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

% *Date of Judgment: 18th August, 2017*

+ **CRL.A. 542/2013**

DEEPAK @ DEEPU Appellant

Through : Mr.Ravi Tikania, Adv.

versus

STATE Respondent

Through : Ms.Radhika Kolluru, APP for the
State along with Insp. Rajesh
Kumar, PS Sarai Rohilla, in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') assailing the judgment dated 28.02.2013 passed by the Trial Court in Sessions Case 88/2011 arising out of FIR 222/2011 PS Sarai Rohilla, by which the appellant has been convicted for the offence under Section 302 of the Indian Penal Code, 1860 ('IPC'). Challenge is also laid on the order on sentence dated 28.02.2013 by which the appellant has been sentenced to undergo imprisonment for life and fine of Rs.1,000/-; in default of payment of fine, to undergo simple imprisonment for a period of one month.
2. The case of the prosecution, as noticed by the learned Trial Court, is as under:-

"1. On 26.06.2011, on receipt of DD No.35-A, ASI Bachhu Singh along with Ct. Vijay reached at the spot and after inspecting the spot, informed the senior officials about the incident upon which Inspector M.P. Singh alongwith SI Sunil Kumar also reached at the spot where they were informed that the injured had already been taken to hospital

by PCR van and the accused was produced by TSR driver namely Sharwan Kumar. Thereafter ASI Bachhu Singh reached at BJRM hospital and obtained the MLC of deceased Pawan Kumar as per which he was declared dead. Statement of TSR driver was recorded wherein he stated about the stab injuries caused to the deceased with broken bottle of liquor in the hands of accused. Accordingly, case u/s 302 IPC was registered against the accused and during the investigation of the case, IO prepared site plan, got the scene of crime inspected through crime team, recorded statements of witnesses, got the post-mortem examination of dead body conducted through mortuary, sent the exhibits to FSL for expert opinion and after completion of investigation, filed the charge sheet u/s 302 IPC in the court.”

3. Charge was framed against the appellant/accused under Section 302 IPC, to which the appellant pleaded not guilty and claimed trial. In support of its case, the prosecution has examined 17 witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. wherein he claimed to be innocent and also claimed that he was falsely implicated in the matter. No evidence was led by the defence.
4. Upon appreciation of evidence, the Trial Court found the chain of events to be complete and the prosecution was able to prove the factum of the deceased and the accused being together at the time of the incident followed by their quarrel over the issue of money and the accused causing injuries upon the person of the deceased by broken liquor bottle which led to his death and convicted the accused/appellant under Section 302 IPC and sentenced the appellant as noticed in paragraph 1 foregoing.
5. At the outset, learned counsel for the appellant submits that he has instructions to state that he does not contest the judgment as far as the conviction is concerned, but wishes to lay challenge that no case under Section 302 IPC is made out. Learned counsel submits that the case

of the prosecution is based on the testimony of an eye-witness who was the TSR driver, i.e. Sharwan Kumar (PW-1). Mr. Tikania contends that a careful reading of the testimony of this witness would show that the deceased and the appellant were friends and were travelling in the same TSR. It is also pointed out that upon reaching the destination, a sum of Rs.50/- was handed over by the appellant to the TSR driver, out of which Rs.30/- was returned to the appellant and thereafter, an altercation broke out between the deceased and the appellant with regard to the balance amount which was handed over by PW-1 to the appellant.

6. Learned counsel further contends that it was primarily a money dispute which occurred on the spur of the moment and which led to the unfortunate incident. It is contended that there was no pre-meditation; there was no weapon of offence and the appellant did not act in an unusual or cruel manner. The appellant used a bottle of alcohol, which both the appellant and the deceased were carrying. The bottle was hit on the head of the deceased and thereafter, the appellant stabbed him with broken liquor bottle. Counsel further submits that only one of the injuries resulted in the death of the appellant.
7. Ms. Kolluru, learned counsel for the State, submits that there is no infirmity in the judgment and the order on sentence passed by the Trial Court. She submits that the evidence of PW-1 would also show that both the appellant and the deceased were quarrelling throughout the journey in the TSR. She further submits that the appellant acted in a cruel manner and hit the liquor bottle on the head of the deceased and thereafter stabbed him with broken liquor bottle on the other parts of the body.

