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IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ CRL.L.P. 502/2017 & CRL.M.A. 14343/2017 (Delay of 170 days)

STATE NCT OF DELHI

.....Petitioner

Through: Ms. Radhika Kolhuru, Advocate with
Insp. Rajesh, P.S. Nangloi

Versus

SHYAM YADAV

.....Respondent

Through: None

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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06.11.2017

CRL.M.A. 14343/2017

1. This is an application seeking condonation of 170 days in filing the accompanying petition seeking leave to appeal.

2. From the explanation offered in the application, the Court is not satisfied that there were sufficient or justified reasons for the delay in filing the present petition. Nevertheless the petition is also being examined on merits.

CRL.L.P. 502/2017

3. This petition by the State seeks leave to appeal against the judgment dated 18th March, 2017 passed by the learned Additional Sessions Judge acquitting the Respondent of the offence under Section 307 IPC.

4. The key prosecution witness in the case is the injured complainant Ms. Nirmala Devi (PW-1). It appears that the Respondent was already married to one Ms. Asha Devi and PW-1 was his second wife. On the date of the incident i.e. 8th August, 2015, the Respondent had just taken a room on rent in Amar Colony, Nangloi.

5. In her deposition in the Court, PW-1 stated that on the date of the incident, there had been no quarrel between the two. At around 7.30 p.m., however, while she was lying with her head on the lap of the accused, he suddenly put her head on the floor and cut her neck with a shaving blade. PW-1 further stated in Court in her examination-in-chief that after cutting her neck, the accused pressed her neck and exhorted “*AAJ TUM DONO MAA BETA KO KATKAR RASTA CLEAR KAR DETA HOON*”. Thereupon their son, aged 2½ years, started crying. According to PW-1 the accused struck the head of the son against the wall 2 or 3 times. PW-1 raised an alarm, went outside the room and fell down. Some person came there, dialled 100 and thereafter police reached there and took her to the Sanjay Gandhi Hospital in Nangloi where she was treated.

6. At the time of issuance of notice in the present petition, the Court noted the submission Ms. Radhika Kolluru, learned counsel for the State that the two doctors who were examined had deposed that the injury on PW-1 could not be self-inflicted. Further she pointed out that the MLC recorded that there was a history of her assault by the Respondent. Ms. Kolluru further submitted that the improvements made by PW-1 in her deposition were ‘minor’.

7. With the assistance of Ms. Kolluru, the Court has again carefully perused the evidence of the PW-1 and other relevant witnesses as well as the impugned judgment of the trial Court. One contradiction which cannot be termed as 'minor' is as regards what transpired immediately prior to the incident. In her statement made to the police, PW-1 stated that a quarrel had taken place between her and the accused and under aggression, he had taken out the shaving blade from his pant and attacked her. She made no mention in her statement to the police about the accused giving the above exhortation and about his having attacked their son by striking his head against the wall 2-3 times. She stated in the Court, however, that there was in fact no quarrel between them prior to the incident and that she was lying with her head on the lap of the accused when he suddenly put her head on the floor and cut her neck with the blade and then exhorted that he would finish off both her and her son.

8. The above improvements made by PW-1 in her deposition in Court to her previous statement cannot be termed as 'minor'. These are significant improvements. The words used in the exhortation neatly fit the offence under Section 307 IPC regarding the intention of committing an act that would cause death. It is also significant that the injury suffered by PW-1 was by the Doctor (PW-3), who first examined her, as a 'simple injury'. It was an incised wound on the right side of the neck of size 7cm x 1cm x 1cm. No question was put to PW-3 that the injury was life threatening.

9. In the circumstances, the Court concurs with the view of the trial court

that since PW-1 has made a significant improvement in her deposition before the Court as to what transpired immediately prior to the incident, she was not a reliable witness. It does appear that the prosecution failed to prove, beyond reasonable doubt, the ingredients of Section 307 IPC *qua* the Respondent.

10. The Court is not satisfied that on merits, a case has been made out for grant of leave to appeal.

11. Both the application for delay and the petition are accordingly dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

NOVEMBER 06, 2017
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