A SHANKAR JAISWARA

v.

STATE OF WEST BENGAL

MAY 14, 2007

B [S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Penal Code, 1860; Ss. 86 and 302:

Murder—Accused attacked deceased with a sharp edged weapons
C *causing his death—F.I.R.—Charge sheet—Trial Court found accused guilty of committing offence u/s 302 IPC, convicted and sentenced him accordingly—Affirmed by High Court—On appeal, Held, no doubt recovery of weapon seized itself would not be enough and sufficient to convict an accused with the crime unless it is established that the weapon has been used by him for*
D *commission of the offence—But the weapon in the instant case was recovered at the instance of the accused—Besides, ocular evidence of PW 1 and 3 consistently reveals that the accused was carrying a knife—Thus, sequence of events and material available on record clearly establishes that the weapon recovered was used for commission of murder of the deceased by the accused—Upon re-appreciation of the evidence it cannot be said that the accused was*
E *devoid of his actual senses and was unable to comprehend his action while committing the crime—On the other hand the manner in which he inflicted grievous injuries to the deceased suggests that he was quite conscious of the consequences of his act—He had control over his senses as evident from the evidence as he tried to make good his escape after the incident in a calculated*
F *manner—Intention to commit the crime is also evident from the attending circumstances and material on record—Hence, the prosecution proved the charges against the accused beyond any reasonable doubt—Evidence Act, 1872—s. 27.*

Section 86: Drunkenness as defence in committing the crime of murder—
G *Held: Not allowed in the facts and circumstances of the case.*

According to the prosecution, on the fateful day, accused-appellant shouting and hurling abuse and then started knocking the door of the house of PW-3 in the presence of PW1. Apprehending trouble, PW1 requested the accused to leave the place. However, he became agitated and started abusing
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the younger brother of PW 1, the deceased in filthy language, who was taking his meal sitting in his rickshaw. When the deceased requested him to leave him alone, he became furious and started stabbing him with a sharp edged weapon. Deceased fell down, he was profusely bleeding. PW-1 took him to a Hospital in the same rickshaw. Hospital authorities having regard to the grievous nature of injuries advised PW-1 to take him to another Hospital. The victim was accordingly taken to the Hospital, so referred, where he was pronounced dead. PW 1 informed the police about the incident. Accordingly, an FIR was registered by the Police under Section 302 IPC against the accused. The trial Court found the accused guilty of the offence punishable under Section 302 IPC, convicted and sentenced him accordingly. The conviction and sentence was affirmed by the High Court. Hence, the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. The medical evidence available on record and the ocular evidence of PW-1 and PW-3 were absolutely in conformity with each other which clearly establishes the prosecution case. [Para 16] [488-C]

1.2. There is no doubt whatsoever about the recovery of weapon seized under seizure list but the recovery itself would not be enough and sufficient to connect the accused with the crime unless it is established that the said weapon has been used by the accused for commission of the offence. But it cannot be denied that the recovery of the said article is a fact discovered at the instance of the accused. [Para 17] [488-D]

1.3. The ocular evidence of PW-1 and PW-3, which is consistent, reveals that the appellant was carrying a knife. The sequence of events and the material available on record clearly establishes that the weapon of offence has been used for the commission of the murder of the deceased by the appellant. The recovery made under Section 27 of the Evidence Act by PW-19, the investigating officer from the house of PW-9, a friend of the appellant is required to be taken into consideration. The process of recovery is based upon the statement of the appellant made to PW-19 is in accordance with Section 27 of the Evidence Act. [Para 17] [488-E-F]

Basdev v. *The State of Pepsu,* [1956] SCR 363 and *Bablu @ Mubarik Hussain* v. *State of Rajasthan,* (2006) 14 SCALE 15, relied on.

Director of Public Prosecutions v. *Beard,* (1920) AC 479, referred to.

A 2.1. In the present case a plea of drunkenness and that the mind of the accused was so affected by the drink with the result he acted in a way in which he would not have done had he been sober, is not set up by the accused-appellant. [Para 26] [491-F]

2.2. There is no evidence available on record as to the quantity of the B alcohol consumed by the appellant except the observation of PW-1 and PW-3 that he was under the influence of liquor. No one stated that he was not in his senses and lost self control. There is no evidence as regards the degree of intoxication. There is no evidence of any attending general circumstances to arrive at any conclusion that the appellant was beside his mind altogether C temporarily at the time of incident. He was apparently conscious and fully capable of understanding the consequences of his act as it is evident that immediately after the incident he walked the distance to the house of PW-9, and concealed the weapon of offence and wearing apparels.

