

**(2013) 07 DEL CK 0475**

**Delhi High Court**

**Case No:** Criminal A. 882 of 2013

Anil Kumar @ Chhotu

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

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**Date of Decision:** July 16, 2013

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 374(2)
- Penal Code, 1860 (IPC) - Section 302, 304, 323, 34

**Hon'ble Judges:** G.S. Sistani, J; G.P. Mittal, J

**Bench:** Division Bench

**Advocate:** R.K. Anand, for the Appellant; Richa Kapoor, for the Respondent

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### **Judgement**

G.S. Sistani, J.

CM 10359/2013.

1. Exemption allowed subject to all just exceptions. Application stands disposed of.

CM 10358/2013.

2. This is an application filed by the appellant seeking condonation of 553 days" delay in filing the present appeal.

3. Notice. Learned counsel for the State accepts notice and has no objection if the present application is allowed.

4. Heard. For the reasons stated in the application and in view of the stand taken by counsel for the State, present application is allowed. Delay in filing the present appeal is condoned.

5. Application stands disposed of.

CRL. A. 882/2013

6. Admit. With the consent of counsel for the parties present appeal is set down for final hearing and disposal.

7. Challenge in the present appeal, filed u/s 374(2) of the Criminal Procedure Code, is to the judgment dated 4.8.2011 and the order on sentence dated 10.8.2011 whereby the trial Court has sentenced the appellant and the other co-accused to undergo life imprisonment for the offence of murder under Sections 302 /34 IPC with fine of Rs. 20,000/-and in default of payment of fine, simple imprisonment for a period of six weeks. The appellant and the other co-accused were further directed to undergo rigorous imprisonment for a period of one year for the offence under Sections 323 /34 IPC. All the sentences were directed to run concurrently.

8. The case of the prosecution in nutshell is that on the intervening night of 14/15.05.2007 three persons (present appellant and appellants in Criminal Appeal Nos. 1179/2011, 1250/2011 and 1506/2011) beat up Parvez, PW-4 and others i.e. Najim and Karan Singh @ Billu. It was alleged that PW-4 used to work in a truck bearing No. HR-46C-6332 and Billu and Najim (the deceased) were drivers on duty. The said truck as well as another truck bearing no. HR-46B-6332 were used to ferry goods to specific destinations. One of the appellants, Sukhchain@Bhura, was the driver of the second vehicle bearing no. HR-46B-6332 and the other driver was Gandhi i.e. the co-accused, Anand. All of them allegedly worked for Vijender Singh@Fauji. It is alleged that the goods had been unloaded at some place in Andhra Pradesh, a few days before the incident. PW-4 stated that some money received after unloading the goods had been stolen. The co-accused Sukhchain and Anand suspected PW-4 and the deceased as those who had committed theft. It was alleged that all of them threatened PW-4 and the deceased. After the trucks returned to Delhi, Vijender Singh @ Fauji called PW-4 and Billu inside the office on the first floor. The other three co-accused were also present at that time. Fauji apparently enquired whether PW-4 had committed theft which he denied. It was alleged that similarly Billu and Najim were also questioned. PW-4 stated that all of them were "taken to task" and subsequently severely beaten with dandas in the office itself by the accused. Najim succumbed to the beating in the office; Billu was however alive but badly injured. PW-4 too was injured. The police was informed and the injured as well as the deceased were taken to the hospital. The next morning statement of complainant Billu as well as that of PW-4 and others were recorded by P.S. Samaipur Badli; this led to lodging of an FIR (No. 417/2007 at 9.00 AM). The appellant and other co-accused were arrested during the investigation on 15-05-2007 and they were subsequently charged with committing the offences. They denied guilt and claimed trial.

9. Mr. Anand, learned counsel for the appellant, submits that the co-accused, being Bijendra Singh, Anand Singh and Sukhchain, had preferred their appeals (Criminal Appeal Nos. 1179/2011, 1250/2011 and 1506/2011) and the said appeals have already been decided by a Division Bench of this Court vide judgment dated

14.2.2012 whereby the conviction u/s 302 IPC has been altered to one u/s 304, Part I, and also the sentence has been reduced to rigorous imprisonment for ten years instead of imprisonment for life. Mr. Anand further submits that since the role of the appellant was identical to the role of other co-accused (Appellants in Criminal Appeal Nos. 1179/2011, 1250/2011 and 1506/2011), similar order should be passed with respect to the present appellant.

10. Ms. Richa Kapoor, learned counsel for the State, is unable to point out any difference in role between the present appellant and the other co-accused (appellants in Criminal Appeal Nos. 1179/2011, 1250/2011 and 1506/2011). Ms. Kapoor is further unable to show as to why the judgment dated 14.2.2012 would not be applicable to the facts of the present case as well.

11. We have heard learned counsel for the parties, considered their rival submissions and also examined the judgment dated 14.2.2012 rendered by a Division Bench of this Court in Criminal Appeal Nos. 1179/2011, 1250/2011 and 1506/2011, filed by other co-accused persons. The learned Division Bench has noticed that the facts alleged against the co-accused, Anil Kumar, present appellant, are identical and thereafter clarified that since he was not before the Court the judgment would not preclude his contentions, it would be open for him to independently challenge the findings of the trial court. It would be useful to reproduce Paras 23 and 24 of the judgment dated 14.2.2012 reads as under:

23. Having regard to the above legal principles, and the factual conspectus in this case, we are of the opinion that the conviction u/s 302 IPC requires to be altered to one u/s 304, Part I, in respect of the present appellants. Although the facts alleged against the co-accused Anil are identical, we clarify that since he is not before this court in appeal, nothing stated in this judgment shall preclude his contentions; it is open to him to independently challenge the findings of the Trial Court, if so advised, by preferring his appeal.

24. So far as sentence is concerned, we are of the opinion that the facts of this case reveal that the appellants, belaboured the hapless deceased and the eyewitness on suspicion of their having committed theft. Having regard to the position occupied by the appellant Vijender @ Fauji, i.e. as their employer, and the roles played by the other appellants, in the peculiar circumstances, we are of the opinion that this aspect has to be duly taken note of in the sentence awarded. The sentence of imprisonment for life awarded by the Trial Court is, therefore, altered, and instead, the appellants are hereby sentenced to undergo RI for 10 years. The other sentences imposed by the Trial Court are left undisturbed; all sentences shall operate concurrently.

Accordingly, the present appeal is partly allowed. For the detailed reasons stated in the judgment dated 14.12.2012 rendered in Criminal Appeal Nos. 1179/2011, 1250/2011 and 1506/2011, the conviction u/s 302 IPC is altered to one u/s 304, Part

I. The sentence of imprisonment for life awarded by the trial court is altered and the appellant is hereby sentenced to undergo rigorous imprisonment for ten years. The other sentences imposed by the trial Court are left undisturbed and all the sentences shall operate concurrently.