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

% *Date of Decision: May 25, 2016*

+ **CRL.A. 26/2015**

DEEPU

..... Appellant

Represented by: Mr.Harsh Prabhakar, Advocate
(DHCLSC)

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP with
SI Yogesh Kumar,
P.S.Timarpur

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (ORAL)

1. The appeal has reached for hearing.
2. Learned counsel for appellant has not appeared.
3. CrI.M.B.No.39/2015, seeking bail pending hearing of the appeal filed by the appellant, was allowed on May 03, 2016 with a direction that upon furnishing a personal bond and in sum of ₹25,000/- and one surety to the satisfaction of the Registrar of this Court, the appellant shall be admitted to bail. The personal bond and surety bond have been filed but proof of solvency not given by the surety, the learned Joint Registrar directed that a fixed deposit receipt be produced and till date nothing has been done. The appellant languishes in jail having been convicted for an offence punishable under Section 304/34 IPC, without indicating whether it is Part-I or Part-II

of Section 304 IPC and has been sentenced to undergo imprisonment for four years and pay fine in sum of ₹5000/-; in default to undergo simple imprisonment for six months.

4. It is in this context, that I write that learned counsel for the appellant ought to have appeared because the appeal has reached for hearing.

5. I have appointed Mr. Harsh Prabhakar, Advocate, on the panel of Delhi High Court Legal Services Committee as Amicus Curiae for the appellant and with his assistance and that of the learned counsel for the State have perused the impugned judgment and have gone through the evidence.

6. The co-convict of the appellant is one Dinesh who has not filed any appeal. That the deceased 'Santosh' died due to asphyxia upon drowning in river Yamuna has been admitted by the appellant. That they were present at the bank of river Yamuna and had consumed liquor has also been admitted by the appellant and co-convict Dinesh. When incriminating circumstances were put, the appellant and Dinesh said that they were innocent. Both said that alongwith their friend Babu, who is since deceased, they were present with Santosh having liquor at the banks of river Yamuna but left Babu and Santosh together who had wanted to bathe in the river.

7. The learned Trial Judge has held that the defence is to shift the blame on Babu, who has since died. Now, the learned Trial Judge had no means to hold so, except upon his hunch.

8. Be that as it may, the charge laid by the prosecution is that during the drinking session a sudden fight ensued at which Babu kicked Santosh, who as a consequence fell inside the river and drowned.

9. Now, there is no eye witness as to what happened. The witnesses are of having seen the four boys proceeding to the river bank. Rajeshwari PW-3

has said that she saw the four boys consuming liquor and quarrel.

10. Learned Trial Judge has obviously overlooked the charge-sheet filed.

11. Whilst it may be true that this aspect i.e. of Babu hitting Santosh flows out from the confessional statement of the appellant and the co-accused, but the fact of the matter remains that there is no evidence of either appellant or co-accused Dinesh drowning Santosh.

12. The principle of law is clear. Evidence should not only point towards the guilt but even rule out the innocence.

13. The appellant would thus be entitled to the benefit of a doubt.

14. The appeal is disposed of setting aside the impugned order dated March 06, 2014 convicting the appellant of the offence punishable under Section 304/34 IPC. The order on sentence dated March 10, 2014 is quashed.

15. The appellant is directed to be released forthwith.

16. Co-accused Dinesh has not filed any appeal. Therefore, he is still in jail. I direct that even he be released forthwith if not required in any other case, inasmuch as I set aside his conviction and sentence as well.

17. Copy of this order be sent to the Superintendent, Central Jail Tihar for updation of records and to be supplied to the appellant.

18. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

MAY 25, 2016

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