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

+ **CRL.A. 980/2002**

SUBHASH CHAND GUPTA ... Appellant

Through: Ms. Inderjeet Sidhu,
Advocate

versus

STATE Respondent

Through: Mr. Hirein Sharma, APP
for State

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL**

ORDER
18.09.2018

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 26th July, 2001 passed by the Court of learned Additional Sessions Judge, New Delhi, in Sessions Case No.234/1996 arising out of FIR No.824/1995, registered at Police Station ('PS') Ambedkar Nagar, convicting the Appellant for the offences under Section 302 and 201 IPC and the order on sentence dated 30th July, 2001 whereby for the offence under Section 302 IPC he was sentenced to imprisonment for life with fine of Rs.10,000/-, and in default of payment of fine to undergo simple imprisonment (SI) for three years and for the offence under Section 201 IPC to rigorous imprisonment for three years with fine of

Rs.5,000/-, and in default of payment of fine to undergo SI for six months. Both the sentences were directed to run concurrently.

2. The Appellant was charged with having murdered his wife Rani on 25th November, 1995 at around 10 pm at their house in Devli Extension, New Delhi and after committing the murder of having washed out the blood at the scene of crime thereby committing the offences punishable under Section 302 and 201 IPC.

3. The deceased was earlier known as Anisha Bano. She was married to Mohammad Israr (PW-4). The Appellant used to work with PW-4, and PW-4 had even arranged a house for him on rent. It appears that the deceased went away with the Appellant and they started living together at Madangir for about 7 years prior to her death. According to PW-4, just 15 days before her death, the deceased had come to his house and complained that the Appellant was harassing her and that she wanted to return to PW-4 and their children.

4. The case was based on circumstantial evidence. One of the key witnesses was Smt. Ashrafi (PW-5), in whose house the Appellant was staying along with the deceased as tenants. According to PW-5 at about 9 pm she and her husband Amar Singh (PW-18) were sleeping in their house when suddenly she heard the deceased calling out to her and saying “*Mar Gayi Mar Gayi*”. When she opened the door of the

room she noticed that the deceased lying in the courtyard of the house with her face towards the ground. When they called the Appellant, who was in his room at the time, and asked him as to what had happened, he is supposed to have admitted to having committed a mistake by stabbing his wife. PW-5 noticed blood coming out from the body of the deceased. She and PW-18 then advised the Appellant to take the deceased to the hospital.

5. According to PW-5, the Appellant immediately took the deceased to the hospital in an auto-rickshaw. PW-5 stated that they informed the Police Control Room but the police did not visit the spot at the time. At around 12 midnight, the Appellant returned home and informed PW-5 and PW-18 that he had admitted the deceased in the hospital. He told them that he had informed the doctor in the hospital that the deceased had sustained injuries due to a fall from the roof. He then asked that he should be allowed to wash the blood lying on the floor of the courtyard and proceeded to do so, despite the advice of PW-5 and PW-18 that the police might come and he should not. The next morning, the Appellant is stated to have left the house with some clothes on the pretext of going to the hospital to meet his wife.

6. It is only on the third day after the incident that the police visited the house and made inquiries from PW-5 and PW-18. At around 6 pm, they took PW-18 to the hospital for identification of the body. On that

very date the Appellant is stated to have returned home at around 8 pm. The Appellant was arrested on 28th November, 1995. After completion of investigation the charge sheet was filed.

7. The trial Court has in the impugned judgment, after discussing the evidence, concluded that the motive for commission of the crime was the resentment that the Appellant had about the deceased wanting to return to her family which then led to a domestic discord between the two. The trial Court noted that PW-5 and PW-18 stated that shortly prior to the incident, they heard the cries of the deceased. The medical evidence revealed that the deceased had suffered a single stab wound 2 cm x 1 cm on her chest on the left side in the third intercostal space. The track was directed medially and inwards. It had cut the muscle and the upper lobes of the left lung “cutting through and through”. The track then led to the heart producing stab wound on the anterior surface of left ventricle. This single injury was opined to be the fatal wound and held to be sufficient to cause death in the ordinary course of nature.

8. The trial Court concluded that the prosecution had proved each of the links in the chain of circumstances and that they pointed unerringly to the guilt of the accused. One crucial circumstance which formed part of the chain was the recovery of the blood stained knife as well as the blood stained clothes of the Appellant at his instance and the fact

that the blood group found on both the knife and clothes of the Appellant matched the blood group of the deceased. The trial Court accordingly proceeded to convict the Appellant and sentenced him in the manner as indicated hereinabove.

9. The present appeal was admitted on 18th December, 2002 and the nominal roll was called for. It showed that as on 29th November, 2002 the Appellant had already completed 7 years and one day of imprisonment. Noting this fact in its order dated 22nd April 2003, by which time the Appellant had completed seven years, four months and 10 days of imprisonment, this Court suspended his sentence subject to his furnishing a personal bond in the sum of Rs.10,000/- with two sureties of the like amount.

10. However, it appears that the Appellant could not fulfill this condition and came back to this Court with an application for reduction of the number of sureties. This was acceded to and by an order dated 18th July, 2003, he was asked to be released on furnishing one surety.

11. It appears that even this condition was not able to be fulfilled and another application was filed by the Appellant which was dismissed by this Court on 8th April, 2004. It appears that the Appellant was

released from jail only thereafter which meant that he had completed more than 8 years of imprisonment by then.

12. Having perused the evidence again with the help of learned counsel for the Appellant and the learned APP, this Court is not persuaded to take a view different from the trial Court as regards the culpability of the Appellant in stabbing his wife with a knife to death, which has been sufficiently established by the evidence placed on record by the prosecution, particularly the medical and forensic evidence.

13. However, the Court is persuaded to consider the plea of the Appellant for converting the conviction for the offence punishable under Section 302 IPC to the offence of culpable homicide not amounting to murder punishable under Section 304 Part 1 IPC. This is because it is plain from the evidence of PW-4 and then PW-5 and PW-18 that till about 15 days prior to the killing, there was no serious discord between the Appellant and the deceased. The crime was not pre-meditated. It appears that there was a quarrel immediately prior to the occurrence in which the Appellant gave a single stab wound to the deceased, albeit on a vital part of the body i.e. the left side of her chest. Consequently, the Court is persuaded that this would be an offence of culpable homicide not amounting to murder punishable under Section

304 Part I IPC and accordingly converts the conviction of the Appellant.

14. As regards the sentence, considering that the Appellant has already served more than 8 years of imprisonment, the Court confines the sentence to the period already undergone. In the circumstances, the bail bond and surety bond furnished by the Appellant stand discharged. The appeal is disposed of.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 18, 2018

sandeep/“shailendra”