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

+ **CRL.A. 792/2024 & CRL.M.(BAIL) 1430/2024**

VIKAS @ TINKU

.....Appellant

Through: Mr. Rajdipa Behura, Mr. Philomon Kani, Ms. Neha Dobriyal, Ms. Aishwarya Gupta & Mr. Shashwat Kabi, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the State with Ms. Divya Yadav and Mr. Lalit Luthra, Advocates.

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+ **CRL.A. 913/2024 & CRL.M.(BAIL) 1638/2024**

VIRENDER @ BABLU

.....Appellant

Through: Mr. Himanshu Anand Gupta, Mr. Sidharth Barua, Mr. Anvesh Varma, Mr. Shekhar Anand Gupta and Ms. Navneet Kaur, Advocates (M-9811338050).

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the State with Ms. Divya Yadav and Mr. Lalit Luthra, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **06.12.2024**

1. This hearing has been done through hybrid mode.
2. The present appeals have been filed by the Appellants - Virender @ Bablu and Vikas @ Tinku challenging the impugned judgment of conviction dated 26th March, 2024 and order on sentence dated 30th May, 2024 respectively passed by Id. ASJ-05, North-West District, Rohini Courts, Delhi



in SC No. 56/2017, arising out of FIR No. 732/2016 registered at P.S. Begumpur, under Sections 302/34 of the IPC. *Vide* the order on sentence dated 30th May, 2024 the Appellants were sentenced in the following terms:-

*“After considering all the relevant facts and circumstances, I am of the view that the present case does not qualify the test of rarest of the rare case in which the death sentence can be imposed. **Both the convicts are accordingly sentence u/s 302 IPC for imprisonment for life and a fine of Rs.1 lac each.** In default of fine, the convicts shall undergo a further simple imprisonment for a terms of 6 months. **The convict Virender @ Bablu is also sentenced u/s.25/27 Arms Act for imprisonment for 3 years and a fine of Rs. 5,000/-.** In default of payment of fine, he shall undergo a further simple imprisonment for a terms of 1 month.”*

3. The present case arises out of an incident stated to have taken place on 22nd September, 2016. Both the Appellants were accused of causing the death of the deceased- Vinay Singh with a common intention to commit the aforesaid offence. The prosecution had claimed that a country-made pistol with one cartridge was recovered at the instance of the Appellant Virender @ Bablu which is claimed to have been used for the commission of murder.

4. The aforesaid FIR was registered at P.S. Begumpur, Delhi under Section 302 *r/w* Section 34 of the IPC and the accused were arrested on 29th September, 2016. Subsequently, the chargesheet was filed and charges were framed *vide* order on charge dated 18th March, 2017. Insofar as the sanction under Section 39 of the Arms Act, 1959 is concerned, formal proof regarding the same was dispensed with, in view of the statement of the defense Counsel under Section 294 Cr.P.C recorded on 21st April, 2023. The evidence led by the prosecution consisted of 26 witnesses. The evidence led by the defence



consisted of 2 witnesses.

5. The submission on behalf of the Appellants is that the impugned judgment does not discuss the evidence in detail. According to the Appellants, the prosecution had miserably failed to prove their case especially in light of the fact that (i) there was evidence to show that the accused were not arrested from Rohini, Delhi but from Uttar Pradesh and, (ii) the witnesses' presence on the spot of the incident was suspicious and, (iii) even the recovery witness' testimony is sketchy.

6. On behalf of the prosecution, Mr. Bahri, Id. APP for the State submits that there is sufficient evidence to convict the Appellants as the prosecution has led the evidence of 26 witnesses. The State also submits that even the motive of the accused was established, though there was no discussion in respect of the same and the judgment holds to the contrary.

7. However, on a query from the Court, both the Counsels are candid enough to admit that there is hardly any discussion in respect of the evidence in the impugned judgment. Apart from the paraphrasing the evidence of various witnesses, the conclusions arrived by the Id Trial Court are in para 11 and 12, of the impugned judgment which reads as under:-

"11. The prosecution has firmly established the identity of both the accused. It has been proved on record that the accused Virender @ Bablu was the pillion rider, who has caused -gun shot injury to Vinay Singh and that accused Vikas @ Tinku was riding the motorcycle at the time of incident.

12. In this regard, Ld. Addl. PP for the State argued that the very fact that the accused Virender @ Bablu and Vikas @ Tinku committed the murder of Vinay Singh, is a sufficient proof of the common intention between them. It is argued that from the facts



and circumstances, it can be gathered that both the accused persons shared a common intention to commit the murder of Vinay Singh.”

8. In the considered opinion of this Court, the impugned judgment of the Trial Court is sketchy to say the least as there is no discussion in respect of the evidence or the basis of the conclusions that the Trial Court has arrived at in the said judgment. In a case involving a serious offence such as an offence under Section 302 IPC, the Id. Trial Court is expected to analyse and appreciate the evidence which has been led and draw its conclusions only on the basis of the same. The said reasoning being completely absent in the impugned judgment, the same cannot be sustained. In these circumstances, therefore, this Court is of the opinion that the matter deserves to be remanded for re-hearing of the final arguments and pronouncement of judgment afresh on the existing evidence and documents on record.

9. According to the respective nominal rolls on record, the Appellant in **CRL. A. 792/2024** i.e., Vikas@Tinku has already undergone a period of approximately 3 years 7 months and the Appellant in **CRL.A. 913/2024** i.e., Virender@Bablu has undergone approximately 5 years 10 months. Accordingly, the Appellants are directed to be released on bail till the pronouncement of final judgment by the Id. Trial Court, upon them furnishing a personal bond of Rs. 20,000/- each with one surety of like amount, to the satisfaction of the Id. Trial Court/Link Court, further subject to following conditions:

- i. The Appellants shall not leave India without prior permission of the Id. Trial Court.
- ii. The Appellants shall intimate the Id. Trial Court by way of an affidavit



and to the Investigating Officer regarding any change in residential address.

- iii. The Appellants shall appear before the Id. Trial Court as and when the matter is taken up for hearing.
 - iv. The Appellants are directed to give their mobile numbers to the Investigating Officer and keep it operational at all times.
 - v. The Appellants shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
10. The impugned judgment of conviction and order of sentence dated 26th March, 2024 and 30th May, 2024, respectively, are set aside. The matter is remanded back to the Id. Trial Court and the same shall be listed on 9th January, 2025. The Id. Trial Court shall hear the arguments afresh and pronounce judgment within a period of 2 months from the said date.
11. The appeals are disposed of accordingly.
12. Pending application(s), if any, also stand disposed of.
13. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
14. Copy of the order be sent to the concerned Id. Trial Court for necessary information and compliance.
15. Order be uploaded on the website of this court *forthwith*.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 06, 2024/sn/pr/Am