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IN THE HIGH COURT OF DELHI

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Date of Decision: 06th August, 2009

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CRL.L.P.65/2005

STATE

...Petitioner

Through : Ms. Richa Kapoor, Advocate

versus

LAKHBIR SINGH & ORS.

...Respondents

Through : Mr. Naseeb Singh, Adv. for R-1
Mr. Gurbaksh Singh and
Ms. Meenakshi Sharma, Advs. for
R-2
Mr. H.S.Chaudhary, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 19.08.2004, the appellants have been acquitted of the charges framed against them for offences punishable under Section 4 of the Explosive Substance Act as also the charge of conspiracy under Section 120B IPC. They have also been acquitted of the charge punishable under Section 489B IPC.
2. The State seeks leave to appeal against the impugned decision.

3. We have heard learned counsel for the State and the respondents. Learned counsel for the State attempted to urge that a contra view point is possible from the evidence led, which view point supports the case of the prosecution.

4. We have pointed out to learned counsel for the State that it is settled law: If two views are possible from the evidence led; one favourable to the prosecution and the other favourable to the accused, at a criminal trial, the second view has to be preferred. We have also pointed out to learned counsel for the State that the task of the appellate court is not to re-appreciate the evidence to see whether an alternative view is plausible. The task of the appellate court is to see whether the learned Trial Judge has taken note of the relevant circumstances and, in a case of acquittal, has not ignored admissible evidence or has returned findings of facts which are patently erroneous.

5. Thus, we have considered the arguments advanced, keeping in view the aforesaid legal principles.

6. Case of the prosecution is that the police had information that two men and a woman who were sympathizers of a banned terrorist organization 'Khalistan Zindabad Force' would be in Delhi to create a law and order problem in Pahar Ganj area in or around 15th August, 2000. On a secret information received, Lakhbir Singh, respondent No.1 was apprehended by the crime branch of Delhi Police headed by

ACP Sh.Ravi Shankar from outside Gurudwara Rakab Ganj. The date was 14.8.2000. The time was 4:00 AM. At the time of his arrest he was having with him a raxine bag, which on being checked resulted in a detonator, a battery and some explosives put inside a ceramic container being found inside the bag. A paper slip bearing two mobile telephone numbers 9810209087 and 9814157862 was recovered from him. The explosive was PENT with traces of RDX. Lakhbir Singh disclosed that he was to hand over the explosives to Mann Kaur respondent No.2 and that the telephone numbers on the slip were of the person who had supplied counterfeit currency to him, which counterfeit currency, he had handed over to Mann Kaur. Respondent No.1 also named Surjeet Singh respondent No.3 as their accomplice. Luckily the police officers had not to labour to apprehend Mann Kaur, who came to the Gurudwara. She was apprehended and 32 counterfeit notes in denomination of Rs.100/- recovered from her, besides a pencil timer. Both, respondent No.1 and respondent No.2 stated in their respective disclosure statements that they had hidden explosives at the banks of river Ravi near Jammu and could get the same recovered. At the pointing out of respondent No.1, respondent No.3 was apprehended from China Market Karol Bagh near Aman Hotel and he confessed of being a co-conspirator with the respondents 1 and 2. He led the police team to a room in hotel Aman and from a suitcase inside the room handed over

counterfeit currency notes which were seized vide memo Ex.PW-4/D. A mobile phone pertaining to the two mobile numbers which were noted in the slip recovered from R-1 was in his possession. Thereafter, R-1 and R-2 took the police team to Jammu and from the banks of river Ravi at Simbhal got recovered two timers, five electric detonators and 4.2 kg explosives which were seized as per the memo Ex.PW-8/A. Respondent No.3 took the police team to his native village Bhugreni District Hoshiarpur, Punjab, and from the top of an almirah of his residential house got recovered 795 counterfeit notes of Rs.100/- denomination.

7. This, in its entirety, is the case of the prosecution.

8. Four police officers namely SI Harbir, PW-7, SI Ashok Kumar PW-8, SI Ramesh Chand PW-9 and Insp.Rakesh Dixit PW-22 have claimed to be associated with the investigation, at different stages. We would be noting their testimonies relatable to the different stages of the investigation.

9. Indeed, the learned Trial Judge has referred, extensively, to their testimonies. As and when needed, testimonies of a few other witnesses of the prosecution has been referred to.

10. Learned counsels for the parties submit that the credibility of the case of the prosecution has to be determined with reference to the testimonies of PW-7, PW-8, PW-9 and PW-

22. Thus, arguments centered on the testimonies of the said witnesses.

11. The decision of the learned Trial Judge can be put into four compartments; each being distinct and independent of the other. The first segment pertains to the arrest of respondent No.1 and respondent No.2 in the early hours of the morning of 14.8.2000 at Gurudwara Rakab Ganj and the recoveries effected at the spot when they were arrested. Segment No.2 is the apprehension of respondent No.3 and recoveries effected from a room in Hotel Aman at his instance. Segment No.3 pertains to the recoveries effected at Jammu at the instance of respondent No.1 and respondent No.2. Segment 4 pertains to the recoveries effected at village Bhugreni District Hoshiarpur, Punjab.

