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

+ CRL.L.P.No.279/2016 & Crl.M.A.No.8362/2016

% Date of decision : 14th March, 2017

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through: Ms. Aashaa Tiwari, APP for
the State.

versus

VARUN KUMAR Respondent
Through: Mr. S.N. Parashar, Adv.

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE ANU MALHOTRA**

JUDGMENT (ORAL)

GITA MITTAL, J.

Crl.M.A.No.8362/2016

1. Heard.
2. We are satisfied that the State was prevented by sufficient cause from bringing this leave petition within the statutory period of limitation. Delay in filing the leave petition is condoned.

This application is allowed.

CRL.L.P.No.279/2016

3. We have heard Ms. Aashaa Tiwari, learned APP for the petitioner-State and MR. S.N. Parashar, learned counsel for the

respondent in this petition under Section 378(3) of the Code of Criminal Procedure, 1973 filed by the State seeking leave to appeal against the judgment dated 11th December, 2015 whereby the trial court had convicted the respondent for commission of an offence under Section 308 of the IPC for 3 years and acquitted him for commission of an offence under Section 307 IPC in SC No.112/14 arising out of FIR No. 18/13 registered by Police Station Chanakya Puri.

4. The State has sought enhancement of the consequential order of sentence dated 18th December, 2015 imposed upon the respondent whereby he was released on probation of good conduct on furnishing a personal bond in the sum of ₹10,000/- with one surety in the like amount for a period of three years and payment of compensation of ₹20,000/- to the victim.

5. So far as the circumstances in which the court has acquitted the respondent of the charge under Section 307 IPC is concerned, we find that the same have been considered in para 30 of the impugned judgment which reads thus :

“30. In the case in hand, it has categorically come on record from the depositions of prosecution witnesses that on 24.01.2013 at about 09.00 PM at footpath in front of Masjid Sanjay Camp within the jurisdiction of PS Chankyapuri accused Varun had caused injuries on the person of Nand Kishore with a chopper vide Ex.P1. It has also come on record that on 24.01.2013, on receipt of DD no.34A, which is Ex.PW2/A, PW2 SI Ramvir Singh along with HC

Anil went at RML Hospital, where injured was declared 'unfit' for statement. PW14 Babloo [worker of victim] being eye witness of the incident and upon his statement the present case was registered. He has correctly identified the accused as culprit and he testified that accused caused injuries to victim Nand Kishore with choppar, vide his statement Ex.PW14/A and site plan as Ex.PW14/B. Moreover, PW1 Nand Kishore, victim in this case has also categorically stated that on 24.01.2013 accused Varun Kumar attacked upon him with a choppar blow on his face which struck him on the right side. He has also testified that he has a meat shop of fish on the patri near Masjid and he had to take Rs.350/- from the accused Varun Kumar. On this issue a quarrel took place with accused. Other material witnesses i.e. PW4 Deena Shankar Singh and PW5 Fazrool Rehman have also supported the prosecution case. Besides, PW15 Dr. Dinesh had examined victim Nand Kishor vide MLC no.E/12543/13 vide Ex.PW13/A on 24.01.03 and after perusal of the record he had mentioned that the final opinion as to the nature of injuries to be given by neurosurgeon. His writing is at point B on MLC Ex.PW12/A and signed the same at point C. As per record the nature of injuries is grievous as given by Dr. Manish Rawat, neurosurgeon. As per record on the MLC it is written "alcoholic breath present". As per records when the patient arrived in the hospital he was unfit for statement. Keeping in mind the observations made in above referred

judgment, I am of the view that act done by accused should be scrutinized carefully and taking resort to judgment **Ansarudin v. State of Madhya Pradesh, (1997)2 Crimes 157 (MP)** referred above, it is not necessary that injury, capable of causing death, should have been inflicted. What is material to attract, the provisions of section 307 is the guilty intention or knowledge with which the all was done, irrespective of its result. The intention and knowledge are the matters of inference from totality of circumstances and cannot be measured merely from the results. Having perused the testimonies of all the material witnesses i.e. PW1 Nand Kishor, who happens to be victim in this case, it has come on record that there was a dispute over money i.e. Rs.350/-, which he had to take from accused and upon this issue a quarrel had taken place on 24.01.2013. Simultaneously, it has also come on record as per MLC of injured PW13/A that he was having alcoholic breath. Further on perusal of the testimonies of PW4 Deena Shankar Singh and PW5 Fazrool Rehman it has come on record that they have not deposed on material aspects. Hence, they were cross examined by the learned APP. They have denied that in their presence accused had caused injuries to the victim. In light of these facts and circumstances of the case, I am of the view that prosecution has miserably failed to prove on record that accused had intention to kill precisely for the reasons that accused caused sharp injuries to the victim on grave and sudden

provocation with chopper blow Ex.P1, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. Thus, prosecution has successfully proved its case beyond reasonable doubt for the offence u/s 308 IPC.

*Accordingly, accused Varun Kumar is **convicted** for the offence 308 IPC; and*

I absolve accused Varun Kumar for the offence u/s 307 IPC.”

6. Nothing has been pointed out by the petitioner which would enable us to take a view different from that taken by the trial court.

7. The respondent was aged barely about 18 years as on 18th December, 2015. The trial court has noted that he was looking after old parents and two young sisters. The respondent was also not a prior convict. In fact, there is no criminal case ever registered against him.

8. It is also not disputed that even after the passing of the order dated 18th December, 2015, the respondent has not been implicated in any other case.

9. It is also necessary to note that the respondent has since deposited the amount of compensation awarded by the trial court by the order dated 18th December, 2015.

10. Mr. S.N. Parashar, Advocate has handed over a copy of receipt No.A-433259 dated 21st December, 2015 acknowledging receipt of the amount of ₹20,000/- being the compensation awarded

by the trial court by the order dated 18th December, 2015. It would, therefore, appear that the respondent has complied with the order on sentence as well.

11. It is also to be noted that he had submitted the personal bond of good conduct as directed by the trial court and the period of the bond of 3 years has since expired.

12. In view thereof, we find no merit at all in this petition which is hereby dismissed.

GITA MITTAL, J

ANU MALHOTRA, J

MARCH 14, 2017/kr

