

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

+ **CRL.A. No. 89/2017**

Judgment reserved on : 31st March, 2017.

Date of decision : 20th JUNE, 2017

ASHOK BIND

..... Appellant

Through: Mr. Sumeet Verma, Advocate.

Versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Varun Goswami, Addl.P.P. for the State.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. This appeal has been instituted by the appellant Ashok Bind son of Shri Ram Nain Bind assailing the impugned judgment dated 23.09.2016 and impugned order on sentence also dated 23.09.2016 of the learned Special Judge-2, NDPS Act (Central District), Tis Hazari Courts, Delhi in Sessions Case No. 100/2013 in relation to FIR No. 99/13, P.S. NDRS. Vide the impugned judgment dated 23.09.2016, the accused/the appellant herein Ashok Bind was convicted for the commission of the offence punishable under Section 302 of the Indian Penal Code (IPC), 1860 and vide the impugned order on sentence also dated 23.09.2016, he was sentenced to imprisonment for life and to pay a fine of Rs.10,000/- and in default of the payment of fine to further undergo

simple imprisonment for two months. The accused/the appellant herein Ashok Bind was also granted the benefit of the period of detention already undergone in terms of Section 428 Cr.P.C, 1973.

2. Alongwith the Criminal Appeal no. 89/2017, an application Criminal M.A. No. 1357/2017 seeking condonation of delay of 70 days was filed, which was allowed vide order dated 24.01.2017. The appeal was thus admitted and notice of Criminal M. (Bail) No. 142/2017 was issued to the State. The nominal roll of the accused/the appellant herein Ashok Bind was called for vide order dated 27.03.2017, which has since been received, which indicates that as per the nominal roll dated 20.03.2017, as on 20.03.2017, the accused/the appellant herein Ashok Bind had undergone 03 years 09 months and 11 days of incarceration. The nominal roll of the accused/the appellant herein Ashok Bind further indicates that the overall jail conduct of the accused/the appellant herein Ashok Bind in the jail had been satisfactory.

3. Vide orders dated 27.03.2017 and 28.03.2017 in Criminal M. (Bail) No. 142/2017, it was considered essential that the accused/the appellant herein Ashok Bind be produced, who was produced before us on 31.03.2017. During the course of the hearing, with the consent of the counsel for the appellant and the State, the appeal itself has been taken up for disposal.

FACTS ALLEGED

4. The charge-sheet was instituted under Section 302 of the Indian Penal Code (IPC), 1860 on 31.08.2013 and was committed vide order dated

09.09.2013 to the Court of Sessions, whereafter the charge of allegations was framed on 15.10.2013 by the Special Judge-2, NDPS Act (Central District), Tis Hazari Courts, Delhi against the accused/the appellant herein Ashok Bind to the effect that on the intervening night of 09/10.06.2013 at about 12.00 midnight at Platform No. 1, in front of the SS office, New Delhi Railway Station within the jurisdiction of PS New Delhi Railway Station, New Delhi, the accused/the appellant herein Ashok Bind had committed the murder of Uday Kumar (since deceased) son of Bagappa aged 25 years, by hitting him with a stone and that he had thereby committed an offence punishable under Section 302 of Indian Penal Code (IPC), 1860, to which the accused/the appellant herein Ashok Bind pleaded not guilty and claimed trial.

PROSECUTION VERSION

5. The prosecution version set forth against the accused/the appellant herein Ashok Bind was to the effect that Uday Kumar (since deceased) and his friend **Sh. Purushottam M.N.(PW-1)** had come to Delhi on 09.06.2013 to appear in an examination held by DSSSB. After appearing for the same, they both reached at Platform No. 1 for their return journey, and, having bought their platform tickets they entered the railway station. They were yet to purchase their travelling tickets and had taken seats on a bench in front of the SS office, Platform No. 1. After sometime, Uday Kumar (since deceased) lay down on the bench and fell asleep and his friend **Sh. Purushottam M.N.(PW-1)** continued to remain seated and awake.

6. In the meantime a person i.e. the accused/the appellant herein Ashok Bind alongwith a bag came at about 12.30 midnight and asked them to get up and insisted that he wanted to sleep on the bench where Uday Kumar (since deceased) was already asleep but **Sh. Purushottam M.N.(PW-1)** refused to do so. As a consequence thereof, a quarrel ensued there and Ashok Bind the accused/the appellant herein went to a nearby gutter, picked up a stone from there and hit the same on the head of Uday Kumar (since deceased), who was in deep sleep on the bench, which resulted into injuries on his head and he started bleeding from his head and when **Sh. Purushottam M.N.(PW-1)** made efforts to apprehend the accused/the appellant herein Ashok Bind, he attempted to hit **Sh. Purushottam M.N.(PW-1)** also on which **Sh. Purushottam M.N.(PW-1)** raised an alarm for help, which attracted the police i.e. **Ct. Mohanan (PW-13)**, No. 661/RM, PS NDRS and **ASI Raj Pal Singh (PW-8)**, No. 6710/D, Central Zone PCR, who were present near the PCR Van whilst on duty at the New Delhi Railway Station at Platform no. 1 from 9.00 p.m. to 9.00 a.m. and had heard the noises “PAKRO PAKRO” at about 12.40 in the night and they went inside the Plat form No. 1 near the SS office and noticed that a person was lying on a steel bench and blood was oozing out from his head. Near the bench, one person who gave his name as **Sh. Purushottam M.N.(PW-1)** and the name of the injured as Uday Kumar (since deceased) and the accused/the appellant herein Ashok Bind were also present at the spot and the accused/the appellant herein Ashok Bind had a stone in his hand and the complainant **Sh.**

Purushottam M.N.(PW-1) had informed that the accused/the appellant herein had assaulted Uday Kumar (since deceased) with that stone on which **Ct. Mohanan (PW-13)** apprehended the accused/the appellant herein and on inquiry his name was revealed as Ashok Bind and at the time of apprehension, the accused/the appellant herein had a stone in both his hands and he had thrown that stone immediately with force on the floor of the platform on seeing them and that stone broke into pieces.

