

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

Judgment delivered on: February 09, 2011

+ **CRIMINAL APPEAL NO.888/2008**

RAM KUMARI

....APPELLANT

Through: Mr.Ajay Verma, Advocate with Mr.
Gaurav Bhattacharya, Advocate.

Versus

THE STATE (NCT) OF DELHI

.....RESPONDENT

Through: Ms. Fizani Husain, 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 dated 30th July, 2008 in Sessions Case No. 223/2006, FIR no. 128/2002, P.S. Samaipur Badli and the consequent order on sentence dated 31st July, 2008, whereby the appellant has been convicted for the offence punishable under Section 304 Part II IPC and sentenced to undergo RI for the period of four years and to pay fine of ₹ 500/-, in default thereof to undergo SI for a further period of 15 days.

2. Briefly stated, case of the prosecution is that on 23rd February, 2002 between 07.00 p.m. to 07.30 p.m., at first floor of house of Udai Raj Sharma, near Post Office-Village Badli, the appellant assaulted her husband Pradeep (deceased) with a '*silbatta*' (grinding stone) and caused him as many as seven injuries and escaped from the place of occurrence along with her young girl child. Pradeep (deceased) was taken to Santom Hospital, Prashant Vihar by the complainant Suraj Pal (PW4). The information about the admission of Pradeep was conveyed by the hospital authorities to the police station and on this, ASI Hari Ram reached at the hospital and collected the MLC of the deceased, who was declared unfit for statement and was referred to Trauma Centre. ASI Hari Ram recorded the statement of Suraj Pal (Ex.PW3/C) and sent it to the police station along with his endorsement Ex.PW16/A for the registration of the case. Pradeep unfortunately expired because of the injuries and on receipt of information regarding his death, Section 302 IPC was added to the FIR. On completion of the investigation of the case, appellant was challaned and sent for trial on the strength of circumstantial evidence.

3. The learned Additional Sessions Judge charged the appellant for the offence punishable under Section 304 IPC, to which, the appellant pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the appellant, prosecution has examined 19 witnesses.

5. Statement of the appellant under Section 313 Cr.P.C. was recorded wherein she claimed to be innocent and she stated that Suraj Pal (PW4) and his wife Shanti (PW5) had borrowed ₹ 20,000/- from her late husband Pradeep and in order to avoid payment of said money, they had falsely implicated her in this case. The appellant examined one Sunil Kumar in her defence.

6. The learned Additional Sessions Judge, on consideration of submissions made on behalf of the parties and the material on record, convicted the appellant under Section 304 Part II IPC and sentenced her accordingly.

7. Learned Sh. Ajay Verma, Advocate/amicus curiae, on instructions from the appellant, who is present in the court, submits that the appellant admits her guilt and she does not wish to challenge her conviction under Section 304 Part II IPC. He, however, has confined his arguments against the sentence awarded to the appellant. Learned counsel for the appellant submits that the sentence awarded to the appellant is harsh and the learned Additional Sessions Judge, while sentencing the appellant, has ignored the fact that this is a case of stray incident and that the appellant is a young lady having a minor daughter who needs the

care and protection of her mother. Learned counsel further submits that the daughter of the appellant is aged about 12 years and at this impressionable age, she needs the support and guidance of the appellant. Otherwise also, the sentence awarded to the appellant is almost over. Thus, he has urged for reduction of the sentence of imprisonment of the appellant to the period already undergone in custody by the appellant and the remission earned by her.

8. Learned APP, on the other hand, has submitted that considering the gravity of offence committed by the appellant, she has already been dealt with leniently by the Additional Sessions Judge and there is no reason for reduction of the sentence.

9. I have considered the rival contentions. 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.”

10. In the case in hand also, appellant is a young lady aged about 29 years having a girl child aged 12 years. It cannot be denied that the young daughter of the appellant definitely needs care and protection of her mother. As per the nominal roll sent by Deputy Superintendent, Central Jail No. 6, Tihar, the appellant has already undergone incarceration for a period of 02 years, 11 months and 16 days (actual) as on 03rd February, 2011 and she has also earned remission in sentence for a period of 09 months and 21 days. The unexpired portion of the sentence awarded the appellant is 02 months and 23 days as on 03rd February, 2011. If 06 days of custody after 03rd February, 2011 are counted from then, the unexpired portion of the sentence of the appellant is 02 months and 17 days. Thus, it is obvious that the appellant has undergone almost entire period of sentence of imprisonment awarded to her, which in my opinion, meets the ends of justice.

11. In view of the discussion above, while maintaining the conviction of the appellant under Section 304 Part II IPC and fine imposed on the appellant, the substantive sentence awarded to the appellant is reduced from 04 years to the period already undergone in custody by the appellant.

12. The appeal is partly accepted, subject to the aforesaid modification in the impugned order on sentence.

13. The appellant is in custody. If she has already paid the fine and there is no other case against her, she be released forthwith.

14. Copy of the order be sent to the Deputy Superintendent, Central Jail No. 6, Tihar for compliance.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 09, 2011

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