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

+ **CRL.A. 782/2018 & CRL.M.(BAIL) 1192/2018**

RAKESH @ VAKIL @ BAKKU Appellant
Through: Mr. Chetan Lokur, Advocate.

versus

STATE Respondent
Through: Mr. Rajat Katyal, APP for State with
Inspector Shish Pal, PS-Adarsh
Nagar.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER
16.10.2018

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1. The appellant has been produced from custody. We have interacted with him and Mr.Lokur.

2. The appellant and Mr.Lokur state that the appellant is willing to have the offence converted from one under Section 302 IPC to one under Section 304 IPC. We may observe that there are two convicts i.e. the appellant Rakesh @ Vakil @ Bakku and Salman Ansari @ Alamgir. The present appeal has been preferred by accused No.1 - Rakesh @ Vakil @ Bakku. We are informed that Salman Ansari @ Alamgir has not preferred any appeal against his conviction. We direct that his appeal be also preferred through legal aid. He

be informed of this position. A copy of this judgment be communicated to the co-convict, as well as the DSLSA by the Registry through the concerned Jail Superintendent.

3. We have heard learned counsels and also perused the record.

4. The case of the prosecution taken note of in the impugned judgment by the trial Court are as follows:

“On 21.05.2017 Monu was present under the Azadpur flyover. Rakesh and Salman were also standing near him. At about 2:30 pm Sanjay who was also working there came under flyover. After seeing Sanjay, Rakesh said “tuney aaj jo meri pitayee ki hai uska maja chakhata hoon”. On the asking of Rakesh Salman took out a knife from his dub and handed over to Rakesh. Rakesh hit on the thigh of Sanjay with intention to kill him. After causing injury on the person of Sanjay they both fled away with the knife and Sanjay went towards the police station. Sanjay was removed to hospital where he died. Both accused Rakesh and Salman were apprehended. Rakesh got recovered the knife used in the commission of offence. After completion of investigation the charge sheet against accused persons was filed.”

5. The submissions for Mr.Lokur is that the present case falls under Section 304 Part II IPC. The submission is premised on the fact that only one stab injury was inflicted on the deceased on his thigh. Mr.Lokur submits that,

unfortunately, the artery supplying blood to the lower part of the body got cut on account of the said injury. The evidence shows that the deceased thereafter walked/ran to the police station and collapsed at the police station and he continuously bled in this process. The police found a continuous blood trail from the place of incident to the police station, where also a lot of blood had been spilt.

6. Mr.Lokur submits that had the deceased received immediate treatment, and had been lifted from the spot itself, he may not have suffered the blood loss which appears to be the cause of his death. Mr.Lokur submits that there was no intention on the part of the accused to cause the death of the deceased. If that was so, both the accused would have overpowered the deceased and inflicted a fatal blow on a vital part of his body. However, the injury in the present case is on the thigh which is not a vital part of the body.

7. Having heard the submissions of learned counsels, we are of the view that there is merit in the submissions of Mr.Lokur. The deceased suffered only one stab injury and that too on his thigh. Had the intention of the accused been to commit the murder of the deceased, they would have given the knife blow on the vital part and they would have repeatedly struck him after having disabled him by inflicting a stab injury on his thigh. However, after inflicting one stab wound on the thigh, the accused disappeared from the spot. The incident was preceded by a minor fight between the deceased and the accused/appellant Rakesh. That minor dispute was not such as to drive any reasonable person to commit the murder of the person with whom the dispute had arisen. Thus, the intention was not to cause the death of the

deceased. Since the appellant did not have the intention to either cause death or cause bodily injury as was likely to cause death, the matter would fall under Section 304 Part II IPC. Accordingly, we are of the view that the conviction of the appellant deserves to be converted from one under Section 302 IPC to Section 304 Part II IPC. Accordingly, the conviction of the appellant under Section 302 IPC is set aside and is converted to one under Section 304 Part II IPC.

8. Mr.Lokur submits that the appellant is an HIV-positive patient and is 23 years old. Considering the circumstances of the appellant and the period that he has undergone, we sentence him to 7 years Rigorous Imprisonment. The fine imposed upon the appellant by the trial Court is, however, maintained.

9. The appeal stands disposed of.

VIPIN SANGHI, J

I.S.MEHTA, J

OCTOBER 16, 2018

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