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

+ **CRL.A. 511/2015**

MUNNI LAL

..... Appellant

Through: Mr. Chetan Lokur, Adv. for appellant
Appellant produced from jail.

versus

STATE

..... Respondent

Through: Ms. Manjit Arya, APP for State with
SI Punit, P.S. K.N. Katju Marg.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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09.10.2018

1. Aggrieved by his conviction under Section 304 Part I IPC and sentence of 10 years awarded to him besides fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for 6 months, appellant has preferred this appeal.
2. Brief facts of the case are that appellant is brother of Inder Pal (deceased). Appellant is a rickshaw puller. Appellant's brother-Inder Pal was a beggar. Both of them belonged to a poor family. Appellant's nephew-Raju (son of Inder Pal) had constructed a house on the land of appellant without his permission. No money was paid to the appellant towards the cost of the land, as a consequence of which their relations got

strained. As per the prosecution, on 20.10.2012 appellant came to deceased's house and gave three-four blows on his person by a wooden plank resulting in injuries to the deceased as a consequence whereof deceased fell down on the road and became unconscious. He was removed to the hospital by an ambulance. PW5 Ramesh Kumar made a call at number 100 pursuant whereof police officials arrived at the spot and investigations began.

3. The incident was witnessed by PW2 Jitender Yadav and PW3 Rakesh. Initially, FIR was registered under Section 308 IPC. However, after the death of Inder Pal offence under Section 308 IPC was converted to offence under Section 302 IPC. Appellant was arrested. After completion of investigation charge sheet was filed.

4. Learned trial court framed charge under Section 302 IPC to which appellant pleaded not guilty and claimed trial.

5. Prosecution examined 19 witnesses. PW2 Jitender Yadav and PW3 Rakesh are eye witnesses and are main witnesses to prove the incident. They supported the prosecution version. PW2 deposed that on 20.10.2012 at about 2 pm appellant came on his rickshaw to meet his brother-Inder Pal. At that time he (PW2) was going to a nearby restaurant to get food. All of a

sudden, he heard some noises. He saw the appellant hitting Inder Pal with a rectangular shaped *fatti* (plank) on his head and face about three or four times, as a result of the blows, deceased became unconscious. PW3 has corroborated this version. Their statements had remained unshattered in their cross-examination and have been accepted by the trial court as trustworthy and reliable.

6. PW5 Ramesh Kumar deposed that he had gone to temple to offer prayers, where he saw that a huge crowd had gathered there and one beggar was lying in a pool of blood with head injury. He made enquiries and came to know that injured was given beatings by his brother-Munni Lal. He made a call at number 100.

7. Dr. Arvind had examined the deceased on 20.10.2012 vide MLC Ex. 17/A. PW17 Dr. Deepti Bhalla has proved the MLC by identifying the handwriting and signatures of Dr. Arvind. Dr. Bhim Singh had conducted the post-mortem. PW18 Dr. R.P. Singh stepped in the witness box and proved the post-mortem of Dr. Bhim Singh as Ex. PW18/A. All other witnesses are formal in nature. PW1 HC Yogender Singh had recorded the FIR and has proved the same as Ex. PW2/B. PW6 SI Anil Kumar was Incharge Crime team and had inspected the spot and gave his report which

he has proved as Ex. PW6/A. PW7 Ct. Ravinder had taken photographs of the spot and has proved the same as Ex. PW7/A collectively and their negatives as PW7/B collectively. PW8 W/Ct. Ritu was posted at Police Control Room on 20.12.2012 and had received the information about the incident from mobile no. 9811114015. She proved the PCR Form as Ex. PW8/A. PW9 HC Narender Kumar was Malkhana Mohrrar at police station K.N. Katju Marg and has proved the relevant entries regarding deposit of case properties, forwarding of the same to FSL and receipt thereof from the FSL after examination. PW10 Sh. Dhirendera Kumar Rai had removed the deceased to BSA Hospital in Ambulance and has deposed in this regard. PW11 Insp. Manohar Lal had prepared the site plan on the pointing of PW16 SI Suresh Chand and has proved the same as Ex. PW11/A. PW12 Ct. Arun was present with Investigating Officer SI Suresh Chand (PW16) and has deposed in this regard. PW13 Israr Babu is Nodal Officer of M/s Vodafone. He produced the Call Detail Records and other details in respect of mobile no. 9811114015 in Court. As per the record, the said mobile number belonged to Ramesh Chander (PW5). PW14 Chhater Pal is brother of deceased and appellant. He had identified the dead body of deceased and has proved his statement in this regard as Ex. PW14/A. PW15 Sh. V.