[Para 27] [492-B-C]

D 2.3. According to PW 5, Professor of Forensic and State Medicine, injuries nos. 4 and 7 may have been caused while the victim was defending himself. In the circumstances, it cannot be said that there was no intention on the part of the appellant and he was out of his senses on account of intoxication. The evidence of PW-1 and PW-3 who are eye witnesses to the incident is consistent. Both of them have seen the appellant stabbing the E helpless victim who was sitting in his own rickshaw and eating his evening food. There was no provocation as such caused by the deceased leading to any sudden attack. The appellant was carrying weapon and attacked the deceased, caused grievous injuries resulting in his death. [Para 28] [492-D-F]

2.4. The intention on the part of the appellant can easily be gathered F from the evidence of PW-1 and PW-3 which is supported by medical evidence. There is absolutely no reason whatsoever to disbelieve their evidence. There is nothing on record suggesting that at the time the appellant attacked the victim his mind was so affected by the drink he had voluntarily taken that he was incapable in forming the intention requisite for making his act the offence G charged against him. The taking of drink cannot itself excuse the commission of a crime; and it is not a defence to prove that a man's mind was so affected by drink that he more readily gave way to passion, or that he would not have acted as he did had he been sober nor will drunkenness be a defence in case of strict liability, since, if an honest and reasonable mistake by a sober person cannot afford a defence, a mistake while drunk cannot do so.

H [Para 28] [492-F-H]

Halsbury's Law of England, **page 26, referred to.** A

2.5. Upon appreciation of the evidence this Court is unable to persuade itself and agree that the appellant was devoid of his actual senses and he was unable to comprehend his action. On the other hand the manner in which he attacked the deceased resulting in as many as seven grievous injuries suggests that he was quite conscious of the consequences of his act. The B **appellant as is apparent from the evidence had control over his senses and tried to make good his escape after the incident in a calculated manner. This is clear from the evidence of PW-9 that he came immediately after the incident to conceal his wearing apparels and the weapon of offence. It is not possible to accept the theory propounded by the Amicus that due to drunkenness the** C **appellant lost his senses and self control. The intention on the part of the appellant is clearly evident from the evidence and all attending circumstances. [Para 29] [493-A-C]**

3. The prosecution proved the charge against the accused beyond any reasonable doubt. The Trial Court as well as the Appellate Court came to the D **right conclusion in convicting and sentencing him for the offence punishable under Section 302 IPC. [Para 30] [493-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 721 of 2007.

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From the Final Judgment and Order dated 30.01.2006 of the High Court of Calcutta in Crl. Appeal No. 344 of 1998.

Vijay Panjwani, (A.C.) for the Appellant.

T.C. Sharma for the Respondent. F

The Judgment of the Court was delivered by

B. SUDERSHAN REDDY, J. 1. Leave granted.

2. This appeal by special leave is directed against the judgment of the G Calcutta High Court confirming the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life and a fine of Rs. 5,000/-, in default of payment of fine to further undergo six months rigorous imprisonment. The appellant was charged with the offence punishable under Section 302 IPC of committing the murder of Tarak Jaiswara the younger brother of the informant (PW-1). H

A 3. The prosecution story, briefly stated, is that on 14.1.1997 at about 11 or 11.30 p.m. Bhola Jaiswara (PW-1) heard a row from outside his bedroom. He heard the appellant Shankar Jaiswara was shouting and hurling abuse and in the process started knocking at the door of the house of Mohan Jaiswara (PW-3). Apprehending trouble, Bhola Jaiswara (PW-1) came out and requested the appellant to leave the place. The appellant became agitated and started B moving towards the main road where he found Tarak Jaiswara (deceased) who was taking his meal while sitting in his rickshaw. Bhola (PW-1) also followed the appellant. The appellant Shankar Jaiswara started abusing Tarak Jaiswara (deceased) in obscene and filthy language. When the deceased Tarak requested the appellant to leave him alone the appellant became furious and started C stabbing Tarak with a sharp edged weapon. Deceased Tarak fell in the rickshaw. He was profusely bleeding. Bhola (PW-1) took the victim who is none other than his own brother to North Suburban Hospital in the same rickshaw where the hospital authorities having regard to the grievous nature of injuries advised him to take the victim to the R.G. Kar Hospital. The victim was accordingly taken to the R.G. Kar Hospital where he was pronounced dead. D While on his way back from the hospital Bhola (PW-1) found some police personnel in the vicinity of occurrence and he narrated the incident to the police. Based on the statement of Bhola (PW-1) the Police Station Cossipore issued first information report and registered a P.S. Case No. 11 of 1997 under Section 302 IPC against the appellant.

