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

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Judgment delivered on: 24.07.2017

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CRL.A. 720/2017

SUBHASH ROY & ANR.

..... Appellants

Through: Mr. V.K. Ohri, Mr. S.S. Bhatia and
Mr. Rudra Pratap, Advocates.

Versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Ms. Rajni Gupta, Additional Public
Prosecutor.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE NAJMI WAZIRI

SIDDHARTH MRIDUL, J (Oral)

Crl.M.A. No.11624/2017 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed off.

CRL.A. 720/2017 & Crl.M.A. No.11623/2017

3. The present appeal assails the order on conviction dated 13th April, 2017, and the order on sentence dated 19th April, 2017, passed by the learned Additional Sessions Judge, Saket, New Delhi, in Sessions Case No.52/2011, convicting respondent No.2, Vijay Virdhi, under the provisions of Sections 299/304 Part II read with Section 308 of the Indian Penal Code, 1860 (for short 'IPC'). Respondent No.2 has been sentenced to undergo rigorous imprisonment for a period of 4 years for the offence punishable

under the provision of Section 304 Part II IPC, and to pay a fine of Rs.5,00,000/- (Five Lacs) as compensation to be given to the parents of the deceased, namely, Shailesh Roy. In the event of default of payment of compensation, Respondent No.2 was sentenced to further undergo simple imprisonment for a period of one year. Further, Respondent No.2 has been sentenced to undergo rigorous imprisonment for a period of 3 years for the offence punishable under the provision of Section 308 IPC; and a fine of Rs.2,00,000/- (Two Lacs) was imposed to be paid to the injured victim, namely, Sidharth Roy, the Appellant No.2 herein, as compensation. In the event of default of payment of fine he was sentenced to further undergo simple imprisonment for a period of one year. Both the sentences were ordered to be run concurrently.

4. The said judgement and order dated 13.04.2017 and 19.04.2017, respectively, were impugned by Respondent No.2 before a Single Bench of this Court, in Crl. A. No.448/2017 titled as “*Vijay Viridi vs. State (GNCT of Delhi)*”. Whilst upholding his conviction under the provisions of Sections 299/304 Part II read with Section 308 IPC, the Single Bench of this Court by its judgment dated 29th May, 2017, modified the sentence imposed upon Respondent No.2 from four years rigorous imprisonment to three and a half years rigorous imprisonment.

5. The instant appeal has been preferred by Mr. Subhash Roy, the father of the deceased, Shailesh Roy; and Mr. Sidharth Roy, the injured-victim. The Appellants by way of the present appeal seek to invoke the provision under Section 372 of the Criminal Procedure Code, 1973 (for short ‘Cr.P.C.’), which provides for an appeal to be preferred by the victim when

the accused is either convicted and sentenced for a period, that is considered inadequate in the facts and circumstances of the case or has been acquitted.

6. For the sake of facility, it would be advisable to extract the relevant provision, which reads as follows:-

“372. No appeal to lie, unless otherwise provided. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.”

7. Brief facts of the case of Respondent No.2, as enumerated in the impugned judgment dated 29th May, 2017, are that on 28.11.2011 at about 4.45 AM, a quarrel had taken place between the accused persons and Appellant No.2 and Mr. Shailesh Roy, the deceased, resulting into a brawl with fist and dandas at the tea stall of Radharaman, at Gurudwara Chowk in front of Gali No.1, Fruit Market, Ratia Marg, Govindpuri, New Delhi. In the said quarrel Appellant No.2 had sustained injuries on the right side of his forehead and his right eye; and Mr. Shailesh Roy had died due to the injuries sustained by him in the incident at the hands of the accused persons. After completion of investigation and deposition of relevant witnesses, Respondent No.2 was held guilty of the offence with which he was charged and was sentenced to imprisonment vide said judgment and order on sentence dated 13.03.2017 and 19.04.2017, respectively.

8. Mr. Ohri, learned counsel appearing on behalf of the appellants, would invite our attention to a decision of the Hon'ble Supreme Court in **Roopendra Singh v. State of Tripura and Ors.** reported as 2017 (2) JCC 1303, to urge that even when an appeal preferred by the State, against the

acquittal of an accused or seeking enhancement of the sentence imposed upon the accused on the ground of it being inadequate, is dismissed by the Appellate Court, the right of the victim to assail the same judgment and order is absolute.

9. Mr. Ohri, would invite our attention to paragraphs 9 and 10 of the report in **Roopendra Singh** (*supra*), to urge that in the present case although an appeal preferred by Respondent No.2 has been disposed off by a Single Bench of this Court vide said judgment and order dated 29.05.2017, the present appeal is still determinable independently and substantively, *inter alia*, on the ground that the said order of the Ld. Single Judge, upholding his conviction under the provisions of Sections 299/304 Part II read with Section 308 IPC, whilst modifying the sentence imposed upon him from four years rigorous imprisonment to three and a half years rigorous imprisonment, is both erroneous and was rendered without affording an opportunity to the appellants herein of being heard in that appeal.

