

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

% **Date of decision:06.11.2013**

+ **CRL.A. 296/2010**

RAVI KUMAR @ RANGA **Appellant**

Through: Mr. Sunil Kumar, Adv.

versus

STATE (NCT) OF DELHI **Respondent**

Through: Mr. O.P. Saxena, APP for State with
SI Harish Chandra, P.S. Karol Bagh.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

JUDGMENT

VEENA BIRBAL, J.(Oral)

1. This criminal appeal is directed against the judgment dated 5.10.2009 whereby the appellant has been held guilty for having committed the offence punishable under Section 304 Part I of IPC and the order of sentence dated 6.10.2009 whereby the appellant has been sentenced to undergo R.I. for 10 years and to pay fine of Rs.5000/- in default of payment of fine to undergo S.I. for 3 months. The benefit under Section 482 Cr.P.C. has been given to him.

2. The case of the prosecution is that on 9.3.2006 DD No.5A i.e. Ex.PW8/A was got recorded in P.S. Karol Bagh on the information given by Jagdish, PW2 that his brother Surender was lying dead at house no.10844,Gali No.1, near 100 quarter, Karol Bagh and police be sent there. The copy of said DD report was given to ASI Mahinder Singh, PW12 who

had gone to spot along with Constable Suraj Pal. There they had come to know that deceased Surender had already been taken to Lady Harding Medical College. ASI Mahinder Singh PW12 along with Constable Surender, PW-16 reached the aforesaid hospital and collected the MLC of the deceased Surender who was declared having brought dead by the Doctor. The post mortem of the deceased was got done in the mortuary of aforesaid hospital. The crime team was called at the spot and necessary exhibits were seized by him after completing the necessary formalities. On 11.3.2006 the post mortem report was collected wherein the cause of death was craniocerebral damage as a result of blunt force impact on head injury no.1 which was ante mortem in nature and was sufficient to cause death in the ordinary course of nature. ASI Mahinder Singh PW12 collected four sealed pulandas and sample seal duly sealed with the seal of aforesaid hospital and seized vide memo Ex.PW12/A. On the basis of post mortem report an endorsement Ex.PW12/B was made on the copy of DD No.5A, Ex.PW8/A and a case was got registered under Section 302 IPC and thereafter investigation was taken over by SHO Inspector Shiv Dayal, PW8. He had prepared the site plan Ex.PW8/B at the instance of Jagdish PW2. In the meanwhile, constable Suraj Pal came at the spot along with copy of FIR Ex.PW 8/A and original *tehrir* and handed over the same to Inspector Shiv Dayal, PW8. The statements of the relevant PWs were recorded by him on that day.

3. On 13.3.2006, the appellant was arrested at the instance of Jagdish, PW-2 vide arrest memo Ex.PW8/C whose personal search was conducted vide memo Ex.PW8/D. On interrogation he made disclosure statement Ex.PW2/D. After completion of necessary formalities a final report was

prepared and was filed before the concerned M.M. The learned M.M. committed the case to Sessions wherein charge under Section 302 IPC was framed against the appellant. The appellant pleaded not guilty and claimed trial.

4. To prove its case, prosecution in all had examined 17 witnesses out of which Bimla PW1 is the neighbourer of the deceased. Jagdish PW2 is the brother of the deceased. Vinod Kumar PW4 is also a resident of the same locality where deceased was living. Tilak Raj PW5 is an eye witness to the alleged occurrence. Shanti PW6, Krishna PW7 and Om Parkash PW14 are the family members of the deceased. Om Parkash PW14 had taken the deceased to the hospital along with his son Manoj. The remaining evidence relates to police officials and of doctors.

5. After prosecution closed its evidence, the incriminating evidence was put to the Police and his statement under Section 313 Cr.P.C. was recorded wherein he denied the same and stated that he was an innocent person and was falsely implicated in the present case. However, no evidence was led in evidence.

6. After hearing arguments of both the sides, the learned ASJ had held the appellant guilty and convicted him for the offence punishable under Section 304 Part I IPC and accordingly sentenced him as is stated above.

7. Aggrieved with the same, the present appeal is filed.

8. Learned counsel appearing for the appellant, under the instructions of the appellant, submitted that appellant is not challenging his conviction under Section 304 Part I IPC. The statement of learned counsel to this effect has also been recorded separately. It is submitted that appellant has already undergone sentence of 7 years and 8 months including remission earned and

request is made to release him on the sentence already undergone by him. It is submitted that fine has already been deposited by the appellant.

9. Learned APP has submitted that before the request is considered, the antecedents of the appellant be verified. Accordingly, the same has been verified. The SHO, P.S. Karol Bagh has submitted a report wherein it is stated that the available record has been checked and no other conviction has been found against the present appellant except the present case.

10. The eye witness to the alleged occurrence is Tilak Raj PW5 who has supported the prosecution case by deposing about the alleged incident on oath. He has further deposed that he had heard the appellant saying “*sale tere ko aaj chhodunga nahin*”. The Ld.ASJ has rightly relied upon his evidence. His evidence finds support from the post-mortem report Ex.PW9/A as per which the cause of death was craniocerebral damage as a result of blunt force impact on the head. The doctor who had conducted the post-mortem report of the deceased i.e. PW9 had stated that the injury No.1 was anti-mortem in nature and fresh and was sufficient to cause the death of the deceased in the ordinary course of nature. He has also deposed in the cross-examination that the injury on the deceased could not have been caused if a person is running and falls down on the hard surface. The post-mortem report Ex.PW 9/A also supports the case of the prosecution. The CFSL report Ex.PW 13/B also supports the case of the prosecution which shows human blood was detected on the clothes of the deceased and the floor pieces seized during investigation i.e. Ex.P-1, Ex.P-2, Ex.P-3, Ex.P-4, Ex.P-6A, Ex.P-6B & Ex.P-7. The arrest of the appellant also stands proved from the evidence of Jagdish, PW-2 and Inspector Shiv Dayal, PW-8.

11. Considering the evidence on record, the learned ASJ has rightly convicted the appellant under Section 304 Part I IPC. Further, the ld. counsel appearing for the appellant has also not challenged the conviction. The conviction of the appellant is therefore upheld.

12. As regards the sentence, learned counsel for the appellant submits that appellant was 23 years of age at the time of occurrence. The appellant has already undergone sentence of 7 years and 8 months. His antecedents have also been verified. As per report submitted by SHO, P.S Karol Bagh he is not involved in any other case except the present one. The fine amount has already been deposited by him.

13. Considering the submissions made, conviction of the appellant is therefore upheld. The substantive sentence of the appellant is reduced from RI of 10 years to imprisonment already undergone by him. The sentence of fine is maintained. Accordingly, the appellant be released from Jail if not required in any other case.

The appeal stands disposed of accordingly.

VEENA BIRBAL, J

NOVEMBER 06, 2013

srb/kks