



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 26th July, 2022

Pronounced on: 24th August, 2022

CRL.A. 1167/2017

MANOJ

..... Appellant

Through: Mr. Amit Gupta, Advocate
(Amicus Curiae) with Mr. Shiv Varma,
Advocate

Appellant produced through VC.

versus

STATE

..... Respondent

Through: Mr. Prithu Garg, APP for State
SI Nitin, PS Farsh Bazar

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

ANISH DAYAL, J.

1. This appeal assails the judgment dated 18th September, 2017 convicting the appellant for offence punishable under Section 302 IPC and order on sentence dated 27th September, 2017 sentencing the appellant to life imprisonment with fine of Rs.10,000/- and simple imprisonment for three months in default of payment of fine.

**The Incident:**

2. As per the case of the prosecution an information was received on 17th July, 2012 that a person had fallen from the roof in Karkardooma Courts, Mediation Complex. When the police team arrived at the place of occurrence, a wall fan was found lying in broken condition and the roof of the Mediation Centre made up of plastic at the first floor was found damaged. The injured had already been taken to the hospital where he was declared brought dead. Upon the police checking the CCTV footage of second floor B Block, it was observed that the deceased was sitting on the parapet and some boys were found standing with the deceased and talking with each other and at about 10:13 a.m. one of the boys standing next to the deceased seemingly pushed him down. The crime team was called, *Rukka* was prepared and FIR No.256/2012 was registered. Pursuant to the investigation by the Investigating Officer (IO) Inspector Raj Kumar SHO PS Farsh Bazar, the deceased Nazim was identified by his brother who also identified the appellant as the person who had pushed the deceased. On 18th July, 2012 with the help of the brother of the deceased and upon a search by the police, the appellant was arrested who on interrogation confessed his guilt. Later, he pointed out the place of occurrence and upon completion of investigation charge-sheet was filed. Charges were framed for the offence punishable under Section 302 IPC to which the appellant pleaded not guilty and claimed trial. The prosecution examined 19 witnesses, statement of the accused was recorded under Section 313 Cr.P.C. and no evidence was led by the defence.

**Submissions by the Appellant:**

3. The appellant contended through the appeal and arguments on his behalf by the learned counsel that no statement of eye witness had been recorded despite many persons who were seen on the CCTV footage and that the FIR lodged was also under Section 34 IPC besides Section 302 IPC. The appellant further contended that the prosecution did not place on record any CCTV footage of the ground and the first floor of the court premises which would have made it clear as to how the deceased fell through the plastic sheet. Besides no blood was found at the site and the photographs by the police would show that the plastic sheet was loosely fixed to the iron frame as a cover to the first floor and had come undone. The alleged act of the appellant in pushing the deceased could not have been said to have been done with intent to commit murder since knowing there was a plastic sheet covering the ground floor, there was no intention to cause an injury which would result in death. The death of the deceased was caused due to shock as a result of the injury to the head produced by the blunt force impact. Accordingly, the appellant relied upon the decision of the Hon'ble Supreme Court in *Sarabjeet Singh and Ors. v. State of U.P.* (1984) 1 SCC 673 where in an alleged case of lifting a deceased infant and throwing him on the ground, the Hon'ble Supreme Court stated that every death cannot be seen as murder and there is a well recognized line between culpable homicide amounting to murder and that not amounting to murder which has to be respected. The appellant, therefore, contended that his case at the worst falls under Section 304 (Part 2) of the IPC, similar to the facts of the case in *Girish Singh v. State of Uttaranchal* (2008) 15 SCC 330 where it was



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a push down the hill. It was stated that the appellant had already served more than ten years in imprisonment in Mandoli Prison and therefore ought to be released.

Submissions by the Prosecution:

4. The learned Additional Public Prosecutor countered the contentions of the appellant and submitted that the manner in which the act was committed happened in a few seconds and clearly showed pre-meditation and not a heat of the moment act since there was no resistance by the deceased as evident from the CCTV footage. It was clearly a case of deliberate tipping over of the deceased by the appellant from the second floor to the ground floor of the Mediation Complex irrespective of the presence of the plastic sheet. Further since the plastic sheet was supported by iron bars it would be a case covered under Section 300 (*Fourthly*). He further submitted that in the statement under Section 313 Cr.P.C. Question no.37, the appellant stated that he had admitted his guilt three years prior and had submitted an application in the court in this regard but had been advised by his lawyer to not admit the guilt and therefore he was claiming innocence. There was nothing in his statement to say that he saw the plastic sheet and there had no intention to cause injury leading to death.

