

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

**Date of Decision: 25<sup>th</sup> August, 2014**

+ **CRL.A. 184/2011**

MOHD. SAGIR @ SAQIR ..... Appellant  
Through: Ms. Nandita Rao, Advocate

versus

STATE (GOVT. OF NCT) DELHI ..... Respondent  
Through: Mr. M.N. Dudeja, Additional  
Public Prosecutor for the State

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**CORAM:**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

## JUDGMENT

: **SUNITA GUPTA, J.**

1. Challenge in this appeal is to the judgment dated 02.08.2010 and order on sentence dated 04.08.2010 whereby the appellant was convicted for offence under Sections 304 of Indian Penal Code, 1860 (“IPC” for short) in Sessions Case No. 30/09 arising out of FIR No.240/08 Police Station Daryaganj for culpable homicide not amounting to murder of deceased Rakesh and sentenced to undergo rigorous imprisonment for a period of ten years and fine of Rs.5,000/-. In default of payment of fine, the appellant was to undergo rigorous imprisonment for a period of six months.

2. Prosecution case emanates from the fact that on 19.09.2008 at about 11.30 pm, complainant – Nasir was present along with his friends Mohd. Shakeel and Mohd. Rehan near the parking gate in front of Delite Cinema. The three of them were sitting in a TSR and chatting with each other when one Iqbal, who was known to Nasir, came running towards them and informed that one person was fiercely beating another man near the parking gate. Thereafter, all three of them accompanied by Iqbal went towards the place of incident and saw the accused hitting on the head of another man with a stone. On seeing the complainant and his friends approaching him, accused fled from the spot. The complainant called the police from his mobile and informed about the incident. A police gypsy came and took the injured to the hospital, who later on succumbed to his injuries. Meanwhile, the complainant along with his friends went in the direction where the accused had fled and apprehended him near the MTNL building. Thereafter, the complainant again called up the police and informed them about the apprehension of the accused. The police came and arrested the accused. A blood stained stone with which the accused allegedly hit the deceased was seized and sealed at the spot. Statement of Mohd. Nisar was recorded which culminated in registration of an FIR under Section 308 IPC. On 20.09.2008, the injured Rakesh succumbed to his injuries, as such the case was converted to Section 304 IPC. After completing investigation,

charge-sheet was submitted against accused.

3. Charge for offence under Section 304 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the accused, the prosecution, in all examined 16 witnesses. All the incriminating evidence was put to the accused in his statement under Section 313 of Code of Criminal Procedure wherein he denied his involvement in the case and stated that he has been falsely implicated. He did not prefer to lead any defence evidence. Vide impugned judgment, the learned Additional Sessions Judge observed that case of the prosecution stands established from the testimony of eye witnesses coupled with the medical evidence. No motive was imputed by the prosecution as such it was observed that the accused had knowledge that the bodily injuries which he inflicted were likely to cause death and as such the case squarely falls within the second limb of Section 304 IPC.

5. Aggrieved by this judgment, the present appeal has been preferred by the appellant.

6. The material witnesses who substantiated the case of the prosecution are PW2 – Mohd. Shakeel, PW4 – Iqbal, PW5 – Rehan and PW13 – Mohd. Nasir.

7. PW2 – Mohd. Shakeel is one of the eye witnesses of the incident. He deposed that on 19.09.2008 at about 11.30 pm, he was present near Delite

Cinema with Rehan and Nasir. One boy named Iqbal from Shehnai Band came there and told them that one boy was hitting another boy on face with stone and when Iqbal intervened he was asked to leave the spot. According to him, Iqbal was nervous when he came to them. On receiving the information from Iqbal all four of them proceeded towards Shehnai Band near Delhi Gate red light and saw that the accused was hitting a boy with a stone on his forehead. The boy was bleeding from nose and mouth. In the meantime, police gypsy also reached the spot. By that time, the accused had fled away from the spot. The police on 100 number was called, which came to the spot and took the injured to the hospital. They then went to ground near Red Light, Delhi Gate, where Iqbal identified the accused and he was apprehended and taken to Police Station Darya Ganj. He further went on deposing that he had not seen the face of the accused on the spot due to darkness. According to him it hardly took two minutes to remove the deceased in gypsy. The accused had already fled away from the spot before arrival of gypsy. He was apprehended at a distance of 20 steps from the place of occurrence five minutes after removal of injured in gypsy.