E 4. After completion of the investigation, the police filed charge sheet under Section 302 IPC against the accused appellant. The prosecution in all examined 19 witnesses (PW-1 to PW-19) and got marked 20 documents in evidence. The prosecution also produced material exhibits which were marked as mat. Ext. I to XIII. The statement of the accused appellant under Section F 313 Cr.P.C. was recorded in which he took the stand that he was innocent of the charge levelled against him.

5. The learned Sessions Judge upon appreciation of evidence available on record found the appellant guilty of the offence punishable under Section 302 IPC and the same has received its affirmation at the hands of the High G Court.

6. Hence this appeal by special leave.

7. In order to consider as to whether the prosecution established the charge against the appellant for the offence punishable under Section 302 IPC H beyond reasonable doubt it is just and necessary to appreciate the evidence

available on record. A

Evidence:

8. Bhola Jaiswara (PW-1) who is none other than the elder brother of the deceased Tarak is the eye witness. It is in his evidence that on 14.1.1997 at about 11 p.m. when he was about to go to sleep he heard a row from B outside. He came out of his house and found the appellant Shankar Jaiswara at the entrance gate abusing and threatening to kill whoever came in his way. The appellant was found to be under the influence of liquor. The deceased Tarak was taking his meal sitting in his rickshaw on the main road just about 40 feet away from the house of Bhola (PW-1). The appellant started proceedings towards main road and Bhola (PW-1) followed him. PW-1 heard his brother C Tarak Jaiswara advising the appellant to go away from the place. The appellant without heeding to the advice started abusing the deceased in filthy language and struck the deceased with a knife like weapon. PW-1 made an attempt to apprehend but the appellant fled away from the scene of offence. He found two stab injuries on the chest of the victim. He then removed the victim to D North Subarban Hospital by the same rickshaw where he was advised to take him to R.G. Kar Hospital by an ambulance. The attending doctor at the R.G. Kar Hospital pronounced Tarak dead. PW-1 while returning from the hospital found the police van in the vicinity of the place of occurrence to whom he made a statement who recorded the same. He signed the report ext. 1. PW-1 specifically stated in his evidence that he found stab injuries on the throat, E chest and abdomen of the deceased. PW-1 has been subjected to intense cross-examination. He denied the suggestion that at the time of occurrence the deceased was also under the influence of liquor. He denied the suggestion that he did not witness the occurrence. He more or less confirmed what has been stated by him into the police in his complaint (Ext. 1). F

9. PW-3, Mohan Jaiswara is another eye witness. It is in his evidence that on the frightful day deceased Tarak was taking his meal sitting in his own rickshaw at Cossoipore road. He found the appellant coming from a nearby lane abusing the people at random. He had seen the appellant stabbing the deceased with a knife like weapon. The appellant stabbed the deceased for G about 5 or 6 times. The deceased fell in his rickshaw. The deceased was then taken to the hospital in the same rickshaw. In the cross-examination he admitted that he is the Chachato brother of PW-1 and the deceased. He denied the suggestion that the deceased was the habitual drunkard.

10. PW-5 is the Professor of Department of Forensic and State Medicine, H

A N.R.S. Medical College, Calcutta. He held the post mortem examination over the dead body of the deceased. On examination of the body he found the body of the deceased subject with rigor mortis present all over the body, pupils-fixed, dilated, equal and the cornea hazy. The following injuries were found on the body of the deceased:

B 1. One incised wound 1 1/2" x 1/2" x trachea was found on the midline on the front of the leg with inverted bruised margins. The track was directed backwards and terminated on the posterior wall of the trachea.

