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

+ CRL.A. 1108/2016

ASHISH GUPTA

..... Appellant

Through Mr.R.M. Tufail, Mr.Vishal Raj
Sehijpal, Mr.Anwar Ahmed Khan,
Mr.Farooq Chaudhary, Ms.Meenakshi
Joshi and Ms.Preeti, Advs.

versus

STATE

..... Respondent

Through Mr.Ashish Dutta, APP with SI
Harinder, PS Aman Vihar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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23.02.2017

The present appeal has been filed under Section 374 read with Section 482 Cr.P.C. against the judgment of conviction dated 22.10.2016 and order on sentence dated 27.10.2016 passed by the learned Additional Sessions Judge-02, North West District, Rohini Courts, New Delhi in S.C. No.187/2013, FIR No.289/2013, under Section 304/34 IPC, Police Station Aman Vihar.

The facts in brief are that one Sanjay Purohit (deceased) was alcoholic and was admitted in the Drug De-addiction and Rehabilitation Centre, namely, Nasha Mukti Kendra, NGO situated at Plot No.B/93, Lakhi Ram Park, Sector-22, Rohini, Delhi on 27.06.2013. It is alleged that on the intervening night of 29-

30.06.2013, appellant Ashish Gupta and co-accused Rahul Lakra, who were already admitted in the drug de-addiction centre and were kept in the general ward, came to the special ward where Sanjay Purohit along with other inmates was kept to control him, and gave merciless beatings to Sanjay Purohit. It was alleged that due to the beatings given to Sanjay Purohit, he succumbed to his injuries. The deceased was taken to SGM Hospital where he was declared brought dead. A complaint was made by Mr.Dinesh Chander Lakhera on 30.06.2013 on the basis of which, FIR of the instant case was registered. Appellant Ashish Gupta and co-accused Rahul Lakra were arrested.

After completion of investigation, charge sheet was filed in the Court. To prove its case, the prosecution had examined 27 witnesses. After completion of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded. No evidence was adduced by the accused persons in their defence.

After going through the evidence and material placed on record, the trial court convicted the appellant Ashish Gupta and other accused Rahul Lakra for the offence punishable under Section 304 (Part II) read with Section 34 IPC vide judgment dated 22.10.2016. Vide order on sentence dated 27.10.2016, both the convicts have been awarded rigorous imprisonment for 8 years each and to pay fine of Rs.25,000/- each, in default of payment of fine to further undergo simple imprisonment for 3 months for the offence punishable under Section 304 (Part II) read with Section 34 IPC.

Feeling aggrieved by the judgment of conviction and the order

on sentence, the present appeal has been preferred by the appellant.

Arguments advanced by the learned counsel for the appellant as well as learned Additional Public Prosecutor for the State were heard.

During the course of arguments, learned counsel for the appellant has confined his arguments on the quantum of sentence and no challenge to the judgment of conviction has been made.

Consequently, the judgment of conviction dated 22.10.2016 convicting the appellant under Section 304 (Part II) read with Section 34 IPC is upheld.

On the quantum of sentence, submissions made by the learned counsel for the appellant is that the appellant has been awarded 8 years rigorous imprisonment and he has already undergone about 3 years and 7 months in custody. It is further submitted that the appellant is having old aged parents and two children in his family. The appellant belongs to a poor strata of society and his entire family is dependent upon him as he is the sole bread earner of his family. It is further submitted that the amount of fine imposed by the trial court has already been deposited.

Perusal of record shows that the incident of the present case is dated 30.06.2013. As per the nominal roll of the appellant, as on 03.12.2016, he has already undergone 3 years, 4 months and 15 days and earned total remission of 2 days. The sentence awarded to the appellant is 8 years and the matter is pending since 2013. The receipt of fine has already been placed on record which shows that the amount of fine has been deposited by the appellant.

In view of the above mentioned facts and circumstances, the

sentence awarded to the appellant is reduced to the period already undergone by him.

The appellant, in custody, be released forthwith if not required in any other case.

A copy of the order be sent to the Superintendent (Jail) for information.

With the above observations, the present appeal stands disposed of.

Pending application, if any, is also disposed of.

Dasti.

P.S.TEJI, J

FEBRUARY 23, 2017
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