his shop in the presence of his neighbour Suresh Kumar @ Tony (PW-1) who at that time had also informed the police control room. This witness also confirmed that the police had removed the injured rickshaw puller to the hospital.

So far as the infliction of injuries by the appellant on the person of the deceased Dev Narain is concerned, there is, therefore, no doubt at all that the appellant was responsible for the same.

30. The other contention pressed is that there was a quarrel. We also find that no circumstances of any quarrel have been brought out in the testimony of PW-1, the eye-witness. Though Vishal (PW-2) refers to a quarrel but he has referred to an incident of the rickshaw puller being beaten by the appellant Munniappa and one more person. There is no evidence that the deceased rickshaw puller was involved in any violence, physical or non-physical, against the appellant or his associate.

Therefore, the instant case certainly does not fall under exception 4 of Section 300 IPC as there is no evidence of it being an incident '*without premeditation in a sudden fight in the heat of passion upon a sudden quarrel*'.

31. On the contrary, it is in evidence that the appellant was carrying a knuckle which is certainly a weapon intended to be used to inflict injury on another person. There is no suggestion in the

cross-examination of any witnesses with regard to the same. The appellant has also not made any statement to this effect or tendered any explanation in these terms in his statement recorded under Section 313 of the Cr.P.C.

32. For all these reasons, we find no merit in the present appeal which is hereby dismissed.

Crl. M. Bail 1472/2016 (for suspension of sentence)

In view of the dismissal of the appeal, this application for suspension of sentence does not survive for adjudication and is dismissed.

GITA MITTAL, J

P.S.TEJI, J

OCTOBER 7, 2016/aj