2. Another incised wound 1" x 1/2" x left carotid into the left side
C of the trachea was found on the left lateral side of the neck with inverted bruised margins. The track was directed obliquely downwards, backwards, medial wards from the left to right and convergent in nature and those terminated into the lumen of the trachea after cutting the corresponding left carotid vessels through and through.

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3. One incised penetrating wound with inverted bruised margins with 1 1/2" x 1/2" x left chest cavity left lung which was placed over the left chest wall 2 inch left of midline. On dissection it was seen to have passed in the intercostals space in between 4th and 5th ribs on the left side to left chest cavity to basal part of the
E left apical lobe of the left lung with pleurae to lower part of the left lateral wall of the heart. The injury effected the lateral wall of the heart with pericardium into the lumen of the left ventricle of the heart 1/2" x .2" x wall of the heart and it terminated into left ventricle. The track of the wound was directed obliquely
F downwards, backwards, inwards and medial wards from the left to right and convergent in nature. The wound caused collection of fluid and clotted blood about 1½ liter inside the chest cavity.

4. One incised wound 2" x 1" x muscle deep was found over the front of left shoulder.

G 5. Another incised wound 2" x ½" x muscle deep was found over mid eternal region of the chest.

6. Another incised wound ½" x .2" x skin deep was found just above the aforesaid injury.

H 7. Another incised wound 1" x ½" x muscle deep was also found

across the left deltoid region of the arm. A

11. He opined the cause of death was due to the injuries which were ante-mortem and homicidal in nature.

12. PW-9, Mongala Prasad Lal (Sadhu) speaks about the recovery of the knife (mat. ext. XI). He states that the appellant took out his wearing trousers B and shirt said to have been kept by him in the room of PW-9. The appellant took out one knife from the plastic bag. He put his thumb impression on the panchnama prepared at the time of recovery of articles.

13. PW-18, sub-Inspector of police states that he arrested the appellant at about 2.35 p.m. on 15.1.1997. He accompanied PW-19 the Investigating C Officer to the house of Sadhu (PW-9). The appellant was also with them. He states that on arrival at the house of Sadhu (PW-9) the appellant brought out one knife hidden under the bag of coal. The appellant also brought out one shirt and one trouser hidden under the pillow kept on the cot in the house of PW-9. PW-19 prepared a seizure list in respect of the articles recovered in D the house of PW-9. He identified the knife seized by the Investigating Officer (mat. Ext. XI).

14. PW-19 is the Investigating Officer. He speaks about the recording of the information/statement of Bhola (PW-1). He came to the place of occurrence on receiving a telephonic information to the effect that one E unknown person has been stabbed by another on Cossipore Road. It is in his evidence that on 16.1.1997 he examined the appellant who stated before him that he concealed the weapon in the house of his friend, Sadhu (PW-9) at Jatin Nagar Colony. He made the statement that he would be able to lead the police party to the place where he kept the knife concealed. The statement so made by the appellant has been recorded in exhibit 18. He speaks about F the recovery of the weapon and the seizure list (ext. 17) prepared by him.

15. The prosecution case is narrated by the two eye witnesses PW-1, Bhola Jaiswara and PW-3, Mohan Jaiswara. This evidence has been elaborately dealt with by the trial court as well as the High Court. Their evidence has been G properly appreciated by the courts below. Suffice it to note that both of them (PW-1 & PW-3) stated clearly that the appellant stabbed the deceased repeatedly. PW-1, Bhola Jaiswara found stab injuries on the throat, chest, abdomen of the deceased. PW-3, Mohan Jaiswara spoke that the deceased Tarak was stabbed by the appellant repeatedly by 5 or 6 times. PW-12, Dr. Sruti Kr. Bera before whom the deceased was brought dead on the day of H

A occurrence found multiple stab injuries. He further deposed that PW-1 gave a statement that the deceased was severely stabbed by the appellant. PW-5 Prof. B.C. Mazumdar, Head of the Department of Forensic and State Medicine, Calcutta who held the post-mortem examination on the body of the deceased on 15.01.1997 found as many qaas 7 injuries which we have noticed herein above. The injuries were ante-mortem and homicidal in nature. He opined that B injury nos. 4 and 7 might have been caused while the victim was defending himself. He was of the opinion that the injuries found by him could be caused by the weapon of offence (mat. Ext. XI) which was shown to him.

16. We find the medical evidence available on record and the ocular C evidence of PW-1 and PW-3 were absolutely in conformity with each other which clearly establishes the prosecution case.

