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

+ **CRL.L.P. 498/2018**

STATE

..... Petitioner

Through: Ms. Kusum Dhalla, APP for State
with Ms. Priti, Advocate.
SI H. Gangte, PS-V.Vihar.

versus

NARENDER & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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02.08.2018

CRL.M.A. 29134/2018

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.L.P. 498/2018

The State has preferred the present petition to seek leave to appeal against the judgment dated 09.04.2018 passed by learned District and Sessions Judge, South District, Saket, New Delhi in CIS-SC-7072-2016 arising out of the FIR No.125/10 under Section 302/34 IPC registered at Police Station, Vasant Vihar. There were six accused in the case. The Sessions Court has convicted accused Nos. 1 and 2 under Section 302 IPC read with Section 34 IPC. The accused No.4 Narender Kumar has been acquitted altogether. The three remaining accused i.e. Charan Singh-accused No.3, Raju Kumar-accused No.5 and Himanshu Rathi-accused No.6 have been convicted under Section 323 IPC read with Section 34 IPC and they have been sentenced accordingly. The present leave petition is directed

against the acquittal of accused nos. 3 to 6 of the charge under Section 302 read with Section 34 IPC.

We have heard Ms. Kusum Dhalla, learned APP and have perused the impugned judgment and the relevant evidence filed along with the petition. There were four eye witnesses, namely, PW-1-Harish who is a landlord of the premises where three of the accused were residing. This premises was close to the place where the incidence took place. The Second eye witness Joginder Tuli-PW-3 was present at the spot and he called the cousin brother of the deceased viz. PW-16. Nitin Sansawal-PW-16 is the cousin brother of the deceased is also an eye witness to the occurrence. Avinash Malik, PW-10 is a neighbour having a shop in the locality and he was also present and saw the incident which occurred. The Trial Court has found accused nos. 1 and 2 guilty of the offence under Section 302 IPC read with Section 34 IPC on account of the fact that during the course of the incident-when the deceased was gheraod and was being given beating by the accused, the said two accused went into the house and came back with a rod and knife. Accused no. 1 Muninder Panjita gave a knife blow to the deceased, whereas accused no. 2 Saurabh Yadav gave a danda blow to the deceased. The knife blow proved fatal. Consequently, the said two accused have been found guilty under Section 302 IPC read Section 34 IPC.

The learned District and Sessions Judge has found that the said development was sudden, and it took place during the course of the incident itself and, thus, accused nos. 3 to 6 could not have possibly shared the intention to commit the offence under Section 302 IPC with accused nos. 1 and 2. Consequently, they have been acquitted of the charge under Section 302 IPC read with Section 34 IPC.

So far as accused no. 4 Narender Kumar is concerned, after a detailed discussion of the evidence of the prosecution evidence, the trial Court found that none of the eye witnesses attributed any role to the said accused in the commission of the crime. So far as the fact that he had run away from the spot is concerned, the same was held to not, necessarily, lead to the conclusion that he too was guilty of participating in the commission of the offence. His running away from the spot could be explained by his getting scared on account of the stabbing of the deceased.

Accused nos. 3, 5 and 6 have, however, been found guilty of the offence under Section 323 read with Section 34 IPC, since there was evidence led by the prosecution to show that they were giving fist and leg blows to the deceased, none of which, however, was the cause of the fatality.

The submission of Ms. Dhalla is that PW-3 had stated that they had heard the accused persons saying that “Ye gown ka bada dada banta hai aaj saale ko dekhte hai”. So far as PW-10 is concerned, he did not make any incriminating statement in his testimony about the exhortation, but only when he was put a leading question by the learned APP, he admitted that he had stated in his statement recorded under Section 161 Cr.P.C that the accused no. 1 and “his associates” exhorted that the deceased be killed. This was impermissible under Section 142 of the Indian Evidence Act and, in any event, only tantamounted to an admission of what PW-10 has stated in his statement recorded under Section 161 Cr.P.C. This still fell short of a statement made under oath that Accused No. 1 and “his associates” had exhorted that the deceased be killed. So far as PW-16 is concerned, he claims to have reached the site of occurrence, while the deceased-his cousin brother, was being beaten. Surprisingly, he did not intervene. If he had, he

would have received some injuries while saving the deceased. Even he is not definite in his statement as to who gave the exhortation that the deceased be killed.

Firstly, it is not been established by the prosecution as to which of the accused made the said utterance. Secondly, the above quoted utterances, in any event, do not tantamount to an exhortation to kill the deceased.

Ms. Dhalla further submits that when accused nos.1 and 2 came with the deadly weapons, the other accused did not stop them from attacking the deceased. This, in our view, cannot be understood to me that they shared the intention with accused nos. 1 and 2 to kill the deceased. Thus, there is no evidence on record to rope in the respondents/accused Nos. 3 to 6 in the offence under Section 302 IPC with the aid of Section 34 IPC.

Having gone through the impugned judgment minutely, as well as the evidence placed on record, we find no merit in this petition.

The petition is accordingly dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

AUGUST 02, 2018/nk/nd