The Evidence:

5. The initial information regarding falling of a person at Karkardooma Mediation Centre Complex (KKD Complex) was received by PW-5 who recorded it in DD No.9A on 17th July, 2012.



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This was marked to PW-14 SI Hinderveer Singh who along with Pw-9 Constable Sanjeev Kumar reached KKD Complex and noticed the broken fan and the plastic sheet covering the first floor being undone. Upon coming to know that an injured boy had been taken by an ambulance to GTB Hospital, they tried to ascertain as to whether there were any eyewitnesses and on not getting any affirmative response, left for GTB Hospital where the deceased had been brought dead on arrival. Thereupon, they checked the CCTV footage and upon seeing the act of tipping over of the deceased they made the endorsement Ex. Pw-14/A. FIR No.256/2012 was subsequently registered at PS Farsh Bazar. The designated Investigating Officer PW-19 Insp. Raj Kumar thereafter pursued the investigation along with the crime team.

6. Site plan was prepared and the body of the deceased was identified by his mother and *post mortem* was conducted by PW-15. As per the *post mortem* report dated 18th July, 2012, the cause of death was shock as a result of *ante mortem* injury to the head produced by blunt force impact and there were four external injuries on the body. Thereafter, PW-19 and his team showed the CCTV footage to PW-2 Shaukat, the brother of the deceased, and he identified that the person who had pushed the deceased from the second floor was the appellant. The CCTV footage obtained from the Control Room of Karkardooma Court was preserved and upon an application to the court, the hard disk of the CCTV footage was also seized. The expert agency for the CCTV (Paramid Cyber Security) gave details of the hash value which is exhibited as Ex.PW-12/A.

7. Based upon further details provided by the deceased brother PW-2 Shaukat, it transpired that the deceased and the appellant used to



do pickpocketing work and they used to meet the deceased in the area of Sunder Nagari. Upon enquiries made by PW-19 at Sunder Nagari, they finally apprehended the appellant near Subhash Cinema in Sahibabad.

8. Pursuant to the arrest of the appellant a personal search was conducted and disclosure statement was recorded as per which he stated that he was wearing the same clothes as he was wearing on the date of the incident. Further, when he was led to the second floor at KKD Complex where the incident had taken place his pointing out memo was prepared alongwith his statement. PW-19 also requested for issue of a certificate under Section 65B Indian Evidence Act regarding the CCTV footage (Ex PW-19/H).

9. PW-18 the Senior Scientific Officer and Head of the Department of Computer Forensic Division, CFSL testified that he had examined the hard disk of the CCTV footage and opined that the hard disk was not tampered. He had also cloned the hard disc and prepared a DVD from which snap-shots were taken from 09:30 to 10:30 hours. As regards the CCTV, testimonies of PW-10 Constable Yatender who saw the incident from the CCTV camera no.82 at about 10:00 a.m. and PW-13 Ashwani, the official from the CCTV company who retrieved the footage of camera no.82 confirmed that the police officials had sealed the same hard disk which was taken out from the CPU from the CCTV Control Room in his presence. Also relevant in this regard is the testimony of PW-12 the Forensic Investigator who was brought to the CCTV Control Room by the I.O. and took out the hard disk from the CPU and prepared the two mirror copies of the hard disc and generated the hash value of the original hard disk. He



testified that there was no tampering in the process of taking out the hard disk from the CPU.