8. PW4 – Iqbal is the first eye witness of the incident. According to him, on 19.11.2008 at about 11 or 12 pm, he was going towards his home when he saw one person hitting another boy with stone on his face and forehead near the parking gate. He enquired from the assailant as to why he

was hitting the boy, he did not respond. Out of nervousness, he ran for help and found Nasir and his friends sitting in a TSR to whom he narrated the incident. He further deposed that it was on seeing the police gypsy that the assailant started fleeing away. The police instructed them to catch hold of accused while they took the injured to hospital. In cross examination, he deposed that accused was apprehended within 15 minutes of occurrence, at that time he was standing opposite Telephone Exchange, Delhi Gate.

9. PW5 – Rehman was another eye witness to the incident and was standing with the complainant – Nasir when Iqbal came to them. He deposed on similar lines as that of PW2 and PW4.

10. PW13 – Mohd. Nasir is the complainant. He has corroborated the testimony of other eye witnesses. He deposed that on being informed by Iqbal about the incident, he along with Iqbal and his friends Rehan and Shakeel rushed to the place, where he saw that accused, after thrashing the injured was about to flee, but he was overpowered by them. They informed the police which came to the spot and arrested the accused. He saw the accused hitting the deceased with stone from a distance of about 10/15 paces.

11. All the witnesses were subjected to cross examination, but they were coherent, consistent, categorical and corroborative to each other in their testimony. They had seen the accused hitting the deceased on face and

forehead with stone. All of them have deposed that a police gypsy came and took the injured to hospital. They also deposed regarding apprehension of the accused near MTNL building and that after a call was given to police at 100 number, ASI Sri Ram Sharma and constable Anurag came to the spot and apprehended the accused. They also identified the stone Ex.P1.

12. It was submitted by Ms. Nandita Rao, learned counsel for the appellant that there are material contradictions in the deposition of the eye witnesses with regard to distance of place of occurrence and the place of apprehension of the accused.

13. However, perusal of entire evidence goes to show that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions here and there particularly for the reason that the witnesses are totally independent witnesses. Mere marginal variance and contradictions in the statement of witnesses cannot be a ground to discard their testimony.

14. Minor discrepancies regarding minute details of the incident including the sequence of events and overt acts are possible even in the version of truthful witnesses. In fact such discrepancies are inevitable. Such minor discrepancies only add to the truthfulness of their evidence. If on the other hand these witnesses had given evidence with such mechanical accuracy that may have been a reason to contend that they were giving

tutored versions. Minor discrepancies on facts which do not affect the main fabric need not be taken into account by the courts if the evidence of the witnesses is found acceptable on broad probabilities.

15. Hon'ble Supreme Court in ***Gangabhavani v Rayapati Venkat Reddy and Ors*** 2013(11) SCALE 132 held:

*"9. In State of U.P. v. Naresh (2011) 4 SCC 324, this Court after considering a large number of its earlier judgments held:*

*In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.*

*Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.*

*Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.*

*A similar view has been reiterated in **Tehsildar Singh and Anr. v. State of U.P.** AIR 1959 SC 1012; **Pudhu Raja and Anr. v. State, Rep. by Inspector of Police** JT 2012 (9) SC 252; and **Lal Bahadur v. State (NCT of Delhi)** (2013) 4 SCC 557).*

16. Thus, it is evident that in case there are minor contradictions in the deposition of witnesses, same are bound to be ignored as the same cannot be termed as improvement and it is likely to be so as the statement in the courts is recorded after considerable time. In case the contradictions are so material that the same goes to the root of the case, materially affect the trial or core of prosecution case the court has to form its opinion about the credibility of the witnesses and find out as to whether their deposition would inspire confidence or not. In the instant case, all the eye witnesses on material aspects of the case are consistent and categorical in their deposition. They were not related either to the deceased or to the accused. The accused is not alleging any animosity, ill-will or grudge against any of the witnesses for which reason they would implicate the accused falsely in such a heinous offence. Rather as good samaritans, they not only informed the police for timely removal of injured to the hospital but also helped the police in nabbing the accused. As such, these witnesses deserve words of appreciation instead of condemnation. This is particularly so as it is common experience that public persons are generally reluctant to join police proceedings. This is precisely for the reason that they do not want to

get dragged in police and criminal cases and want to avoid them because of long drawn trials and unnecessary harassment. However, these witnesses not only informed the police and joined investigation but also apprehended the accused, as such there is no reason to disbelieve their version.

