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

+ **CRL.L.P. 180/2018**

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Hirein Sharma, APP for State.

versus

TARA CHAND

..... Respondent

Through: None.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE I.S. MEHTA**

**ORDER**

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**21.03.2018**

**CRL. M.A.5288/2018 (Exemption)**

1. Allowed, subject to all just exceptions.

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2. This is a petition filed by the State seeking leave to appeal against the judgment dated 22<sup>nd</sup> December 2017 passed by the learned Additional Sessions Judge in Sessions Case No.56791/2016 arising out of FIR No.231/2011 registered at Police Station ('PS') Khyala. By the said judgment, the learned Additional Sessions Judge has convicted the Respondent (Tara Chand) for the offence punishable under Section 304 Part II IPC. By a separate order on sentence dated 23<sup>rd</sup> December 2017, the Respondent was sentenced to undergo Rigorous Imprisonment ('RI') for 10 years with a fine a sum of Rs. 50,000/- and, in default of payment of fine, to undergo RI for a further 6 months.

3. The State seeks leave to appeal on the ground that there was sufficient evidence to convict the Respondent for the offence under Sections 302/34 IPC and that the trial Court therefore had erred in converting the offence to one punishable under Section 304 Part II IPC.

4. According to the prosecution, on the intervening night of 25<sup>th</sup>-26<sup>th</sup> September 2011, at around 1 am, on the Footpath Road No.29, near the Cement Godown, Raghubir Nagar, New Delhi, the Respondent along with two of his associates, Vishal Kumar and Ajay @ Ghee, both of whom were juveniles in conflict with law ('JCLs'), in furtherance of their common intention, stabbed the deceased Ajju @ Mogli to death. A separate chargesheet was filed as far as the JCLs were concerned and they were tried before the Juvenile Justice Board ('JJB').

5. Mr. Surender Singh (PW-3) was the eye-witness to the incident. His testimony, which was unable to be dislodged during cross-examination, was to the effect that he saw the deceased coming from the side of *nala*. JCL Ajay caught hold of him and asked him to return his money. The deceased then stated that he did not have any money. Thereafter, the deceased and Ajay started abusing each other. Ajay then asked the Respondent and the other JCL to take the deceased to the other side of the road where a bus was parked. While the respondent and the other JCL caught hold of the deceased, Ajay took out a knife from his pant pocket and stabbed the deceased three or four times. The other JCL then exclaimed that the deceased had died and all of them then started running towards the *nala*.

6. With the above description of the incident having been found to be believable by the trial Court, there was no difficulty in holding the Respondent was liable for the killing of the deceased. As far as the nature of the offence was concerned, the trial Court concluded that the role of the Respondent was that he was holding the victim while the actual act of stabbing with a knife was by the JCL Ajay. It was opined that while the Respondent could be attributed with the knowledge that such injury inflicted was likely to cause death, he could not be attributed with an intention to commit murder.

7. The view taken by the trial Court appears to be a plausible one. That the Respondent could not have anticipated where the JCL might stab and how many times was definitely a plausible view to take even if one were to accept that the Respondent knew that the JCL was carrying a knife. Further, it is not the case of the prosecution that the Respondent himself was carrying any weapon which he intended to use against the victim.

8. In these circumstances, the Court does not see any ground made out to seek leave to appeal against the impugned judgment of the trial Court.

9. The petition is accordingly dismissed.

**S. MURALIDHAR, J.**

**I.S. MEHTA, J.**

**MARCH 21, 2018/nd**