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

+ CRL.A. 1494/2011

ARIF KHAN @ DAWOOD KHAN Appellant
Through :Mr. Kaushal Yadav and Mr. Nandlal
Kumar Mishra, Advs.
Versus

STATE NCT OF DLEHI Respondent
Through :Mr. Amit Ahlawat, APP with
Inspector Pradeep Kumar, P.S. Khyala

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **23.04.2015**

1. Appellant has been convicted under Section 304 Part I and sentenced to undergo rigorous imprisonment for 10 years with fine of ₹20,000/- and in default of payment of fine to undergo rigorous imprisonment for one year. Benefit of Section 428 of the Cr.P.C. has also been accorded to appellant.
2. Aggrieved by his conviction and also the sentence handed down to him, appellant has preferred this appeal.
3. Prosecution story, as unfolded, is that on 27th August, 2009 at about 10:00 PM, PW20 Shyam Sunder Oberoi, owner of a chemist shop situated at 5A/36, Shop Nos. 2 and 3, Vishnu Garden Extension, Delhi, heard some noises coming from the gali. He came out of the shop and saw the appellant was scuffling with deceased Santosh. PW9 Anil and PW10 Satish, who were

working in the shop of PW20, also came there and all of them separated the two. Thereafter, appellant went to 'Sai Juice Corner', where he had been working and returned with a knife and stabbed the deceased on his neck and chest. Deceased was removed to hospital, where he died. Appellant was chased and apprehended by the PW10 Satish.

4. Trial court has found the statements of eye-witnesses PW9, PW10 and PW20 to be trustworthy and reliable and has concluded that appellant had stabbed the deceased by a knife resulting in his death. PW19 Dr. B.N. Mishra had conducted the post-mortem of the deceased and has proved his report as Ex. PW19/A. He has categorically deposed that cause of death is due to combined effects of asphyxia and haemorrhagic shock caused by tearing of trachea and neck vessels, consequent upon stabbing at neck by sharp pointed weapon, that is, knife. He further deposed that said injuries were sufficient to cause death in ordinary course of nature.

5. During the course of hearing of the appeal, learned counsel has failed to point out any material discrepancy in the statements of eye-witnesses and the doctor who conducted post mortem, inasmuch as has given up the challenge to conviction of appellant on merits. I have also perused the testimonies of above noted material witnesses and find them trustworthy and reliable and sufficient to conclude that appellant in a quarrel between the appellant and deceased,

stabbed the deceased by the weapon of offence recovered from him resulting in death of the deceased. Accordingly, conviction of appellant under Section 304 part I of the IPC is upheld.

6. Counsel for the appellant has further contended that appellant has been sentenced to undergo 10 years rigorous imprisonment, out of which he has already completed 7 years rigorous imprisonment. In fact, he has remained in actual incarceration for more than 6 years and has earned remission of more than 1 year. Jail conduct of the appellant has been satisfactory. At the time of incident, appellant was about 21 years of age and presently, he is 27 years of age. Crime was committed in the fit of rage in a quarrel which erupted between him and the deceased all of a sudden. While in jail, appellant pursued his further education and has passed Secondary School Examination in the year 2011. He has also pursued practical poultry training in Tihar Jail and a certificate in this regard has also been issued by the Jail Superintendent in this regard. Petitioner's aged mother is ailing from various ailments and needs to be looked after. Accordingly, sentence of the appellant be reduced to the period already undergone by him.

7. I have considered the prayer of the appellant and am of the view that sentence of the appellant can be reduced to the period already undergone by him, keeping in mind that at the time of commission of crime, appellant was

aged about 21 years, he had stabbed the deceased in a fit of rage during a quarrel between him and the deceased; he has no previous criminal record, his jail conduct is satisfactory, inasmuch as, he has pursued higher education in the jail. Basically, the purpose of awarding substantive sentence of imprisonment is twofold; it is reformatory as well as punitive. So far as punitive purpose is concerned, appellant has already undergone sentence of 7 years out of 10 years awarded to him. His jail conduct is also satisfactory, which also indicates that he has reformed himself. Accordingly, sentence of the appellant is reduced to the period already undergone by him. As regards, sentence of fine is concerned, the same is also reduced to ₹10,000/- from ₹20,000/-, in view of the fact that appellant belongs to a poor family and is in incarceration for more than seven years.

8. Appellant be released from the jail forthwith, if not wanted in any other case.

9. Appeal is disposed of in the above terms. Dasti.

A.K. PATHAK, J.

APRIL 23, 2015

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