

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 598/2016**

Date of Decision: 05.12.2016

STATE Petitioner

Through: Mr.Varun Goswami, APP for
State.

versus

BABU LAL Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

GITA MITTAL, J (Oral)

Crl.M.A.No.17574/2016 (Condonation of delay)

We have heard Mr.Varun Goswami, learned Additional Public Prosecutor for the State on this application for condonation of delay.

For the reasons stated in the application, the delay in filing the petition is condoned. This application is allowed.

CRL.L.P. 598/2016

1. The instant petition has been filed seeking leave to appeal against the impugned judgment dated 4th March, 2016 as well the order dated 16th March, 2016 on the point of sentence passed in Sessions Case No. 134/01 arising out of FIR No. 398/2012, registered at PS Shahbad Dairy under Section 304/323/34 IPC. After investigation, the police filed the charge-sheet for commission of offence under these sections only. The case was committed by an order passed on 21st February, 2013 by the court

of learned Metropolitan Magistrate for trial by Sessions Court when it was registered as Sessions Case No. 134/01.

2. It appears that vide order dated 23rd February, 2013, charges under Section 302/323/34 IPC came to be framed against the respondents, who pleaded not guilty and claimed trial.

3. During the pendency of the case before the trial court, accused Bhapi absconded and by an order dated 29th July, 2015 was declared a proclaimed offender. As such the trial proceeded only against Babu Lal/the respondent herein.

4. In order to substantiate its case the prosecution examined 19 witnesses including an eye-witness Sh. Vijay as PW-3. The trial court recorded the statement of Babu Lal under Section 313 Cr.P.C. and he was given an opportunity to explain the incriminating evidence. He denied the same and pleaded innocence claiming false implication in the case. No defence evidence was led.

5. After a detailed consideration of the entirety of the matter by the judgment dated 4th March, 2016, the learned trial court has found the respondent Babu Lal guilty of an offence of culpable homicide not amounting to murder punishable under Section 304 Part-II IPC. On the point of sentence the learned trial court by order dated 16th March, 2016, sentenced the respondent rigorous imprisonment for four years with benefit of Section 428 of Cr.P.C. besides fine of Rs. 2000/- for commission of the said offence and in default of payment of fine the respondent was sentenced to undergo rigorous imprisonment for two months.

6. This petition has been filed by the State under Section 378 Cr.P.C. seeking leave to appeal urging that the prosecution had established commission of the offences under Section 302/323/34 IPC and that the respondent deserves to be convicted for commission of these offence and also consequently, enhancement of the punishment awarded.

7. We have heard Mr. Varun Goswami, learned APP for the State who has taken us through the record of the case. We find that so far as the incident dated 4th November, 2012 is concerned, the witness has deposed that Sonu was his friend; that both of them used to roam around together, had meals together. The accused persons i.e. Babu Lal and Bhapi used to reside with their families in their neighbourhood and that all were rag pickers used to return back from their work during late hours in the night. So far as the incident is concerned, the witness Vijay-PW3 has stated that on 4th November, 2012 at about 12:30 am; after taking meals Sonu and he had visited the house of the respondent where they had altercations with Smt. Janara Bibi wife of Babu Lal as well as the wife of Bhapi. The accused persons were not present in the house at that time. Sonu (since deceased) and the witness returned to their house. But since the said incident had left bad impact on their mind, they decided to revisit the residence of the accused persons to sort out the issue with the accused persons. Upon their return, the witness states that in the ensuing conversation regarding the previous incident, the accused persons lost their temper; started blaming them and pushing them around and beating them.

8. During the course of this quarrel Sonu (since deceased) hit a punch on the face of Babu Lal which further agitated the accused persons. During this altercation, Babu Lal picked up one big branch out of some branches of the tree lying in front of his house and hit the same on the head of Sonu. Resultantly, Sonu fell down and sustained injuries and they were removed to the hospital. At the hospital, Sonu received medical treatment and was discharged. However, Sonu subsequently succumbed to these injuries.

9. The impugned judgment has carefully considered the medical evidence in the nature of the post-mortem examination report dated 5th November, 2012 (Ex.PW-15/A) and has extracted the injuries noted by the doctor. The prosecution has also examined Dr Vijay Dhankar who had conducted the post-mortem as PW-15. The doctor has opined that the cause of death was the combined effect of cerebral damage and hemorrhagic shock consequent to multiple injuries to the head, neck, chest and limbs. It is also opined that injury Nos. 5 and 6 were caused by a linear hard object like a lathi/danda and that the injuries to the chest and limbs were sufficient to cause death in ordinary course of nature. The doctor had also opined that the injuries on the body of the deceased could be caused by the weapon examined which was branch of the tree.

10. In its judgment, the trial court has also carefully analyzed the evidence of prosecution so far as the incident is concerned. The solitary witness who had testified with regard to the circumstances in which Sonu had suffered the homicidal injuries is the evidence

of Vijay (PW-3). The learned Judge has observed that the deceased Sonu alongwith this witness had outraged the modesty of the wife of accused Babu Lal which circumstance had actually provided the provocation for the incident. It is pertinent to be noted that the trial court has observed with regard to this incident, an FIR (397/2017 Ex.PW19/D1) for commission of an offence under Section 351/354/34 IPC had been registered against the deceased Sonu as well as the witness Vijay (PW-3) on the complaint of the wife of the Babu Lal.

11. So far as the weapon with which the injuries were caused, it has been noted that the same was in the nature of a weapon branch found lying in front of the residence of the accused, which was intended to be used as fuel, therefore, no dangerous weapon had been used by the appellant.

12. The deceased Sonu was found to be under the influence of alcohol (heavily drunk) at the time of the incident. The trial court has also noted the conduct of the Vijay (PW-3) and Sonu in having outraged the modesty of the wife of Babu Lal at her residence and thereafter having returned to the premises. It has been established in the evidence before the trial court that prior to the incident in question, the deceased Sonu as well as accused persons were friends and used to sit together. In our opinion, there is no evidence of any previous enmity between them.

13. After detailed consideration of the evidence, the trial court has concluded that Babu Lal had inflicted the stick blow on the head of Sonu without pre-meditation in a sudden fight and in the

heat of passion observing that the quarrel had taken place between the accused and the deceased in the spur of the moment in which assaulted blow was inflicted on the head of the deceased without any intention to cause death.

14. As per the FSL result Ex.PW-19/D2, the blood sample of the deceased contained ethyl alcohol 104.8 mg/100 ml which shows that the deceased Sonu was heavily drunk at the time of the incident. The MLC of the deceased as well as the MLC of Vijay (PW-3) also reflects that both of them were heavily drunk at the time of incident.

15. In view of the above, we are of the view that there is no merit at all in this petition which is hereby dismissed.

16. It is made clear that we are not examining the petition from the perspective of any challenge by the respondent. The present petition is on a prima facie consideration on the application filed at the behest of the prosecution to the effect that the conviction and the sentence needed to be modified from the perspective of enhancement. This order shall not come in the way of an examination on merits of the impugned order from the perspective of the respondent, if the same is challenged by way of an appeal.

GITA MITTAL, J

ANU MALHOTRA, J

DECEMBER 05, 2016/mr