

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

+ Crl.Appeal No.436/2000

Date of Decision: 30th January, 2017

TARA CHAND

..... Petitioner

Through Mr.M.K.Vashisht, Adv.

versus

STATE OF DELHI

..... Respondent

Through Mr.Panna Lal Sharma, APP with SI
Narender Kumar, PS: Prasad Nagar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present appeal has been filed under Section 374 Cr.P.C. against judgment dated 06.07.2000 whereby the appellant has been found guilty and convicted for an offence punishable under Section 304 Part II IPC and order on sentence dated 07.07.2000 whereby the appellant has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default to payment of fine, to undergo simple imprisonment for a period of six months.

The fine, if recovered, had been directed to be paid to the heirs of the deceased as compensation.

2. The facts of the case, as per the case of the prosecution, in a nutshell are that on 15.08.1992 at about 3 P.M. Vikrant @ Bunty with Des Raj was returning after changing a video cassette and on the way back, Bunty and Des Raj were abusing the owner of video cassette library who had supplied defective video cassette. When they reached near house of accused Tara Chand, Soma Devi w/o Bhim, the brother of accused, accosted them and alleged that they were abusing her. Vikrant @ Bunty refuted the allegation, but Soma Devi insisted that she had been abused. In the mean time, Bhim, Ashok and appellant/accused Tara Chand, the three brothers came and started beating Vikrant @ Bunty and Des Raj. Accused Tara Chand gave beatings to Vikrant. In the meantime, one Manak Chand came there and tried to save Vikrant @ Bunty saying 'Kaya Tu Larke Ko Jaan Se Marega'. In the meantime, mother of Vikrant @ Bunty came at the spot. The accused then released Vikrant, picked a brick and gave blow on the head of

Manak Chand saying 'Sale Ab Bacha Le Bunty Ko'. Thereafter blood oozed out of the head of Manak Chand and accused left the spot. Mother of Vikrant @ Bunty asked Manak Chand to go to the hospital, but he went to his house.

3. Manak Chand got private treatment, but on 20.08.1992, his condition worsened so he was taken to RML Hospital. The information about his admission was received at PS: Parsad Nagar and recorded at Serial No. 13A in D.D.Registrer. Copy of the same was handed over to SI Rajinder Singh who along with Const. Manohar Lal reached the hospital. In the hospital, MLC of Manak Chand was collected, but he was declared unfit for treatment. No eye witness was found in the hospital so after perusal of MLC SI Rajinder Singh made an endorsement and got case registered under Section 308 IPC. Then SI Rajinder Singh reached the spot and prepared site plan at the instance of Om Wati, mother of Vikrant @ Bunty and recorded statements of Om Wati and Vikrant.

4. On 25.08.1992, information was received from the Hospital that Manak Chand had died and the information was

recorded at serial No.26A in DD Register so the case was converted into one under Section 304 IPC and post mortem of the dead body was conducted. The appellant/accused was arrested, but weapon of offence could not be recovered. After completion of investigation, challan was prepared, filed in the court of M.M. and the case was committed to the court of sessions for trial.

5. Charge under Section 304 IPC was framed against the appellant/accused vide order dated 24.10.1994, to which appellant/accused pleaded not guilty and claimed trial.

6. The prosecution examined fifteen witnesses in support of their case i.e. PW-1 Jatinder Kumar, PW-2 Const. Nitter Singh, PW-3 S. Mehto, PW-4 Des Raj, PW-5 Dr.L.T.Ramani, PW-6 HC Prem Chand, PW-7 Raj Kumar, PW-8 Const.Manohar Lal, PW-9 Const.Raj Kumar, PW-10 Omwati, PW-11 Vikrant, PW-12 Dr.Poonam Kapoor, PW-13 HC Dharam Pal, PW-14 SI Rajinder Singh and PW-15 ASI Rameshwar Dayal. Statement of accused under Section 313 Cr.P.C. was recorded and he examined DW-1 Bhim Singh in

his defence.

7. In support of the appeal, the appellant/accused has taken the grounds that there is a delay in lodging of FIR in the instant case inasmuch as the incident took place on 15.08.1992 at 3 PM while the FIR was recorded on 20.08.1992 at 4.30 P.M; that the appellant/accused had not been named in the proceedings nor in the FIR; that the weapon of offence i.e. brick has not been recovered by the IO and that there are material contradictions in the testimony of the witnesses.

8. Per contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the judgment of conviction and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order, therefore, the same is not liable to be interfered with.

9. Arguments advanced by the learned counsel for the appellant as well as learned APP for the State were heard.

10. PW1 is Jatinder Kumar, who is the son of the deceased, has deposed that when he came to his house, he saw his father having head injury. He took his father to RML hospital and got him

admitted there.

11. PW11 is Vikrant @ Bunty. In his deposition, he stated that he was running cable TV business and on 15.08.1992 while he along with Des Raj was returning after taking a cassette from video library and reached in front of the house of the appellant/accused, his mother was found sitting on a cot in front of her house and his foot struck with the cot whereupon she started abusing him. He told her that he had said nothing against her. In the meanwhile, Shyama Devi also came out of the house and started abusing. Tara Chand, the appellant/accused, also came there and caught hold of Vikrant and started abusing him. He fell down and appellant/accused started give kick and fist blows to him. In the meanwhile, Manak Chand came there and started saving Vikrant. He also asked the accused not to beat Vikrant. The appellant/accused stated that 'you will save bunty' and started abusing Manak Chand and picked up a brick and hit on the head of Manak Chand as a result of which he sustained injuries and fell down. The appellant/accused ran away.

