

O R D E R@@
EEEEEEEEEE

.SP2

Two inebriated persons engaged in a wrangle on the night of 8.4.1987 and one of them fell on the road just in front of the house and he was run over by a truck. This was treated as an act of culpable homicide committed by the appellant who is alleged to have pushed the deceased down on the road. The sessions court and the High Court convicted him under Section 302 IPC and sentenced him to imprisonment for life. This appeal is at the instance of that convicted person by special leave.

There is no dispute that the deceased Botu was run over by a truck at about 10.30 P.M. on 8.4.1987 and died of serious injuries suffered thereby. Many of his bones were fractured. Those injuries would clearly account for being run over by a heavy vehicle.

.PA

:2:

The only witness, the evidence on which prosecution could rely on in the endeavour to substantiate the case against the appellant, is PW1 - Shantibai who was the sister-in-law of the deceased Botu. What she said about the occurrence, in brief, is the following:- The deceased Botu was in liaison with a lady by name Ashabai to the chagrin of the accused Gyani Kapoor. On the night in question, the accused went to the house of the deceased and called him out, questioned him about his improper conduct because Ashabai was treated by the accused more or less as a sister-in-law. After dragging the deceased out of the house the accused pushed him down. Deceased fell on the road (presumably the road would have been just in front of the house). A truck came by that way and ran over the deceased.

The question is whether the appellant could be convicted under Section 302 of IPC on the basis of the aforesaid version given by PW1, even if it is assumed that all what PW1 said in the court is true? A suggestion was made during cross examination of PW1 that

.PA

:3:

both accused and the deceased were fully drunk at the time of the incident. PW1 admitted that both of them consumed alcohol though she did not admit in so many words that accused was fully drunk. But the fact remains, when the autopsy was conducted by the doctor on the next morning he had smell of alcohol from the dead body. Considering the interval of almost of 12 hours between the time of death and the time of autopsy the smell of alcohol which the doctor felt would indicate that the deceased would have been drunk when the incident happened. If the condition of the appellant was not better on that aspect when the incident happened it would have been a brawl between the two, or at least, it would have been only an act by which the appellant had pushed the deceased down on the road. PW1 did not say that

appellant did it knowing well that the truck is almost near speeding up. In all probabilities the supervening event of the truck running over the deceased would not have been anticipated by the appellant. It would have happened all of a sudden by some misfortune.

On the aforesaid fact situation it is difficult for us to confirm the conviction for the offence under Section 302 of the IPC.

.PA

:4:

We, therefore, allow this appeal and set aside the conviction and sentence passed on the appellant. We acquit him and direct him to be set at liberty forthwith unless he is required in any other case.

.SP1

@@
AAAAAAAAAAAAAAAAAAAA
...J@@
AAAAAAAAAAAAAAAAAAAA
(K.T. Thomas)@@
AAAAAAAAAAAAAAAAAAAA
@@
AAAAAAAAAAAAAAAAAAAA
@@
AAAAAAAAAAAAAAAAAAAA
@@
AAAAAAAAAAAAAAAAAAAA
New DelhiJ@@
AAAAAAAAAAAAAAAAAAAA
December 11, 2001 (S.N. Phukan)@@
AAAAAAAAAAAAAAAAAAAA
@@
AAAAAAAAAAAAAAAAAAAA