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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 27th September, 2023

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CRL.L.P. 28/2022**STATE OF NCT OF DELHI**

..... Petitioner

Through: Mr. Tarang Srivastava, APP for State.

versus

NEERAJ & ANR.

..... Respondents

Through: Respondent No. 1 in person.

Ms. Maulshree Pathak, Advocate for
R-2 with R-2 in person.**CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Criminal Leave Petition under Section 378(1) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) has been filed on behalf of the petitioner/State to seek Leave to Appeal against the Judgment dated 17.12.2019 and Order on Sentence dated 18.12.2019 *vide* which the respondents have been held guilty for the offence punishable under **Section 304(II) of the Indian Penal Code, 1860** (*hereinafter referred to as "IPC, 1860"*) **instead of Section 302 of IPC, 1860** and further convicted under Sections 304(II)/323/341/34 of IPC, 1860.

2. **The facts in brief** are that on 10.08.2014 at about 08:30 P.M., a quarrel took place amongst the vegetable vendors near Mandir Wali Gali opposite Gurudwara, on account of both the respondent No. 1/Neeraj and the respondent No. 2/Raj Kumar having set up their *rehries* in front of the *rehries* of PW5/Naseem and Talib. When they were asked to remove their *rehries*, a quarrel ensued between them. During the quarrel, Gulfam, Rashid and Dildar happened to reach there. PW4/Gulfam who was passing by on his scooter got hit by a *batta* (weight used for weighing vegetables) and suffered



injuries. While PW4/Gulfam was sitting on the side as the quarrel continued, his two friends, namely, Rashid (*hereinafter referred to as* “the deceased”) and Dildar who were passing by on the motorcycle noticed PW4/Gulfam in an injured condition, they stopped their motorcycle and enquired from him about the incident. Thereafter both, the deceased and Dildar intervened in the quarrel to get it settled. Other people also intervened and tried to push away the *rehriewalas*. In the meanwhile, the respondents called their other friends who also came with *dandas* (wooden stick) and *sarias* (iron rod) and joined the fight and gradually, a larger crowd collected at the spot of quarrel. While PW4/Gulfam, deceased and Dildar retracted and started walking towards the Bus Stop, DTC Colony, the respondents along with their accomplices encircled Gulfam and Rashid and started beating them. The respondent No. 1/Neeraj hit deceased on his head with a *danda*, while the respondent No. 2/Raj Kumar hit deceased on his neck with a *danda* and consequently, deceased fell down. The deceased was taken to the Hindu Rao Hospital, where he was declared “*Brought Dead*”. The post-mortem of the deceased was carried out and the cause of death was opined as “*shock as a result of ante mortem injury to head by blunt force impact*” and all the injuries were found to be ante mortem in nature.

3. The investigations were taken over by Inspector Rajender Khatri who reached at the spot and recorded the statements of the witnesses. Investigations were done and after conducting other necessary formalities and completion of investigation, Charge Sheet under Sections 302/323/341/34 of IPC, 1860 was filed in the Court.

4. The prosecution examined 25 witnesses in all, however, the three eye-witnesses being, PW2/Mohd. Dildar, PW4/Gulfam and PW5/Naseem.



5. The statement of the accused was recorded under Section 313 of Cr.P.C., 1973, wherein they pleaded their false implication in the case.

6. **The learned Additional Sessions Judge** relied upon the testimony of the three witnesses and concluded that it was proved beyond reasonable doubt that the death of the deceased was caused due to the injury to his head which was sufficient in ordinary course of nature to cause death. However, it had emerged from the evidence of the witnesses that a quarrel had taken place on account of the lining up of *reheris* in front of each other. There existed no previous enmity amongst the parties and there was no conspiracy or premeditation to kill or harm anyone. There was no mischief intended, but the incident occurred due to sudden fight which happened on the spot.

7. Accordingly, the respondents were convicted under Sections 304(II)/34 of IPC, 1860 and also held guilty under Sections 323/341/34 of IPC, 1860. They were sentenced to simple imprisonment of one month under Sections 341/34 of IPC, 1860. Further, they were sentenced to undergo imprisonment for the period already undergone by them for the offence punishable under Sections 304(II)/34 of IPC, 1860 and also to undergo simple imprisonment for three months for offence punishable under Sections 323/34 of IPC, 1860, but the same was set off against the period already undergone.