Shankar Narayan is a Scientific Expert and has proved his report as Ex. PW15/A. PW16 SI Suresh Chand is first Investigation Officer. PW19 Insp. Arvind Sagar Negi is second Investigating Officer. He had recorded the statement of Raju (Ex. PW4/A) and Chhater Pal (Ex. PW14/B) regarding identification of dead body. He also prepared scaled site plan and proved the same as Ex. PW11/A.

8. From the testimonies of PW2 Jitender Yadav and PW3 Rakesh, trial court has concluded that appellant had indeed given wooden *fatti* blow on the head of deceased-Inder Pal resulting in injuries on the head of deceased, as a consequence whereof he died. As per the post-mortem report, head injury caused by a blunt object had resulted in death of the deceased. PW2 and PW3 have deposed about the blows given by the appellant with a wooden *fatti* on the head of the deceased. Trial court has concluded that medical evidence supports the prosecution case. It was contended before the trial court that PW2 and PW3 had not accompanied the deceased to hospital which created a doubt about their presence at the spot. Trial court has noted that deceased was a beggar. PW2 and PW3 were not related to him. Deceased was removed to BSA Hospital in CATS Ambulance. In these circumstances, even if witnesses did not accompany the deceased to the

hospital the same would not make any difference. I do not find anything wrong in this view, taken by the trial court. The appellant has been convicted for the offence punishable under Section 304 Part I IPC in view of the circumstances in which injuries were caused. Trial court held that no evidence was lead to show that assault was premeditated and pre-planned. I also do not find the assault to be pre-meditated or pre-planned in the facts and circumstances of this case. I find the view taken by the trial court in conformity with the evidence adduced by the prosecution.

9. During the course of hearing, learned counsel for the appellant has failed to point out any discrepancy in the statements of PW2 Jitender Yadav and PW3 Rakesh and other witnesses, more particularly the medical evidence, so as to make them untrustworthy and unreliable, inasmuch as, has given up the challenge to conviction of appellant on merits, on instructions of the appellant, who has been produced from the jail. The only prayer pressed by the counsel is that sentence of appellant may be reduced to the period already undergone by him in the facts and circumstances of this case. It is submitted that appellant is a rickshaw puller. His brother (deceased) was a beggar. A dispute arose between them over the immovable property and in a rush of heat the appellant gave wooden *fatti* blows on the

person of deceased. Appellant was not armed with any deadly weapon. The assault was not premeditated. It is the blow given on the head unfortunately proved fatal. Appellant is in incarceration for more than seven years. It is prayed that sentence of appellant may be reduced to the period already undergone by him.

10. It is trite law that purpose of awarding sentence of imprisonment is twofold; one is punitive and other is reformatory. It is not necessary that in each and every case the maximum sentence has to be awarded. In *State GNCT of Delhi vs. Mukesh*, 2011 (3) Crimes 111, a Division Bench of this Court has observed thus: “a proper sentence is amalgamation of many factors such as the nature of offence, the circumstances extenuating or aggravating of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community

need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the court in deciding upon the appropriate sentence”.

11. Appellant has already completed sentence of seven years and one month out of the total sentence of 10 years. Appellant has no previous criminal record. Appellant's mother is aged about 80 years and is stated to be unwell. Accordingly, while upholding the conviction of appellant under Section 304 Part I IPC, his sentence is reduced to the period already undergone by him. Appellant be released from the jail, if not required in any other case.

12. Appeal is disposed of in the above terms.

13. Copy of the order be sent to the concerned Superintendent Jail for serving it on the appellant and for compliance.

A.K. PATHAK, J.

OCTOBER 09, 2018

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