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

+ **CRL.A. 875/2017**

DEEPAK @ BARKA Petitioner

Through: Mr. Manoj Singh, Adv.

versus

THE STATE NCT OF DELHI Respondent

Through: Mr. Hirein Sharma, Adv.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

ORDER

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08.10.2018

1. This is an appeal directed against the judgment dated 5th November 2014 passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi in SC No.4/2014 arising out of FIR No.531/2013 registered under Sections 147/148/149/302 IPC read with Section 34 IPC at PS Dabri. By the said impugned judgment, the Appellant and the co-accused Naveen ('A-2') were convicted for the offence punishable under Section 302/34 IPC as well as for the offences punishable under Sections 147/148/149 IPC read with Section 34 IPC.

2. This appeal is also directed against the order on sentence dated 28th May 2015 whereby the Appellant, along with A-2, was sentenced

to undergo imprisonment for life along with a fine of Rs.5,000/- each and in default of payment of fine, to undergo further SI for three months for the offence punishable under Section 302/149 IPC. For the offence punishable under Section 147 IPC, both of them were sentenced to rigorous imprisonment for one year and fine of Rs.2,000/- each and in default of payment of fine, to undergo further simple imprisonment for one month. As for the offence under Section 148 IPC, they were each sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.3,000/- each, and in default of payment of fine, to undergo further simple imprisonment for two months. The sentences were directed to run concurrently.

3. At the outset, it requires to be noticed that as far as A-2 is concerned, CrI.A. 903/2015 preferred by him before this Court was allowed by the judgment dated 21st April 2017.

4. The charge against the present Appellant and A-2 was that along with three other co-accused [all of whom were juveniles in conflict with law ('JCLs'), viz. JCL-1, JCL-2, and JCL3] formed an unlawful assembly on 24th September 2013 outside a house at Sitapuri Part II, Delhi; committed rioting by use of force and pursuant thereto, murdered Chetan (deceased), the son of Mahesh Chander Sharma (PW-2), by stabbing him with a knife.

5. It requires to be noticed that as far as the three JCLs are concerned, they were sent up for trial before the Juvenile Justice Board ('JJB').

The Court is informed that the three JCLs were convicted and have since served out the sentences awarded to them by the JJB.

6. PW-5 is the sister of the deceased. She deposed that at around 10 pm on 24th September 2013, she was sitting outside her house at Gali No.2, Sitapuri, New Delhi when five boys came there, started staring at her and passed lewd comments. The deceased objected, at which point the boys started abusing him. The deceased asked them to leave but the boys refused to do so. Thereafter, they assaulted the deceased and exhorted each other to beat him as he was trying to save her.

7. According to PW-5, she tried to intervene but the accused kept beating the deceased. PW-5 identified the three JCLs as holding her brother by his neck and the present Appellant holding the hand of the deceased. JCL-1 apparently took out a knife from his bag and gave it to JCL-2. JCL-2 then uttered the words, “*bada aaya behan ko bachane wala*” and stabbed the deceased in the stomach. According to PW-5, she shouted and called her father. Her uncles Dinesh and Ganesh and certain neighbours also came there. Her father, with the help of her uncles, apprehended three boys on the spot, viz. JCLs 1 and 2 and the present Appellant.

8. The PCR form also records at 10:14 pm on 24th September 2013 that a complaint of ‘stabbing’ was given to the police from a mobile number indicating precisely the place of the incident. The information

recorded was “4-5 ladke gali me chaku le kr aaye hai aur ek admi ko jhagda me chaku mar diya hai”. The further noting at 10:48 pm on 24th September 2013 in the PCR form is that “3 ladke pakad liye”. The fact that the knife was also seized from the boys was also mentioned in the PCR form.

9. The star witness for the prosecution was PW-5 herself. As far as the role of the present Appellant is concerned, nothing much could be elicited by the counsel for the defence in her cross-examination to discredit her clear testimony about his presence and the fact that he was holding the hands of the deceased. A suggestion given to him that after seeing the knife, he withdrew himself from the quarrel was denied by her.

10. At this point, it requires to be noticed that this is one aspect of the matter which distinguishes the case of the present Appellant from that of the co-accused Naveen. In respect of Naveen, this Court in its judgment dated 21st April 2017 noted that Naveen removed himself and ran away from the spot as soon as the deceased was stabbed and therefore distanced himself from the common object. The Court has also noticed that “no evidence could be adduced by the prosecution to establish the common object of the assembly was to do away with the deceased killing”. However, as far as the present Appellant is concerned, he was caught at the spot itself and therefore, his participation in the crime and being present in the end has been clearly

established by the prosecution. The evidence of PW-5 has been corroborated by PW-2 and by her uncles PWs 9 and 11 as well. Moreover, the forensic evidence also clearly establishes the presence and the role of the present Appellant in the crime.

11. Learned counsel for the Appellant then submitted that the nature of crime was such that it should be viewed as culpable homicide not amounting to murder under Section 304 IPC.

12. The Court finds in the post mortem report that a single knife blow was given to the chest of the deceased which proved to be fatal. The incident happened at the spur of the moment with no premeditation. The provocation here was the intervention of the deceased on behalf of his sister who was being harassed. This resulted in a quarrel and one of the JCLs took out a knife, handed it over to another JCL who did the actual stabbing. The role of the present Appellant was of holding the hands of the deceased. While the culpability of the present Appellant would certainly be attracted with the help of Section 34 IPC, considering that there was a single stab injury, although on a vital part of the body of the deceased, the Court is persuaded that the offence would be one of culpable homicide not amounting to murder punishable under Part 1 of Section 304 IPC.

13. The Court is informed that the Appellant has been in custody from the date of the incident. This means that he has been in custody for

more than five years. He is not known to have any previous criminal history and the Court is not informed of any unsatisfactory conduct of the Appellant in jail.

14. Keeping in view the above circumstances, the Court while converting the conviction of the Appellant from the offence under Section 302 read with 149 IPC to one under Section 304, Part I read with Section 34 IPC and sentences the Appellant for the same to the period of imprisonment already undergone by him.

15. As far as the offence under Sections 147 and 148 IPC are concerned, since this Court has already acquitted the co-accused A-2, those offences do not stand attracted. Thus, the present Appellant is acquitted of the said offences punishable under Sections 147 and 148 IPC. The impugned judgment of conviction and order of sentence passed by the trial court *qua* the Appellant stand modified in the above terms.

16. The Court notices that no mention has been made in the impugned order on sentence of the trial Court of compensation being paid to the family/relatives of the victim. For considering this aspect, the Court directs that the judgment of the trial Court as well as the present judgment be sent to the Secretary, Delhi State Legal Services Authority (DSLISA) to consider whether the family of the deceased would be eligible for compensation in terms of the scheme under

Section 357A Cr PC. If they are, the Secretary DSLSA will proceed to pass orders for payment without awaiting further orders.

17. The Appellant will fulfill the requirements of Section 437A Cr PC to the satisfaction of the trial Court. He will be released forthwith unless wanted in some other case. The appeal is disposed of in the above terms.

18. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 08, 2018

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