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

+ CRL.A. 511/2017

SONU

..... Appellant

Through: Mr. Pramod Kumar Dubey, Advocate
(DHCLSC) with Ms. Pinky Dubey
and Mr. Saurabh Kumar, Advocates

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, Additional Public
Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

17.05.2018

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The present appeal has been preferred by the appellant / convict to assail the judgment dated 08.08.2016 rendered by the learned ASJ – 02, South East District, Saket Court, New Delhi in Sessions Case No. 74/2014 arising of the FIR No. 431/2014 registered at PS – Sun Light Colony under Sections 302 IPC.

The trial court has convicted the appellant under Section 302 IPC and sentenced him, vide order dated 08.08.2016, to life imprisonment with fine of Rs.2000/-. In default of payment of fine, he has been directed to undergo further rigorous imprisonment of three months. The matter has been referred to the Delhi Legal Services Authority for awarding compensation to the family of the victim.

The trial Court has taken note of background of the case in Paragraphs 1 and 2, which read as follows: -

“1. As per case of prosecution, on 11.07.2014 at about 1:27 in the night, information was received from duty Ct. Ajay at LNJP Hospital that Mohd. Shamshad, who was got admitted by his friend Sonu in LNJP Hospital was declared brought dead by doctor vide MLC No. EBG-9001/15. The said information was recorded at Police Post Sarai Kale Khan vide DD No.37 Ex.PW-10/A and was entrusted to ASI Shailender for necessary action.

2. On receipt of DD No.37 Ex. PW-10/A, SI Shailender Singh (PW-12) alongwith HC Vipin (PW-5) went to LNJP Hospital, where he collected MLC of Shamshad. He handed over MLC of Mohd. Shamshad to Inspector Ram Phal, who came there in the hospital alongwith some other police officials. One eye witness of the incident namely Sikandar (PW-1) was found present in the hospital. Inspector Ram Phal (PW-15) recorded statement of Sikandar Ex. PW-1/A, who informed that Sonu had given beatings to Shamshad. Accused Sonu was also present in the hospital. He was apprehended. The police officials alongwith accused Sonu and witness Sikandar came to the spot. Inspector Ram Phal prepared

rukka Ex. PW-15/A and gave the same to HC Vipin for registration of FIR. HC Vipin got the FIR registered in the case and thereafter, handed over original rukka and copy of FIR to the IO of the case.”

The charge framed against the accused by the trial court on 05.11.2014 read as under:-

“As per case of prosecution, in the night of 10.07.2014 at about 12.00 O’clock, one Mohd. Sikander along with Shamsher was taking meal under flyover of Sarai Kale Khan, New Delhi. Accused who was working at the shop of Shamsher came there and kicked Shamsher on his back. Shamsher fell down on the ground. Accused kept on beating him by leg and fists. He also intimidated said Shamsher saying that he will not leave him alive. Accused banged head of Shamsher on the road. The latter suffered injury. Accused pushed aside Mohd. Sikander and fled away. Accused had grievance against said Shamsher for his (accused) relations with wife of Shamsher. Said Mohd. Sikander is stated to be eye-witness of incident. Accused was already known to him. I have no reason to disbelieve said Mohd. Sikander at this stage. If his statement and other evidence on record is taken as true, a prima facie involvement under Section 302 IPC is made out against the accused. Charge is framed accordingly. Accused pleaded not guilty and

claimed trial.”

The appellant pleaded not guilty and consequently, the matter proceeded to trial.

PW-1 – Mohd. Sikander is stated to be the eye-witness to the offence. He deposed that on 10.07.2014 in the night at about 12 midnight, he alongwith the deceased – Shamsher, who was his brother-in-law, were present under the flyover at Sarai Kale Khan, taking their meals. Shamsher had a tea stall under the said flyover. The accused Sonu (correctly identified by PW-1), came there and gave a leg blow from behind to Shamsher/deceased. He fell down. Sonu then started beating Shamsher by legs and fist blows. PW-1 tried to save Shamsher. He deposed that the accused shouted that he would not spare Shamsher and would kill him. PW-1 fell down on being pushed away by the accused. Sonu then caught the deceased by his hair and hit his head on the footpath and blood started oozing out from his forehead. The accused continued to beat the deceased by fist and leg blows till Shamsher became unconscious.