Analysis:

10. From a perusal of assessment of the CCTV footage by the learned Trial Court, it transpires that the deceased was seen sitting on the railing/parapet at the second floor of the KKD Complex and some boys were found standing with the deceased and talking with each other. At about 10:13 a.m. one of the boys, who was standing around the deceased suddenly kept his one hand on the chest of the deceased and pushed him down while using his other hand to pull up his legs. The incident happened in seconds that nobody took notice of it and therefore there was no eyewitness of the incident. This Court also perused in detail the CCTV footage and confirms what has been recorded by the learned Trial Court. In fact, the footage shows that the deceased was sitting on the parapet, the appellant approached him and after a brief conversation left along with another male person, and then came back after a while and restarted his interaction with the deceased. Then suddenly without any provocation and exhortation from anybody or any scuffle or fight, the appellant suddenly tipped the deceased over the parapet and hung around in that area along with the other people there and subsequently left. Some snapshots of the CCTV footage of the relevant time starting from a bit prior to the incident, the incident and then post the incident are being copied here for convenient reference (the appellant is the one wearing pink shirt in these photographs while the deceased is one sitting on the left most side of the parapet):





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11. The act of tipping over the deceased is extremely evident from the perusal of the CCTV footage. It is also evident that the deceased and the appellant knew each other since they were involved in a brief conversation, and this fact of them knowing each other is also corroborated by the testimony of PW-2, the brother of the deceased. Moreover, PW-2 also identifies two other boys were the persons standing there aside from the appellant viz. Sarfaraz and Mussan who apparently were also pickpockets and used to reside at Sunder Nagari. It is evident from the CCTV footage that three or four of the persons milling around in that area where the deceased was sitting knew each other since they interacted briefly on various occasions and seen to be conversing with each other while standing there. The fact that the others have not been brought into the witness box or charged with the offence under Section 34 IPC, does not dilute the evidence against the appellant of being responsible for the act of tipping over the deceased from the second-floor parapet.

12. The fact that there were no eye witnesses or even they were not examined also does not take away from the fact the appellant had indeed being responsible for the act of tipping over since it is clearly evident from the CCTV footage. The Courts have considered the CCTV footage as relevant evidence if it has not been tampered with (refer *inter alia Arvind Singh v. State of Maharashtra* (2021) 11 SCC 1 and *Mukesh v. State* (2017) 6 SCC 1).

13. The footage does not seem to suggest that the deceased slipped over or accidental fell off the parapet. Also, the act of the appellant in keeping one hand on the deceased chest and using the other hand to pull up his legs clearly is a deliberate act and not just a shove or a



slight push in a jocular fashion. From the flow of events, it seems that the appellant had a conversation with the deceased and then went off with another person (as seen from the complete footage) and then came back and committed this deliberate act. Therefore, it seems pre-meditated by the appellant and not something which happened at the spur of the moment.

14. It is important and critical now to address the argument put forth by the learned counsel for the appellant that since the appellant would have been aware that there was a plastic sheet covering the first floor, he would have not intended to cause an injury which would lead to death and therefore, would be covered under an offence punishable under Section 323/325 IPC or at best amount to culpable homicide not amounting to murder. Reliance was also placed on *Sarabjeet Singh* (supra) and *Girish Singh* (supra) where the Hon'ble Supreme Court convicted the accused in cases of pushing to an offence under Section 304 (Part II) IPC. It is the learned counsel's contention that post the brief conversation, the appellant had tried to topple the deceased not to cause death and it ended up being a fatal mishap.

15. Although, from the CCTV footage, it is difficult to fully ascertain from the body language of the appellant that he tipped over the deceased with an intent to cause death, but what is clearly evident is that it was indeed a deliberate act to cause injury. In the assessment of a normal human being, toppling a person from the 2nd floor will necessarily imply that the person could suffer an injury which could or could not be fatal. It would be reasonable to impute the knowledge to the appellant that toppling over a person from the 2nd floor could be at