12. PW10 Om wati is the mother of PW-11 Vikrant @ Bunty. She has corroborated the testimony of PW-11. She has stated that on 15.08.1992 someone informed her that her son Vikrant @ Bunty was

having a quarrel. She rushed towards gali where quarrel was going on. She saw that appellant Tara Chand was beating her son. Her son Buntty was lying on the ground. She further stated that one Manak Chand tried to save her son and in the meanwhile, the appellant/accused took a piece of brick and gave its blow on the head of Manak Chand. As a result of which blood started oozing out and appellant ran away from the spot.

13. The testimony of PW-10 and PW-11 has been duly corroborated by PW5 Dr.L.T.Ramani. PW-5 conducted post mortem on the body of Manak Chand on 26.08.1992. He opined that the deceased had sustained following injuries:

External Injuries:

Stitched wound C shape extending from right temporo parietal area to the vault of scalp and then continuing to right occipital area. On removing stitched wound margins were found united.

Partly healed up abrasions 1 ½" x 1" on the left fronto parietal area.

Internal Examination:

Haematoma in the scalp over right parietal region around craniotomy hold of 2" diameter on the right parietal bone. There was gele foam backing beneath. There was thick extra dual haemorrhage on the posterior half of right cerebral hemisphere and generalized sub-dural haemorrhage. Brain was oveematous and there was necrosis of vasal part of

mid brain. Neck tissues were normal.

As per his opinion, the injuries were ante-mortem in nature caused by blunt object. Injury to the brain was sufficient to cause death in the ordinary course of nature. Death was due to coma resulting from head injury.

14. PW2 is Constable Mittar Singh who was posted in RML Hospital on 20.08.1992 and he had informed PS Parsad Nagar. PW12 is Doctor Poonam who was working as CMO on 20.08.1992 in this hospital and she had examined Manak Chand and prepared MLC Ex.PW12/A and thereafter Manak Chand was referred to surgical emergency.

15. PW3 is the Medical Record Clerk who proved death report and death summary of the deceased Manak Chand.

16. PW14 SI Rajinder Singh is the IO of the case. On 20.08.1992 he was handed over copy of DD No.13A which is Ex.PW14/A. He along with Const. Manohar Lal reached RML Hospital. He collected MLC of Manak Chand who was declared unfit for statement. Since no witness was found at the hospital, he made endorsement on the DD and sent the same through Const. Manohar Lal to the police station for registration of the case. He returned to the spot at Pershad

Nagar where occurrence had taken place. He prepared the site plan Ex.PW14/C on the pointing of Om Wati and recorded the statement of Om wati. He also recorded the statement of Vikrant. On 25.08.1992, he received a copy of DD No.26A (Ex.PW6/A) that Manak Chand had died. He conducted the inquest proceedings and got the dead body identified by Jitender and Raj Kumar and recorded their statements. With the help of Const. Raj Kumar, he brought the dead body to Subzi Mandi mortuary for post mortem. After post mortem, he handed over the dead body to relatives of the deceased.

17. Indisputably, the quarrel had taken place between the appellant and Vikrant @ Bunty and in the said quarrel, the appellant first gave kick and fist blows to Vikrant @ Bunty and when Manak Chand intervened, the appellant/accused stated 'you will save Bunty' and started abusing the deceased and picked up a brick and hit on the head of Manak Chand due to which he sustained injuries on his head and fell down.

18. From the testimony of eye witness PW11 Vikrant @ Bunty, it has been duly established that on the day of the incident, while he along with Desh Raj was returning to his house and reached in front of the house of accused Tara Chand, mother of appellant/accused

was found sitting on a cot in front of her house. His foot struck against her cot and mother of accused started abusing him. In the mean time, the accused/appellant came there and caught hold of him and started abusing. Vikrant @ Bunty fell down and accused/appellant gave kick and fist blows to him. In the mean time, the deceased came there and started saving him. He also asked the accused not to beat him. The accused stated that 'you will save Bunty'. He started abusing the deceased who sustained injuries on his head and fell down. The accused ran away. When the blow was given by the accused/appellant, the mother of the witness was about to reach there. In the cross examination, this witness stated that when he saw his mother, he was standing near Manak Chand and the accused had run away from the spot. The brick with which injury was caused was lying near the nali.

19. In the considered opinion of this Court, the testimony of the eye witness Vikrant @ Bunty (PW11) is reliable and trustworthy. Even otherwise, his testimony has duly been corroborated by public witnesses Om Wati (PW10) whose testimony was also found to be credible.

20. It is apparent from the testimony of prosecution witnesses that

there are discrepancies with regard to date and time of incident and the manner of investigation conducted by the police. But the fact remains that the said contradictions or discrepancies are not material enough, which could have gone to the root of the matter. Such discrepancies are bound to occur in normal course. It is a fact that the incident had taken place on 15.08.1992, deceased received private treatment, got admitted in hospital on 20.08.1992 and succumbed to the injuries on 25.08.1992. Such contradictions and discrepancies are bound to occur due to such a lapse of time and after a careful reading of their testimony, this Court does not find the same to be material which could discard the case of prosecution in toto.

21. A cumulative effect of the above discussion leaves no room of doubt that on the day of incident, the appellant committed culpable homicide not amounting to murder of the deceased Manak Chand and the same has duly been established from the evidence produced on record by the prosecution.

22. Consequently, the judgment of conviction and order on sentence passed by the Court below are upheld.

23. The personal bond and surety bond of the appellant stands

cancelled. Appellant, on bail, is directed to surrender within a period of 15 days before the trial court concerned to serve the remainder of the sentence.

24. With the above observations, the present appeal stands disposed of. Pending application, if any, is also disposed of.

JANUARY 30, 2017



**(P.S.TEJI)
JUDGE**