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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 195/2017

STATE

..... Petitioner

Through: Ms. Radhika Kolluru, Advocate

versus

POORNA SHUKLA & ANR.

..... Respondents

Through: Mr. Anil Kumar Kamboj, Advocate

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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06.11.2017

1. This is a petition by the State seeking leave to appeal against the judgment dated 19th November 2016 passed by the Additional Sessions Judge, Tis Hazari Courts, Delhi, whereby the Respondents were convicted for the offence under Section 307/34 IPC. The case of the State is that the Respondents should have been convicted for the offence with which they were charged i.e. 302/34 IPC or at least under Section 304-II/34 IPC.

2. The case of the prosecution is that the deceased Amit and his brother Rajesh Kumar (PW-2) were sleeping on the roof of their house at Tilak Vihar, Tilak Nagar on 19th August 2012 when at around midnight, a quarrel took place between them and the accused Poorna Shukla (A-1) and Veeru (A-2). According to PW-2, upon the accused returned a short while thereafter. A-1 had an iron rod in his hand and A-2, a plastic pipe of PVC.

They hit Amit on his head with the said weapons while he was sleeping. In his statement to the police, PW-2 stated that while he stood up, Amit remained lying down and when Amit's head injuries started bleeding, PW-2 tried to save Amit.

3. The deceased was first taken to the DDU Hospital. PW-21, Dr. Manoj, who was then posted as Senior Resident (Casualty), has stated that he found a contused lacerated wound (CLW) "of size about 6cm x 1cm x 1cm, bone deep right side of forehead to mid parietal region, CLW size about 2cm x 1cm x 1cm right side forehead above right side eyebrow, large swelling right side parietal region, bleeding with abrasion upper lip and swelling on right eye."

4. PW-21 further stated that he referred the injured to the Neuro Surgery, ENT & Eye Department of the said hospital. As it transpired, Amit was thereafter taken to Shakuntala Hospital without any referral order from the doctors of DDU Hospital. He remained there from 19th August 2012 to 27th August 2012. He was operated upon on 20th August, 2012 and kept in the ICU. He was there discharged around 10:30 p.m. on 27th August 2012 and left against medical advice (LAMA). This is spoken of by PW-10 Dr. Dinesh Makkar.

5. Amit was then taken in an ambulance which was driven by PW-6, Narendra Singh Tomar. He was to be taken back to DDU Hospital to be taken to Patna. He states that although despite all precautions, Amit died expired around 10.30 to 11 am on 29th August, 2012, i.e. around 10 days

after the assault.

6. Dr. Shailendra Kumar, PW-8, who conducted the post mortem at Sadar Hospital, Banka, Bihar on 30th August, 2012 gave the cause of death as ‘Shock due to subdural haematoma’ i.e. the death was due to the head injury’. The only reply in his cross-examination which is relevant to the issue in question in the present petition is that “there was no Brain Haemorrhage in this case”.

7. The learned trial Court, after analysing the evidence, came to the conclusion that the ingredients of Section 302 IPC were not proved. It was held that “although it is proved that the accused persons attempted to kill the deceased Amit but it is not established within the parameters of law that they have killed him”.

8. Ms. Radhika Kolluru, learned counsel appearing for the State refers to Section 299 IPC and submits that the latter part of the definition would be attracted inasmuch as the death was as a result of intention to cause “such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death”. She submitted that ‘subdural haematoma’ was a direct result of the head injury suffered by the deceased at the hands of the accused and therefore, the offence made out was that of culpable homicide not amounting to murder as defined under Section 299 IPC punishable under Section 304-II IPC. She placed reliance on the decisions in *Sellappan v. State of Tamil Nadu 2007 Cri LJ 1442* and *Rewaram v. State of Madhya Pradesh 1978 Cri LJ 858*.

9. The Court is unable to agree with the above submission. The description of the incident by the injured eye-witness is that there was a quarrel between the accused and the deceased and his brother as a result of which the accused armed with an iron rod and plastic pipe attacked the deceased. Reading the evidence as a whole the Court is not persuaded to hold that the ingredients of Section 302 IPC or even Section 304 Part II read with Section 34 IP{C are made out. The number and nature of injuries is certainly one factor. The fact that the death did not ensue immediately but ten days after the assault is another relevant factor.

10. Ms. Kolluru referred to Explanation 2 to Section 299 IPC and submitted that, the person who caused the bodily injury should be deemed to have caused the death although by resorting to skilful treatment the death might have been prevented. However, Explanation 2 does not relieve the prosecution from having to prove beyond reasonable doubt the actual ingredients of Section 302 or Section 304 Part II viz., that when they assaulted the deceased, the accused had the knowledge that such bodily injury was likely to cause death at a later point in time. In the present case, the prosecution cannot be said to have discharged that burden.

11. The decisions cited by Ms. Kolluru are distinguishable on facts. In *Sellappan v. State of Tamil Nadu* (*supra*), the accused were armed, *inter alia*, with also a sharp edged weapon (*Aruval*). In fact, when the *Aruval* was thrown by one of the accused at the deceased, the latter side-stepped. In *Reva Ram v. State of Madhya Pradesh* (*supra*), there were multiple injuries

which collectively were held to be sufficient "in the ordinary course of nature to cause death".

12. For the above reasons, the Court is not persuaded to hold that the trial court erred in convicting the Respondents under Section 307 IPC read with 34 IPC and not Section 304 Part II IPC read with Section 34 IPC.

13. The petition is accordingly dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

NOVEMBER 06, 2017
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