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

% Decided on: 3rd November, 2022

+ **CRL.A. 987/2019**

ASHOK @ KULLU Appellant
Represented by: Mr. Feroz Khan Ghazi, Adv. thru VC

versus

STATE Respondent
Represented by: Ms. Shubhi Gupta, APP for State with
Insp. Manjeet, PS Punjabi Bagh.

+ **CRL.A. 769/2019**

SANJAY @ B.C. Appellant
Represented by: Mr. Feroz Khan Ghazi, Adv. thru VC

versus

STATE Respondent
Represented by: Ms. Shubhi Gupta, APP for State with
Insp. Manjeet, PS Punjabi Bagh.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J. (ORAL)

1. By the present appeals, the appellants challenge the impugned judgment dated 26th April, 2019 convicting them for offences punishable under Section 302/34 IPC and the order on sentence dated 30th April, 2019

directing them to undergo imprisonment for life and to pay a fine of ₹5000/- each in default whereof to undergo rigorous imprisonment for three months each.

2. Learned counsel for the appellant contends that even as per the statement of the sisters of the deceased, the deceased was having an evil eye on the sister and wife of the appellant Sanjay due to which there was enmity. He states that enmity is a double edged weapon and was thus the reason for false implication of the appellant. Further the appellants can be attributed neither any intention nor even the knowledge that hitting with the stone would cause the death of the deceased. Learned counsel for the appellant further contends that even taking the prosecution case on its face and believing the witness Tariq Khan, who is stated to be the only eye witness of the prosecution to have witnessed the alleged incident, at best an offence punishable under Section 304 IPC is made out, as the incident took place on the spur of the moment, the appellants were not armed and they were giving fists blows, when in the heat of moment the deceased was hit on the head by a piece of stone resulting in his death.

3. Learned APP on the other hand contends that Tariq Khan who is an eye-witness, on whose statement the rukka was recorded and who brought the deceased in the injured condition to his home, as stated by Girdhari Lal and the two sisters, namely, Neelam and Rekha has clearly deposed the manner in which the appellants in pursuance to a common intention inflicted injury on the vital part i.e. head of the deceased resulting in the death. The post-mortem report clearly notes that the injury is sufficient to cause death in the ordinary course of nature and hence the offence punishable under Section 302/34 IPC stands proved beyond reasonable doubt against the appellants.

4. Heard learned counsel for the parties and perused the record.
5. The prosecution case rest on the deposition of Tariq Khan on whose statement the FIR was registered and in terms of the said statement he deposed in the Court. Tariq Khan deposed that he was working as a Bumper repairer at Road No.33, DDA Market, Punjabi Bagh. On 23rd June, 2014 at around 10.30 PM while he was going to meet his friend Naresh at F Block, J.J. Colony, Madipur, in front of H.No. 493, J.J. Colony, Madipur he saw that Sanjay @ B.C. and Ashok @ Deepak @ Kullu who were also the residents of J.J. Colony, Madipur were beating Manoj Kumar @ Kauwa with kicks and fists. He knew all the three persons, thus he intervened and tried to pacify Ashok and Sanjay. Sanjay pushed him aside and asked Tariq Khan not to intervene, whereafter Deepak @ Kallu sat on the chest of Manoj who was lying on the road due to beating and continued giving him fists blows. He was also striking the head of Manoj with the road. In the meantime, Sanjay picked up a slab of stone (*silli ka tukda*) lying nearby and hit on the head of Manoj. Thinking that Manoj was dead, both of them fled away, leaving Manoj in a pool of blood on the road. Seeing the fight, though number of people gathered, however nobody came forward. He cried for help and lifted injured Manoj and took him to his house, after wiping the blood from his face. When he took Manoj to his house, he found his maternal uncle Girdhari Lal outside, to whom he informed that Manoj was beaten by Sanjay and Ashok. Thereafter, Girdhari Lal took Manoj upstairs. On being taken to the hospital, Manoj was declared brought dead.
6. Post-mortem of Manoj was conducted by Dr. Munish Wadhawan/ PW-15 who noted the following external injuries:

- “1. Lacerated wound, 1 X 0.2 cm x bone deep on right forehead.
2. Reddish abrasion, 1 x 0.2 cm on right face.
3. Reddish abrasion, 2 x 1 cm on front of left knee joint.

OPINION: Death is due to cerebral damage as a result of blunt force/object diverted upon head.

All injuries are antemortem in nature.”

7. Thereafter, the weapon of offence i.e. the stone was also sent for the opinion of Dr. Munish Wadhawan and he gave his subsequent opinion regarding the weapon of offence stating that the injury was possible by the said weapon.

