

\$~R-41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 412/2011

PRAVIN Appellant

Through Mr.M.L.Yadav, Amicus Curiae.

versus

STATE Respondent

Through Mr.Kewal Singh Ahuja, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **08.01.2018**

1 None has appeared for the appellant inspite of bailable warrants having been served upon him.

2 Mr.M.L.Yadav, Advocate on the panel of Delhi High Court Legal Services Committee is appointed as an Amicus Curiae to assist this Court.

3 The appellant has been convicted under Section 304 read with Section 34 of the IPC. There were two accused who had been charged sheeted. The co-accused has been acquitted. The appellant alone has been convicted. The judgment does not specify whether the conviction is under Section 304 Part I or 304 Part II of the IPC. Learned counsel for the appellant points out that this is a clear case where the appellant should be granted benefit of doubt as the MLC of the victim reflects that the injured had suffered a fall from the stairs. This MLC has been prepared on the history given by PW-1 (brother of the deceased). There is no mention of the name of the appellant at

the time when the MLC was prepared. The case has been foisted upon the appellant falsely. Attention has also been drawn to the statement of PW-12 (Dr.Amit Sharma); who in his cross-examination has stated that the stomach wall of the deceased wall is suggestive of the fact that some irritant or poisonous substance might have been consumed by the deceased; there is no report of the viscera on which score the appellant is entitled to a benefit of doubt.

4 Learned APP has countered these arguments.

5 The present FIR had been registered on the complaint of PW-1. PW-1 is the brother of the deceased. In his statement he has stated that on 18.10.2009 at about 11.00 p.m. his brother had a quarrel with the appellant. On the following morning the appellant along with the co-accused came to their house where they started quarrelling with the deceased. The appellant took a brick from the floor and hit it upon the head of the deceased pursuant to which the deceased fell down on ground. The appellant and the co-accused fled away. In his cross-examination, he admitted that both the accused persons were residing in the same block where the deceased and the complainant reside. He denied the suggestion that a quarrel had taken place inter se the parties on the issue of parking of a motorcycle. He admitted that the proceedings under Section 107/151 of the Cr.P.C. had been initiated on the complaint of present appellant. He admitted that the appellant had sustained injuries on 18.10.2009.

6 Apart from PW-1 the other eye-witnesses did not support the case of the prosecution. PW-1 is closely related being brother of the deceased.

7 The testimony of Dr. Amit Kumar Singh (PW-6) is relevant. He had prepared the MLC of the victim. A perusal of this MLC shows that the victim had been brought to the hospital on 19.10.2009. The history of the patient recorded that the patient had suffered a fall from height; he was operated upon and he remained in the hospital till 24.10.2009. This MLC was prepared on 21.10.2009 i.e. 2 days after the examination of the patient by the doctor; this was at the asking of the complainant as the complainant wished to initiate a legal proceeding against the accused. This document clearly evidences the fact that the patient had been brought to the hospital with a history of having fallen from stairs. Had this been the case that the victim had suffered a brick injury at the hands of the appellant, the same would have been got recorded by his brother (PW-1) at the time when he gave the history of the patient. Not having been pointed out; this throws doubt on the veracity of the aforementioned document.

8 The statement of Dr.Amit Sharma (PW-12) who had conducted post mortem on the deceased is also relevant. This document states that although the cause of death was cranio cerebral damage consequent to blunt force impact to the head, the viscera was preserved to rule out any poison. The report of the viscera is not on record. In his cross-examination, PW-12 admitted that the stomach wall of the deceased was congested which is suggestive of that some irritant or poisonous substance having been consumed by the deceased. In this scenario, the report of the viscera would have been relevant to arrive at a conclusive finding as to whether the blunt force impact was the cause of death of the victim or whether common

poison was the cause of his death. The fact that the history of the patient in the MLC had recorded a fall from stairs is also a statement which cannot be overlooked. This MLC was prepared on 21.10.2009 at 5.00 p.m.; this was prepared on the statement of the brother of the victim; even at that point of time the version of the complainant was not that the appellant had caused these injuries upon his brother and he was responsible for his death.

9 In this scenario this Court is of the view that benefit of doubt must accrue in favour of the appellant. The appellant is entitled to an acquittal. The appellant is accordingly acquitted of the charges levelled against him. Bail bond of the appellant stands cancelled; surety stands discharged.

10 Appeal allowed in the above terms.

INDERMEET KAUR, J

JANUARY 08, 2018

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