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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12th March, 2019

CRL.A. 8/2019

SALMAN ANSARI @ ALAMGIR

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Rakhi Dubey, Advocate

For the Respondent : Mr. Ravi Nayak, APP for State with SI Mahendra,
P.S. Adarsh Nagar

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

SIDDHARTH MRIDUL, J. (ORAL)

1. The present appeal has been instituted on behalf of the appellant, Salman Ansari @ Alamgir, who alongwith the prime accused Rakesh @ Vakil @ Bakku was convicted by the Trial Court for an offence punishable under Section 302 read with Section 34 IPC vide judgment dated 24.04.2018 and sentenced to undergo rigorous imprisonment for life with fine of Rs.5,000/- and in default to undergo simple imprisonment for a further period of one year.

2. It was the prosecution's case that, the appellant herein with the common intention to murder the deceased handed over the weapon of offence, i.e., knife to the prime accused and the latter inflicted single blow on the upper thigh resulting in the death of the victim.

3. In this regard, our attention has been drawn to the judgment and order dated 16.10.2018 rendered by a Co-ordinate Bench of Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Mr. Justice I.S. Mehta, to urge that it has been held thereby that, the prime accused did not have the intention to either cause death or cause bodily injury, as was likely to cause death and therefore, the matter has been held to fall under Section 304 Part II IPC. It is resultantly submitted that, in view of the aforementioned finding, the Co-ordinate Bench was pleased to convert the conviction of the prime accused, from one under Section 302 IPC to Section 304 Part II IPC.

4. It is the submission of Ms. Rakhi Dubey, learned counsel appearing on behalf of the appellant that, the case of the present appellant stands on a higher pedestal, since he has been convicted with the aid of Section 34 IPC, on the ground that he shared common intention alongwith the prime accused, Rakesh @ Vakil @ Bakku, to murder the deceased. Consequently, it is urged that, the conviction imposed upon the appellant deserves to be converted from one under Section 302 IPC to Section 304 Part II IPC on the ground of parity. No other point was urged.

5. Having heard the learned counsel appearing on behalf of the parties; and perused the judgment and order dated 16.10.2018 in **Crl. A. 782/2018 Rakesh @ Vakil @ Bakku Vs. State**; and further having examined the evidence on record, as well as, having considered the affidavit dated 07.03.2019 filed by the appellant, we are of the considered view that, the present appellant is a fortiori entitled to the benefit of the conversion of the conviction from one under Section 302 IPC to Section 304 Part II IPC. We therefore, partly allow the appeal and direct accordingly.

6. In so far as the sentence is concerned, we are of the view that a sentence of 7 years RI would be just, proper and appropriate in the facts and circumstances of the case, since the commission of the offence has led to the loss of life.

7. The sentence awarded to the appellant, Salman Ansari @ Alamgir is, therefore, modified to 7 years rigorous imprisonment. The fine imposed on the appellant by the Trial Court, as well as, the default sentence is however maintained.

(SIDDHARTH MRIDUL)
JUDGE

(MANOJ KUMAR OHRI)
JUDGE

MARCH 12, 2019

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