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

+ CRL.L.P. 180/2017

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP with SI
Narender Kumar, PS Sarai Rohilla

versus

ASHU KUMAR JHA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

11.05.2018

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Notice was issued in this leave petition on 10.10.2017. However the respondent could not be traced and served despite issuance of bailable warrants for his production.

We have consequently heard Mr. Katyal on merits at some length. The case of the prosecution taken note of in the impugned judgment reads as follows:

“2. Prosecution's case is that deceased and accused persons were vagabonds. On 12.05.2014, in Banderwala Park, accused Ashu quarreled with deceased Shravan and deceased took Shankar's crutch and started beating Ashu. Ashu ran away from the spot. Later on the same day, both accused persons again quarreled with deceased and repeatedly stabbed deceased with a broken bottle. Deceased was bleeding and ran out of the park towards Police Post, where he fell down and was unable to speak. One public person and a Police official were present at the police post, who informed the PCR. PCR took injured to the hospital, where his MLC was prepared, but injured could not

recover and died in the hospital. IO reached the hospital and collected his MLC. Dead body was preserved in the mortuary. IO went to the spot and found blood scattered at various places, also found broken beer bottle and slippers on the spot. The same were seized. IO found one eye witness, who was residing outside the park and recorded his statement. He disclosed that two accused were involved in the offence and had assaulted deceased. Accused were not found. It was however revealed that accused Ashu was injured in a prior quarrel with deceased and had been admitted in the hospital. The said information was recorded as DD and IO of the said case collected his MLC, but could not find him and delivered the said DD and MLC of accused Ashu was handed to the IO of present case. On identification of eye witness, both accused were arrested. Details of deceased were not available. IO made efforts to ascertain his details but was unable to find any. Eye witness also disclosed that deceased was Muslim by religion but had a tattoo of "Jai Mata Di" on his hand. Postmortem was conducted and exhibits were deposited in the Malkhana and later sent to the FSL. Dead body was handed over to the Delhi Wakf Board for last rites. After completion of investigation, chargesheet was filed. Subsequently, FSL report were obtained and filed".

There were two accused tried by the Court, i.e., the respondent Ashu Kumar Jha @ Sumit and Santosh Kumar Singh @ Govinda. The Trial Court convicted the second accused Santosh Kumar Singh @ Govinda under Section 302 IPC. However the present accused Ashu was given the benefit of the doubt on the premise that out of the two eye witnesses cited by the prosecution, one did not support the case of the prosecution. As per the case of the prosecution, it was the co-accused Santosh Kumar Singh @ Govinda who had given the fatal blow to the deceased by broken glass bottle which caused his death.

So far as the accused Santosh Kumar Singh @ Govinda is concerned,

vide the judgment dated 17.02.2018 rendered in Crl A No. 510/2017 by another Division Bench of this Court has partly allowed the same and the conviction stands altered to one under Section 304 Part I IPC. The co-accused has been awarded sentence of 7 years rigorous imprisonment with a fine as imposed by the Trial Court.

The submission of Mr. Katyal is that in the present case, one eye witness has supported the case of the prosecution that it was on the provocation of the respondent Ashu that the co-accused Santosh Kumar Singh @ Govinda had inflicted the fatal blow on the deceased. He submits that on the same day in the morning there was a fight between the respondent accused and the deceased and the accused had also proceeded to get his MLC conducted, however, before getting himself examined he left the hospital, whereafter the incident took place later in the day. Thus the accused also had a motive for commission of the crime.

Having heard Mr. Katyal and examined the impugned judgment, we are not inclined to entertain the present petition. PW-3, the eye witness has given a clean chit to the respondent accused. In view of the contradictory testimonies of PW-3 and PW-8, we are of the opinion that the respondent accused was entitled to the benefit of doubt. Consequently, we find no merit in the petition.

Dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 11, 2018

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