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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 718/2017

STATE

..... Petitioner

Through: Ms. Radhika Kolluru, APP for State

versus

SRINIWAS

..... Respondent

Through:

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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14.12.2017

Crl.M.A.No.20628/2017 (condonation of delay)

1. This is an application under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 filed on behalf of the Petitioner-State seeking condonation of delay in filing the criminal leave petition.

2. For the reasons stated in the application, the delay in filing the leave petition is condoned. The application stands disposed of.

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3. This is a petition by the State seeking leave to appeal against judgment dated 9th June, 2017 passed by the learned Additional Sessions Judge-02,

South District, District Court Saket, New Delhi. The case arose out of FIR No. 72/13, registered at Police Station (PS) Sangam Vihar.

4. By the impugned judgment Respondent has been convicted for the offence punishable under Section 304 (I) IPC and sentenced to the period already undergone by him during the trial which at the time of the order on sentence dated 4th August, 2017 was around 4 ½ years. By the same impugned judgment he has also been convicted for the offence punishable under Section 309 IPC and sentenced to undergo rigorous imprisonment for 6 months. He was also sentenced to a fine of Rs.2000/- and Rs.500/- each for the above offences, in default of which, he was to undergo simple imprisonment for one month and seven days respectively.

5. The State prays for leave to appeal to the limited extent of the conviction of the Respondent for the offence under Section 304 (1) IPC. It is sought to be urged by the State that the Respondent's conviction ought to have been for the offence under Section 302 IPC, with which he was charged.

6. The case of the prosecution was that on receiving DD No.10 A dated 21st February, 2013 the Station House Officer (SHO) of PS Sangam Vihar, Inspector Shahid Khan along with staff reached the spot, i.e. H.No. C-106, Sangam Vihar, and found the dead body of a female covered with a blanket. Three minor children were found beside her. The eldest son, Vishal, informed the IO that on the previous night, i.e. 20th February, 2013, a quarrel had taken place between his father, i.e. Srinivas (the Respondent), and his mother, Meera (the deceased), resulting from her conversation with some

other person. According to Vishal, the deceased had not prepared dinner on the previous night and they had gone to sleep without eating. In the night, when he woke up, he found that his mother was lying on the bed and his father was sitting on the bed near her head. He went back to sleep and when he woke up again after some time he found his father hanging from the ceiling. Vishal then pulled the rope which resulted in his father falling on the floor. Vishal then alerted the neighbours and the police was called. The Respondent was taken in an ambulance to the hospital and a crime team was called. Thereafter, the FIR No.72/2013 was registered at PS Sangam Vihar against the Respondent under Sections 302/309 IPC.

7. The statement of Vishal was additionally recorded under Section 164 Cr PC where he more or less maintained what he had stated to the police in the first instance. As far as the post-mortem report of the deceased is concerned, the opinion was that her death was as a result of strangulation. The mobile used by the deceased was analysed and one Ansar was interrogated. He denied having any illicit relations with the deceased. He, however, admitted to talking with her on her mobile.

8. Although the case proceeded on the basis of last seen evidence spoken of by Vishal (PW-2), what was also critical was a suicide letter Ex.PW30/P-2 written by the Respondent himself. This was recovered by the IO during the investigation from the room of the accused and seized vide seizure memo Ex. PW16/A. The suicide letter along with specimen handwriting Ex. PW30/P-3 was sent for comparison. As per FSL report Ex. PW31/A, the

handwriting in the suicide letter matched with the specimen handwriting of the accused.

9. The analysis by the trial court of the contents of the suicide note was as under:

“This suicide note categorically suggest that accused is in deep love with the deceased, however totally disturbed due to her illicit relations and even tried to sort out the things through her family members but they paid no attention to his complaints, and on the day of incident which will be discussed later on, he was disturbed so much that he killed her and also tried to kill himself, and this disturbed state also could be inferred that he had handed over the mobile phone to PW 9 Manoj Kumar Choudhary.”

10. Additionally, in his deposition in the Court, Vishal (PW-2) stated how he had gone for tuition on the previous evening and his father had collected him from there and taken him home. When he returned, his father enquired from his mother as to whom she was talking to but she did not reply. According to PW-2 a call then came on the mobile phone of the deceased which was answered by his father, in which the caller had said “*woh meri hai, meri hi rahegi*”. As noted by the trial court, upon hearing this, his father became angry and a quarrel ensued between him and the deceased.

11. Since the background to the incident appeared to be fairly clear from the above evidence, the trial court concluded that this was not a case of a premeditated murder of the deceased by the accused. The conclusion reached by the trial court was that after the call on the mobile phone of the deceased which was answered by him, the accused was “completely

disturbed” and thus, committed the extreme act of “finishing himself as well as the deceased”. The trial court further observed that the offence was one borne out of passion and provocation due to the said call. The conclusion of the trial Court that the case falls in the category of culpable homicide not amounting to murder punishable under Section 304 (I) IPC cannot be said to be erroneous in the facts and circumstances.

12. The sentences awarded to the Respondent, who was left with three minor children to look after, and who had obviously committed a crime of passion in a disturbed state of mind, do not also warrant interference.

13. No grounds have been made out for grant of leave to appeal against the impugned judgment and order on sentence of the trial Court.

14. The petition is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

DECEMBER 14, 2017

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