8. We have heard the learned counsels for the parties and perused the Trial Court record.
9. Though no challenge has been laid to the merits of the conviction, we deem it appropriate to analyse the evidence to consider the aspect of conviction in order to satisfy our conscience. PW-1 is the eyewitness to the incident, however, the story begins from the home of PW-4 and PW-5.
10. Pintoo (PW-5) deposed that on 26.06.2011, in the night hours, his brother Pawan ('deceased') and his friend/appellant herein had come to his house. Both were under the influence of liquor and had come to see him as he had sustained injuries in an accident. They served them food and he accompanied them to see off at about 9:30 PM. They used to work in the bus as a conductor and helper and used to quarrel with each other on the issue of money. They had hired a three wheeler for going to the place where their bus was stationed. Both of them were quarrelling with each other for some amount of money before they boarded the three wheeler. In this cross-examination, PW-5 stated that the appellant and the deceased had come to his house at about 7:45-8 PM.
11. Mahalaxmi (PW-4), wife of PW-5, deposed on similar lines. She further deposed that her husband (PW-5) had accompanied the deceased and the appellant to see them off at about 9:30 PM. In her cross-examination, she deviated from the statement of her husband to the extent that she stated that the appellant and the deceased had come to their house at about 6:30 PM.
12. The prime prosecution witness is Sharwan Kumar (PW-1), who deposed that he is a TSR driver and on 26.06.2011, he was driving his TSR and going to Gulabi Bagh for dinner. At about 9:30 PM, he

reached Nimri Colony near Khuda Khatta, there three boys were standing and they gave indication to stop the TSR. Two boys boarded his TSR for going to Bharat Nagar Nala. The boys were talking to each other and one boy was demanding his money (Rs.1200-1300/-) from the other. They were shouting and quarrelling with each other. PW-1 stopped his TSR near Bharat Nagar Nala near the *desi theka* (liquor shop) on the asking of the appellant. The appellant demanded money from the deceased to purchase liquor; which he refused stating that the previous balance had not been cleared. The appellant demanded Rs.100/- and told that he would return the same with the earlier amount. The deceased gave Rs.100/- for purchasing liquor; the appellant brought liquor and came back and sat in the TSR. They told PW-1 to drop them off a little ahead. Both of them started quarrelling again. The TSR was stopped near Chowki No.2 near bus stand on the asking of the boys. PW-1 requested them to pay the fare of TSR. The appellant paid him Rs.50/- and he returned Rs.30/- to him. When the appellant got down he started quarrelling with the deceased and the appellant hit the liquor bottle on the head of the deceased. The deceased fell down and the appellant gave stabs with the broken liquor bottle on the other parts of the body and he caused injuries to the neck and stomach. The appellant tried to flee, however, he was chased by PW-1 and other public persons and apprehended. Someone called the police and he handed over the appellant to the PCR van officials. The witness was thoroughly cross-examined, wherein he stated that he dropped the appellant and the deceased at about 9:15 PM, though he did not remember the exact time. He further stated that the auto fare was paid by the deceased.

13. The deceased was taken to BJRM Hospital, wherein he was examined and MLC (Ex.PW-2/A) was prepared. As per the testimony of Dr.Sanjay Kumar (PW-2), the deceased was brought in a drowsy condition, with severe bleeding, respiratory laboured and three stab wounds; he was treated upon, however, he was declared dead at 12:30 AM. The postmortem (Ex.PW-6/A) was conducted by Dr.V.K.Jha (PW-6), who found 3 lacerated wounds, and one incised wound and abrasion on the chest. The cause of death was opined to be haemorrhagic shock as a result of laceration of neck vessel injury consequent to sharp weapon with irregular margin. All injuries were *ante mortem* in nature and injury no.3 (lacerated wound on right side of the neck 3 cm below from the right ear lobule of size 3x2 cm, muscle deep) was found sufficient to cause death in ordinary course of nature. As per his subsequent opinion (Ex.PW-6/B), PW-6 opined that the injury had been caused by sharp edged weapon with irregular margin.
14. We find the testimony of PW-1 to be reliable and consistent with the testimonies of PW-4 and PW-5 as well as the medical evidence, hence, the order of conviction was rightly recorded by the Trial Court. The prosecution was able to prove that the appellant had caused the injuries on the body of the deceased which resulted in his death.
15. We proceed to examine whether a case of Section 302 IPC would be made out against the appellant? We are of the opinion that the case would be covered under Exception 4 to Section 300 IPC. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was member, in ***Kamaljeet v. State***, MANU/DE/1752/2017 (paragraph 40) observed that “[t]o bring a case under the exception, fourfold requirement must be satisfied: first, there must be a sudden

fight; second, absence of pre-meditation; third, the accused must have been overcome with the heat of passion; and fourth, the accused must not have taken undue advantage or acted in a cruel or unusual manner.”