least be likely to cause death. However, whether there was any intention to cause death needs to be assessed from the surrounding circumstances. The most relevant fact in this assessment is that the first floor was roofed with a plastic sheet which was supported by an iron frame. The CCTV footage and the photographs of the place of incident on the trial court record show that the appellant had stood over besides the deceased for many moments and had the occasion to look over the parapet. It would be therefore safe to infer that the appellant had indeed seen and was aware that the first floor was covered with a plastic sheet and thus the tipping over was not meant to cause death but was likely to cause death. This Court is inclined to give benefit of doubt to the accused, as per accepted principles of criminal jurisprudence, for lack of any better evidence or corroborating circumstance or fact regarding the intention of the appellant. It would thus be appropriate to convict the appellant under Section 304 Part II than Section 302 in these circumstances for act done with the knowledge that it is likely to cause death but without any intention to cause death, or to cause a bodily injury that is likely to cause death. What is also important that the appellant was not brandishing or using a weapon which would then sway this assessment towards a Section 302 conviction i.e. an intent to cause death. Or at the very least the needle would have moved away from Section 299 to Section 300 (any of its sub-parts). The obvious presence of the plastic sheet roof of the first floor would mean that the toppling over was to cause a bodily injury likely to cause death and not one sufficient to cause death in the ordinary course of nature. Further, Ex. PW-15/A, the *post mortem* report clearly opines that the cause of death was shock was a result of an *ante mortem* injury to the head produced by



blunt force impact. It is not categorically evident from the medical evidence that blunt force impact would in all cases cause shock so as to lead to a fatality. The benefit of doubt in this case would also therefore be given to the appellant/accused.

16. Even applying principles laid down in classic judgements like ***Virsa Singh v. State of Punjab AIR 1958 SC 465***, this fact situation would not fit into the *Virsa Singh* rubric, but rather into the situations contemplated in the cases cited by the appellant viz. ***Sarabjeet Singh and Ors. v. State of U.P. (supra) (paras 11-17: where in an alleged case of lifting a deceased infant and throwing him on the ground, the Hon'ble Supreme Court stated that every death cannot be seen as murder and there is a well-recognized line between culpable homicide amounting to murder and that not amounting to murder which has to be respected)*** or ***Girish Singh v. State of Uttaranchal (supra) (para 9: in a case of pushing down a hill the Hon'ble Supreme Court affirmed conviction under Section 304 (Part II) of the IPC).***

17. The cases relied upon by the prosecution besides *Virsa Singh* [***Anda & ors. V. state of Rajasthan AIR 1966 SC 148; Rajwant Singh v. State of Kerala AIR 1966 SC 1874; State of A.P. v. Rayavarapu Punnaya & anr. 1976 (4) SCC 382***] are based on very different fact situations. Injuries caused in these cases were grave, severe and particularized towards causing death viz. dragging inside a house and beating the deceased severely (as in *Anda & ors.*); covering the mouth with adhesive plaster, plugging the nostrils, tying the deceased and throwing him in a drain (as in *Rajwant Singh*);



indiscriminately pounding legs and arms of the deceased till he became unconscious (as in *Rayavarapu*).

18. The contention of the learned Additional Public Prosecutor for the State that the appellant in his statement recorded under Section 313 Cr.P.C. also did not state that he had seen the plastic sheet and he was not intending to fatally injure the deceased cannot be accepted as to incriminate the appellant, in view of the entire CCTV footage which shows that the appellant had been standing at that place earlier as well.

19. What also does not appeal to this Court is the observation of the learned Trial Court in para 35 of the judgement of conviction where the learned Session Judge relies upon the statement of the appellant recorded under Section 313 Cr. P.C. where he states that three years prior, he admitted his guilt before the court and gave an application to that effect but later withdrew it on the advice of his lawyers. What the learned Trial Court ought to have relied upon is the concluding part of the appellant's statement that now he was claiming innocence since that is what would have been determinative for the purposes of the trial and not a prior alleged confession of guilt which in any event was invalid and *non -est*.

Conclusion:

20. In light of the above analysis, the appeal of the appellant is partly allowed and his conviction for an offence under Section 302 IPC and sentence for life is set aside and instead he is convicted for an offence under Section 304 Part II IPC and sentenced to rigorous imprisonment for 10 years. From perusal of the nominal roll available



on record it appears that the appellant has already undergone incarceration for a period of 10 years including remission earned and therefore, this Court directs that the appellant be released forthwith, if not required in any other case. The appeal is accordingly partly allowed as per directions stated above.

21. Copy of this order be uploaded on the website of this Court and be also sent to Superintendent, Jail for compliance and intimation to the appellant and updation of records.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

AUGUST 24, 2022/mk



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