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

+ **CRL.L.P. 624/2017**

STATE (NCT OF DELHI)

..... Petitioner

Through: Ms.Kusum Dhalla, APP along with
Insp.Narender Yadav, P.S. Mangol Puri.

versus

RAHUL

..... Respondent

Through: None.

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

ORDER
30.01.2018

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1. The State seeks leave to appeal against the judgment dated 13th July, 2017 passed by the Additional Sessions Judge - 05, North, Rohini Courts, Delhi in S.C.No.58024/2016 arising out of the FIR No.252/2012 registered at Police Station (P.S.) Mangol Puri under Section 302/34 IPC whereby the Respondent was acquitted of the offence under Section 302/34 IPC.

2. The case of the prosecution was one of honour killing by the Respondent and his brother Gaurav (since expired) of their brother-in-law who had been married to their sister Jyoti (PW-5) against their wishes.

3. The star witness as far as the prosecution is concerned was Kavita (PW-1), the sister of the deceased who was apparently present in the house when the Respondent and his brother Gaurav had come to ask for Ranvir (the

deceased). The date of the incident was 5th July, 2012 and the time was around 8:30 a.m. in the morning. The trial Court found PW-1 to be an unreliable witness primarily on the ground that she was confused as to which of the two brothers, that is, Rahul or Gaurav had entered her house, gone upstairs and then taken Ranvir with him. According to her, she came out in the *gali* (lane) after a few minutes only to see Gaurav and the Respondent Rahul attacking the deceased. She was confused as to which of the two was holding the deceased and which among them was stabbing him with the knife.

4. This Court has with the help of the learned APP again examined her evidence in some detail. There is one crucial Court question put to her “Which of the boy had gone upstairs?” PW-1 then pointed out towards Rahul and stated that the accused Rahul had gone upstairs. She then stated thereafter as under:

“My brother Ranvir was following Rahul. On my asking, my brother Ranvir had told me that he would be back in two minutes. I had asked my brother as to where he is going but he did not tell me anything. Rahul had first left my house and my brother followed him. Accused Gaurav never entered into my house. I came out from my house after about five minutes.”

5. She also thereafter stated that “I had gone out of my house because accused Gaurav had said that they would kill my brother. Accused Gaurav had said that he would kill my brother, while leaving”. Clearly, both these statements contradict each other. If according to her, Gaurav never entered into her house, the question of Gaurav saying that he would kill Ranvir while he was leaving did not arise.

6. It is significant that during her examination-in-chief, she was allowed 5-10 minutes to compose herself. When she resumed after composing herself, at one point, the Court notes “The witness has pointed towards Rahul and named him as Gaurav. She states that both the accused are here whom she correctly identified as the boys who had taken her brother along with them”.

7. Having carefully perused the entire deposition of PW-1, the Court is left with the impression that she is genuinely confused as to the identity of the two accused and she seems to be inter-changing one for the other. In a case under Section 302 IPC, it would be unsafe to place reliance solely on such a witness to return a finding of guilt.

8. As far as the present case is concerned, the added difficulty is that one of the accused, i.e., Gaurav has expired during the pendency of the present petition. In that view of the matter, reading the entire evidence of PW-1 as if it pertains only to accused Rahul would be improper and unsafe.

9. The learned APP then submitted that the younger brother of the deceased, Master Manish (PW-11) was another witness who spoke of the presence of the two accused in the house on the fateful day. The Court has perused the evidence of PW-11 and finds that in his cross-examination, he concedes that from the date of the incident till January, 2014 despite police visiting their house on several occasions, he did not disclose to the police about his having seen both the accused in their house. Consequently, he too is an unreliable witness.

10. For the aforementioned reasons, the Court finds that no ground is made for leave to appeal. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 30, 2018
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