7. As per the prosecution version, thereafter the injured Uday Kumar was taken in the PCR vehicle accompanied by his friend **Sh. Purushottam M.N.(PW-1)** to the Lady Hardinge Hospital where Uday Kumar expired. **Ct. Mohanan (PW-13)** continued to remain at the spot with appellant in his custody, who allegedly accepted his involvement in the case whereafter he was arrested at about 11.00 a.m. at Platform No. 1, in front of the SS office, New Delhi Railway Station vide arrest memo **Ex.PW1/I** and the personal search of the appellant was also conducted in which *inter alia* a ticket from NDRS to Deoria Sadar dated 09.06.2013 and one passbook of the State Bank of Patiala were recovered, which were seized vide seizure memo **Ex.PW1/J**.

8. The charge-sheet indicates that at 1.10 a.m., an information was sent by PCR through wireless recorded by **DD No. 4A Ex.PW-21/A dated 10.06.2013 PS NDRS** to the effect that the person injured in the quarrel at the New Delhi Railway Station, Platform No. 1 had been admitted to the Lady Hardinge Hospital whereafter information was recorded by **HC Har Parshad (PW-4)** in

the roznamcha. The inquiry was entrusted to **SI Ashok Kumar (PW-21)**, who alongwith **Ct. Ram Kumar (PW-12)** (PW-12) went to the spot and thereafter to the Lady Hardinge Hospital where, the Investigating Officer **SI Ashok Kumar (PW-21)** obtained the **MLC No. 39988/13 Ex.PW-18/A** of the injured Uday Kumar son of Bagappa resident of Aditya Birla Memorial Hospital, Pune, aged 25 years whom the doctor declared unfit for statement and who during treatment expired after sometime. The friend of Uday Kumar (since deceased), **Sh. Purushottam M.N.(PW-1)** son of Nagayya r/o Mohalla Shanti Nagar, Belur Thana, Belur Hasan, Karnataka was present at the hospital and his statement was recorded by **SI Ashok Kumar (PW-21)** as **EX.PW1/A**. The Investigating Officer **SI Ashok Kumar (PW-21)** attested the signatures of the eye witness **Sh. Purushottam M.N.(PW-1)** and made his endorsement on the same vide **Ex.PW-21/C** and gave the rukka to **Ct. Ram Kumar (PW-12)** for getting the FIR registered, which was so registered and **Ct. Ram Kumar (PW-12)** left the hospital at about 3.10 a.m. and reached the police station at about 3.25 a.m. and handed over the original tehrir to the Duty Officer HC Hariom Singh for the registration of the FIR and then he went back to the spot.

PREPARATION OF SITE PLAN

9. The second Investigating Officer Inspector Meera Sharma (PW-24) came to the spot. The Mobile Crime Team officials were also called to the spot who inspected the scene of crime and took photographs from different angles at the instance of the second Investigating Officer Inspector Meera Sharma

(PW-24), who prepared the site plan **Ex.PW-24/A** at the instance of the complainant **Sh. Purushottam M.N.** (PW-1). There was blood lying at point-D in front of the bench and there was a stone smeared with blood lying at point-E as indicated in the site plan.

SEIZURES EFFECTED

10. The second Investigating Officer Inspector Meera Sharma (PW-24) lifted the blood with the help of the cotton and gauze and got it dried and put it into a plastic container which was sealed with the seal of MS and was taken into possession through seizure memo **Ex.PW1/B** whereafter **the second Investigating Officer Inspector Meera Sharma (PW-24)** had also lifted the earth control and earth control with blood and kept the same in two plastic containers which were also sealed with the seal of MS and the same were taken into possession through separate seizure memos **Ex.PW1/G and Ex.PW1/F** respectively. A pair of black coloured sandals which were blood stained and lying beneath the bench in front of the SS office, Platform No. 1 were kept in a cloth parcel and taken into possession through seizure memo **Ex.PW1/C**. One single bed sheet with blue, yellow, red and white colours was also lying on the floor, which was kept into a cloth parcel and was sealed with the seal of MS and it was taken into possession vide seizure memo **Ex.PW1/E**.

11. The second Investigating Officer Inspector Meera Sharma (PW-24) also lifted the eight (8) pieces of blood stained black granite stone lying near the spot and kept the same in a cloth parcel which was also sealed with the seal of

MS and it was also taken into possession through seizure memo **Ex.PW1/E**. The complainant **Sh. Purushottam M.N.(PW-1)** also produced two platform tickets bearing no. 65348 and 65347, which were also taken into possession and were seized vide seizure memo **Ex.PW1/H** whereafter **the second Investigating Officer Inspector Meera Sharma (PW-24)** went to counter no. 59 of Pahar Ganj side to verify the platform tickets where she met the concerned official **Sh. C.P. Harit (PW-7)**, who stated that both these tickets **Ex.PW1/H** had been issued by him. **The second Investigating Officer Inspector Meera Sharma (PW-24)** thereafter came back to the spot and interrogated the accused/the appellant herein.

