

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

Judgment delivered on: May 05, 2011

+ **CRIMINAL APPEAL NO. 354/2011 & CRL.M.B.464/2011**

MOHD. IFRAZ @ SONU MASTER @ KATUA APPELLANT

Through: Mr.Ranbir Singh Kundu, Advocate with
Mr. Amit Nehra, Advocate.

Versus

THE STATE (GOVT. OF NCT OF DELHI) RESPONDENT

Through: Mr. Sunil Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. This appeal is directed against the impugned judgment of learned Additional Sessions Judge dated 06th May, 2006 in Session Case No. 73/04, FIR No. 261/04, under Section 302 IPC, P.S. R.K.Puram and the consequent order on sentence dated 09th May, 2006 whereby the appellant Mohd. Ifraz @ Sonu Master @ Katua has been convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo RI for the period of 10 years besides payment of fine of ₹ 5000/-, in default, to undergo RI for further period of three months.

2. Briefly stated, case of the prosecution is that on 15th April, 2004 at about 8.30 p.m. in front of godown of Dhyani Tent House, Anantram Dairy, Sector 13, R.K.Puram, the appellant and the victim Rajesh, who both were the employees of the tent house fought with each other on the issue of distribution of the tips received a day earlier in a marriage party at Laxmi Bai Nagar. During fight, the appellant Sonu inflicted a knife wound on the abdomen of Rajesh with such a force that his intestine came out. The appellant was able to escape from the place of occurrence with the knife. Several persons from the locality collected at the spot and someone informed the police. In the meantime, a PCR Van came and took the injured to Safdarjung Hospital. On the receipt of information regarding incident vide DD No. 71B recorded at P.S. R.K.Puram, SI Mahender Singh reached at the spot and where it was reported that the victim has already been removed to the hospital. SI Mahender Singh reached at Safdarjung Hospital and found that the deceased Rajesh had been declared brought dead at about 10.00 p.m. One Dalbir Singh who claimed himself to be the eye witness gave his statement Ex.PW1/A to SI Mahender Singh, which was sent to the police station along with the endorsement Ex.PW14/A for the registration of the case. It is alleged that on completion of formalities of investigation, the appellant was challaned and sent for trial.

3. The appellant was charged for the offence of murder punishable under Section 302 IPC. He pleaded not guilty to the charge and claimed to be tried.

4. In order to bring home the guilt of the appellant, prosecution examined 19 witnesses including the eye-witness of the occurrence as well as the recovery of the weapon of offence.

5. The appellant when examined under Section 313 CrPC denied the prosecution version and claimed to be innocent. He did not opt to produce any evidence in defence.

6. Learned Additional Sessions Judge, on consideration of the submissions made by the rival parties and the evidence on record, found the appellant guilty of the offence of culpable homicide not amounting to murder and sentenced the appellant vide order on sentence dated 09th May, 2006.

7. Learned Sh. Ranbir Singh Kundu, Advocate, on instructions of the appellant, submits that the appellant does not press his appeal on merits and admits his guilt so far as factual matrix of the case is concerned. He has however confined his submissions to the quantum of sentence. Learned counsel submits that the appellant, on conviction under Section 304 Part II IPC, has been sentenced to undergo maximum term of imprisonment i.e. 10 years RI. It is contended that the substantive sentence awarded to the appellant

is too harsh and it does not commensurate with the gravity of the offence committed by the appellant. Learned counsel submitted that the appellant was a young man of 22 years at the time of commission of offence and he has responsibility of a large family comprising of his parents and three sisters. It is also contended that the appellant has his whole life ahead of him and he deserves at least one chance to relent and repent and become a useful member of the society. Thus, learned counsel for the appellant has urged for reduction of substantive sentence from 10 years RI to the imprisonment for the period already undergone by him in custody.

