



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

% Decided on: 14th September, 2022

+ **CRL.A. 902/2019**

SURESH SINGH

..... Appellant

Represented by: Mr. B. Badrinath, Adv. DHCLSC.

versus

STATE

..... Respondent

Represented by: Ms. Shubhi Gupta, APP for State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J. (ORAL)

1. By the present appeal the appellant impugns the judgment dated 11th April, 2019 whereby he was convicted for offence punishable under Section 302 IPC and the order on sentence dated 18th April, 2019 whereby he was awarded sentence of imprisonment for life.

2. Learned counsel for the appellant contends that there is dispute on the identity of the deceased who was named as Jagdish, however turned out to be one Usman Khan as identified by his son. Further, the prosecution case is that both the deceased and the appellant were found lying in an unconscious inebriated condition in a room which was locked from inside and was opened by the Police. According to the learned counsel for the appellant there are material discrepancies and contradictions in the evidence led by prosecution and that there is no eye witness to the alleged incident. Further, the Ld. Trial Court erred in shifting the burden of proof on the appellant to



explain how the injuries were inflicted and how appellant was connected to the said offence.

3. The appellant further submitted that neither the prosecution lifted any finger prints from the alleged weapon i.e. “iron *tawa*” to connect the appellant to the incident, nor any human blood was detected from the *tawa* as per the FSL Report. It has also been submitted that the appellant was not named in the FIR despite being known to the complainant. No motive was brought on record as to why appellant committed the alleged offence. And lastly, in the alternative, it is submitted that even taking the case of prosecution as it is at best an offence under Section 304 Part II of the IPC is made out.

4. Case of the prosecution is that a PCR call was received from H.No. 266-G, Ward No.2, Bhuiya Chowk Mehrauli, wherein Smt. Mithlesh the owner of the plot was found whose statement was recorded vide DD No.102-B on 2^{5th} August, 2014. The owner informed that the door of the room was closed from inside. The door was broken with the help of public persons and it was noted that two persons were lying on the floor, namely, injured Jagdish and accused Suresh. Crime team was called at the spot because Jagdish the injured was in an unconscious condition.

5. Statement of Smt. Mithlesh was recorded wherein she alleged that around 20 days ago she had given the room on rent to one Jagdish and Suresh and on that date i.e. 25th August, 2014 at about 4.00 PM she had seen both of them quarrelling after taking liquor. On this she scolded them and went to fetch milk. Thereafter, the room was closed and both of them were inside. At around 11.00 PM she knocked the door of the room. However, she could not hear any sound and thus made a call at 100 number. The



injured Jagdish was declared brought dead at AIIMS Trauma Centre resulting in the registration of the FIR. The body of the deceased was identified by PW-3/ Shakeel Ahmed, the son of the deceased stating that the same was of his father Usman Khan. Smt. Mithlesh in the Court reiterated her statement based whereon FIR was registered.

6. Statement of Devender Singh Rana, S/o Smt. Mithlesh was also recorded who was examined as PW-5 who supported the version of Mithlesh and stated that when no voice was heard from inside the room, he peeped through the window using his mobile phone as torch and found both the persons lying in the room. He stated that brother of the accused was also residing with him, however a week prior to the incident he shifted to some other premises and thereafter he was joined by two other persons, namely Munim and Shyam Singh. After some time Munim and Shyam Singh also went to their native village and one Jagdish used to visit Suresh. He stated that on 25th August, 2014 Jagdish visited the accused Suresh in the night at about 10.30 PM. As per usual practice they used to lock the main gate after checking all the tenanted rooms. Thus, his mother called out for Suresh but there was no response. Therefore, she informed him and he also knocked on the door but there was no response. When he peeped through the window using the torch of the mobile phone both of them were seen lying on the floor.

7. Crime team at the spot found blood-stained “tawa” and as per the FSL report human blood was found on the “tawa”, though blood-grouping could not be detected. The post-mortem of the deceased was conducted by Dr. Mahesh Kumar who appeared as PW-7 and opined that the cause of death was shock as a result of *ante mortem* injuries to head produced by blunt



force impact. As per the post mortem report the following external and internal injuries were found:

“External Injury:

- 1. Lacerated wound measuring 2.5 x 4 cm horizontally present over the boarder of the eye lid, conjunctiva is conjested.*
- 2. Lacerated wound measuring 3 x 3 cm present over the right pinna upper end, cartilage deep.*
- 3. Lacerated wound measuring 2 x 2 cm, cartilagenous deep present over left ear tragus.*
- 4. Reddish contusion measuring 5 x 4 cm present over right side face, 4 cm from midline and 5 cm above right angle of mandible.*
- 5. Reddish contusion measuring 8 x 6 cm present over left upper chest and shoulder, 4 cm from midline and 2 cm below left clavicle.*