12. The second Investigating Officer Inspector Meera Sharma (PW-24) also informed of the arrest of the accused/the appellant herein on the mobile number which was given to her by him. The pink colour t-shirt worn by the appellant herein with blood stains was also seized by the IO vide seizure memo **Ex.PW13/A**. One black colour bag of rexine was also lying at the spot which the accused/the appellant herein identified to be his was seized with its contents vide seizure memo **Ex.PW1/M**. **The second Investigating Officer Inspector Meera Sharma (PW-24)** also recorded the disclosure statement of the appellant herein **Ex.PW1/K** and deposited the case property and personal search articles of the accused with the MHC(M). The appellant herein was also got medically examined and as per the **MLC Ex.PW22/A**, the appellant had a cut on the left palm, near the thumb and a superficial cut in scaly occipital area. The appellant

thereafter was produced at the Tis Hazari Court and was remanded to judicial custody.

13. The second Investigating Officer Inspector Meera Sharma (PW-24) also moved an application under Section 164 Cr.P.C. before the learned Metropolitan Magistrate for recording the statement of the complainant under Section 164 Cr.P.C. copy of which statement is **Ex.PW1/L** in which the complainant corroborated the material particulars in his statement **Ex.PW1/A** which forms the basis of the registration of the FIR.

14. Proceedings at the mortuary were conducted and thereafter on 11.06.2013, two persons namely Sh. Nagraj (PW-10), brother of the deceased Uday Kumar and Sh. Sri Kant, cousin of the deceased Uday Kumar met **the second Investigating Officer Inspector Meera Sharma (PW-24)** and identified the dead body of the deceased Uday Kumar. **The second Investigating Officer Inspector Meera Sharma (PW-24)** recorded their statements **Ex.PW10/A** and **Ex.PW24/C** respectively and thereafter sought to conduct the postmortem on the body of the deceased Uday Kumar. After the postmortem was conducted the dead body was handed over to **Sh. Nagraj (PW-10)** vide memo **Ex.PW10/B**. **ASI Raghbir Singh (PW-19)** produced two sample seals and two sealed parcels which were given to the concerned doctor and the same were taken into possession vide seizure memo **Ex.PW19/A**. Thereafter **the second Investigating Officer Inspector Meera Sharma (PW-24)** alongwith **ASI Raghbir Singh (PW-19)** and **Ct. Ram Kumar (PW-12)**

came back at the police station from the mortuary and deposited the exhibits with the MHC(M). At about 4.30 p.m. SI Ashok Kumar produced two photographs of the deceased Uday Kumar which he had taken from his private mobile phone which were seized by **the second Investigating Officer Inspector Meera Sharma (PW-24)**.

15. The statement of SI Ashok Kumar on the next day was recorded by **the second Investigating Officer Inspector Meera Sharma (PW-24)** who also moved an application before the RPF of NDRS to obtain the CCTV footage which was produced in the form of a CD by ASI Arvind of the RPF and was taken into possession vide seizure memo **Ex.PW21/D**. **The second Investigating Officer Inspector Meera Sharma (PW-24)** also collected the CPCR form and moved an application to obtain the duty Roster of the dealing clerk **Sh. C.P. Harit (PW-7)** which was provided to her vide memo **Ex.PW16/A**.

16. A scaled site plan was also got prepared through SI Mahesh draftsman of the Crime Branch. The IO also collected the postmortem report **Ex.PW23/A**. On 2.06.2013, the investigating officer collected the sealed cloth parcels containing the pieces of granite stones after making the DD entry and she had given the sealed parcel to the concerned autopsy surgeon alongwith an application to obtain his subsequent opinion regarding the weapon of offence. On receipt of the opinion on the injuries to the deceased Uday Kumar **Ex.PW23/B**, the said information alongwith the pieces of granite stones were

deposited by the Investigating Officer with the MHC(M) on 01.07.2013. **The second Investigating Officer Inspector Meera Sharma (PW-24)** also recorded the statements of the witnesses and sent the exhibits to the FSL for analysis and after completion of investigation the police report under Section 173 of Cr.P.C., 1973 was instituted.

17. The second Investigating Officer Inspector Meera Sharma (PW-24) through her testimony on oath also identified the case property of the instant case as under :-

- (a) Two platform tickets produced by **PW-1 as Ex.P1.**
- (b) One black coloured rexin bag with its contents belonging to the accused as **Ex.P2**
- (c) Pink colour blood stained T Shirt worn by the accused at the time of incident as **Ex.P3**
- (d) Blood stained black colour marble stone pieces with which the injured was assaulted by the accused collectively as **Ex.P6.**
- (e) One bed sheet of black of blue, yellow, red and white colour which belongs to the deceased Uday Kumar which was also blood stained as **Ex.P7**
- (f) Railway ticket of the accused as **Ex.PW21/DX.**
- (g) CD containing CCTV footage as **Ex.PW24/PX2.**

MEDICAL EVIDENCE

18. The MLC of the deceased Ex.PW18/A shows that when the patient was

brought to the hospital at 12.50 a.m. on 10.06.2013, the deceased Uday Kumar was unconscious, not oriented, gasping and unfit for statement, BP as well as the pulse of the patient were not recordable and bilateral frontal bone had depressed fracture with brain herniation.