8. Aggrieved by the acquittal of the respondents *vide* impugned Judgment dated 17.12.2019 under Section 302 of IPC, 1860 and convicted under the lesser offence of Section 304 (II) of IPC, 1860, the present Leave to Appeal has been filed on behalf of the petitioner/State.

9. The learned Additional Public Prosecutor for the State has submitted that two respondents had given beatings and *lathi* blows to the deceased



which as per the testimony of PW25/Dr. Neha Gupta were found to be sufficient in the ordinary course of nature to cause death. The respondents, therefore, should have been convicted under Section 302 of IPC, 1860 and not under Sections 304(II)/34 of IPC, 1860.

10. **Submissions heard** from the learned counsels for the parties and the documents perused.

11. It is not in dispute and it is the case of the prosecution as well, that a quarrel took place among the *reheriwalas* on account of placing of their *reheris* in front of each other. The fight took an ugly turn and one injured PW4/Gulfam who was passing by on his scooter intervened, but he got hit by a weight (*batta*). Gulfam's friends, Rashid and Dildar who were passing by on the motorcycle upon seeing their friend PW4/Gulfam injured, intervened to pacify the quarrel, but the crowd became larger. As they decided to retract, the accused/Neeraj hit Rashid on his head with a *danda* while accused/Raj Kumar gave Rashid a blow on his neck with some rod like object as deposed by PW2/Md. Dildar.

12. PW4/Gulfam had deposed that accused/Raj Kumar and his associates had given beatings and also *danda* blow to him and that accused/Raj Kumar had hit Rashid on his neck with a *danda*, although in his cross-examination he deposed that neither Neeraj nor Rajkumar were present at the spot at the time of the incident.

13. PW5/Naseem also deposed that accused/Neeraj had hit Rashid on his head with the *danda*, while accused/Raj Kumar hit Rashid on his neck with a *danda*.

14. From the testimony of all three eye-witnesses, it is established, as held by learned Additional Sessions Judge, that the deceased had been hit on his



head with the *danda* and also with an object on the back of his neck, aside from being beaten by the crowd.

15. The significant document for consideration is the Post-Mortem Report Ex.PW25/1 which has described that there were 7 injuries on the body of the deceased which were essentially abrasions except *“one lacerated wound of 2x 0.2 cm x 0.5 cm present horizontally over filtrum in midline with a surrounding reddish abrasion of size 2x1 cm”* and *“one reddish blue bruise of size 7x2 cm present horizontally over left side and back of neck, 8 cm from midline and 4 cm below left mastoid process with an underlying swelling of size 7x5 cm over left lateral aspect of neck and left back”*. It was observed that there was linear fissured fracture present on the back of the scalp in middle cranial fossa, aside from sub-dural haemorrhage present over and below cerebral hemisphere subarachnoid haemorrhage present over bilateral cerebral hemisphere and base of bilateral fronto-temporal lobes. It was opined that the death was *“due to shock of ante mortem injury to head produce by blunt force impact”*.

16. It is established from the testimony of the three eye-witnesses, coupled with that of PW25/Dr. Neha Gupta who proved the Post Mortem Report Ex.PW25/1 that indeed the death of Rashid happened because of the blows given by the two respondents on his head and behind his neck.

17. The core question which emerges is that whether the conviction should have been under Sections 302 or 304(II) of IPC, 1860 as has been held by the learned Additional Sessions Judge.

18. Section 300 of IPC, 1860 defines murder. Its Clause (1) provides that *“culpable homicide is a murder if the act is done with an intention of causing death”*. Its third clause states that it is murder *“if it is done with the*



intention of causing bodily injury to any person and that bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death”. Exception 4 to Section 300 of IPC, 1860 reads as under: -

“Exception 4— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

19. In the present case, undeniably, a sudden quarrel had happened *inter se reheriwalas* and as the deceased along with his friends, had intervened to disperse the crowd, the deceased also got hit by two *danda* blows by both the respondents.

20. These circumstances clearly establish that there was no premeditated act; it is only in the heat of passion that the injuries were inflicted upon the deceased which proved to be fatal.

21. In this background, the learned Additional Sessions Judge had rightly convicted both the respondents under Section 304(II) of IPC, 1860.

22. Accordingly, we find no infirmity in the impugned Judgment dated 17.12.2019. Hence, there is no merit in the present leave to appeal which is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 27, 2023
S.Sharma