17. There has been some criticism about the evidence of recovery of the weapon of offence (mat. Ext. XI). There is no doubt whatsoever the recovery of weapon seized under seizure list (ext. 17) but the recovery itself would not D be enough and sufficient to connect the appellant with the crime unless it is established that the said weapon has been used by the appellant for commission of the offence. But it cannot be denied that the recovery of the said article is a fact discovered at the instance of the appellant. We have the evidence of PW-5, Prof. B.C. Mazumdar who in categorical terms stated that the injuries found on the deceased could be caused by such a type of knife E (mat. Ext. XI). The Ocular evidence of PW-1 and 3 which is consistent reveals the appellant carrying a knife. The sequence of events and the material available on record clearly establishes that the weapon of offence (mat. Ext. XI) has been used for the commission of the murder of Tarak Jaiswara by the appellant. The recovery, made under Section 27 of the Evidence Act by PW-F 19 Supriya Kumar Pal from the house of PW-9, Mongala Prasad Lal (Sadhu) is required to be taken into consideration. The process of recovery in our considered opinion which is based upon the statement of the appellant made to PW-19 is in accordance with Section 27 of the Evidence Act.

18. Upon appreciation of the evidence the Trial Court convicted the G appellant for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment.

19. The incident and the involvement of the appellant in the commission of offence is not in dispute.

H *Submission:*

20. The stand taken by the appellant before the High Court and reiterated in this appeal was that the appellant was in a state of drunkenness and did not know the consequences what he did and, therefore, cannot be convicted for the offence punishable under Section 302 IPC. It was contended that at the most the appellant could be convicted and sentenced under Section 304 Part II IPC. This was the only contention urged before us.

21. *The nature, scope and applicability of Section 86 IPC*

Section 86 IPC which was elaborately considered by the High Court runs in these terms:

> "86. *Offence requiring a particular intent or knowledge committed by one who is intoxicated*—In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

22. This Court in *Basdev* v. *The State of Pepsu,* [1956] SCR 363 while construing Section 86 IPC observed:

> "It is no doubt true that while the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about those cases where *mens rea* is required. Are we at liberty to place intent on the same footing, and if so, why has the section omitted intent in its latter part? This is not the first time that the question comes up for consideration. It has been discussed at length in many decisions and the result may be briefly summarized as follows:-
>
> So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being? If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the

A facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an B intention and knowledge is an awareness of the consequences of the Act. In many cases intention and knowledge merge into each other and means the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are C used interchangeably and this has led to a certain amount of confusion."

23. The learned Amicus Curiae, however, relied upon the judgment in *Mandru Gadaba* (1916) AIR Madras 489 in support of his submissions. It is not necessary to consider the judgment to the effect of the observations D inasmuch as the charge against the accused therein was under Section 304 and not under Section 302.

24. On consideration of various authorities including the decision rendered by the House of Lord's in *Director of Public Prosecutions* v. *Beard,* (1920) AC 479 the law is neatly summarized in Russel on Crime in the following E words:

"There is a distinction, however, between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming a specific intention. If actual F insanity in fact supervenes as the result of alcoholic excess it furnishes as complete answer to a criminal charge as insanity induced by any other cause. But in cases falling short of insanity evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether G or not he had this intent, but evidence of drunkenness which falls short of proving such incapacity and merely establishes that the mind of the accused was so affected by drink that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his act".

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25. In *Bablu @ Mubarik Hussain* v. *State of Rajasthan,* (2006) 14 SCALE 15 this Court held: A

> "The defence of drunkenness can be availed of only when intoxication produces such a condition as the accused loses the requisite intention for the offence. *The onus of proof about reason of intoxication due to which the accused had become incapable of having particular knowledge in forming the particular intention is on the accused.* Basically, three propositions as regards the scope and ambit of Section 85 IPC are as follows: B
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> (i) The insanity whether produced by drunkenness or otherwise is a defence to the crime charged; C
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> (ii) Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had this intent; and D
>
> (iii) The evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind is affected by drink so that he more readily give to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts." E

This Court while construing the expression "without his knowledge" stated that it simply means an ignorance of the fact that what is being administered to him is or contains or is mixed with an intoxicant.