19. The **postmortem report Ex.PW23/A** brings forth that the injured Uday Kumar expired on 10.06.2013 at 1.20 a.m. The **external injuries** on the body of the deceased detailed therein are as under : -

- (1) *“Lacerated wound of size 10.5 cm x 3 cm x cranial cavity deep with herniation of brain matter and blood through it present along with the sagittal plane 4.5 cm right lateral to the mid line starting from right frontal eminence going backwards*
- (2) *Lacerated wound of size 4.5 cm x 1.5 cm x cranial cavity deep with herniation of brain matter and blood through it present along with the coronal plane starting 1.7 cm right lateral of external injury no. 1's midpoint.*
- (3) *Lacerated wound of size 5 cm x 0.5 cm x bone deep placed vertically starting 1 cm above the midpoint of right eyebrow.*
- (4) *Lacerated wound of size 4.7 cm x 0.3 cm x bone deep placed horizontally over mid part of the forehead 1.5 cm above the slapella.*
- (5) *Lacerated wound of size 3 cm x 0.4 cm x bone deep placed horizontally over the middle and lateral 3rd of left eyebrow*
- (6) *Lacerated wound of size 3 cm x 0.3 cm x 0.3 cm placed horizontally on left half of the face starting 0.5 cm lateral to outer canthus of left eye.”*

20. As per the post mortem report, the **internal injuries** sustained by Uday Kumar (since deceased) as per the postmortem report were to the following effect:

- (1) *Scalp, skull & vertebral – Under surface of the scalp found contused over whole frontal, right parietal and temporal region, depressed*

communited fracture of right frontal and parietal bone present. The fracture line extended down to whole of the anterior cranial fossa as a transverse fracture.

(2) Meninges – Dura found torn under the depressed communited fracture of right frontal and parietal bone.

(3) Brain – The brain matter was found herniating out through the torn dura matter involving right frontal and parietal lobes of the cerebrum, with laceration of the entire frontal parietal lobes of the brain, sub arachnoid hemorrhage present over entire brain with surface contusion of left frontal, right temporal and right occipital lobes of brain.

CAUSE OF DEATH

21. Dr. Manoj Kumar Hansda (PW-23), Assistant Professor Department of Forensic Medicines, IMS and SUM hospital, Bhuwneshwar, Orissa conducted the said postmortem on the body of the deceased Uday Kumar vide postmortem report No. 295/2013 dated 11.06.2013 **Ex.PW23/A**. The cause of death was opined by **Dr. Manoj Kumar Hansda (PW-23)** to be due to “cranio –cerebral injuries sustained and its complications as a result of blunt force trauma to head” and it was further opined by **Dr. Manoj Kumar Hansda (PW-23)** that “all the injuries were antemortem in nature and fresh in duration; that external injuries no. 1, 2 , 3 & 4 alongwith corresponding internal injuries were individually and in combination sufficient to cause death in the ordinary course of nature”.

Dr. Manoj Kumar Hansda (PW-23) testified also to having handed over the wearing apparels and blood in gauze to the Investigating Officer alongwith sample seals and on 25.06.2013, one cloth parcel duly sealed was opened and it was found containing 8 broken pieces of black granite stones

having fresh broken edges except on side of stone on 6, 2 and 5 with adherent reddish brown stains (bloodstains), hair pieces along with dirt like soil spit chewing gum etc. It was stated by **Dr. Manoj Kumar Hansda (PW-23)** that all the 8 pieces of black stones fell into place i.e. they all belong to a large stone slab of the diagram as mentioned in his subsequent opinion **Ex.PW23/B. Dr. Manoj Kumar Hansda (PW-23)** further approved that after examining the same, the injuries inflicted by the stones slab were sufficient to cause death in the ordinary course of nature.

SUBSEQUENT OPINION

22. Ex.PW23/B, the subsequent opinion given by Dr. Manoj Kumar Hansda (PW-23) categorically opines to the effect that : -

- (1)The injuries on the head of the deceased are possible by the granite slab examined.*
- (2)The injuries inflicted by the stone slab are sufficient to cause death in ordinary course of nature*
- (3)Approximation of stone pieces and broken margins reveal that all the 8 pieces belong to single slab.”*

FORENSIC EXAMINATION

23. The FSL result Ex.PX and Ex.PX1 no. FSL-2013/B-5583 BIO No. 749/13 dated 18.02.2014 indicates that blood was detected on exhibits ‘A1’, ‘A2’, ‘B’, ‘D’, ‘E’, ‘F’, ‘G1’, ‘G2’, ‘G3’, ‘G4’ & ‘I’. The description of the articles contained in parcels sent to the FSL are as under : -

Parcel 'A' : One sealed cloth parcel sealed with the seal of "MS" containing exhibits 'A1' & 'A2' kept in a plastic container.

Exhibit 'A1' : Cotton wool swab having dirty blackish brown stains described as blood in cotton.

Exhibit 'A2': Dirty blackish brown gauze cloth piece described as blood in gauze.

Parcel 'B' : One sealed cloth parcel sealed with the seal of "MS" containing exhibit 'B' kept in a plastic container.

Exhibit 'B': Pieces of cemented material having dirty brownish stains described as earth control mixed with blood.

Parcel 'C' : One sealed cloth parcel sealed with the seal of "MS" containing exhibit 'C' kept in a plastic container.

Exhibit 'C': Piece of cemented material described as earth control.

Parcel 'D' : One sealed cloth parcel sealed with the seal of "MS" containing exhibit 'D'

Exhibit 'D': One bedsheet having dirty brown stains.

Parcel 'E': One sealed cloth parcel sealed with the seal of "MS" containing exhibit 'E'

Exhibit 'E': A dirty pair of sleepers described as blood mixed pair of sandal.

