

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

Date of Decision: January 27, 2018

+ **CRL.A. 299/2015**

DEVENDER DASS

..... Appellant

Through: Mr. Pramod Kumar Dubey,
DHLSC panel counsel & Mr. Saurav Kumar,
Advocate

Versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, Additional Public
Prosecutor for State with SI Puneet Grewal,
police station Shahbad Dairy

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT

(ORAL)

1. The appellant is husband of the deceased, who was tried for having murdered his wife on the intervening night of 31st October and 1st November, 2012. Vide impugned judgment of 28th November, 2014, appellant has been held guilty for offence of murder and vide order of even date, he has been sentenced to imprisonment for life with fine of ₹10,000/- and in default of payment, he has been directed to undergo further simple imprisonment for six months.

2. The prosecution case, stands unfolded in the opening paragraph of the impugned judgment and so, needs no reproduction. The

uncontroverted factual background of this case is that on 1st November, 2012, at about 06:50 a.m., *Vinay Kumar Gupta (PW-1)* went to Police Post of Metro Vihar of Police Station Shahbad Dairy and informed that one- *Devender Dass*, who was his tenant in one of the rooms of his house at K. NO. 96/72, Dal Mill Road, Holambi Kalan, Delhi had murdered his wife. *Vinay Kumar Gupta (PW-1)* stated that on the fateful day, at about 06:15 a.m., he heard that a few people had gathered outside the tenanted room and there was some noises and when he peeped inside the tenanted room from the iron grill door, he saw that wife of appellant –*Smt. Phoolwati* was lying in unconscious state in pool of blood on her face and on the ground. *Vinay Kumar Gupta (PW-1)* further stated that on enquiry, appellant told him that he had a quarrel with his wife last night and therefore, appellant had inflicted injuries on his wife with a peeler knife and brick. On the complaint of *Vinay Kumar Gupta (PW-1)*, appellant was arrested by the police in this case.

3. Suffice to note that as per the prosecution version, there had been a quarrel between appellant and his wife on the intervening night of 31st October and 1st November, 2012 and in the morning of 1st November, 2012 at about 6:50 a.m., appellant was seen crying inside his house while his wife was lying on the floor. The prosecution relies upon the evidence of neighbors- *Vinay Kumar Gupta (PW-1)* and *Bharat Lal (PW-2)*. Apart from the medical evidence, there is evidence of *SI Mukesh Kumar (PW-6)* and *Inspector Sanjeev Chahar (PW-20)*, Investigating Officer of the case. Appellant in his statement under Section 313 Cr.P.C. has taken plea of *alibi* and has stated that he has been falsely implicated in this case. Appellant has chosen not to lead any evidence in his defence. Learned

trial court while relying upon the prosecution evidence, convicted and sentenced the appellant as noted above.

4. Learned Amicus Curiae Counsel for appellant submits that even if the case of prosecution is taken as it is, still the offence committed would not come within the purview of Section 302 of IPC as it has come in evidence that appellant is a drunkard and in a fit of anger, he had assaulted his wife and so, the offence committed by appellant comes within the definition of Section 304, Part-I of IPC. Learned Amicus Curiae Counsel relies upon the judgment of the Supreme Court in *Surinder Kumar v. Union Territory, Chandigarh* (1989) 2 SCC 217 and a decision of a Division Bench of this Court in *Mahender v. State*, 2009 SCC OnLine Del 343. It is pointed out by learned Amicus Curiae Counsel for appellant that by now, appellant has undergone sentence of about six years and he is not a previous convict and that his conduct in jail is satisfactory. So, it is submitted that sentence awarded to appellant needs to be reduced to the period already undergone by him, as he has to support his children who are of minor age.

5. Learned Additional Public Prosecutor supports the impugned judgment/ order and submits that twenty one injuries were inflicted by appellant on his wife and injury nos.18 & 19 proved to be fatal and there were injuries on the head of deceased, which resulted in fracture to the skull. So, it is submitted that all this show that there was a clear intention on the part of appellant to murder his wife. Thus, it is submitted that this appeal deserves dismissal.

6. Upon hearing and on perusal of impugned judgment, order on sentence, evidence on record and the decisions cited, we find that

prosecution case stands amply proved from evidence of *Vinay Kumar Gupta (PW 1)*; *Bharat Lal (PW 2)* and the medical evidence on record. The plea of *alibi* raised by appellant does not stand substantiated. Learned Amicus Curiae Counsel for appellant has rightly confined submissions regarding the nature of offence committed. Appellant had made '*extra judicial confession*' of his quarrel with his wife on the day of the incident and of causing as many as twenty one injuries to her with a vegetable knife peeler. It emerges from the evidence on record that appellant is a drunkard and he had been earlier also quarrelling with his wife.

7. Upon considering the nature of injuries caused to deceased, we find that the assault on the head of deceased was so brutal that it resulted in fracture of underlying skull bone. The evidence regarding injuries on the head being fatal is unassailable. It is evident from the post mortem report and evidence of *Dr. Vijay (PW 19)* that the depth of injury on the abdomen of deceased was 5 cm and it had pierced the peritoneum and entered the left lobe of liver upto a total depth of about 5 cm. To say the least, we find that instant case is of brutal murder and not of 'culpable homicide not amounting to murder'. Appellant had acted in a cruel manner in brutally assaulting the deceased without any provocation. Reliance placed upon Supreme Court's decision in *Surinder Kumar (Supra)* is of no avail, as in the said case, only three injuries were inflicted upon deceased and fight was not started by accused, whereas in the instant case, appellant had caused multiple injuries without any provocation. In *Mahender (Supra)* deceased was assaulted with a brick and so, it was held that nature of injuries caused did not justify inference

that accused had acted in a cruel manner. In the case in hand, it is quite evident that appellant had brutally assaulted deceased. So, in our opinion, in the instant case, it cannot be said that the offence committed by appellant is 'culpable homicide not amounting to murder'. It is a case of brutal murder.

8. In view of aforesaid, this appeal is dismissed being without any substance.

(SUNIL GAUR)
JUDGE

(PRATHIBA M. SINGH)
JUDGE

JANUARY 27, 2018

dk/r