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

% *Date of Judgment : 09.9.2015*

+ CRL.A. 814/2013

ASHOK KUMAR TIWARI Appellant

Through Mr.Dinesh Malik and
Mr.Gurpreet Singh, Advocates.

versus

STATE OF THE NCT OF DELHI

..... Respondent

Through Mr.Akshai Malik, APP along
with SI Kishan Lal.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal is directed against the impugned judgment and order on sentence dated 19.12.2013 and 21.12.2012 respectively wherein the appellant had been convicted under Section 304 Part-II of the IPC. He had been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.2000/- in default of payment of fine to undergo SI for 2 months.

The version of the prosecution is that on 08.4.2012 it was reported in the local police station that a quarrel had taken place at “T” point, Ring Road, Bhairo Road. ASI Mohd.Naim (PW-19) along with constable Tejpal reached the spot. No one was found there; it was reported that the injured was removed to the RML Hospital. Injured Kapil was under treatment. His son Munna (PW-4) was present in the hospital and pursuant to his statement the present FIR was registered. His statement was to the effect that when he was returning from Sarai Kale Khan in his bicycle at about 10-10.15 p.m. he saw that the appellant Ashok Kumar Tiwari was assaulting his father with legs and fists blows. His father had fallen to the ground. At that point of time he was conscious and he told PW-4 that Ashok Kumar Tiwari had hit him with an unknown object on his head. After saying this to PW-4 he became unconscious. His father was removed to the hospital. Police was informed. Apart from the statement of PW-4 two other eye-witnesses namely PW-2 Azad Khan and PW-14 Wasim Ahmed were also examined. The victim had died the following day. Post mortem of the victim was conducted by PW-13 (Dr.Nidhi Sachdeva) who had opined that it was the injuries suffered on the brain and vertebral which were the cause of the death of

CrI. Appeal No. 814/2013

the victim.

2 In the statement of the accused recorded under Section 313 Cr.P.C. his plea was that he has been falsely implicated. He was made to sign on blank paper which was used against him. No evidence was led in defence.

3 On behalf of the appellant learned Amicus Curiae submitted that although there are three witnesses who have been set up by the prosecution but only PW-4 had supported the version of the prosecution. He is an interested witness being the son of the victim. The other two eye witnesses namely PW-2 and PW-14 have turned hostile. Testimony of PW-4 also has to be appreciated with greater circumspection. Submission being that the conduct of the appellant itself shows that he is innocent as he would not have been found in his jhuggi on the next date from where he was arrested. The weapon of offence i.e. phatta has also not been recovered. Attention has been drawn to the cross-examination of PW-13 (Dr.Nidhi Sachdeva) wherein she had admitted that the injuries such as those suffered by the victim could have been caused by a fall. The impugned judgment call for an interference. In the alternate leniency has been prayed for in the sentence.

4 Needless to state that arguments have been refuted by the learned APP for the State.

5 Arguments have been heard and record has been perused. PW-4 was the star witness of the prosecution. He was the son of the victim. He had deposed that on 08.4.2012 between 10.00 to 10.15 p.m. while he was returning from Sarai Kale Khan after taking meal by his cycle and when he reached at U turn point on Ring Road Bhairon Road, he saw that the appellant was assaulting his father with fists and kick blows. His father had fallen down. He quickly alighted from his cycle and rushed towards his father. He picked up his father; he was conscious. He told him that the accused had hit him with an unknown object on his head. After saying so his father became unconscious. Appellant fled away. In his cross-examination he stuck to his stand. He categorically stated that the incident of accused attacking his father had been seen by him. There was no suggestion given to this witness for the false implication of the appellant.

6 Another witness who had come into the witness box is PW-2. He, however, did not support the version of the prosecution. He did not state that he had seen the incident. He however admitted that PW-4 told

Crl. Appeal No. 814/2013 Page 4 of 8

him that the deceased had been beaten by the appellant. PW-14 was the other eye-witness. He also did not support the version of the prosecution. He did not depose in the capacity as an eye-witness.

7 Even while ignoring the versions of PW-2 and PW-14 this Court is of the view that the testimony of PW-4 is clear, cogent and coherent. There was no reason for him to have falsely implicated the accused. He had seen the incident and detailed it in the manner in which it had occurred. It was just after the incident (when PW-4 was under traumatic and emotional state of mind) and had seen his father in an unconscious condition that his statement (Ex.PW-4/A) was recorded by the police which had formed the basis of the FIR yet it was the same version given by him in Court as well.

8 The ocular version of PW-4 was fully supported by the medical evidence which was the MLC (Ex.PW-12/A) of the victim and his post mortem report (Ex.PW-13/A) wherein the alleged history of assault had been noted. The injured was in a semi-conscious state at that point of time. He was, however, not responding to verbal stimuli but was responding to pain. Nasal swelling, blood clots on both the nostrils and two lacerated wounds on the bridge of his nose were found. He was

referred to the neurosurgery where he was given oxygen by a mask and intravenous fluids. On the following day i.e. 09.4.2012 the victim had died.

9 The post mortem of the victim was conducted by PW-13 (Dr.Nidhi Sachdeva). External and internal injuries have been noted by the Trial Judge. The cause of death of the victim had been opined to be Cranio cerebral damage consequent upon blunt force/surface impact to head. There is no doubt that the weapon of offence (sheet or phatta) has not been recovered but that cannot wash away the ocular version of PW-4 which was clearly to the effect that he had seen his father being hit by fists and kick blows by the appellant and his father while in a conscious state of mind had told him that the appellant had hit on his head with some unknown object whether it was a phatta or some other object did make any difference as a blunt force impact had been created on the cerebral region of the head of the victim which had led to his death within a short span of time and he was finally declared dead at 8.45 p.m. on 09.4.2012. Injuries suffered by the victim on his brain were herniation of the left cerebral hemisphere underneath dura present thick film of sub dural hamerrohage present over all the lobes of both

cerebral hemisphere. Although PW-13 had stated that such injuries could have been caused by a fall on the ground but it was not a defence of the appellant in the cross-examination of the witnesses that the victim had died by falling.

10 The appellant had also been medically examined vide his MLC (Ex.PW-17/A) which had noted certain abrasions and pains over his left shoulder and neck. The time of the examination of the appellant is corroborative of the version of PW-4 that it was about the same time i.e. at the time when the injuries were suffered by the deceased pursuant to a scuffle which the appellant had with the deceased. It was not the version of the appellant that he was beaten by the police due to which he had suffered these injuries.

11 Under Section 304 Part-II of the IPC where death is caused due to such injuries which are likely to cause death but without any intention to cause death but only with a knowledge, conviction of the appellant under Section 304 Part-II of the IPC is well founded.

12 This was rightly noted by the Sessions Judge. Conviction of the appellant under Section 304 Part-II of the IPC is maintained.

13 This Court is of the view that the sentence awarded to the

appellant is also on the lower side. A valuable life had been lost and PW-4 had been rendered fatherless for no fault of his and neither for any fault on the part of the victim. It was a sudden quarrel and may be without any motive but the act of the appellant had resulted in this unfortunate incident which has adversely affected not only PW-4 but his entire family. The sentence awarded to the appellant calls for no interference. Appeal is without any merit. Dismissed.

14 A copy of this order be sent to Jail Superintendant for intimation to the appellant.

INDERMEET KAUR, J

SEPTEMBER 9th, 2015

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