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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.A. 583/2016 and CRL.M.(BAIL) 1860/2019**

LETMINJOY HAKIP ..... Appellant  
Through: R.A. Worso Zimik and Mr  
Soreishang Kharay, Advocates.

versus

STATE ..... Respondent  
Through: Mr Amit Gupta, APP for State.

**CORAM:**  
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**  
% **20.02.2020**

**VIBHU BAKHRU, J**

1. The appellant has filed the present appeal impugning a judgment dated 26.04.2016, whereby the appellant was convicted of an offence punishable under Section 304 Part I of the Indian Penal Code, 1860 (IPC). The appellant also impugns the order dated 28.04.2016, whereby the appellant was sentenced to serve nine years of rigorous imprisonment and a fine of ₹10,000/-. And, in default of payment of the fine, to undergo simple imprisonment for a further period of six months.

2. The appellant was prosecuted pursuant to the registration of the FIR bearing No. 172/2014 under Section 302 of the IPC, with Police Station Maurice Nagar. The said FIR was registered at 01:55 a.m. on 30.08.2014. Two boys named Thangboilen Haokip and Paokhothang Haokip had produced the appellant before the Police Station and had

stated that the appellant had murdered one Ngulmin Lal Haokip, the brother of Paokhothang Haokip, and the dead body was lying in the appellant's room. Inspector Sanjay Kumar Gaur and SI Ct. Ram Chander and Ct. Paramvir went to the spot along with Thangboilen and found dead body of the deceased along with other articles, which was identified as the body of Ngulmin Lal Haokip. There were injury marks on the body including the throat of the deceased. On inspection of the said room, a kitchen knife, one empty liquor bottle, two plastic glasses and one data cable were found lying around the dead body.

3. Thangboilen Haokip deposed as PW1. He stated that he had completed his graduation from the Delhi University and was residing at D-10, Room No.5, Gali Mazar Wali, Christian Colony, Delhi and was preparing for the Civil Services Examination. He stated that on the intervening night of 29.08.2014 and 30.08.2014 at around 12:45 am (night), he was present in his room and was visited by the appellant. The appellant had come to his room and informed that he was in some problem. He did not explain anything but asked PW1 to accompany him to his room. He stated that on his way, the appellant informed him that he had got drunk with his friend Lalboy (Ngulmin Lal Haokip) and they had a physical fight. He stated that after the fight, Lalboy (Ngulmin Lal Haokip) remained still and did not move. He stated that when they reached the room, he saw that Lalboy was already dead. He testified that in the meantime, the brother of the deceased Paokhothang Haokip reached there and they took the appellant to PS Maurice Nagar, where the appellant was handed over to the police.

4. He stated that thereafter, he returned to the spot and police recovered the kitchen knife; one black colour data cable; one medical treatment slip in the name of the accused (Ex.PW1/F); one half bottle of liquor without lid; two plastic glasses and one empty Pepsi bottle. Apart from the above, certain ATM Cards, DTC Bus pass, student ID Card, two metro cards and a sum of ₹30/- were also seized.

5. The post-mortem report was conducted and the report indicated that the deceased had several external injuries. The description of the said injuries, as noted by the Trial Court in the impugned order, is set out below:

- “1. Reddish abrasion 3cm x 1 cm on right side of forehead, 3 cm above mid point of right eyebrow.
2. Multiple linear superficial reddish abrasions intermingling with contusion over area of 13 cm x 7 cm over front and sides of neck in upper half 5 cm below chin and 6 cm above supra sternal notch.
3. Multiple contusions reddish in colour present over area of 23 cm X 4 cm on left upper half of chest starting from clavicle extending inwards to the midline upto the level 6.5 cm above xiphi sternum.
4. Reddish bruise 7.5 cm x 5 cm present on right side of chest 1cm below midline of right clavicle.
5. Four linear bruise over area of 13 cm x 3 cm present on upper half of left side of abdomen. ,6.

Red bruise 3cm x 1.5 cm on front of right leg 20 cm below the right knee joint.

6. On internal examination, Doctor found the following findings :

1. On opening the chest and neck massive collection of haematoma of red colour present all over the lower part of neck and both sides of upper half of chest in the muscle.
2. Fourth rib of right side was fractured in mid axillary line, fifth rib of left side was fractured in mid-axillary line with extravasation of blood in surrounding area About 100 ml of fluid and cotted blood present in each pleural cavity.
3. Multiple laceration varying in size from 1cm x 1 cm to 0.5 cm X 0.5 cm present in middle lobe and upper lobe of both sides lungs.
4. On examining the rectum, anal orifice was opened with no fresh bleeding and abrasion.”

6. In all, the prosecution had examined eighteen witnesses which included official witnesses as well as one Dr. Sandeep Garg, who had conducted the post-mortem. Dr. Garg deposed as PW18. He testified that the deceased had died due to shock resulting from polytrauma. In his cross-examination, he explained that the shock was neurogenic shock and haemorrhagic shock due to blood loss from several injuries.

7. A plain reading of the testimony indicates that there was not much external blood loss from the injury, however, there was internal bleeding. He also testified that none of the injuries, except one, suffered

or found on the dead body of the deceased were as a result of any sharp weapon. Only the injury found on the neck of the deceased was caused by a sharp instrument and admittedly, the said injury was superficial and not deep. It is, thus, clear from the evidence brought on record that the deceased had died by the blows that were inflicted by a blunt weapon. However, no blunt weapon was recovered.