26. In the present case a plea of drunkenness and the mind of the accused was so affected by the drink with the result that he acted in a way in which he would not have done had he been sober, is not set up by the appellant accused. Reliance is sought to be placed upon the statement given by Bhola Jaiswara (PW-1) to the police and as well as his evidence wherein he stated that the appellant was shouting under the *influence of liquor* and abused the deceased and as well as the evidence of PW-9, Mongala Prasad Lala (Sadhu) a friend of the appellant in whose house he had kept his wearing apparels (mat. Ext. XII & XIII) and weapon of offence (mat. Ext. XI) to the effect that the appellant was under the *influence of liquor* when he came to conceal the weapon after the commission of offence. Based on the sequence of events it was urged that the appellant was under the influence of liquor F G H

A and the injuries inflicted by him on the deceased was devoid of any intention.

27. We are unable to persuade ourselves to agree with the submissions. There is no evidence available on record as to the quantity of the alcohol consumed by the appellant except the observation of PW-1 and PW-3 that he was under the influence of liquor. No one stated that he was not in his B senses and lost self control. There is no evidence as regards the degree of intoxication. There is no evidence of any attending general circumstances to arrive at any conclusion that the appellant was beside his mind altogether temporarily at the time of incident. He was apparently conscious and fully capable of understanding the consequences of his act as it is evident that C immediately after the incident he walked the distance to the house of PW-9, Mongala Prasad Lal (Sadhu) and concealed the weapon of offence and wearing apparels.

28. Prof. Mazumdar (PW-5) found seven grievous injuries which according to him were the cause of death being ante-mortem and homicidal D in nature. We are required to notice the evidence of PW-5 with a particular reference to injuries no. 4 and 7 which according to him may have been caused while the victim was defending himself. In the circumstances, it cannot be said that there was no intention on the part of the appellant and he was out of his senses on account of intoxication. The evidence of PW-1 and PW-3 who are eye witnesses to the incident is consistent. Both of them have seen E the appellant stabbing the helpless victim who was sitting in his own rickshaw and eating his evening food. There was no provocation as such caused by the deceased leading to any sudden attack. The appellant was carrying weapon and attacked the deceased, caused grievous injuries resulting in his death. The intention on the part of the appellant can easily be gathered from F the evidence of PW-1 and PW-3 which is supported by medical evidence. There is absolutely no reason whatsoever to disbelieve their evidence. There is nothing on record suggesting that at the time the appellant attacked the victim his mind was so affected by the drink he had voluntarily taken that he was incapable in forming the intention requisite for making his act the offence charged against him. The taking of drink cannot itself excuse the commission G of a crime; and it is not a defence to prove that a man's mind was so affected by drink that he more readily gave way to passion, or that he would not have acted as he did had he been sober nor will drunkenness be a defence in case of strict liability, since, if an honest and reasonable mistake by a sober person cannot afford a defence, a mistake while drunk cannot do so. (see Vol. II, H Fourth Edition, Halsbury's Law of England page 26)

29. We have perused the relevant evidence for our own satisfaction though the Sessions Court as well as the High Court upon proper appreciation of evidence found the appellant guilty of the charged offence punishable under Section 302 IPC. Upon appreciation of the evidence we are unable to persuade ourselves and agree that the appellant was devoid of his actual senses and he was unable to comprehend his action. On the other hand the manner in which the appellant attacked the deceased resulting in as many as 7 grievous injuries suggests that the appellant was quite conscious of the consequences of his act. The appellant as is apparent from the evidence had control over his senses and tried to make good his escape after the incident in a calculated manner. This is clear from the evidence of PW-9 that he came immediately after the incident to conceal his wearing apparels and the weapon of offence. It is not possible to accept the theory propounded by the learned Amicus that due to drunkenness the appellant lost his senses and self control. The intention on the part of the appellant is clearly evident from the evidence and all attending circumstances.

30. The prosecution proved the charge against the appellant beyond any reasonable doubt. The Trial Court as well as the Appellate Court came to the right conclusion in convicting and sentencing the appellant for the offence punishable under Section 302 IPC.

31. Before parting with the case, we must record our appreciation of the assistance rendered by Shri Vijay Panjwani, advocate to the court as learned Amicus Curiae and we direct the payment of Rs. 1,500/- as fee to him.

32. The appeal is accordingly dismissed.

S.K.S. Appeal dismissed.