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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 1460/2011

HARA

..... Appellant

Through: Mr. Ajay Verma and Mr. Udyan
Tandon, Advocates.

versus

STATE

..... Respondent

Through: Ms. Fizani Husain, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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30.08.2013

1. Feeling aggrieved by the judgment and order on sentence dated 08.10.2010 and 13.10.2010 respectively passed by the learned Additional Sessions Judge in Session Case No.21/2008 arising out FIR No.93/2008 u/s 302/34 IPC whereby the appellant was convicted u/s 304-II IPC and sentenced to undergo rigorous imprisonment for 7 years with a fine of Rs.3,000/- in default of payment of fine, to undergo simple imprisonment for 3 months, present appeal has been preferred.

2. The FIR was registered on the statement of one Rohida Bibi, wife of deceased wherein she unfolded that her husband was a rag picker. One Hara and his mother Janegar Bibi along with their sister Anwara @ Kali who belonged to the same village were also living in the

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By:AMULYA

Crl.A.1460/2011

same colony and they were having family relations with them. Anwara

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@ Kali used to call her husband as Jija and used to address her as sister.

On 27.02.2008, at around 7.30 p.m, she was present along with her husband in her jhuggi. At that time her husband cracked a joke with Anwara @ Kali and she felt insulted and left the spot. At around 8 p.m., mother of Anwara @ Kali came to their jhuggi and told her husband that she wanted to talk to him and he should accompany her. Her husband accompanied her and she also followed them. At that time, one Ajmali Sheikh and Ansarull Sheikh were also present. Mother of Anwara @ Kali asked her husband as to why he caught the dupatta of her daughter to which her husband replied that he had joked with her considering her to be his Saali. To this comment, Hara objected and his mother exhorted him to beat her husband. Thereafter Hara picked up one iron pipe and started beating her husband on the back. Thereafter leaving the pipe over there, went to his tea shop and brought a knife. His mother Janegar Bibi caught hold of her husband from behind and exhorted "*Hara Dekhta kya hai, iska kaam tamam kar de*". Thereafter Hara gave a knife injury on the body of her husband on his left thigh. Her husband fell down and both of them ran away. She took her husband to hospital where he succumbed to injuries. On the basis of this statement, case u/s 302/34 IPC was registered.

3. The learned Trial Court observed that the accused had no intention to cause death of deceased nor had he any such intention of

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causing such bodily injury as was sufficient to cause death in the ordinary course of nature. Only one stitched wound vertical about 2.5 cms long over upper front of left thigh below anterior superior iliac spine was found. Though the accused had an opportunity to cause multiple injuries on the body of the deceased but he refrained from doing so. Moreover the knife used in the case was only a kitchen knife. Under the circumstances, a case u/s 302 is not made out but case u/s 304-II IPC was made out. Accordingly both the accused persons were convicted and while the present appellant was convicted for 7 years rigorous imprisonment with fine of Rs.3,000/-, co-accused Janegar Bibi was sentenced to undergo rigorous imprisonment for 5 years and fine of Rs.3,000/-.

4. During the course of arguments, learned counsel for the appellant, on instructions from the appellant stated that the appellant does not challenge his conviction u/s 304 Part II IPC but leniency in sentence was prayed for on the ground that the appellant has suffered maximum period of his sentence and only 7 months remains to be undergone. He is now aged about 31 years. He has the responsibility to maintain his wife and three minor children. Conduct of the appellant throughout the trial and even during his incarceration in jail has been highly exemplary. For his good conduct, he was awarded certificate by the jail authorities. Under the circumstances, it was submitted that the

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appellant be sentenced to the period during which he remained as undertrial in this case. Reliance was placed on *Tholan V. State of Tamil Nadu*, (1984) 2 SCC 133 where also although the charge-sheet was submitted u/s 302 IPC and the appellant was also convicted u/s 302 IPC but Hon'ble Supreme Court observed that it was a case of single knife blow. Deceased was not having any previous dispute with the accused, as such, offence u/s 302 IPC is not made out. But since the accused wielded a weapon like a knife, he can be attributed with the knowledge that he was likely to cause injury which was likely to cause death, as such he was convicted u/s 304 Part-II and sentenced to 5 years rigorous imprisonment.

5. Learned APP, however, opposed the prayer on the ground that a precious life has been taken by the appellant and, therefore, he does not deserve any mercy.

6. I have considered the submissions of learned counsel for 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 u/s 304 Part II IPC, the order of conviction of the Trial Court stands confirmed.

7. Regarding the order on sentence, nominal roll was called from the Jail Superintendent which reveals that the unexpired portion of sentence is four months 22 days. The appellant is reported to be not

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involved in any other case. His conduct in jail has been reported to be satisfactory. The certificate of recognition given by the jail authorities have been verified.

8. The appellant is a young person aged about 31 years having responsibility of maintaining three children. Under the circumstances, following the judgment passed by Hon'ble Supreme Court in *Tholan* (supra), coupled with the fact that the appellant has undergone the major portion of the sentence leaving behind only four months and 22 days, ends of justice will be met if he is sentenced to the period during which he remained as under-trial in this case. However the sentence regarding payment of fine is maintained. In case the fine has not been deposited, then the appellant is directed to deposit the fine. Subject to deposit of fine, the appellant be released, if not wanted, in any other case. Intimation be sent to the appellant through the Superintendent Jail.

Copy of this order along with the trial court record be sent back.

Sunita Gupta
SUNITA GUPTA, J

AUGUST 30, 2013

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ORDER

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30.08.2013

CRL.A. 1460/2011 & Crl.M.A.2411/2013

Vide separate order passed today, the Crl.A.1460/2011 stands
disposed of. That being so, Crl.M.A.2411/2013 also stands disposed
of.

Sunita Gupta
SUNITA GUPTA, J

AUGUST 30, 2013

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