

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

% Decided on: 11th July, 2018

+ **CRL.A. 199/2017**

NEERAJ @ RINKLE & ANR. Appellants
Represented by: Mr. Gaurav Sharma, Advocate.

versus

GOVT OF NCT OF DELHI Respondent
Represented by: Ms. Meenakshi Dahiya, APP
for State with SI Ved Pal
Sharma, PS Mangolpuri.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeal, Neeraj @ Rinkle and Surender Singh @ Goldy @ Goly challenge the impugned judgment dated 17th January, 2017 convicting them for the offences punishable under Sections 304/341/506/34 IPC in FIR No. 56/2010 registered at PS Mangolpuri, Delhi and the order on sentence of the even date directing them to undergo rigorous imprisonment for a period of fourteen years and to pay a fine of ₹30,000/- each; in default whereof to undergo simple imprisonment for a period of one year for the offence punishable under Section 304/34 IPC, simple imprisonment for a period of one month for the offence punishable under Section 341/34 IPC and rigorous imprisonment for a period of one year and to pay a fine of ₹2,000/- each; in default whereof to undergo simple imprisonment for a period of one month for the offence punishable under Section 506/34 IPC.
2. Assailing the conviction, learned counsel for the appellants contends that there are grave inconsistencies in the testimony of Idrisha (PW-1) and

Aslam Khan (PW-2). Weapon of offence i.e. the danda has not been recovered in the present case. Even as per the case of the prosecution only single danda blow was inflicted. The MLC of the deceased who died due to septicemia has not been proved. He further urges that appellant No.2 Surrender has not been named in the FIR, no TIP was conducted, hence the identification is required to be disbelieved. Even accepting the allegations by the prosecution witnesses Idrisha categorically stated that the role assigned to Surrender was of catching hold. Surrender being six feet tall whereas the deceased was five feet it was impossible for Neeraj @ Rinkle to have inflicted danda blow on the parietal region of the deceased. Even otherwise the case of the prosecution at best is of giving the danda blow pursuant to a minor scuffle which could not be said to be with an intention to commit culpable homicide not amounting to murder. The conviction of the appellants be thus converted to Section 325 IPC and they be released on the period undergone.

3. Learned APP for the State on the other hand contends that the impugned judgment and the order on sentence suffer from no illegality. MLC has been duly exhibited from the testimonies of the two material witnesses. Prosecution has proved its case beyond reasonable doubt.

4. Process of law was set into motion on 3rd February, 2010 at about 11:50 P.M. when information was received that one Mujjafar s/o Mohd. Yusuf r/o of I-319, Mangolpuri was got admitted by his mother Idrisha in Sanjay Gandhi Memorial Hospital with alleged history of quarrel. Aforesaid information was recorded vide DD No. 71B (Ex.PW-6/A) and was assigned to SI Ajay Yadav (PW-18). He reached the place of occurrence i.e. I-319 Mangolpuri, Delhi but no eye witness was found present. Thereafter, he

along with Ct. Rajkumar (PW-5) went to SGM Hospital and collected the MLC of injured Mujjafar. Injured Mujjafar was later moved to LNJP Hospital. Enquiries were made to trace Idrisha, mother of Mujjafar who had brought him to SGM Hospital but she could not be found.

5. On 13th February, 2010, Idrisha came to the police station when her statement was recorded wherein she stated that she was a resident of I-319, Mangolpuri, Delhi. On 3rd February, 2010, when she was at her house with her family at about 11:30 P.M., Neeraj @ Rinkle who resided at H.No. I-299, Mangolpuri, Delhi, who was standing in the lane, started abusing people passing by and when her son Mujjafar came out of the house and asked him why he was abusing in front of his house, Neeraj @ Rinkle did not pay any heed to it and started abusing her son. Neeraj @ Rinkle was accompanied by another boy whose name and whereabouts she did not know but she could identify him if shown to her. When her son tried to explain both of them, they started a scuffle with her son. When she went out to bring her son inside the house, the boy with Rinkle stopped her way and Rinkle started beating her son with kicks and fists blows and by danda and thereafter both of them ran away. She called the police by dialing at 100 number and before the PCR came, she took her son to SGM Hospital, Mangolpuri, Delhi, where the doctors after giving treatment to her son, referred to LNJP Hospital. On the basis of the aforesaid statement recorded vide Ex.PW-18/A, FIR No.56/2010 (Ex.PW-5/A) was registered under Sections 323/341/34 IPC at PS Mangolpuri.

6. On 7th March, 2010, information was received from LNJP Hospital regarding the death of Mujjafar. Section 302 IPC was added and further investigation was handed over to Insp. Satish Yadav (PW-19). He recorded

the statement of Anis vide Ex.PW-3/A and Mohd. Akil vide Ex.PW-4/A regarding identification of the dead body. He also prepared the brief facts vide Ex.PW-19/C. During the course of investigation, site plan (Ex.PW-18/C) was prepared with marginal notes on the pointing out of Idrisha.