10. In **Roopendra Singh** (*supra*) and, in particular, in paragraphs 9 and 10 relied upon by the appellants, the Hon'ble Supreme Court held as under:-

“9. These appeals, at the instance of the original informant question the orders dated 20.06.2012 and 28.06.2012 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur. By order dated 20.06.2012 Criminal Application No. 399 of 2012 preferred by State of Maharashtra seeking leave to appeal against the judgment and order dated 04.02.2012 passed by the Extra Joint Ad-hoc Additional Sessions Judge, Kelapur in Sessions Trial No. 6 of 2011 acquitting the Accused of the offences punishable Under Section 302, 201 read with Section 34 Indian Penal Code was rejected by the High Court.

The appeal Under Section 372 Code of Criminal Procedure preferred by the Informant, who also happens to be the widow of the deceased was rejected in the light of the earlier rejection dated 20.06.2012. It appears that State of Maharashtra did not challenge the rejection of their application seeking leave to appeal. This Court issued notice in the aforesaid matter on 12.10.2012 and the matter was thereafter tagged with SLP(Crl) No. 7014 of 2012, namely, the earlier matter arising out of the judgment of the Gauhati High Court.

10. Section 372 Code of Criminal Procedure has conferred upon a victim a substantive and independent right to maintain an appeal against acquittal. The widow of the deceased in the present matter comes within the definition of "victim" as incorporated in Section 2(wa). Merely because leave to appeal was not granted to the State to prefer an appeal against acquittal, the appeal preferred by the victim Informant ought not to have been rejected by the High Court summarily. We, therefore, set aside the order dated 28.06.2012 passed by the High Court rejecting Criminal Appeal preferred by the Appellant and remit the matter to the High Court for fresh consideration. It will be open to the High Court to consider the matter for grant of leave to appeal to the Appellant in the light of paragraphs 17 and 18 of the decision of this Court in Satya Pal Singh."

11. A bare reading of the above paragraphs would reveal that the Hon'ble Supreme Court held that even when an appeal preferred by the State against a judgment and order acquitting the accused of offences is rejected by a High Court, another appeal assailing the very same acquittal, preferred by the victim in terms of Section 372 Cr.P.C., is to be determined independently and substantively.

12. However, in the instant appeal, the decision in **Roopendra Singh** (*supra*) may not come to the aid of the appellants.

13. In the first instance, in the present case, an appeal was preferred by Respondent No.2, the convict, which came to be disposed off by a Single Bench of this Court by way of its said judgment and order dated 29th May, 2017. The Hon'ble Single Judge whilst upholding the conviction of Respondent No.2 under the provisions of Sections 299/304 Part II read with Section 308 IPC, and after considering the facts and circumstances attendant thereto, modified the substantive sentence awarded to Respondent No.2 by reducing it from four years rigorous imprisonment, as imposed by the Trial Court, to 3 ½ years rigorous imprisonment.

14. The judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction, after issue of a notice and a full hearing in the presence of both the parties, would be the final judgment to be executed in accordance with law by the Court below. The judgment so pronounced would certainly be arrived at after due consideration of the evidence and all the arguments and would replace the judgment of the lower court. (Ref: **U.J.S. Chopra v. State of Bombay**, reported as AIR 1955 SC 633)

15. The juristic justification of the doctrine of merger may be sought in the principle that at one point of time there cannot be multiple operative orders governing the same subject-matter. Therefore, the judgment of an inferior Court on being examined by the superior Court ceases to have existence in the eye of law; and is treated as being superseded by the judgment of the latter. In other words, the judgment of the inferior court

loses its identity by its merger with the judgment of the superior court. (*Ref: Gojer Bros. (Pvt.) Ltd. v. Shri Ratan Lal Singh*, reported as AIR 1974 SC 1380)

16. The said judgment and order dated 29th May, 2017, rendered by this Court, has become final in view of the circumstance that it has not yet been carried in appeal either by the State, who were a party to that appeal, nor by the appellants, who have instituted the present appeal.

17. Therefore, in view of the facts and circumstances, what the appellants are asking for in the instant appeal is for this Court to test the correctness or regularity of the said judgment and order dated 29th May, 2017, rendered by the learned Single Judge of this Court, which, axiomatically, is not permissible in law.

18. This Court, evidently, cannot embark on either a review or sit in appeal on the merits of the said judgment and order dated 29th May, 2017, rendered by the learned Single Judge. Only the Hon'ble Supreme Court could do so in a petition by special leave that may be instituted by the appropriate parties.

19. Even otherwise, in our view, the reliance placed on **Roopendra Singh** (*supra*) is misplaced in the facts and circumstances of this case, inasmuch as, a judgment is only an authority for what it actually decides, and not for what logically follows from it. (*Ref: Lord Halsbury in Quinn v. Leathem*, reported as 1901 AC 495)

20. Furthermore, the appellants are at liberty to assail the correctness of the said judgment and order dated 29th May, 2017, rendered by the learned

Single Judge of this Court, in the appeal instituted on behalf of Respondent No.2, in appropriate proceedings in accordance with law. It would thus neither be legal nor proper for this Bench to review the said decision rendered by the learned Single Judge of this Court, as if this Court were sitting in appeal over the same.

21. In view of the foregoing discussion, the present appeal is devoid of any merit and the same alongwith the pending application is dismissed accordingly.

SIDDHARTH MRIDUL, J.

NAJMI WAZIRI, J.

JULY 24, 2017

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