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

% ***Date of decision: 19<sup>th</sup> March, 2024***

+ **CRL.A. 1041/2023 & CRL.M.A.34142/2023**

**STATE (NCT OF DELHI)**

**..... Appellant**

Through: **Ms. Manjeet Arya, APP for the State  
with SI Naresh Kumar, PS Baba  
Haridas Nagar.**

**versus**

**VIKRANT BIRLA @ KAATU**

**..... Respondent**

Through: **Mr. Anupam S. Sharma with  
Mr. Prakash Airan and Ms. Harpreet  
Kalsi, Advocates.**

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

**CRL.A. 1041/2023 & CRL.M.A.34142/2023 (for condonation of  
delay)**

1. Present petition has been filed by the appellant/State seeking  
following prayer:-

*“a) Pass an order for the Trial Court record arising out  
of FIR No.469/14, U/s 302/34/147/148/149/34 IPC, P.S  
Baba Haridas Nagar; and/or*

*b) Allow the present appeal to enhance the sentence of  
the accused persons/respondents and sentence them for  
life imprisonment/death penalty and set aside the  
impugned judgment dated 28.10.2021 passed by the  
Hon'ble Court of Sh. Pitamber Dutt, Ld. Addl. Session  
Judge (South West), Dwarka Court Delhi and order dated  
9.03.2022 passed by the Hon'ble Court of Sh. Vishal  
Gogne Ld. Addl. Session Judge (South West), Dwarka  
Courts Delhi arising out of from FIR no. 469/2014 PS:  
Baba Haridas Nagar U/s 302/147/148/149/324/34 of*



*IPC; and/or*

*c) To further liable the accused/ respondents for conviction as per law under section 302/34/149 of Indian Penal Code.”*

2. Present appeal has been filed by the State under 377(1) Cr.P.C. seeking enhancement of sentence passed in the impugned judgment dated 28.10.2021, passed by learned ASJ (South West), Dwarka Courts, Delhi.
3. The trial had taken place against nine accused in FIR No.469/2014 PS Baba Haridas Nagar for the offences punishable under Section 302/324/147/148/149/34 IPC. One of the accused namely Preeti, had absconded. Out of the remaining eight accused, two accused namely Rahul and Sandeep @ Sarkar have been convicted for offence punishable under Section 302 read with Section 34 IPC and the eight accused (who are respondents herein) had been, instead, convicted for offence punishable under Sections 147, 148 IPC and under Section 324 read with Section 149 IPC.
4. It is not in dispute that all the respondents in the present appeal have been awarded maximum sentence. Learned APP has very fairly conceded to the same. In such a situation prayer for enhancement in sentence is totally misconcerned. There is also no appeal under Section 378 Cr.P.C. challenging acquittal under Section 302 IPC. Since maximum sentence has already been granted to the respondents, enhancement in sentence would be against the statute, being impermissible.



5. We also find no plausible reason to condone the delay which is of 763 days.

6. In view of the above, the present appeal and the application for condonation of delay are hereby dismissed.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(MANOJ JAIN)**  
**JUDGE**

**MARCH 19, 2024/st**