Internal injury on head:

- 1. Scalp – extravasation of blood present all over the scalp.*
- 2. Skull – Fracture present as shown in the figure*
- 3. Brain – Extradural hemorrhage is present over left temporal region. Diffuse subdural hemorrhage is present over left fronto-temporo-parieto-occipital region and right parietal region. Diffuse subarachnoid hemorrhage present over both the cerebral and cerebellar hemisphere.*

Internal injury on chest:

- 1. Ribs and chest wall – Right side 5th to 8th and left 5th to 6th ribs are fractured along with extravasation of blood.*

Internal injury on abdomen:

Superficial laceration present over superior anterior surface of liver.”

- 8. After receipt of the viscera report and when the weapon of offence was shown to him, he examined the same and opined that the injuries present on the deceased could be possible with the alleged weapon of offence i.e.*



“tawa”. The viscera of the deceased was also sent to FSL analysis and traces of ethyl alcohol were found therein.

9. Supreme Court in the decision *Abani K. Debnath vs. State of Tripura* reported as (2005) 13 SCC 422 dealing with an injury pursuant to a mutual quarrel, on the spur of the moment held:

“5. This lead us to consider as to under what section of law A-1 Abani K. Debnath is liable to be convicted in the given facts of the case. The prosecution evidence clearly discloses that the dao-blow dealt by A-1 was preceded by a mutual quarrel. We have already noted that there was no common intention to kill Ranjit Das. From the nature of injuries, it is disclosed that A-1 dealt only one dao-blow perhaps on the spur of the moment. The incident had taken place on 10.08.1990 and the deceased succumbed to the injury on 15.08.1990 after a lapse of 7 days. Taking the prosecution evidence and medical evidence cumulatively, we are of the view that the conviction of A-1 also cannot fall under Section 302 IPC but at most under Section 304 Part II. We accordingly convert the sentence of A-1 Abani K. Debnath under Section 302 IPC to one under Section 304 Part II IPC and sentence him to suffer RI for five years. The fine amount imposed by the trial court and affirmed by the High Court is maintained. It is stated at the Bar that A-1 has undergone about 18 months’ imprisonment, if that is so, he will be entitled to get the benefit of Section 428 Cr.PC.”

10. In *Gurmukh Singh vs. State of Haryana*, (2009) 15 SCC 635 dealing with an assault without any premeditation, it was held:

“21. In the instant case, the occurrence had taken place on the spur of the moment. Only the appellant Gurmukh Singh inflicted a single lathi-blow. The other accused have not indulged in any overt act. There was no intention or premeditation in the mind of the appellant to inflict such injuries to the deceased as were likely to cause death in the ordinary course of nature. On consideration of the entire evidence including the medical evidence, we are clearly of the view that the conviction of the appellant cannot be sustained under Section 302 IPC, but the appropriate section under which the appellant ought to



be convicted is Section 304 IPC, but the appropriate section under which the appellant ought to be convicted is Section 304 Part II IPC.

26. We accordingly convert the conviction and sentence of the appellant Gurmukh Singh from Section 302 IPC to one under Section 304 Part II IPC and sentence him to suffer rigorous imprisonment for seven years. The fine as imposed by the trial court and as upheld by the High Court is maintained. The appellant would be entitled to get benefit of Section 428 of the Code of Criminal Procedure.”

11. From the evidence as noted it is evident that the injuries were caused to the deceased pursuant to an altercation that took place between the deceased and the appellant on the spur of a moment, with no pre-meditation, and the weapon of offence used was “tawa” which was lying nearby resulting in the death of the deceased and that the appellant was in an inebriated condition (as was found subsequently by the landlady, her son and Police officers), it is evident that the offence proved by the prosecution would fall under culpable homicide not amounting to murder punishable under Section 304 Part II IPC and not under Section 302 IPC.

12. Consequently, the conviction of the appellant is modified to one from 302 IPC to 304 Part II IPC. As per the nominal roll received, the appellant has been in custody for 9 years and 20 days as on 16.08.2022 and thus he is released on the period already undergone.

13. Appeal is accordingly disposed of.

14. Superintendent Tihar Jail is directed to release the appellant forthwith if not required in any other case.

15. Copy of the judgment be uploaded on the website and be also sent to the Superintendent Tihar Jail for updation of record and compliance.



CRL.M.B. 179/2022

Application is disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

SEPTEMBER 14, 2022
‘ga’

