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IN THE HIGH COURT OF DELHI AT NEW DELHI**DECIDED ON : 22nd MAY, 2013**

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CRL.A. 1499/2011 & CRL.M.B.2121/2011**MOHD.SHEHZAD @ NANHE****..... Appellant**Through : Mr.Sumit Verma, Advocate with
Ms.Charu Verma, Advocate.

versus

STATE**..... Respondent**

Through : Mr.M.N.Dudeja, APP.

CORAM:**HON'BLE MR. JUSTICE S.P.GARG****S.P.Garg, J. (Open Court)**

1. The appellant- Mohd. Shehzad @ Nanhe challenges judgment dated 01.09.2010 in Sessions Case No.20/2009 arising out of FIR No. 326/2008 PS Sarai Rohilla by which he was convicted for committing offence punishable under Section 304 Part-II/34 IPC and sentenced to undergo RI for seven years with fine ₹ 5,000/-.

2. On 25.11.2008 at 11.00 P.M., Daily Diary (DD) No.44, Police Post Inderlok was recorded to the effect that three injured Rajesh,

Hari and Shiv were admitted in Hindu Rao Hospital. The investigation was assigned to ASI Azad Singh who went to Hindu Rao Hospital and collected the MLCs. The injured did not record their statements. The DD was kept pending. On 26.11.2008, Rajesh went to Police Station and recorded his statement. He informed that on 25.11.2008, he, Shiv and Hari were returning from their job and when they reached at Railway Line Track near Tulsi Nagar Mandir at about 10/10.30 P.M., three or four drunkard persons met and started abusing and quarrelling with them. They had knives. In the course of the quarrel, they inflicted knife blows on their thighs and they became unconscious. Chunnu, their friend following them took all of them to Hindu Rao Hospital in a TSR and admitted them. Case under Section 324/34 IPC was registered. During the course of investigation, statements of the witnesses conversant with the facts were recorded. Information was received that Shiv, had succumbed to the injuries sustained by him. The Investigating Officer got post-mortem conducted on the body of the deceased Shiv. Section 304 IPC was added. The accused were arrested. After completion of investigation, a charge-sheet was filed against Mohd.Shehzad @ Nanhe, Mohd.Anis and Mohd.Umar. Mohd.Swalin could not be arrested. The appellant with Mohd.Anis and Mohd. Umar was charged under Section 324/304/34 IPC

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and in the alternative under Section 302/34 IPC. The prosecution examined twenty-eight witnesses. In their 313 Cr.P.C. statements, the accused pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the present appellant- Mohd. Shehzad @ Nanhe and Mohd.Anis and Mohd.Umar under Section 304 Part-II IPC. It is relevant to note that State did not challenge conviction of the appellant under Section 324/304 Part-II/34 IPC and acquittal under Section 302 IPC.

3. During the course of arguments, learned counsel for the appellant on instructions from the appellant- Mohd. Shehzad @ Nanhe stated that he has opted not to challenge the findings of the Trial Court on conviction under Section 324/304 Part-II IPC. He however, prayed to take lenient view and to modify the sentence as the appellant has already remained in custody for more than five years in this case.

4. I have considered the submissions of the parties and have examined the Trial Court record. Since the appellant has not opted to challenge the findings of the Trial Court on conviction under Section 324/304 Part-II IPC, the order of conviction of the Trial Court stands affirmed.

5. Regarding order on sentence, it reveals that the appellant was sentenced to undergo RI for seven years with fine ₹ 5,000/- under Section 304 Part-II/34 IPC. He was further sentenced to undergo RI for one year under Section 324/34 IPC. Nominal roll dated 29.01.2013 reveals that the appellant has already remained in custody in this case for four years and twenty-eight days. He also earned remission for nine months and four days as on 01.02.2013. The period has since increased to more than five years incarceration. It further transpires that the appellant is not involved in any other criminal case and is not a previous convict. His conduct in the jail is satisfactory for the last one year. Only on 29.04.2011, he was given one punishment.

6. Perusal of the file further reveals that injured Hari did not identify the culprits. Injuries were inflicted on thighs. Shiv, the deceased was discharged from the hospital on the same day. He expired next day in his rented room. It is not clear as to what prompted the deceased to get discharge from the hospital on the same day. No First Information Report was lodged by any injured person on the day of occurrence. When Shiv expired, the next day, the injured Rajesh went to the Police Station and lodged First Information Report. There were three or four assailants and the specific role as to who inflicted injuries has not emerged. The weapon

of offence was not recovered. Considering all these facts and circumstances of the case, it is a fit case where order on sentence requires modification.

7. The order on sentence dated 09.09.2010 is modified and the appellant- Mohd. Shehzad @ Nanhe is ordered to be released for the period already undergone by him in this case which is more than five years. The appellant shall pay fine of ₹ 5,000/- and in default of payment of fine, he shall undergo SI for one month.

8. The appeal is disposed of in the above terms. Pending bail application also stands disposed of being infructuous.


(S.P.GARG)
JUDGE

MAY 22, 2013

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