Parcel 'F': One sealed cloth parcel sealed with the seal of "MS" containing exhibit 'F'

Exhibit 'F': one dirty light brownish T-shirt.

Parcel 'G': One sealed cloth parcel sealed with the seal of "FMT LPMC" containing exhibits 'G1' 'G2', 'G3' & 'G4'

Exhibit 'G1': One pants (jeans) having dirty light brown stains.

Exhibit 'G2': One dirty brownish baniyan.

Exhibit 'G3': One dirty T-shirt with cap

Exhibit 'G4': One dirty brownish blackish underwear

Parcel 'H' : One sealed cloth envelope sealed with the seal of "FMT LPMC" containing exhibits 'H'

Exhibit 'H': One dirty light brown gauze cloth piece described as blood in gauze.

Parcel 'T': One sealed cloth parcel sealed with the seal of "FMT LPMC" containing exhibit 'T'

Exhibit 'I': Dirty blackish brown pieces of marble stone described as blood mixed pieces of stone slab."

24. The Biology Division result findings of **Ex.PX** shows that there was human blood grouping found on 'A1', 'A2', 'B', 'D', 'E', 'F', 'G1', 'G2', 'G3', 'G4', 'H' & 'I'. and all human grouping on the same could not be ascertained.

OCULAR EVIDENCE

25. Sh. Purushottam M.N.(PW-1) vouched to the correctness of his statement **Ex.PW1/A** made to the police and of his statement under Section 164 Cr.P.C. **Ex.PW1/C** made to the Metropolitan Magistrate.

Through his cross-examination, the witness stated that the stone with which the accused/the appellant herein had hit the head of the injured Uday Kumar was about 1 – 1/2 feet in length. The testimony of **Sh. Purushottam M.N.(PW-1)** brings forth categorically that pursuant to the accused/the appellant having come to the spot at Platform No.1 in front of the SS office where the deceased was sleeping on the bench and the witness **Sh. Purushottam M.N.(PW-1)** was sitting, the accused asked the complainant **Sh. Purushottam M.N.(PW-1)** to get up as he wanted to sleep and on this **Sh. Purushottam M.N.(PW-1)** refused to do so as Uday Kumar was sleeping on the bench. The accused quarrelled and scolded PW-1 and went from there and

came back with the stone and subsequently hit on the right side of the head of his friend Uday Kumar, who was sleeping on the bench and when **Sh. Purushottam M.N.(PW-1)** tried to catch the accused he also tried to hit PW-1. Thereafter **Sh. Purushottam M.N.(PW-1)** raised the alarm for help and the police reached at the spot and the accused/the appellant herein Ashok Bind (who had a stone in his hand) was apprehended and he threw that stone immediately with force on the floor.

26. The testimonies of **Ct. Mohanan (PW-13)**, No. 661/RM, PS NDRS and **ASI Raj Pal Singh (PW-8)**, No. 6710/D, Central Zone PCR bring forth that at about 12.30 -12.40 a.m. on the intervening night of 09/10.06.2013 they heard noises of PAKRO PAKRO coming from Platform No. 1, in front of the SS office, New Delhi Railway Station and thus **ASI Raj Pal Singh (PW-8)** and **Ct. Mohanan (PW-13)** went inside the Platform No. 1, in front of the SS office, New Delhi Railway Station and saw that a person was there with a stone in his hand and on seeing the police officials he threw the stone on the floor which was broken into pieces. **Sh. Purushottam M.N.(PW-1)** was present near the bench who stated that the injured was his friend named Uday Kumar and identified the accused/the appellant herein Ashok Bind as being the person who had assaulted his friend with a stone, whereafter the accused/the appellant herein was apprehended by **Ct. Mohanan (PW-13)** and his name was revealed as Ashok Bind whereafter the injured was taken to the Lady Hardinge Hospital and the accused was left in the care and custody of **Ct. Mohanan (PW-13)**.

ANALYSIS

27. The testimonies of these witnesses **Sh. Purushottam M.N.(PW-1)** and **Ct. Mohanan (PW-13)**, establishes the presence of the appellant at the spot with the stone in his hand which he had thrown immediately on seeing the police officials which thus broke into pieces. This stone has been identified by **Sh. Purushottam M.N.(PW-1)** as being the stone with which he had assaulted Uday Kumar.

28. The entire available record establishes that the appellant assaulted Uday Kumar with a stone when he was sleeping on a bench on Platform No. 1, in front of the SS office, New Delhi Railway Station on the intervening night of 9/10.06.2013 at about 12.00 midnight as a consequence of which he sustained injuries on his head and was taken to the hospital. The postmortem report **Ex.PW23/A** and the subsequent opinion **Ex.PW23/B** given by **Dr. Manoj Kumar Hansda (PW-23)** categorically brings forth as detailed hereinabove that external injuries no. 1, 2, 3 & 4 alongwith corresponding internal injuries which were :

- on the head resulting into lacerated wound of size 10.5 cm x 3 cm x cranial cavity deep with herniation of brain matter and blood through it present along with the saggatal plane 4.5 cm right lateral to the mid line starting from right frontal eminence going backwards ;
- lacerated wound of size 4.5 cm x 1.5 cm x cranial cavity deep with herniation of brain matter and blood through it present along with the coronal plane starting 1.7 cm right lateral of external injury no. 1's midpoint; lacerated wound of size 5 cm x 0.5 cm x bone deep placed vertically starting 1 cm above the midpoint of right eyebrow;
- lacerated wound of size 4.7 cm x 0.3 cm x bone deep placed horizontally over mid part of the forehead 1.5 cm above the flapella; lacerated wound

of size 3 cm x 0.4 cm x bone deep placed horizontally over the middle and lateral third of left eyebrow;