16. In the case at hand, the evidence reveals that the appellant and the deceased were friends and used to work together in a bus as a conductor and a helper. They were already drunk when they came to the house of PW-4 and PW-5. When they had left the house, they started quarrelling for some amount of money owed by the appellant to the deceased, which continued while they travelled in the TSR of PW-1. They halted in between to purchase liquor, which was once again paid for by the deceased as also the fare for the TSR. After disembarking, the two continued to quarrel and it was during this quarrel that the appellant in the heat of passion struck the liquor bottle on the head of the deceased and then used it to inflict stab injuries on the deceased.
17. There is no evidence of pre-meditation, which is further evinced by the fact that the appellant did not inflict any blows on the deceased all along from leaving the house of PW-4 and PW-5, while riding in the TSR to getting off. Had there been any premeditation, the appellant would have inflicted the fatal blow immediately upon coming after purchasing the liquor bottle. Further as revealed by the postmortem report (Ex.PW-6/A), there was only one fatal blow struck upon the neck of the deceased and thus, it cannot be said that the appellant acted in a cruel or unusual manner.
18. What remains is whether the blows were struck in a sudden fight in the heat of passion? In this regard, we may notice the judgment of a coordinate bench of this Court in ***Chiranji Lal v. State, 2012 (128)***

DRJ 79, wherein the accused/appellant had an altercation with the deceased over the fixation of labour rates, which was pacified; then they boarded a bus together, where the heated exchange of words ensued. They were instructed by the bus driver to get down and immediately thereafter, the appellant had broken a liquor bottle and inflicted injury on the deceased. The Trial Court had convicted the appellant therein under Section 302 IPC, which was converted into one under Section 304 Part I by the bench. The relevant paragraphs read as under:

“12. Now, the only question that remains for us to consider is whether the culpable homicide took place in a sudden fight in the heat of passion and upon a sudden quarrel. It is clear that there was an exchange of words at Daya Basti which was momentarily stalled and, immediately thereupon, all the parties to the incident boarded the very same bus for their respective homes. Immediately, on boarding the bus, the exchange of words again ensued. The heated exchange of words was to such an extent that it caused inconvenience which led the bus conductor and the driver of the bus to stop the bus and to ask the six persons involved in the dispute to get down of the bus near Railway quarters at Sarai Rohella. Immediately thereafter, the incident of breaking of the bottle and of inflicting the injury on Om Parkash took place. To our minds, this would amount to a sudden fight in the heat of passion and upon a sudden quarrel. There is no evidence that the heat of passion ever died down. There was no cooling off, as such, which could be said to have taken place. The fight continued from Daya Basti, on to the bus and after getting down from the bus. In all the three places i.e., at Daya Basti, in the bus as also after getting down from the bus, the fight continued and the exchange of words continued. The parties had no time or opportunity to cool off. As such, we feel that this is a case which would clearly fall within Exception 4 of Section 300 IPC.

...

14. We feel that although the present case is of culpable homicide not amounting to murder, the punishment that is

to be awarded to appellant would fall under section 304 Part I and not Part II, inasmuch as, although we have held that the appellant did not have the intention of causing death, there is enough evidence on record to show that he did have the intention of causing such bodily injury as was likely to cause death. Consequently, the impugned judgment and order on sentence are modified to the extent that instead of being found, guilty of murder, the appellant Chiranji Lal is held to be guilty of committing culpable homicide not amounting to murder and his sentence is to be awarded under Section 304 Part I. In view of the fact that the appellant has already undergone approximately 8 years and 3 months in custody, we feel that the period undergone is sufficient sentence in order to meet the ends of justice.”

(Emphasis Supplied)

19. Similarly in the present case, the quarrel started between the appellant and the deceased the moment they left the home of PW-4 and 5; it continued during the ride in the TSR of PW-1 and even when they got off. There was no cooling off period and the tempers continued to run high. In the heat of passion, the appellant banged the liquor bottle on the head of the deceased and then inflicted stab blows with the bottle. Hence, it is clear that the offence was committed in the heat of passion during the course of a sudden fight.
20. All the essentials of Exception 4 to Section 300 IPC stand satisfied. The conviction is to be converted to one under Section 304 IPC and having regard to the injuries sustained by the deceased, the appellant must be imputed with the intention of causing such bodily injury as likely to cause death, if not the intention to cause death, and thus, the sentence is to be awarded under Section 304 Part I IPC.
21. Having regard to the culpability of the appellant, we are of the view that the ends of justice would be met if the appellant is sentenced to imprisonment for seven and a half years under Section 304 Part I IPC.

The order of the Trial Court with regard to fine shall be read as for one under Section 304 Part I and remains the same.

22. Thus, the appeal is partly allowed and orders of conviction and sentence are modified in the above terms.
23. Trial Court record be returned along with copy of this judgment.
24. Copy of this Judgment be sent to the concerned Jail Superintendent for updating the jail record.
25. In view of the foregoing order, Crl.M.B. 1358/2017 seeking interim suspension of sentence is rendered infructuous and accordingly, dismissed.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

AUGUST 18, 2017

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