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

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Date of Decision: 27.08.2018

% **CRL.A. 447/2016**

MOHD SALEEM

..... Appellant

Through: Mr. Dhan Mohan with Ms. Tanu
B.Mishra, Ms. Harkamal Jeet Kaur,
Mr. Ravi Mishra, Ms. Roshini and
Mr. Jitendra, Advocates

Versus

THE STATE

..... Respondent

Through: Mr. Rajat Katyal, APP

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I. S. MEHTA

VIPIN SANGHI, J. (ORAL)

1. The present appeal has been preferred by the appellant convict to assail his conviction by the learned ASJ-3, South District, Saket Courts, New Delhi in Sessions Case No.87/2014, arising out of FIR No. 157/2011, registered at PS Safdarjung Enclave, under Sections 302/309IPC. By the impugned judgement dated 26.02.2016, the appellant stands convicted of the offence under Section 302IPC while he has been acquitted under Section 309IPC. Vide order dated 04.03.2016, he has been sentenced to life imprisonment with fine of Rs. 20,000/-. In default of payment of fine, he shall undergo simple imprisonment for one year.

2. The background facts of the case taken note of in the impugned

judgment read as follows:

“ On 09.06.2011, accused Mohd. Saleem came to Police Station Ambekar Nagar and disclosed that he has consumed insecticide because he has committed murder of a girl at Rose Garden. On the basis of facts disclosed by accused Mohd. Saleem, DD No. 11-A dated 09.06.2011 (Ex.PW-12/A) was recorded at Police Station Ambedkar Nagar and Sub-Inspector Gurjeet Singh was deputed to take accused Mohd. Saleem to All India Institute of Medical Science (hereinafter referred to as “AIIMS”) for treatment with constable Shiv Dhani and for conveying the information to Police Station Safdarjung Enclave. Sub-Inspector Gurjeet Singh along with Constable Shiv Dhani took accused Mohd. Saleem to AIIMS and got accused Mohd. Saleem admitted in AIIMS vide MLC No. 41034/11 (Ex. PW-6/A). On the way, on being inquired by Sub-Inspector Gurjeet Singh, accused Mohd. Saleem disclosed that he returned to Delhi after working for sometime in Dubai, he developed relations with one girl named Nikki and he started spending money on Nikki. Accused Mohd. Saleem further disclosed that after sometime, he came to know that Nikki was having relations with other persons which he did not like, accused Mohd. Saleem asked Nikki not to roam around with other persons as he was spending so much on her, Nikki was pressurizing accused Mohd. Saleem. Accordingly, accused Mohd. Saleem decided to eliminate Nikki. On 08.06.2011, accused Mohd. Saleem took Nikki to Rose Garden near IIT for outing and took her inside the bushes in the jungle, strangulated her and slit her throat with rajor (ustra), thereafter, accused went to his house and developed a sense of guilt, next morning, accused consumed insecticide and to repent for his mistake, went to Police Station Ambedkar Nagar and informed the police about the entire incident. Accused Mohd. Saleem told Sub-Inspector Gurjeet Singh that he can get body of deceased as well as weapon of offence

recovered from Rose Garden. ”

3. The Trial Court has convicted the appellant under Section 302IPC on the basis of his extra judicial confession made by him before PW21 and thereafter before PW22, who are both doctors at AIIMS, New Delhi. PW22 was working as Sr. Resident Psychiatry at AIIMS. At the instance of the appellant the dead body of the deceased was recovered. The weapon of offence, namely, the razor was also recovered at his instance.

4. Learned counsel for the appellant, on instructions, submits that the appellant limits the challenge to the impugned judgment with the plea that the offence under Section 302IPC was not made out, since the case is covered by Exception (4) to Section 300IPC, even if the extra judicial confession and the post mortem report of the deceased were to be accepted.

5. The extra judicial confession made by the appellant, as per the deposition of PW21 is to the effect that the deceased was the girlfriend of the accused for the last 10-12 months. On the evening previous to the date of the incident, the two had an argument in a park following her demand for Rs. 2 lakhs from him for buying a room. The appellant stated that he had previously given her Rs. 2-2.5 lakhs for supporting her children, as she was separated from her husband. The appellant claims that the deceased was involved with other men and he did not like this, and the quarrel between the two had started soon after they met some men known to her. The appellant stated that the deceased asked him to kill her, or she would get him killed. She also abused the appellant's mother, as the mother of the appellant was

not agreeable to their relationship. The appellant stated that he strangled her with her duppatta and also slit her throat with a blade. Thereafter, he stated that he consumed insecticide and then surrendered before the police. In the statement made before PW22, the appellant alleged that the deceased was a call girl by profession and had illicit relationship with many persons but he still loved her and wanted to marry her, although the deceased was yet to take divorce from her husband. The appellant disclosed that on the previous afternoon, the two had gone to a cinema from where they went for a drive towards Maneswar where they were followed by a few people. Subsequently, there was an altercation between the two on the issue of money that was demanded by the deceased and during the said altercation, the deceased asked the accused to kill her if he could not arrange the money. He states that the incident took place during the altercation which took place.

6. The post-mortem report Ex.PW2/A records the cause of death as: *“Hemorrhagic shock due to cut throat injury coupled with asphyxia due to strangulation”*. Both the said injuries were sufficient, individually or collectively, to cause death in the ordinary course of nature. These injuries appear to have been inflicted more or less simultaneously since they were both ante mortem.

7. Considering the aforesaid aspects, this Court is of the considered view that the appellant is entitled to the benefit of Exception (4) to Section 300 IPC since the culpable homicide of the deceased was committed by the appellant without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender having taken undue

advantage or acted in a cruel or unusual manner.

8. As noticed hereinabove, the appellant and the deceased were in a relationship for 10-12 months. They had gone for an outing to a cinema and were driving when the altercation took place over the demand made by the deceased for Rs. 2 lakhs to purchase a room and over the involvements of the deceased with other men— which was not to the liking of the appellant. The deceased also abused the mother of the accused and, as per the confessional statement of the appellant— which has to be read as a whole, she told the appellant to either kill her, or that she would get the appellant killed. The appellant does not appear to have taken any undue advantage, or to have acted in a cruel manner in as much, as, the nature of injuries show that he strangulated, and simultaneously used the blade, to slit her throat. Thereafter, the appellant went home and after consuming insecticide, he himself went to the police to report his crime.

9. Thus, in our view, the intention to commit the culpable homicide amounting to murder of the deceased is clearly missing in the facts of the case.

10. The appellant is thus, entitled to benefit of Exception (4) to Section 300 IPC. At the same time, the conduct of the appellant shows that the act was done with the intention of causing death and thus his offence falls under the first part of Section 304 IPC.

11. The conviction of the appellant is thus, substituted from one under Section 302 IPC to one under Section 304 part 1 IPC. Looking to the circumstances of the case, the ends of justice would be met if the sentence of

the appellant is reduced to 8 years of substantive/ actual rigorous imprisonment. The fine imposed upon the appellant is, however, maintained and, in case, he does not pay the fine, he shall undergo the default sentence as awarded by the Trial Court.

12. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

I.S.MEHTA, J

AUGUST 27, 2018

N.Khanna