- lacerated wound of size 3 cm x 0.3 cm x 0.3 cm placed horizontally on left half of the face starting 0.5 cm lateral to outer canthus of left eye, which resulted into the under surface of the scalp being found contused over whole frontal, right parietal and temporal region, depressed communitied fracture of right frontal and parietal bone present.
- Further, the fracture line extended down to whole of the anterior cranial fossa as a transverse fracture;
- the meninges were found torn under the depressed communitied fracture of right frontal and parietal bone brain;
- the brain matter was found herniating out through the torn dura matter involving right frontal and parietal lobes of the cerebrum, with laceration of the entire frontal parietal lobes of the brain, sub arachnoid haemorrhage present over the entire brain with surface contusion of left frontal, right temporal and right occipital lobes of the brain with the cause of death being due to “cranio –cerebral injuries sustained and its complications as a result of blunt force trauma to head”.

It was further opined by Dr. Manoj Kumar Hansda (PW-23) that “all the injuries were antemortem in nature and fresh in duration; that external injuries no. 1, 2 , 3 & 4 alongwith corresponding internal injuries individually and in combination are sufficient to cause death in the ordinary course of nature”

29. The circumstance that all the 8 broken pieces of black granite stones fell into place i.e. all belong to a larger stone with a length of 36.5 cms. having breadth of 31 cms. and having a thickness of 2 cms and a total weight of 5 kgs. with weight of the individual stone fragments being 1.5 kgs, 1.3 kgs., 1 kg, 300 gms, 200 gms, 100 gms. and 400 gms. is significant/coupled with the opinion **Ex.PW23/B of Dr. Manoj Kumar Hansda (PW-23)** being categorical that the

injury inflicted by the stone slabs are sufficient to cause death in the ordinary course of nature and that the approximation of the stone pieces and broken margins reveal that all the 8 pieces belong to a single slab.

30. This establishes that the injured Uday Kumar died due to the injuries inflicted by the accused/the appellant herein Ashok Bind with the granite stone slab weighing 5 kgs. on his head.

31. Apparently hitting a person with a stone weighing 5 kgs on his head necessitates the attribution of knowledge to the accused/the appellant herein Ashok Bind that the act was done by him knowing that it was likely to cause death.

CONTENTIONS OF THE APPELLANT

32. On behalf of the appellant, it was contended by Mr. Sumeet Verma, learned Legal Aid Counsel that the two injuries sustained by the injured including injury on the scalp and skull were due to a sudden fight without any pre-meditation in the heat of the moment as brought forth through the testimony of PW-1 and it was thus submitted that the conviction under Section 302 IPC 1860 be altered to one under Section 304 Part II of the IPC 1860.

CONTENTIONS OF THE STATE

33. On behalf of the State, the learned Addl. Public Prosecutor Mr. Varun Goswami contended that both the intent to cause death and knowledge that the likelihood of an assault with the granite slab weighing 5 kgs on the head of

Uday Kumar (since deceased) and consequential injuries likely to cause death would have to be attributed and held to have been established against the accused/the appellant herein Ashok Bind especially as the accused/the appellant herein Ashok Bind had left the spot and gone and brought a granite stone to assault the injured Uday Kumar which would thus make the accused/the appellant herein Ashok Bind culpable of the commission of murder of the deceased and that he was thus rightly convicted and sentenced by the impugned judgment and order on sentence both dated 23.09.2016 of the learned Special Judge-2, NDPS Act (Central District), Tis Hazari Courts, Delhi in Sessions Case No. 100/2013 in relation to FIR No. 99/13, P.S. NDRS.

OBSERVATIONS OF THE TRIAL COURT

34. Submissions were made before the Trial Court also on behalf of the accused/the appellant herein Ashok Bind seeking that the case was covered by the provisions of Section 304 of the IPC 1860 and that the incident took place pursuant to a sudden fight and quarrel.

35. The learned Trial Court observed vide paragraph nos. 28 to 30 of the impugned judgment to the effect that : -

“28. Here, prosecution has established that the accused came near the bench, where Uday Kumar was sleeping while his friend PW1 Purshottam M.N.was sitting, dictated that PW1 should get up from there, as he was to sleep there, and when PW1 did not obey the dictates, the accused quarrelled with him, then picked up a stone from over the gutter nearby and hit the same on the head of Uday Kumar, who was asleep on the bench, resulting in injuries and ultimately to his departure from this world.

