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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 965/2004
BATURAN

..... Appellant

Through: Mr. Deepak Anand, Standing
Counsel (DHCLSC)

versus

STATE

..... Respondent

Through: Ms. Kusun Dhalla, APP for State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

15.06.2018

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The TCR has been received in terms of proceedings dated 12.06.2018.

The submissions have been made on behalf of the appellant and the learned APP for State .

Vide the impugned judgment dated 15.10.2004 of the then learned ASJ, Delhi in State Case No.212/2001 in relation to FIR No.184/2001, PS Jahangir Puri, the appellant herein Baturan, s/o Shri Baleshwar was convicted for the commission of the offence punishable under Section 304 (Part-1) Indian Penal Code, 1860 and sentenced vide the impugned order on sentence dated 18.10.2004 to Rigorous Imprisonment for ten years and to pay a fine of Rs.900/- and in default of the payment of the said fine, to one month of Simple Imprisonment with the benefit of Section 428 Cr.PC, 1973 having been given to the convict.

The nominal roll that was received from the Superintendent, Central Jail No.03, Tihar, New Delhi indicates that the appellant has undergone a period of six years and nine days of incarceration as on 30.03.2007 and he

was released on bail on 30.03.2007 and the unexpired portion of the sentence is three years, one month and one day. The nominal roll has not reflected whether the said fine was paid or not but taking into account the factum that it specifies that the unexpired portion of the sentence is only three years, one month and one day with the submission of the appellant that the fine had been paid already, the same is taken into account to the effect that the unexpired portion of sentence that remains is only three years, one month and one day.

The charge of allegations levelled against the appellant relate to the aspect that on 21.03.2001 there was a quarrel between the children of the appellant and the children of Bhuri Lal, PW-1, the eye witness and the matter was pacified but on 22.03.2001 at about 8:00 am when Bhuri Lal was standing outside his jhuggi, the accused i.e. the appellant/convict herein came with a danda and asked him why he had taken the side of his children and started giving him a danda blow and on this he, Bhuri Lal ran towards the Durga Temple and was shouting for help and Shri Anand Singh and Harbhajan Singh who were present at the gate of the temple, stopped the accused Batoran from giving beating and in the said process, the accused i.e. appellant/convict herein Batoran got angry and gave a lathi blow, which was holding in his hand on the head of Harbhajan Singh and as a result of which, Shri Harbhajan Singh fell down and became unconscious and thereafter the accused/convict/appellant herein ran away from the spot with the danda. Shri Prit Pal, brother of Harbhajan Singh came to the spot and took him to Babu Jagjivan Ram Hospital. The appellant herein is thus indicated to have been quarrelling with Bhuri Lal and in the process had given a lathi blow on

the person of Harbhajan Singh when he intervened in the quarrel at the gate of the Durga temple.

The post mortem report in the instant case indicates that the injuries were found to be in the form of:

- i. Stitched wound on left parital region with two stitches 7.5 cm above the left ear placed obliquely on removal stitches wound in lacerated with size 2.5 cm x 0.5 cm bone deep.
- ii. Semi circular stitched wound (surgical) present on the left parital and temporal region with 18 stitches and 21 cm in length. On removal fracture of bone it seem below with bore hole for evacuation of extraural haemocomma.
- iii. Abrasion on the right buttock on middle of sluteal region 2.5 cm.

with internal injuries on head, “Scalp tissues – clotted blood present on the left occipital region which bruising of scalp tissues, skull bone – left parietal bone fractured, surgical bone hole seen. Extra dural hemotoma seen below the injure side. Brain is oedematous, patches S A++ on left and right hemisphere on cerebelloum with brain matter pulpy, base of skull – linear fracture of middle”

with the opinion having been given that all the injuries were antemorten in nature and injury no.1 was caused by a hard blunt object a danda as alleged on the head was sufficient to cause death in the ordinary course of nature and death is due to coma consequent to cranio cerebral hemmorrhage (head injury) with the time of the death as per hospital record being 11:45 am on 25.03.2001 as per the most mortem report Ex.PW8/A.

