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

+ **CRL.L.P. 276/2018**

STATE

..... Petitioner

Through: Mr.Kewal Singh Ahuja, APP for State
Inspector Jagdish Yadav, PS-
Mandawali

versus

SUJEET KUMAR

..... Respondent

Through:

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

% **26.04.2018**

Crl.M.A.No.7736/2018 (delay)

1. For the reasons stated in the application, the delay of 38 days in filing the present criminal leave petition is condoned. The application is disposed of.

Crl.M.A.No.7737/2018 (Exemption)

2. Allowed, subject to all just exceptions.

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3. This is a criminal leave petition filed by the State seeking leave to appeal against the judgment dated 6th November 2017 passed by the learned Additional Sessions Judge, Shahdara, Karkardooma Courts, Delhi in Sessions Case No.13/2013 arising out of FIR No.458/2012, convicting the Respondent for the offence punishable under Part II of Section 304 IPC.

4. The charge against the Respondent was that he murdered his own sister with a kitchen knife with a single stab wound in the abdomen in the presence of his mother Sunita Sharma (PW-1) who unfortunately turned hostile at the trial.

5. In fact, three other public witnesses related to the victim also turned hostile. Despite this, invoking section 106 of the Indian Evidence Act, 1872 the trial Court proceeded to convict the Respondent. However, the trial Judge was of the view that the attack by the Respondent on his sister with a kitchen knife happened in the spur of the moment, was not premeditated and since it was a single stab injury, the offence should be culpable homicide not amounting to murder punishable under Part II of Section 304 IPC.

6. The Trial Court proceeded to sentence the Respondent to seven years Rigorous Imprisonment with a fine of Rs.10,000 and in default of payment of fine, to undergo Simple Imprisonment for three months

7. Having heard the submissions of learned APP for the State and having examined the record placed before the Court along with the impugned judgment, the Court is satisfied that no grounds have been made out by the State for converting the offence with which the Respondent should be punished to one under Section 302 IPC.

8. Learned APP for the State placed reliance on the judgment in ***Arun Raj v. Union of India 2010 6 SCC 457*** where again death of the deceased was caused by a single stab wound but the Supreme Court declined to convert the offence into one of culpable homicide not amounting to the murder.

However, the Court notes that the facts of that case were different. A heated exchange of words took place between the accused and the deceased one day before the murder. The next day the accused concealed a kitchen knife in his *lungi*, went towards the cot of the deceased and struck a fatal blow on the right side of his chest whilst the deceased was sleeping. The fact that the accused waited until the next day, procured a deadly weapon and aimed the blow at the chest of the deceased pointed to premeditation on his part. In the present case, however, the offence clearly occurred in the spur of the moment and therefore the learned trial Judge was not in error in viewing the offence to be that of culpable homicide not amounting to murder.

9. Consequently, the Court finds no ground having been made out by the State for grant of leave to appeal.

10. Having said that, the Court notes that the accused has filed an appeal being Crl. A. 358/2018 which is pending in this Court. That appeal will be decided on its merits notwithstanding the judgement passed today.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 26, 2018

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