29. *Undisputedly, the occurrence took place all of a sudden. There was no premeditation. But, admittedly, no fight, what to say of sudden fight, took place between the accused and the deceased. Accused quarreled only with PW1 who was awake and not with the victim, who was asleep. The victim had no word with the accused to offend him by not providing seat on the bench. Evidence reveals that the accused had already enough sleep and due to that he had missed his train for Devaria.*

30. *Furthermore, as per oral and medical evidence, the accused repeated blows with the stone on the vital part of the body of the sleeping passenger. Thus, he acted in cruel and more unfair manner. During trial, accused totally denied his involvement in the commission of the crime. In view of these peculiar facts, this case is distinguishable from the decisions referred to by learned defence counsel. Therefore, it cannot be said that he committed an offence which falls within the provisions of Section 304 IPC. Court holds that the accused made himself liable for an offence punishable under Section 302 IPC.*

As a result, the accused is held guilty for the offence of murder and convicted thereunder.” **(Emphasis supplied)**

36. It is apparent as observed in para no. 29 of the impugned judgment dated 23.09.2016 itself that it was concluded by the learned Trial Court to the effect that undisputedly, the occurrence took place all of a sudden. There was no premeditation but it was observed that admittedly, no fight, much less a sudden fight, took place between the accused/the appellant herein Ashok Bind and the deceased and that the accused/the appellant herein Ashok Bind quarrelled only with **Sh. Purushottam M.N.(PW-1)** who was awake and not with the victim, who was asleep. The victim had no word with the appellant herein to offend him by not providing a seat on the bench. The learned Trial Judge also concluded that the evidence reveals that the appellant had already enough sleep and due to that he had missed his train for Devaria and that the accused/the

appellant herein Ashok Bind had given repeated blows with the stone on the vital part of the body of the sleeping passenger and had thus acted in a cruel and more unfair manner.

37. During trial, the appellant totally denied his involvement in the commission of the crime. It was observed by the learned Trial Judge that the peculiar facts of the instant case were distinguishable from the facts in the cases relied upon on behalf of the accused/the appellant herein Ashok Bind and thus the accused/the appellant herein Ashok Bind was liable for an offence punishable under Section 302 IPC.

APPLICABILITY OF SECTION 304 PART-I OR PART-II ?

38. On behalf of the State it was strongly contended that even if the offence falls within the ambit of Exception 4 to Section 300 of the IPC 1860 and even if it be held that the death of Mukesh was held to be only by commission of offence of culpable homicide not amounting to murder in terms of Section 304 of the IPC 1860, the offence would fall within the ambit of Section 304 Part-I of the IPC and not Section 304 Part-II of the IPC as sought to be contended on behalf of the appellant.

39. Section 304 of the IPC 1860 prescribes as follows:

“304. Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of

causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

40. During the course of arguments addressed on behalf of the appellant in the present appeal, reliance was placed on the verdict of the Supreme Court in ***Surinder Kumar Vs. Union Territory, Chandigarh 1989 AIR 1094*** and on the verdicts of this court in ***Mahender Vs. State 2009 [2] JCC 895 and Vinod Vs. The State (NCT of Delhi) 2011 [3] JCC 1774*** to contend that where the incident took place due to a sudden quarrel without any pre-meditation and the act was done in the heat of passion without taking undue advantage or acting in a cruel or unusual manner, where the accused/the appellant herein Ashok Bind had picked up a weapon which came handy and caused injuries in a sudden quarrel, which injuries even if they proved fatal and were accidentally inflicted on a vital part of the body, cannot be held to be pre-meditated to make the accused/appellant herein culpable of having intent to cause the death of a person and it was thus submitted on behalf of the appellant that the accused/the appellant herein Ashok Bind was in no manner guilty of the commission of the offence punishable under Section 302 of the IPC 1860.

41. It was thus strenuously urged that the case falls within the ambit of Exception 4 to Section 300 of the IPC 1860.

CONCLUSION

42. The entire available record establishes that the occurrence had taken place without any pre-meditation and suddenly. The learned Trial Judge has held that there was no fight much less any sudden fight and that thus Exception 4 to Section 300 of the IPC, 1860 could not be applicable in the facts and circumstances of the instant case, having further held that there was no fight whatsoever between the deceased and the appellant, in as much as the deceased i.e. the injured Uday Kumar was sleeping on the bench and the quarrel that had taken place with his friend **Sh. Purushottam M.N.(PW-1)** and that the accused had taken undue advantage and acted in a cruel and unusual manner by assaulting a sleeping passenger.

43. It is essential to observe that the offence in the instant case squarely falls within the ambit of Exception 4 to Section 300 of the IPC, 1860 which provides as follows:

“Exception 4-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault”

44. *It is essential to observe that Exception 4 to Section 300 categorically lays down that it is immaterial in such cases which party offers the provocation or commits the first assault.*

45. This very factum itself indicates that the infliction of the injury by the offender can take place on a person other than a person who gives a provocation or other than a person with whom the quarrel or fight had taken place. Thus the observation of the learned Trial Judge to the effect that the quarrel had not taken place with Uday Kumar the person who was assaulted by the accused/the appellant herein Ashok Bind and had taken place with **Sh. Purushottam M.N.(PW-1)** does not suffice to detract from the applicability of Exception 4 to Section 300 of the IPC 1860 in the facts and circumstances of the instant case.

46. This is so in as much as it has been laid down by the Supreme Court in *Pulicherla Nagaraju @ Nagaraja Reddy vs. State of Andhra Pradesh (2006 (11) SCC 444* to the effect:

“Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under [Section 302](#) or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable

under [section 302](#), are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under [section 302](#). The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows.

47. The evidence on record establishes that the incident took place at around midnight on the night intervening 9th/10th June, 2013 at Platform No.1 of the New Delhi Railway Station. The appellant, a traveller, in search for seating was spurned by Purshottam M.N.(PW-1), who refused to awaken his friend, the deceased, Uday Kumar, who was sleeping on the bench placed for passengers to sit upon, not to be utilized for sleeping by a solitary passenger. The deceased was not a person known to the accused/appellant. The incident was provoked by the unreasonable refusal of PW-1 to make sitting space in the middle of the night for the appellant. The deceased became the target because he was the one who was sleeping on the bench, thereby depriving the appellant of a seat. There is no evidence of pre-meditation on the part of the appellant.

