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

+ CRL.A. 96/2017

SUNIL

..... Appellant

Through: Mr. K. Singhal, Mr. Prasanna &
Mr.Nishant Bhardwaj, Advocates.

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP along with
Inspector Lekh Raj Singh & SI
Jaivind, PS-Kalyan Puri, for the State.

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER
10.04.2018

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1. The appellant has assailed the judgment dated 04.03.2013 rendered by the Additional Sessions Judge: 01 (East), Karkardooma Courts, Delhi in SC No.06/2011 arising out of FIR No.304/2010 registered at PS – Kalyan Puri under Section 302 IPC, and the order on sentence dated 11.03.2013. The appellant stands convicted under Section 302 IPC and sentenced to life imprisonment for the offence of murdering his mother. He has also been fined of Rs.2,000/-. The benefit of Section 84 IPC sought by the appellant has not been granted to him by holding that he has not discharged the onus of proving his mental condition as required by Section 105 of the Evidence Act.

2. The case of the prosecution as noticed in the impugned judgment itself is that PW-9 Seema, the daughter of the deceased stated that she had come to visit her mother at East Vinod Nagar on 09.09.2010. On 11.09.2010, she was sitting on the bed in the room, her mother was in the kitchen and they were talking with each other. Accused Sunil was also present in the house. She was telling her mother that this year there was good rain fall and weather will get cool early. On this, accused scolded her stating that did she know everything. When her mother intervened, accused got angry and slapped her mother. Accused also rushed towards her to assault her but her mother caught hand of accused and asked her to go out from the house. She along with her son and maternal grand mother Padma came out of her house and accused bolted the door from inside. She went to the house of Bhabhiji in front of house of her mother. At her request Bhabhi made a call in the house of her mother to inquire about her. Her mother told Bhabhi that she is alright. In the meantime, she talked with her brother Sushil (PW14) and told him about the incident. At 6.00 PM in the evening she made a call in the house of her mother, accused picked up phone and disconnected it. Accused then called her and asked her that where was she and she told him that she is at Gurgaon and she asked accused where is her mother. Accused told her that he is alone and no one is present in the house. She observed from the house of Bhabhiji situated in front of house of her mother that accused came out of his house and went in the street. After some time accused again called her and asked her that where is she and told her that he had killed his mother and now he will kill all of them. After hearing this, she called her brother Sushil and told him everything. Sushil called their cousin, brother Kishan Kumar (PW10) and asked him to reach at

the spot and Kishan Kumar reached at the house with some other persons. They all went inside house and found her mother lying dead on the bed. Kishan Kumar made a call at 100 number. Accused was addicted to alcohol and was not doing any work. He daily used to demand money from their mother to drink alcohol and used to threaten to kill her. Even earlier accused had assaulted their mother. The prosecution was able to establish the factum of the appellant having caused the death of his mother. On this aspect, the appellant has not challenged the finding returned by the Trial Court.

3. The submission of Mr. Singhal, learned counsel for the appellant is that it has come in evidence that the appellant was not in a completely fit state of mind and did not know the consequences of his conduct. He submits that the prosecution has not been able to establish the intention of the appellant to commit the murder of his mother. He submits that the same is evident from the fact that the disagreement/ quarrel stemmed from a very minor argument and altercation between the appellant, PW-9 and the deceased. Mr. Singhal has drawn our attention to the testimonies of PW-9 the complainant/ sister, PW-14 Sushil, the brother of the appellant and PW-4 Dr. Sushil Kumar, who was also examined as DW-1. From the said testimonies, it is pointed out that the accused used to suffer from fits, and during those periods, he was not in a fit state of mind. Mr. Singhal submits that the appellant was entitled to the benefit of Section 84 IPC in view of his mental/ psychological condition. He submits that the Trial Court has not appreciated the evidence brought on record while rejecting the appellants claim for protection under Section 84 IPC.

4. In the alternative, the submission of Mr. Singhal is that the case would fall under Section 304 Part II, since the appellant has not been shown to have had the intention to commit the murder of his own mother. In this regard, Mr. Singhal has placed reliance upon the judgment in *Elvarasan Vs. State*, (2011) 7 SCC 110.

5. On the other hand, Mr. Katyal submits that since the appellant failed to discharge the onus cast upon him by Section 105 of the Evidence Act, he cannot claim the benefit of Section 84 IPC. It was essential for the appellant to establish the nature of his mental/ psychological disorder, and also the fact that the said disorder afflicted him at the relevant point of time, and that the same entitled him to the benefit of Section 84 IPC.

6. We cannot agree with the submission of Mr. Singhal premised on Section 84 IPC. By virtue of Section 105 of the Evidence Act, “*the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances*”. We agree with Mr. Katyal that the appellant did not discharge the said onus cast upon him. The testimonies of PW9, PW14 and PW4 fall short of discharging the said onus. Pertinently, the issue is squarely covered by the decision in *Elvarasan* (supra). Accordingly, we reject this submission of Mr. Singhal.

7. In the circumstances noted above, Mr. Katyal, learned APP has failed to point out any evidence to prove the intention of the appellant to commit

the murder of his mother.

8. From the evidence on record, it is clear to us that the appellant cannot be said to have entertained the intention to commit the murder of his mother. The incident itself, which led to the unfortunate occurrence, shows that there was hardly any issue over which the argument and quarrel erupted. The appellant was in the habit of consuming liquor and used to demand money from his mother. He would pick up a fight over trivial issues, as is evident from the incident in question. It appears that the same may well have been the background in which the occurrence took place. The offence appears to have taken place without any pre-meditation in a sudden fight, in the heat of passion upon a sudden quarrel. The appellant does not appear to have taken any undue advantage or acted in a cruel manner. The appellant did not use any weapon for committing the offence and the death was caused by strangulation. Thus, in our view, the case would fall under Exception II to Section 304 IPC.

9. The appellant appears to be guilty of the offence of commission of a culpable homicide not amounting to murder and the same falls under Section 304 Part-II since the appellant would have had the knowledge that his act is likely to cause death. Accordingly, the conviction of the appellant is substituted from Section 302 IPC to Section 304 Part II IPC.

10. The nominal roll on record shows that as on 28.12.2016, the appellant had undergone 6 years, 3 months and 15 days of incarceration and earned total remission of 1 year, 4 months and 10 days. In view of the aforesaid, the appellant has undergone over 7 years and 7 months of incarceration,

apart from earning remission of 1 year and 7 months as on date. Keeping in view the facts and circumstances of the case, we sentence the appellant to the period already undergone.

VIPIN SANGHI, J

P.S.TEJI, J

APRIL 10, 2018

B.S. Rohella