On the aspect of motive to commit the said offence, PW-1 deposed that the accused Sonu had developed illicit relationship with the wife of the deceased, i.e. the sister of PW-1, following which the deceased had removed the accused from his tea stall. Earlier also, there had been fights between Sonu/accused and Shamsher on several occasions. He deposed that on seeing the condition of Shamsher, he had called his mother, who alongwith one Pyare Babu the younger brother of PW-1, came to the spot and removed Shamsher in a TSR to LNJP hospital, where Doctors declared him dead. He

deposed that his statement was recorded by the police – Ex.PW1/A. He was cross-examined at length on behalf of the accused. In his cross-examination, he *inter alia* stated that the quarrel between the accused Shamsheer had taken place at around 10 PM. He had not called the police. However, his statement was recorded by the police. He stated that the police officials had come to the spot at about 12.00 in the night ‘*when we called the police officials from the police post*’.

We had heard the matter at some length yesterday and had directed production of the appellant. The appellant is present in Court and he states that he does not wish to press his appeal on merits, except on the aspect of conversion of the offence from Culpable Homicide amounting to Murder, to Culpable Homicide not amounting to Murder-covered under exception (4) to Section 300 IPC.

Learned counsel for the appellant submitted that the MLC – Ex.PW13/A would show that it was the accused who had taken the deceased to the hospital. He further submits that the injuries suffered by the deceased were blunt in nature, and even according to the case of the prosecution-premised on the testimony of PW-1, the deceased was inflicted injuries by the appellant by striking him with his legs and by hitting his head on the footpath. Thus, the appellant had not used any weapon of offence. Learned counsel for the appellant submits that there was no motive with the appellant to commit the said offence, as the motive alleged by PW-1 was never proved on record. Learned counsel submits that it was merely a case of a sudden quarrel between the appellant and the deceased-who were known to each other (since the appellant used to work with the deceased at his tea stall

earlier).

As per the post mortem report (PW16/A), the cause of death was stated to a *'combined result of cardiac tamponade and cerebral damage consequent upon blunt force trauma to the chest and head respectively which is sufficient individually as well as collectively to cause death in the ordinary course of nature. All injuries are antemortem in nature, fresh prior to death in duration and are caused by blunt force. The injuries are consistent with being produced in an assault.'*

Thus, it would be seen that the cause of death was not on account of infliction of any injury by use of any weapon. It was manual beating which resulted in the death of the deceased. The quarrel itself is not stated by PW-1 to have started over any particular issue. The motive has not been established by the prosecution in the present case.

Pertinently, it was the accused who had taken the deceased to the hospital as it is so recorded in the MLC. Had the intention of the accused been to commit the murder of the deceased, that would not have been the situation. It, therefore, appears that even when the accused was giving beatings to the deceased, he did not comprehend, much less intend, that the same would result in his death.

In these circumstances, we are of the considered opinion that the appellant cannot be said to be guilty of commission of culpable homicide amounting to murder as the case clearly falls within the scope of the exception carved out by exception (4) to Section 300 IPC. There does not appear to have been any pre-meditation on the part of the accused to commit

the culpable homicide of the deceased, since he did not come prepared with any weapon. It appears that as a result of a sudden fight and in the heat of passion upon a sudden quarrel, the offence has been committed. From the nature of injuries suffered by the deceased, it cannot be said that the appellant took any undue advantage, or acted in a cruel and unusual manner in the commission of the offence. Consequently, while setting aside the conviction of the appellant under Section 302 IPC, we substitute the same with conviction under Section 304 (2) IPC.

The appellant is accordingly sentenced to rigorous imprisonment of five years. The fine imposed upon the appellant is, however, maintained. Upon failure of the deposit of fine, he shall further imprisonment for three months.

Appeal stands disposed of accordingly.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 17, 2018

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