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

+ **CRL.L.P. 57/2018**

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for State
with Inspector Raj Kumar Saha, SHO,
PS – New Usman Pur

versus

KESHAR ALI @ GUDDU

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **24.01.2018**

CRL.M.A. 1475/2018 (Exemption)

Exemption allowed subject to all just exceptions.

Applications stand disposed of accordingly.

CRL.L.P. 57/2018 and CRL.M.A. 1476/2018

The State has preferred the aforesaid leave petition alongwith the aforesaid application to seek 11 days' delay in filing the leave petition.

We have heard Ms. Tiwari, learned APP for State and perused the record.

Since we are not inclined to issue notice in the leave petition, there would be no useful purpose to issue notice in the delay application.

The Trial Court has convicted the respondent-accused under Section 304 Part II IPC. The State has preferred present petition to seek conviction

of the respondent-accused under Section 302 IPC. The Trial Court has examined the evidence. The incident which had taken place and the gist of discussion in the impugned judgment justifying the conviction of the respondent under Section 304 Part II IPC and not under Section 302 IPC is found in Para 30 of the impugned judgment, which reads as under :-

‘30. Initially, accused made enquiry of his lost articles from all workers and thereafter had a quarrel with one Gule and also with Shoyaib. PWs have further deposed that accused had beaten up Gule and only then deceased Kalam intervened which resulted into quarrel between them. This fact has proved that it was not premeditated assault on the deceased by the accused. Accused made enquiry about his stolen articles from everyone to whom he doubted and ultimately his doubt got stronger on the deceased when he intervened into his dispute with Gule, but still he levelled allegation against the deceased and assaulted when deceased retaliated. This conduct of the accused proves that he had no intention to kill the deceased. The duration of fight was about 15-20 minutes as proved by PW17 and such period also includes the altercation with other co-workers of the accused, due to it cannot said that the accused had already made up his mind to kill the deceased during this period. Rather, this fact has proved that a quarrel had taken place between the accused and deceased on the one hand and other workers with accused on the other hand. The knife was already lying there and was not arranged by the accused to kill the deceased, due to it cannot be said that accused made up his mind to kill the deceased prior to the incident. PW17 and PW18 have duly admitted that knife used during incident was being used to cut gatta and this fact has proved that accused had no intention to cause the death of the deceased. Even the accused caused only single injury on the neck of the deceased and did not attempt to repeat it which has also proved that the incident took place in the spur of moment and without

pre-determination of mind to kill the deceased. Accused ran away instantly after causing injury and this conduct has also proved that he was afraid after the incident. As such, by the act and conduct of the accused, it may be assumed that he might have intention to cause bodily injury to deceased, but it cannot be said that he had specific intention to kill the deceased. However, the body part on which injury was caused by the accused was proved that he definitely had knowledge that the injury caused by him would kill the deceased. Neck is the vital body part and injury caused on such part with such impact by knife having the length of 16.8 cm and 3.1 cm width without handle pierced upto 2.9 x 0.2 cm x 8.5 cm in neck by accused has proved that accused must have knowledge that his assault would kill the deceased. As such, his knowledge to kill the deceased stands proved.”

The submission of Ms. Tiwari is that the respondent was guilty of the offence under Section 302 IPC. Her submission is that merely because a single knife blow had been given by the respondent–accused on the neck of the deceased, is not sufficient to conclude that he did not have the intention to commit the murder of the deceased.

The quarrel between the accused and the respondent took place at the spur of the moment. Infact, it appears that the quarrel had taken place between the accused and some other person, namely, Gule. The deceased intervened and got embroiled in the said quarrel which went on for about 15-20 minutes. The weapon of offence used was a knife, which was already lying at the spot and which was used for the purpose of cutting *gatta*. The accused had not come armed with the said knife at the spot, which also belies the accusation that he has come with the intention of committing a murder. Since the injury inflicted on the deceased was on a vital part with a

knife, the respondent was convicted for the offence under Section 304 Part II IPC, on the premise that he would have had the knowledge that death might result on account of infliction of a knife blow on the neck – a vital part of the body.

Ms. Tiwari has tendered in Court the order on sentence which shows that the respondent has been sentenced for rigorous imprisonment of 7 years with fine of Rs.25,000/-.

In these circumstances, we find no merit in this petition and we are not inclined to grant the leave in the present petition.

Dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

JANUARY 24, 2018

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