

#J-1

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On : 26.02.2020
Judgment Pronounced On : 18.03.2020

CRL.A. 1315/2019

**VISHVAJEET DASS@VISHVANATH DAS
@VISHWA**

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. S.B. Dandapani (DHCLSC), Advocate

For the Respondent :Mr. Ravi Nayak, APP with Inspector Om Prakash, IO/SHO
PS– Sarojini Nagar and Inspector M.S. Kamal, PS- Madhu Vihar

CORAM:

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE C. HARI SHANKAR**

J U D G M E N T

SIDDHARTH MRIDUL, J

1. In pursuance to the directions issued by this Court, Vishvajeet Dass alias Vishvanath Das alias Vishwa, the appellant has been produced in custody.
2. The appellant stands convicted for the commission of the

offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') by the Trial Court by way of its judgement dated 20.07.2019; which further by way of its order on sentence dated 22.07.2019 has consequently directed him to undergo rigorous imprisonment for life with a fine of Rs.5,000/- and in default of payment thereof to further undergo simple imprisonment for a period of one month.

3. As per the case of the prosecution Abhishek Jha (PW-9) recorded the subject complaint that, on 04.07.2012 at about 09:15 PM, while he was returning to his house from the market behind Joshi Colony Church, near Rajdhani Store, he saw the accused giving brick blows on the head and back of the deceased, who was lying on the ground with blood oozing out from his head.

4. Abhishek Jha (PW-9) was consistent in his testimony throughout including the deposition that, although he tried to save the deceased and catch hold of the appellant, the latter ran away and disappeared.

5. Om Pal (PW-4), who is the other eye-witness to the incident, deposed that, he was working as a Technician with M/s. D.G. Cables and was residing at Madhu Vihar at the relevant time. PW-4 further deposed that the cables of his company were *inter alia* installed at

Batla Apartments and, therefore, he used to visit the said location regularly for checking the connections. PW-4 also deposed that on 04.07.2012, when he was taking tea, at the tea shop of Neelu, on the footpath in front of Batla Apartments, he witnessed the appellant quarrelling with the deceased. PW-4 cogently deposed that he knew both the appellant and the deceased, since they also used to visit the said tea shop of Neelu. It was further deposed by PW-4 that, after taking tea as he left the shop, he heard some loud noises from behind him, and on turning back, saw the appellant hitting a brick on the head of the deceased, who had fallen down. It was categorically deposed by PW-4 that the appellant inflicted 2/3 more blows with the brick upon the deceased, and then fled away from the spot, when members of the public started gathering there.

6. The post-mortem conducted by Dr. Vinay Kumar Singh (PW-7) upon the body of the deceased *inter alia* clearly opined that, out of the eleven injuries found on the body of the deceased; injury No.1,2 and 3, i.e. (i) multiple abrasions of 13x11 cm over right side of face and temporal region; (ii) lacerated wound of 1x1 cm with surrounding abrasion of 3x3 cm over right side of forehead just above eyebrow medial end; and (iii) abraded bruise 6x6 cm around left temporal region; were individually and collectively sufficient to cause death in

the ordinary course of nature. PW-7 further opined, upon examination of the brick — which was the weapon of offence — that, the possibility of the fatal injuries having been caused upon the deceased with the same (Ex.4) — seized by the police from the spot — cannot be ruled out.

7. Having heard learned counsel for the parties and perused the evidence on record, the trial court vide the impugned judgment has returned a finding that the prosecution was able to prove its case against the appellant beyond reasonable doubt.

8. Mr. S.B. Dandapani, learned counsel appearing on behalf of the appellant, on instructions from the latter, states that they do not impugn the findings arrived at by the trial court, save and except to the limited extent to urge that, the commission of the offence by the appellant, was upon a sudden fight and occurred in the heat of passion at the spur of the moment, without any pre-meditation and whilst being under the influence of alcohol; and that, therefore, the appellant ought to have been convicted only for the commission of an offence falling within the scope and ambit of the provisions of Section 304 Part II IPC (culpable homicide not amounting to murder) and not under Section 302 IPC, as has been erroneously done by the trial court.

9. In other words, it is the case of the appellant before us that, only a conviction under the provisions of Section 304 Part II was sustainable and not the one under Section 302 IPC and, that therefore, the impugned judgment and order on sentence requires modification in the present appeal. In this behalf, it was also urged that the sentence imposed upon the appellant by the trial court is excessively harsh and disproportionate to the offence found to have been committed by him; and furthermore the ends of justice would be met if the same is reduced to the sentence already undergone by the appellant.

10. Our attention has also been invited to the circumstance that the appellant is the solitary bread winner of a large family comprising besides him, his wife and three children; and that the latter have had to endure untold misery owing to financial deprivation, loss of care and support, as a consequence of the appellant's incarceration.

11. In the present appeal we observe from the nominal roll *qua* the appellant that, he has remained incarcerated for a period of more than seven years; and also that his overall jail conduct has been certified as satisfactory throughout the period of his incarceration. It is further relevant to observe that, the appellant has rendered productive service as a Langer Sahayak to the jail authorities for a sufficiently long period of time.

12. Having regard to the facts and circumstances of the case viewed in totality; and having heard learned counsel appearing on behalf of the parties and appreciated the evidence on record, we are of the considered view that in the present case both the appellant, as well as, the deceased were in a state egregious intoxication at the time of the commission of the offence having just consumed liquor together.

13. We also observe that the commission of the offence was the consequence of a sudden fight where in the heat of passion, the appellant lost control of his senses and attacked the deceased in a brutal manner with a brick. We further find that although the attack on the deceased by the appellant with the brick was vicious, the weapon of offence cannot be characterised as being a lethal one by any stretch of argument. However, we find that the appellant would have known that the force with which he attacked the deceased on a delicate part of the latter's body — the head — it would very well being resulted in death and can, therefore, safely be concluded to have been done intentionally with the requisite knowledge.

14. We are, therefore, of the view that the judgment and order of conviction dated 20.07.2019 is one that commends itself to be converted from one of conviction and sentence under Section 302 IPC to one of conviction and sentence for the commission of the offence

under Section 304 Part I IPC.

15. Directed accordingly.

16. Insofar as, the quantum of sentence is concerned, we are of the view that the ends of justice would be served, if the sentence imposed upon the appellant is reduced from rigorous imprisonment for life imposed upon him by the trial court to one of ten years rigorous imprisonment along with fine of Rs.5,000/- and in default of payment of fine for a further period of six months.

17. The appeal is disposed of in the above terms.

18. A copy of this judgment be provided to the appellant forthwith. A copy of this order be also sent to the Superintendent, Central Jail, Tihar for necessary information and compliance.

SIDDHARTH MRIDUL
(JUDGE)

C. HARI SHANKAR
(JUDGE)

MARCH 18, 2020

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