17. Furthermore, their ocular testimony finds corroboration from the medical evidence which goes to show that injured was removed to LNJP Hospital. His MLC Ex.PW10/A shows that he was brought to the hospital in an unconscious condition with open wound on forehead at 11.45 pm on 19.09.2008. He was declared unfit for statement and admitted to Neurosurgery for expert opinion and management. He later succumbed to injuries at about 6 am in the next morning. The post-mortem examination was conducted by Doctor Bhim Singh (PW16) on 24.09.2009 and following external injuries were found on his person:

- a) L-shaped stitched wound over the left side of forehead measuring 4 cm x 4 cm.*
- b) Contused abrasions 2cm x 1 cm over the left side of cheek.*
- c) Contused abrasions 5 cm x 3 cm over the left side of cheek.*
- d) Multiple contused abrasions in an area of 12 cm x 8 cm over the left side of chest at the level of third rib to sixth rib.*
- e) Lacerated wound 2cm x 1 cm x 1 cm front of left knee.*
- f) Abrasion 3 cm x 2 cm back of left elbow.*
- g) Abrasion 5 cm x 2 cm back of right elbow.*

18. On the basis of this examination, it was opined that death was due to cranio-cerebral damage consequent upon head injury via injury no.1. All the injuries were ante-mortem, recent in duration and could be caused by

blunt/surface impact. Doctor further deposed that on 07.10.2008 an application Ex.PW16/B was filed by the Investigating Officer seeking subsequent opinion. One parcel duly sealed was produced before him. On opening the parcel, one uneven surface stone measuring 14 cm, 20 cm and 15 cm respectively and the weight of the stone was 5 kg was taken out. He gave his opinion Ex.PW16/C opining that the injury nos.1,2,3 and 4 could be possible with this stone.

19. Learned Counsel for the appellant, however, submitted that the injuries were possible by road accident and this possibility could not be ruled out even by the doctor who conducted the post-mortem examination on the dead body of the deceased. Moreover, various injuries were found on the body of the deceased which would not have been possible if hit by a stone only.

20. Although, it is true that PW16 – Dr. Bhim Singh in his cross examination has deposed that injuries were possible by accident but as seen above, he also gave subsequent opinion Ex.PW16/C, after seeing the stone, that injury no.1 to 4 could be possible with this stone. The eye witnesses have deposed that accused inflicted injuries on the person of deceased with stone. As such, accused does not get any benefit from this opinion of the doctor given in cross examination.

21. It was next submitted by learned counsel for the appellant that as per

prosecution witnesses, the accused was apprehended at a distance of 15-20 paces away from the spot. It was urged that after committing such a ghastly crime and picking up a stone weighing 5 kg, it is highly improbable that the accused would cover only a distance of 15/20 paces within a span of 5/7 minutes. This submission has no substance as a perusal of MLC Ex.PW10/A of the accused goes to show that he was smelling alcohol in his breath and he was a known drug-addict. That being so, it cannot be ruled out that the accused had consumed liquor and, therefore, he was clumsy and incoherent in his walk due to which he was not in a position to cover much distance within a span of 5/7 minutes.

22. Lastly, it was submitted that there was no motive on the part of the accused to commit such a crime. This aspect of the matter was squarely dealt with by learned Additional Sessions Judge by observing that from the evidence intention to cause death cannot be imputed to the accused, but as per the post-mortem report injuries were grievous in nature and the same were inflicted on the head of victim and the weapon of offence was a heavy stone weighing about 5 kg as such though it has not been established that there was any intention on the part of the accused to cause death or to cause such bodily injuries as is likely to cause death, but certainly there was knowledge on the part of accused that it was likely by his act to cause death. As such, he was rightly convicted by learned Trial Court under

second limb of Section 304 IPC. The findings are borne out from the eye witness account of incident duly corroborated by medical evidence and, therefore, does not call for any interference.

23. Coming to quantum of sentence, as per nominal roll, the conduct of the appellant has been reported to be satisfactory. He has undergone sentence of five (5) years, ten (10) months and fifteen (15) days and also earned remission of one (1) year and four (4) months and twelve (12) days as on 04.08.2014. It is not the case of the prosecution that the appellant is involved in any other case. Under the circumstances, keeping in view the young age of the appellant, which is reported to be 29 years, his antecedents, ends of justice will be met if the sentence is modified to the period already undergone by him.

24. The appeal is accordingly disposed of by maintaining the conviction, but reducing the sentence to the period already undergone by the appellant. The appellant be set at liberty, if not wanted in any other case.

Trial Court record be returned along with a copy of this judgment.

A copy of this judgment be also sent to concerned Jail Superintendent for information and compliance.

**(SUNITA GUPTA)**  
**JUDGE**

**AUGUST 25 2014/rd**