48. On a consideration of the rival submissions and the verdicts relied upon

on behalf of the accused/the appellant herein Ashok Bind and the verdicts of the Supreme Court as laid down in *Buddhu Singh and Ors. vs. State of Bihar (Now Jharkhand) (2011) 14 SCC 471* in *Pulicherla Nagaraju @ Nagaraja Reddy vs. State of Andhra Pradesh (2006 (11) SCC 444*, it is held that in the facts and circumstances of the instant case where the occurrence admittedly took place due to a sudden quarrel without any pre-meditation in the heat of passion, though the quarrel took place between the friend of the deceased and the accused/the appellant herein Ashok Bind whilst the deceased was sleeping and was assaulted by the accused/the appellant herein Ashok Bind with a granite stone, which was thrown and hit on his head, the circumstances of the case do not establish beyond a reasonable doubt that the infliction of the injury on the person of Uday Kumar by the accused/the appellant herein Ashok Bind sufficed to make him guilty of an act of having caused the death of the deceased Uday Kumar with intent to cause death or causing such bodily injury as the offender knew was likely to cause the death of Uday Kumar, nor of his having inflicted such injury with the intent to cause bodily injury which was intended to be inflicted to be sufficient in the ordinary course of nature to cause death whereby the accused/the appellant herein Ashok Bind could be held guilty of the commission of culpable homicide amounting to murder under Section 302 of the IPC 1860.

49. Thus, the conviction of the accused/the appellant herein Ashok Bind vide the impugned judgment dated 23.09.2016 and impugned order on sentence also

dated 23.09.2016 of the learned Special Judge-2, NDPS Act (Central District), Tis Hazari Courts, Delhi in Sessions Case No. 100/2013 in relation to FIR No. 99/13, P.S. NDRS of a conviction under Section 302 of the IPC, 1860 is modified to one under Section 304 Part II of the IPC 1860.

50. This is so in as much as in the instant case where the injuries were inflicted with the granite stone weighing 5 kgs. the knowledge that such injuries would be caused as would be likely to cause death, (though without any intention to cause death or to cause such bodily injury as was likely to cause death;) -would have to be essentially attributed to the appellant.

51. This Court is fortified in its view in view of the law laid down by the Apex Court in *Samuthram @ Samudra Rajan v. State of Tamil Nadu*, (1997) 2 Crimes 185 (Mad.) to the effect:

“To invoke Exception 4 to Section 300, four requirements must be satisfied, namely (i) it was a sudden fight, (ii) there is no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.... The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly;”
(Emphasis supplied)

QUANTUM OF SENTENCE

52. The offender is now aged 41 years as per the nominal roll dated 20.03.2017 and was aged about 29 years of age at the time of the occurrence.

He has undergone four years and 11 days of incarceration. As informed by him on his production, he has a wife and three children and thus a family to look after. In the circumstances it is considered essential that the sentence imposed upon the accused/the offender/the appellant herein Ashok Bind acts as a deterrent and is simultaneously reformatory with a prospect of rehabilitation.

53. Thus, it is considered appropriate to modify the sentence from imprisonment for life and of a fine of Rs.10,000/- and in default of the payment of fine to further simple imprisonment for two months; -to a sentence of rigorous imprisonment of six years (6 years) only with the direction that the sentence of life imprisonment and of payment of a fine of Rs.10,000/- and in default of the payment of fine to further undergo simple imprisonment for two months imposed vide the impugned judgment and order on sentence both dated 23.09.2016 is set aside, **with the benefit of the set off of the period of detention already undergone by the accused/the appellant herein Ashok Bind** in relation to FIR No. 99/13, P.S. NDRS being granted in terms of Section 428 Cr.P.C..

54. In terms of the verdict of Supreme Court in *Phul Singh Vs. State of Haryana* in Criminal Appeal No. 506/1979 decided on 10.09.1979 and directions laid down by us in *Sanjay vs. State* **2017 III AD (Delhi) 241**, dated 20.02.2017 so that the “*carceral period reforms the convict*” it is essential that the following directives detailed hereunder are given to the reduced sentence of imprisonment.

55. The concerned Superintendent at the Tihar Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible :

- **appropriate correctional courses through meditational therapy;**
- **educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status;**
- **shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent,**
- **ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti – social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons;**
- **adequate counselling being provided to the appellant to be sensitized to understand why he is in prison;**
- **conducting of Psychometric tests to measure the reformation taking place; and**
- **that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.**

56. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date of

release, of the measures being adopted for reformation and rehabilitation of the appellant.

57. Copy of this judgment be also sent to the Director General, Prisons, Delhi and to the Secretary, Law, Justice and Legislative Affairs, GNCTD, Delhi to ensure compliance of the above directions.

58. Thus the impugned judgment dated 23.09.2016 and impugned order of sentence dated 23.09.2016 in Sessions Case No. 100/2013 in relation to FIR No. 99/13, P.S. NDRS is modified accordingly.

59. Criminal Appeal No. 89/2017 is disposed of accordingly. The Registry shall ensure that the copy of the judgment is forthwith served to the appellant and the Jail Superintendent, Tihar.

60. The record of the trial Court be returned forthwith.

Crl. Misc.(Bail) No.142/2017

61. In view of the decision on the main appeal, this application seeking suspension of sentence is dismissed as infructuous.

ANU MALHOTRA, J

ACTING CHIEF JUSTICE

JUNE 20, 2017/mk