

\$~R-115

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

+

CRL.A. 320/2017

MUKESH KUMAR CHAUHAN

..... Appellant

Through: Mr. Ajay Verma, Advocate with Ms.
Katyayini, Ms. Sudha Reddy,
Advocate

versus

THE STATE

..... Respondent

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

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

JUDGMENT

23.04.2018

%

1. This appeal is directed against a judgment dated 22nd January 2015 passed by the learned Additional Sessions Judge-II (North-West) in Sessions Case No.62/2014 arising out of FIR No.764/2014 registered at Police Station ('PS') Sultan Puri convicting the Appellant for the offence under Section 304 Part-I Indian Penal Code ('IPC') and the order on sentence dated 23rd January 2015 whereby, for the aforementioned offence, he was sentenced to undergo rigorous imprisonment for life and payment of fine of Rs.2000/- and in default of payment of fine, to undergo simple imprisonment for 15 days.

2. The Appellant was charged with having committed two murders in the

intervening night of 15th and 16th July 2011 between 11:50 pm and 8 am in the bedroom of the 2nd Floor of his house in Sultan Puri in Delhi. According to the prosecution, he first murdered his disabled child Deepanshu by smothering him with a pillow. The second charge was that soon thereafter he killed his wife Lata by strangulating her with the help of a “press wire”.

3. The case of the prosecution *inter alia* rested on a suicide note apparently written by the Appellant himself admitting to having committed both murders. However, at the end of the trial, the trial Court came to the conclusion that the evidence on record depicted following picture:

“That the accused Mukesh Kumar Chauhan was residing on the Second Floor portion of premises No.C-3/178, Sultan Puri, Delhi along with his wife Smt. Lata aged 28 years who was pregnant at that time and the mentally and physically challenged child Divyanshu aged 6-7 years, while his brothers Govind Ram was residing on the first floor portion and Shyam Lal was residing on the ground floor of the same premises.

That Deepak @ Raj Kumar, the nephew of Lata was also residing with Mukesh and Lata and sharing the same premises. Deepak used to have his food with the family of Mukesh but sleep on the terrace.

That accused Mukesh and Lata were a happy family with no disputes whatsoever between them except for some minor day to day skirmishes which were never serious.

That the physically and mentally challenged child Divyanshu aged 6-7 years was immensely loved by accused Mukesh who used to take great care of him so much so that for two years Mukesh had remained bare footed while praying and pleading to God to cure his son.

That at the time of the incident Smt. Lata was eight months pregnant and had become highly irritable and was not able to manage the affairs of the disabled child who was growing up and had not even developed proper toilet habits. She had become averse to the child Divyanshu who was mentally retarded and even rebuked him frequently.

That a day earlier to the incident there was a verbal altercation between the accused and his deceased wife Lata who had beaten the child and had rebuked him by calling upon Manhoos (inauspicious) for them and told the accused that the presence of the mentally challenged child with them would affect the future of the unborn child (as Lata was eight months pregnant) on which the accused stopped her from being so unreasonable and there was also a physical altercation between the accused Mukesh and his wife Lata on this issue.

That one day prior to the incident and in the early morning hours of the incident Smt. Lata had become highly irritable with the child Divyanshu whom she felt was a burden and curse upon them and had even beaten him but the accused had stopped her from beating the child and chastised her for this act.

That later accused Mukesh went to the toilet, when Smt. Lata strangled the child and smothered him to death with the wire of the electric iron kept in the room and when he returned and saw the child lying on the ground with his face swollen and Lata next to him. When the accused Mukesh inquired from Lata as to what had happened, Lata informed him that she had silenced the child forever.

That the accused tried to revive the child but could not succeed and in the meanwhile he noticed that Lata had put the same wire around her neck and was trying to strangle herself on which the accused Mukesh lost his balance of mind and in the process Lata was strangled and smothered to death.

That thereafter the accused thereafter being overcome by the grief on realization that his entire family had finished, then put both the dead bodies on the ground and covered them with the bed sheets and then decided to end his life after which he wrote this suicide note which is Ex.P-5.

That the accused made a call to the PCR and informed the PCR official that he had killed both his child and the wife after which Mukesh left his house and went towards Mundka Railway Tracks and while leaving the house informed Deepak @ Raj Kumar that police would come to the house soon and he should not be scared.

That soon thereafter police officials came to the spot and it was then that the brothers and other family members of the accused realized what had happened and also realized that accused Mukesh had gone to commit suicide on which they made frantic calls on his mobile phone.

That the family members and friends of the accused Mukesh who was trying to contact him on mobile phone came to know that he was at the Railway Tracks and also the local police tracked down the location of the accused on which they started moving on the railway tracks and found the accused sitting on the side of railway tracks in a completely distorted state and wanted to commit suicide as his entire family had finished.

That the accused was thereafter arrested, brought to the Police Station and then produced before the Ld. MM where his statement under Section 164 Cr.P.C. which is Ex.PX-3 wherein he repeated the version of having killed both his child and the wife and the fact that he did not want to live and that he should be punished.”

4. In view of the above conclusion, the trial Court proceeded to convict the Appellant only for killing his wife Lata thereby committing the offence of culpable homicide punishable under Section 304 Part-I IPC and not murder

punishable under Section 302 IPC. He was acquitted of the charge of having killed his son.

5. When it came to the question of sentence, the trial Court in the order on sentence, reproduced a letter addressed to the trial Court by the Appellant in which *inter alia* he expressed his desire to serve the orphans and mentally and physically challenged children and donate all his organs after his death. The trial Court also noticed that the Appellant was filled with remorse and had become an emotional wreck. He had even pleaded that he be punished with death.

6. The trial Court observed, “He is under psychiatric help under the directions of this Court to help him to cope-up with his loss.” The trial Court further observed, “The evidence on record confirms that the convict has been a loving husband and doting father. The incident was a chance happening which the convict could never have intended or contemplated.”

7. Having observed thus, the trial Court surprisingly proceeded to sentence the Appellant to rigorous imprisonment for life. This was contrary to the above observations made by the trial Court itself in the order on sentence.

8. Having heard the learned counsel for the Appellant and the learned APP for the State, the Court is of the view that the conviction of the Appellant for the offence punishable under Section 304 Part-I should be left undisturbed. However, the order on sentence is directed to be modified by sentencing the Appellant to rigorous imprisonment for 10 years with the fine amount and

the default sentence being unaltered.

9. The appeal is accordingly disposed of. The trial Court record be returned forthwith along with a certified copy of this order.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 23 2018

'anb'