PW-8 during his cross examination has admitted that it was possible that such type of death can occur if the victim is already a cardiac patient and much force is applied by falling on the ground or on the wall.

Inter alia it has been submitted during the course of submissions that have been made on behalf of the appellant that the injured had been opined by the doctor to be fit for statement and that significantly despite the same, the statement of the injured Harbhajan Singh who has subsequently expired was not recorded by the Investigating Agency and that thus the charges of allegations levelled against the appellant qua the commission of offence punishable under Section 304 (Part-1) Indian Penal Code, 1860 was not even remotely brought forth.

A further submission was made on behalf of the appellant that there is inconsistency in the medical records also inasmuch as the post-mortem report, the death certificate and the death summary brought forth the different reasons qua the demise of the appellant inasmuch as the death certificate Ex.PW9/C and the death summary Ex.PW15/B state that the cause of death is cardio respiratory arrest and according to Ex.PW8/A, the post-mortem report it was shown that the injury no.1 on the head was sufficient to cause death in the ordinary course of nature. Furthermore it has been submitted on behalf of the appellant that as per MLC Ex.PW14/B, the history written by the doctor is 'by fall'.

It was further submitted on behalf of the appellant that in any event even if the entire prosecution version is accepted in toto, there could have been no intention of the appellant to cause the death of Harbhajan Singh

who was only intervening in the quarrel between the appellant and Bhuri Lal which quarrel was also due to the children of Batoran, the appellant herein and the children of Bhuri Lal and in any event, if the conviction of the appellant is to be upheld, it can only be qua the commission of an offence punishable under Section 304 (Part-II) Indian Penal Code, 1860 to the extent that the danda blow given by the appellant onto the head of Harbhajan Singh can be termed as an act done with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as would be likely to cause death. The said submission is undoubtedly brought forth to be correct through the evidence on the record, which makes it apparent that the quarrel was at the spur of the moment between Baturan, the appellant herein and Bhuri Lal due to the children of both of them and also the danda blow which has, in the circumstances in terms of Ex.PW8/A, the post-mortem report, to be accepted to have been so inflicted on the head of Harbhajan Singh despite the factum that Harbhajan Singh was not examined and that he was fit for making his statement, nevertheless, the said danda blow given onto the head of Harbhajan Singh who had merely intervened in the quarrel between Baturan, i.e. the appellant herein and Bhuri Lal could have been termed to have been done only with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as would be likely to cause death.

Now it has been informed on behalf of the State that after the release of the appellant on bail on 30.03.2007 i.e. more than ten years ago, there are no adverse antecedents that have been brought forth against the appellant

and in fact the nominal roll dated 11.06.2018 also shows a satisfactory jail conduct and the appellant is stated to be a daily wage labourer.

A submission has been made by the appellant present today in Court that he has four sons and a daughter and the age of the daughter is 17/18 years who has since been married and that one of his son is aged 15 years and is studying in standard 8th and another son aged 18 years has a leg injury and one of the sons aged 21 years does some driving work and his son aged 23 years is a drug addict and his wife works as a domestic maid.

Taking the circumstance of the life of the appellant into account and his present satisfactory conduct, whilst modifying the conviction of the appellant as held vide the impugned judgment dated 15.10.2004 in relation to FIR No.184/2001, PS Jahangir Puri from one under Section 304 (Part-I) Indian Penal Code, 1860 to under Section 304 (Part-II) Indian Penal Code, 1860, the impugned order on sentence dated 18.10.2004 is modified from the period of ten years of Rigorous Imprisonment and a fine of Rs.900/- which is submitted to have been paid, to the period of detention already undergone by the appellant as being six years and nine days with remission of ten months and twenty days amounting thus to a period of six years, ten months and twenty nine days of incarceration and which order on sentence is thus modified accordingly. The appellant having already undergone the said period of incarceration already, the appeal is disposed of accordingly.

The surety of the appellant is discharged.

ANU MALHOTRA, J

JUNE 15, 2018/vm

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