7. On 8th March, 2010, Insp.Satish Yadav (PW-19) received information through secret informer about the presence of Neeraj at I-J Block, Indira Park. Thereafter, he along with ASI Ajay Yadav and Ct. Vijayvir and other staff reached at the abovementioned place and apprehended Neeraj @ Rinkle and arrested him under Sections 302/341/34 IPC vide memo Ex.PW-13/A. His personal search was conducted vide memo Ex.PW-13/B and his disclosure statement was recorded vide Ex.PW-13/C. Neeraj @ Rinkle led them to the place of occurrence and pointed out the place vide memo Ex.PW-13/D.

8. On 4th May, 2010, the officials of Special Staff, South District informed regarding the arrest of Surender @ Goldy and that he would be produced in Patiala House Court. Insp. Satish Yadav (PW-19) along with HC Illa Khan and other staff reached the Court and interrogated him. Surender @ Goldy was arrested in the FIR vide memo Ex.PW-19/E. His disclosure statement was recorded vide Ex.PW-19/F.

9. After the completion of investigation, charge sheet was filed. Charge was framed under Sections 341/302/506/34 IPC vide order dated 25th September, 2011.

10. Idrisha (PW-1) deposed in sync with her statement made before the police. She also deposed that the accused did '*hathapai*' with her son during which appellant "*Surender ne mere bete ki koli bhar li*". Appellant Rinkle who had a danda in his hand inflicted number of blows on the back side of

the head of her son. Her son remained admitted in unconscious state and died after about a month. She further stated that when she was coming to her house on 12th February, 2010, both the appellants were standing and stated that it seems that her son has not died and that they have inflicted danda blows with the intention to commit murder and in case his life is saved, they would kill him later. During her cross-examination, she stated that none except her came out on hearing the abuses. She denied the suggestion that none of the appellants were giving any abuses. During her further examination, she stated that when she tried to save her son, Neeraj also gave a danda blow on her head and back and also pushed her due to which she fell down. In the meantime, Mujjafar had also fallen down on the ground. She rose and raised alarm to save her son. In the meantime, brother-in-law of Mujjafar namely Aslam came to their house to meet his sister. On seeing the situation, he also tried to save them but the appellants showed him the danda and he went back due to fear.

11. Aslam Khan (PW-2) stated that on 3rd February, 2010, he had gone to the house of his sister situated at I Block, 319, Mangolpuri, Delhi. At about 11:30 A.M., he heard the noise of quarrel from the gali and from the first floor, he saw that Neeraj and Surender were quarrelling with Mujjafar. Mother of Mujjafar was his real bua and as he used to visit the house of Mujjafar. He knew Neeraj and Surender. He further stated that his bua also came out and intervened in the quarrel but she was pushed by the appellants. He immediately came down from the first floor and in the meantime, appellants had given 2-3 blows on the head of Mujjafar by danda (*baans ka danda*), Mujjaffar fell down and became unconscious. He further stated that when he moved for saving Mujjafar, they showed him the danda and he

moved backward because of fear. Mujjaffar underwent the treatment for about one month and thereafter, expired.

12. Rajesh (PW-8) stated that on 3rd February, 2010 after closing of his dhaba, he was going to his house situated at Rohini and he had to get his hair cut which he used to get done from the salon of Mujjaffar and since Mujjaffar was not coming to his salon for many days, so while going to his house on the way, he went to Mujjaffar's house to know why he was not coming, when he saw two boys, one of them was tall and other was dwarf. The tall boy was holding Mujjaffar from behind and the dwarf one was giving beatings with thick danda to him. He further stated that thereafter, someone perhaps the mother of Muzaffar made a call to police at 100 number and he was taken to the hospital in an auto by his mother and Aslam. After 3-4 days, he again visited the saloon and came to know that Mujjaffar was admitted in the hospital and he went to see him at the hospital and got to know that he was in ICU. Thereafter, he went to house of Mujjaffar on 21st February, 2010 where he met one ASI, who recorded his statement. He identified the appellants in court.

13. Dr. Anju Rani (PW-9), Senior Resident, Department of Forensic Science, Maulana Azaad Medical College, Delhi, stated that she was deputed to depose on the behalf of Dr. Ankita Dey as she had left the hospital and her present address was not known. She stated that she was conversant with the handwriting and signatures of Dr. Ankita Dey. Post mortem of Mujjaffar was conducted by Dr. Ankita Rey on 7th March, 2010 at about 10.45 A.M., after nine hours of his death. Mujjaffar was admitted in the hospital on 4th February, 2010 at about 2:36 A.M. As per the post mortem report:

1. *No external injuries were present over the body.*
2. *On internal examination, both the lungs were congested and oedematous and patch consolidation present at places on cut section, frothy fluid mixed with pus oozing out. Both lungs weighed 390 gms and 380gms right and left respectively.*
3. *Heart shows no abnormality.*
4. *All internal organs were congested.*
5. *Spinal Column also showed no abnormality.*
6. *On head examination, scalp was NAD (Nothing abnormal detected).*
7. *On skull examination, surgical removal of 13 cm X 9 cm bone on left parieto-temporal region present.*
8. *Brain Examination showed contused neuroses infected area over left partial part of cerebral hemisphere. Patchy areas of pus present over parenchyma of brain at places and whole brain is congested. Weight of brain was 1250 gms.*
14. As per the opinion in the post mortem report, death was due to septicaemia consequent upon blunt force/surface impact to head. All injuries were antemortem in nature and could be caused due to blunt force/surface impact. The post mortem report was proved Ex.PW-9/A.
15. Dr. Manoj Dhingra (PW-10), MOIC, Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi stated that he was deputed by the MS of SGM Hospital to identify the handwriting and signatures of Dr. Vipin whose whereabouts are not known. He further stated that he had seen the MLC of Mujjaffar prepared on 3rd February, 2010 at about 11:50 P.M. with the alleged history of physical assault. The MLC was proved vide Ex.PW-10/A.

He identified the handwriting and the signatures of Dr. Vipin.

16. Mukesh Anand (PW-21), record clerk, LNJP Hospital, Delhi stated that on 4th February, 2010, Mujjaffar was referred to LNJP hospital from SGM hospital with head injury with alleged history of physical assault. The NCCT Head was done and he was operated for craniotomy with removal of Hemotoma with duraplasty. He was treated by Dr. Banwari and Dr. Munesh under the Unit of Dr. P.N. Pandey. Both the doctors had left the hospital and their whereabouts were not known, however, he identified their handwriting. Death summary was prepared by Dr. Banwari and Dr. Munesh. Copy of death summary was proved vide Ex.PW-19/A and copies of other treatment papers including the admission sheet and emergency card consisting of 136 pages was collectively proved vide Ex.PW-19/B.

17. As per the statement of Idrisha initially a quarrel took place between the two appellants and her son resulting in '*hathapai*', whereafter Surrender caught hold of her son and Rinkle who was having a danda in his hand inflicted number of blows on the backside of the head of her son. This version of Idrisha is consistent with her first information report and despite extensive cross-examination nothing contrary thereof has been elicited. Version of Idrisha is corroborated by the MLC of Mujjafar which notes history of nasal bleeding, vomiting and CLW at left eyebrow approximately 3 x 1 x 0.5 cms. The deceased was opined to be unfit for statement and his statement could not be recorded. As per the documents from the hospital Ex. PW-19/B the NCCT of the head of Mujjafar showed left parietal contusion with intra cerebral hematoma. Craniotomy with removal of hematoma with duraplasty of the deceased was conducted.

18. Considering the nature of injuries caused, it cannot be said that the

injury to the deceased was not caused with intention to commit culpable homicide not amounting to murder. Contention of learned counsel for the appellants that Surender being six feet tall and the deceased being five feet is based on no evidence as no witness has been confronted with this fact. No doubt the test identification parade of Surender was not conducted however, Idrisha in her statement categorically stated that she could identify the second boy if brought before her and soon after the arrest Idrisha saw Surender and identified him to be the person accompanying Neeraj @ Rinkle. Test identification parade being only an aid in investigation nothing has been brought on record in cross-examination to suggest that Idrisha wrongly identified Surender as the person accompanying Neeraj @ Rinkle.

19. In view of the discussion aforesaid, this Court finds no error in the impugned judgment dated 17th January, 2017 convicting the appellants for offence punishable under Sections 304/34 IPC.

20. Appellants have been awarded sentence of imprisonment for a period of 14 years and to pay a fine of ₹30,000/- each in default whereof to undergo simple imprisonment for a period of one year for offence punishable under Sections 304/34 IPC. Sentence imposed on the appellants is excessive, considering that the weapon of offence used is only a danda and as per the MLC one single blow on the left parietal region was inflicted.

21. As per the nominal roll the appellant Neeraj @ Rinkle has undergone sentence of imprisonment for a period of eight years and five months approximately. His sentence under Section 304/34 IPC is reduced to the period already undergone. However, the fine amount imposed of ₹30,000/- would be paid by Neeraj @ Rinkle in default whereof he would undergo simple imprisonment for a period of two months. Role assigned to appellant

Surender @ Goldy is of catching hold and as per the nominal roll he has undergone sentence of imprisonment for a period of five years and seven months. The sentence under Section 304/34 is modified to the period undergone. The fine of ₹30,000/- would be paid by appellant Surender @ Goldy in default whereof he would undergo simple imprisonment for a period of two months. The sentence in respect of offence punishable under Sections 341/34 IPC and 506/34 IPC have already been undergone by the two appellants and the fine for offence punishable under Section 506/34 is waived of.

22. Appeal is accordingly disposed of.

23. Superintendent, Tihar Jail and Superintendent, Gurugram, Haryana are directed to release the appellants Neeraj @ Rinkle and Surender @ Goldy forthwith if not required in any other case.

24. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

25. TCR be returned.

Crl. M.B. No.536/2018 (suspension of sentence)

Since judgment has been rendered in appeal, appellants have been released on the period already undergone, application seeking suspension of sentence is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

JULY 11, 2018
‘vn’