8. The statement of the appellant was recorded under Section 313 of the Cr.P.C. In his defence, he stated that on the date of the incident, he and the deceased were drinking in his room, where he was residing as a tenant. He stated that after consuming three or four drinks, they were talking about the places where, they would like to visit during vacation. There was a medical prescription slip laying under the pillow of the deceased, who had seen the same. He stated that on seeing the paper, the deceased started laughing and teasing the appellant by saying that he was mentally disturbed person. This irritated him so much and he got angry and a quarrel begun and they started fighting and he held his neck. The deceased defended himself and his fingernail had left a cut mark on the neck of the deceased. He submitted that after fighting, they both sat on the mattress and he started consuming liquor. He did not pay any attention to what had happened but found that the deceased was holding his chest with both hands. He abused him verbally but he found that he was not moving. He then went to the room of Thangboilen and informed him that the deceased was not responded.

9. The Trial Court had evaluated the evidence on record, including the photographs taken at the site and had concluded that the appellant

was guilty of the offence punishable under Section 304 Part I of the IPC. The Trial Court reasoned that since the dead body was found in the room of the appellant, the onus to explain as to what has happened rested on him. However, the explanation provided by the appellant is not found credible because as per the crime team report, blood was found all over the room as well as on the wall. The Trial Court had reasoned that the injury on the neck of the deceased could not be caused by the fingernail of the appellant, as the fingernail clipping did not indicate any blood. The Court also noted that there was blood on the wall in the room and this also belied the explanation provided by the appellant. The Trial Court rejected the appellant's contention that the fight between the appellant and the deceased had ensued on account of the grave and sudden provocation.

10. The finding of the Trial Court that there was blood all over the walls in the room is an over statement. Although there were a few blood marks on the wall, the deceased did not have much external bleeding. Admittedly, there was no external injury except contusion over area over front and sides of neck. And, it is brought on evidence that no blood was oozing out of the said injury. The photographs placed on record also do not indicate any blood oozing out of the injury on the neck and below the chin of the deceased. Although there is some blood marks found in the room, the same are clearly not from the injury as inflicted by a sharp weapon. The knife found in the room was a kitchen knife and there is no evidence to conclusively establish that the appellant had used the knife and inflicted any injury. As is evident from

the deposition of PW18 (Dr Sandeep Garg) and the post-mortem report, the deceased had died on account of polytrauma (neurogenic shock and haemorrhagic shock). The blood loss was due to haemorrhage from internal injuries resulting in a shock.

11. Given the facts and circumstances of this case, this Court is of the view that an offence under Section 304 Part I of the IPC has not been established. There is little evidence to establish that the appellant had any intention of causing death or of causing bodily injury that was likely to cause death. There is no evidence of any past animosity between the deceased and the appellant. There is also no material to disbelieve the statement of the appellant that he and the deceased were friends and were having drinks together. Two plastic glasses and one empty liquor bottle had been recovered from the said room. Both the boys were from the same community (Kuki) and were students in Delhi. However, it is apparent that the blows delivered by the appellant were with a certain degree of ferocity and therefore, even though the appellant may not have had the intention to kill the deceased; he has to be imputed with the knowledge that the blows delivered by him were likely to result in a fatal injury.

12. In view of the above, the contention advanced by the learned counsel for the appellant that the appellant should have been convicted for an offence under Section 304 Part II of the IPC and not Section 304 Part I of the IPC, is merited. Accordingly, the appellant's conviction under Section 304 Part I of the IPC is modified to a conviction under Section 304 Part II of the IPC.

13. It is also relevant to note that, at the material time, the appellant was a student of the Delhi University. It is also relevant to note that the appellant had surrendered voluntarily before the police on the very same day of the incident and had made no attempt to escape from the law. He has no criminal antecedents and the said mitigating factors are required to be taken into account.

14. The nominal roll indicates that the appellant has already undergone actual custody of five years, two months and seven days as on 13.11.2019 and during the said period has earned remission of one year, one month and twenty-six days. As on that date, the appellant was required to undergo a further sentence of two years, seven months and twenty-seven days. More than four months have since elapsed and, therefore, the appellant would now be required to serve two years and four months if the sentence awarded is upheld.

15. Considering that the appellant's conviction has been modified from the commission of an offence under Section 304 Part I of the IPC to Section 304 Part II of the IPC and considering the mitigating circumstances, this Court is of the view that it would be apposite to reduce the appellant's sentence to the sentence already served. It is so directed.

16. This Court is also informed that the family of the deceased has been compensated as per the customary practice of the community of the *Kuki* Community (to which both the appellant and the deceased belong).

17. The learned counsel appearing for the appellant states that the family of the deceased was paid a sum of ₹3,00,000/- and one *Mithun* (Buffalo).

18. Considering the above, the fine imposed on the appellant is also waived. The respondents are directed to release the appellant forthwith, if he is not required in any other proceedings.

19. The appeal is disposed of in the aforesaid terms. The pending application is also disposed of.

20. Order *dasti* under signature of the Court Master.

**FEBRUARY 20, 2020**  
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**VIBHU BAKHRU, J**

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