8. Learned APP, on the contrary, has argued in favour of the impugned order on sentence. It is submitted that the appellant is guilty of a grave offence of committing culpable homicide not amounting to murder. Therefore, the sentence awarded to him commensurate with the gravity of offence committed by the appellant.

9. I have considered the rival contentions and perused the record.

10. Sentencing of an accused in a criminal matter is a serious exercise and the quantum of sentence imposed commensurate with the gravity of the offence committed by the accused and the circumstances under which the offence was committed. While dealing with the issue of sentence for the offences under Sections

3,4 & 6 of Terrorist and Disruptive Activities (Prevention) Act, 1987, Supreme Court in the matter of **Karamjit Singh v. State (Delhi Admn.)**, (2001) 9 SCC 161, wherein the Supreme Court, has inter alia, observed thus:

“7. Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. After giving our anxious consideration to the question of reduction of sentence as urged on behalf of the appellant and objected to on behalf of the respondent, we have come to the conclusion that some consideration should be shown to the appellant in the matter. In coming to this conclusion we have taken into account the facts that he has spent a long period, more than thirteen years, in jail; that he was a young man of 21 years when he committed the act giving rise to the case; that the situation then prevailing in the State of Punjab was surcharged with acts of terrorism and several misguided young men were drawn into the movement; that in the meantime the movement has subsided and it could be reasonably taken that the State is free from the menace of terrorism. In taking the decision to show some consideration to the appellant in the matter of punishment we have reposed

confidence in goodness of human character which is a part of the personality of every human being. We hope and believe that our confidence will not be belied in the case of the appellant. In the facts and circumstances of the case ¹⁶⁵ and the changed social environment which has taken place in the meantime, it is our considered view that the sentence of life imprisonment should be modified to the period already undergone (about 13 years 7 months). Before being released from jail in the case, the appellant will notify the jail authority the place and the address at which he intends to stay, on receipt of which the jail authority will intimate the Superintendent of Police of that place with a request to him to keep the appellant under observation. If the Superintendent of Police finds that the appellant is indulging in any illegal activity which amounts to an offence under any law, he shall immediately send a report to the Registrar General of this Court. With this modification of sentence as noted above, this appeal is dismissed.”

11. In the case in hand, as per the nominal roll of the appellant received from the Jail Superintendent, the appellant has undergone incarceration for a period of 07 years and 09 days (actual) and he has also earned remission in sentence for a period of 01 year, 03 months and 20 days. It is reported that unexpired portion of his sentence is 01 year, 08 months and 01 day as on 26th April, 2011. The appellant never availed of the benefit of parole or interim bail and he does have any record of previous conviction nor any case is pending against him. The appellant is a young man of 27 years having responsibility of his aged parents and sisters. He appears to have realized his mistake, thus, in my view, he deserves at least a chance to mend his ways and become a useful member of the society. Otherwise also, as per the evidence on record, the occurrence took place on a trivial issue of distribution of Tip received

and the appellant suddenly inflicted knife blow upon the victim in the heat of the moment. There was neither intention nor motive on the part of the appellant to kill the deceased. It is a case of a single blow, which unfortunately resulted in death of the victim. Thus, the appellant deserves leniency. In the matter of **Tholan Vs. State of Tamil Nadu**, 1984 SCC(Criminal) 164, the Supreme Court while dealing with the case of similar nature, converted the conviction of the appellant of that case from charge under Section 302 IPC to charge under Section 304 Part II IPC and observed that sentence of 05 years would be quite adequate under the circumstances. Therefore, drawing a parallel from the aforesaid judgment, I accept the appeal so far as quantum of sentence is concerned and while maintaining the sentence of fine of ₹ 5000/-, in default, to undergo RI for a period of three months, the substantive sentence of 10 years RI is reduced to the period already undergone in custody by the appellant.

12. The appeal is accepted with the aforesaid modification.

13. Copy of the judgment be sent to the concerned Jail Superintendent for information and necessary action.

(AJIT BHARIHOKE)
JUDGE

MAY 05, 2011

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