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

+ **CRL.L.P. 344/2018**

STATE (GOVT OF NCT OF DELHI) Petitioner
Through: Mr. K.S.Ahuja, APP for State with
ASI Bhagwan Singh, P.S.Aman
Vihar

versus

RAMPAL SINGH Respondent
Through: None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

% **ORDER**
18.05.2018

CrI.M.A.No. 9575/2018 (Exemption)

1. Exemption allowed, subject to just exceptions. The application is disposed of.

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2. The State seeks leave to appeal against the judgment dated 14th March 2018 passed by the Additional Sessions Judge-II, North West, Rohini, New Delhi in Sessions Case No.84/2015 arising out of FIR No.1078/2015 registered at PS Aman Vihar acquitting the Respondent of the offence under Section 307 IPC.

3. The case of the prosecution is that on 1st September 2015, pursuant to a quarrel over the Respondent suspecting the deceased of having an illicit affair with the Respondent's wife. The Respondent, according to the prosecution, pushed the deceased from the terrace over the second floor of

his house. The deceased lost his balance, fell down on the terrace of the adjoining house and sustained fatal injuries.

4. There were two eye-witnesses examined by the prosecution. One was Sonu (PW-12), the nephew of the deceased, who claimed that he was on his way to meet the deceased and on the stairs he heard the quarrel between the Respondent and the deceased. When he reached the terrace, he saw the Respondent having a wooden stick. Even when he tried to pacify him, the Respondent did not agree and pushed the deceased from the roof. While the Respondent was trying to beat the deceased with the *danda*, the Respondent also lost his balance and fell down on the adjoining terrace.

5. The other version is that of Sudha (PW-16), the neighbour who claimed that she saw the Respondent and the deceased fighting on the terrace. According to her, it was the deceased who first pushed the Respondent and the Respondent caught hold of the deceased by his neck and both of them then fell down from the terrace onto the adjoining terrace.

6. The Trial Court has concluded that the testimony of PW-16, who happened to be an independent witness, inspired greater confidence than Sonu (PW-12) who was the nephew of the deceased. There was also some discrepancy about his being able to hear the quarrel even when he was on the street considering that the quarrel was taking place on the terrace.

7. Learned APP for the State urged that the medical evidence did not support the version of PW-16 since the nature of the injuries suffered by the Respondent was different from the injuries on account of which death of the

deceased was caused.

8. The fact of the matter is that the Respondent was also injured and was in fact found in an injured condition by the police. It is not necessary that if two persons fall from a terrace onto an adjoining terrace they would suffer identical injuries. It all depends on who fell first there and the manner in which he fell. This is not a matter for surmise.

9. The trial Court had to take a view on which of the two versions was reliable. Its conclusion that the version of PW-16 was reliable cannot be said to be perverse in the facts and circumstances of the case. The Court does not find any grounds made out for granting leave to appeal.

10. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 18, 2018

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