8. Depositions of Neelam and Rekha, the two sisters of the deceased Manoj are also relevant. Neelam deposed that on 23rd June, 2014 at 11.00 PM Tariq Khan and his uncle Girdhari Lal brought their brother to their house. He was in an injured condition and he told them that Sanjay @ B.C. and Ashok @ Kullu had given him beatings. She spoke to the Doctor who advised her to call the Police at 100 number. Police took her brother to the hospital when she also accompanied her brother in the PCR van, where he was declared brought dead. She further stated that on 23rd June, 2014 Sanjay @ B.C. had come to their house at late night and stated that their brother Manoj misbehaves with his sister, on which she stated that her brother was a good person and was busy in his work as a driver. On this Sanjay @ B.C. threatened her that “*mein uska (manoj) kaam taamam kar dunga*”. Version of Neelam is corroborated by the other sister Rekha.

9. From the testimonies of Neelam and Rekha, it is evident that Sanjay had a grudge against Manoj in view of his conduct of teasing his sister. However, as stated by Tariq Khan, the initial fight between Sanjay @ B.C.

and Ashok @ Deepak @ Kullu on one side and Manoj @ Kauwa was by kicks and fists blows. It is after Tariq Khan's intervention that Deepak @ Kullu sat on the chest of Manoj and Sanjay picked up a slab of stone and hit on the head of Manoj, which turned out to be fatal. This version of Tariq is corroborated by the post-mortem report which notes the first injury being laceration on the head and the other two injuries being abrasions. The injury on the head resulted in the fatal blow causing death of the deceased.

10. From the facts as noted above, it is evident that though appellant Sanjay had a grudge against him, the deceased was beaten by fists and kicks blows and only one injury was inflicted that too by the slab of stone which resulted in the death. The appellants were not armed with any deadly weapon. The threat extended earlier of teaching the lesson was being executed by hitting the deceased with kicks and fists blows. The use of the stone to hit the deceased was on the spur of the moment and only a single injury of the kind was inflicted.

11. This Court in the decision reported as 2014 SCC OnLine Del 4912 titled Rajesh Kumar Vs. State and other connected matters, in similar circumstances held :

9. The position would be thus: angered by Jagdish maintaining a contact with Sangeeta, evidence suggests that Ramesh Kumar, father of Rajesh and Sangeeta told Rajesh to muster help and Vadiwel and Ammu, friends of Rajesh agreed to extend a helping hand. Rajesh rang up Jagdish and called him outside his house. On the saying of Ramesh to teach the scoundrel a lesson of his life, Rajesh, Vadiwel and Ammu started punching and kicking Jagdish who in the melee contacted his brother Sushil but before anybody could rescue him, Rajesh picked up a handy stone nearby and hit Jagdish on the head. The utterance attributed to Rajesh by Mohan in the

statement Ex.PW-20/A, from which Mohan resiled: he would now be rendered unfit to speak over the phone, brings out that the target of the assault was the mouth of Jagdish. Be that as it may one thing is clear, neither Ramesh nor Vadiwel nor Ammu had any intention to either kill Jagdish or to cause any life threatening injury. Similarly would be the position qua Rajesh. None of them came armed. All of them came premeditated, but being unarmed, and the manner of assault deposed to by Kamaal PW-3 shows the intention to simply give a beating by fist and leg blows to Rajesh. All of a sudden Rajesh picked up the stone and gave one hard blow on the top of the head of Jagdish. Jagdish died 3 days after the incident and the cause was cranio cerebral injury to the brain.

10. Neither accused shared any common intention, nor anyone else participated in concert with Rajesh to inflict the blow on the skull of Jagdish.

11. Rajesh alone must suffer the consequences of his act, which would constitute the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC. As regards Ramesh Kumar and Vadiwel, from their acts the offence committed by the two would be to cause simple injuries to Jagdish: Ramesh exhorting to beat Jagdish and Vadiwel along with absconder Ammu kicking and punching Jagdish. The grievous injury which has proved fatal was not inflicted by Vadiwel, nor was it infliction at the exhortation of Ramesh. But for the blow on the head with a stone, the injuries on Jagdish are not grievous because none of the impairment of the body envisaged under firstly to eighthly of Section 320 IPC has resulted from the kicks and the fist blows. Thus, Vadiwel and Ramesh would be liable for voluntarily causing hurt to Jagdish.

12. Considering the manner in which offence has been committed by Sanjay and Ashok, this Court finds force in the argument of learned counsel for the appellants that an offence punishable under Section 304/34 IPC is made out and not one under Section 302/34 IPC.

13. Consequently, the conviction of the appellants is converted from one under Section 302/34 IPC to Section 304/34 IPC. The appellants have been awarded sentence of life imprisonment which is modified to period of 10 years rigorous imprisonment and a fine of ₹10,000/- each, in default whereof to undergo simple imprisonment of three months each.

14. Appeals are accordingly disposed of.

15. Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record and intimation to the appellants.

CRL.M.B. 1081/2022 in CRL.A. 987/2019

CRL.M.B. 964/2022 in CRL.A. 769/2019

Since the appeals are disposed of, applications are disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

NOVEMBER 03, 2022

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