12. Doubting the recoveries claimed to have been effected by the police from respondent No.1 and respondent No.2 when they were apprehended as per the police at Gurudwara Rakab Ganj, the learned Trial Judge has found that PW-7, PW-9 and PW-22 claimed in unison, when they deposed in Court, that ACP Ravi Shankar received secret information through an informer that respondent No.1 would be meeting respondent No.2 at Gurudwara Rakab Ganj and would be handing over explosives to her and upon receipt of said information at around 4:00 AM on 14.8.2000, a raiding party of police officers consisting of 13/14 police officers headed by ACP

Ravi Shankar, which included PW-7, PW-9 and PW-22 was constituted and that the secret informer pointed out respondent No.1 outside the gate of Gurudwara Rakab Ganj. The said respondent was carrying a blue coloured bag. The learned Judge has found it extremely strange that such a senior level police officer namely ACP Ravi Shankar who headed the raiding party was not examined as a witness and that though the contents of the blue coloured bag have been allegedly seized as entered in the seizure memo Ex.PW-7/A, the bag has not been shown as seized. The learned Trial Judge has further noted that no contemporaneous record was prepared regarding receipt of secret information and the constitution of the raiding party has been produced and no evidence led to prove the same. The learned Trial Judge has next noted serious discrepancies in the testimony of the three witnesses pertaining to the manner in which the secret informer gave the information as claimed by the police. Whereas PW-7 and PW-9 deposed that, the secret informer rang up from the gate of Gurudwara Rakab Ganj and told the police to reach there and he would meet them at the gate of the gurudwara and upon the police team reaching the gate of Gurudwara Rakab Ganj, the secret informer contacted them; PW-22 deposed that the secret informer personally came and gave information to ACP Ravi Shankar. Thus, the very commencement of the case of the prosecution was found to be faltering. The learned Trial

Judge has further found discrepancies with respect to the exact spot where respondent No.1 was pointed out and was arrested. The learned Trial Judge has held that pertaining to non-joining of public witnesses, contradictory answers were given. Whereas, PW-7 claimed that no public person was present and hence none could be joined, PW-9 and PW-22 claimed that 2 or 3 persons from the public were contacted to join the investigation, but they refused.

13. We do agree with the submission made by learned counsel for the State that the slight variation in the location of the exact spot where respondent No.1 was standing at the time he was allegedly pointed out by the secret informer, is not a contradiction which is so serious so as to discredit the witnesses.

14. But, as noted in para 12 above, this is only one of the many features noted by the learned Trial Judge to disbelieve PW-7, PW-9 and PW-22.

15. Indeed, we find it strange that ACP Ravi Shankar who received the secret information and at whose instance the raiding party was constituted has not been examined as a witness. Learned counsel for the State concedes that no evidence has been led to prove that ACP Ravi Shankar recorded having received any secret information. No evidence has been led of the raiding party being constituted and leaving for Gurudwara Rakab Ganj. Conceding that the recovery memo

Ex.PW-7/A does not list any bag from the articles recovered from respondent No.1, learned counsel for the State sought to justify the same as a mere error.

16. The deficiencies noted by the learned Trial Judge, briefly noted by us in para 12 above, excluding the variation in the testimony of the three witnesses pertaining to the exact spot where respondent No.1 was standing are indeed serious and hit at the root of the matter. Besides, testimony of PW-18 also demolishes the version of the prosecution that respondent No.1 became a suspect when the secret informer gave information on 14.8.2000. PW-18 is an employee at Gurudwara Sheesh Ganj and deposed that respondent No.1 and his wife were allotted room No.186 in the gurudwara. Charges were Rs.50/- per day. Rs.200/- as security was deposited. On 9.8.2000 two police officers came and enquired about respondent No.1 from him. He confirmed to them that respondent No.1 was staying in Gurudwara Sheesh Ganj. Room No.186 was locked. At the asking of the police officers he put a second lock on room No.186. On 12.8.2000 the police got the room opened. He removed the lock put by him. The other lock was broken. The room was searched. Nothing was seized. It is apparent that there is something more than what meets the eye because the police has been proved to be trailing respondent No.1 since much prior to 14.8.2000, the date on which the secret informer gave the alleged information.

17. Had the three other stages of the case of the prosecution withstood the test of credibility, one could have granted leave to appeal qua the evidence pertaining to stage 1 for the reason it sounds logical that the State should be given at least one more chance to justify its case qua stage 1. But where so shoddy is the evidence pertaining to the investigation relatable to stage 2, 3 and 4, it would be of no use to postpone considering the evidence pertaining to stage 1. It is trite that where substantial evidence of the prosecution is tainted, oasis of truth here and there need not be identified because the dessert of lies and fabrication would render the entire territory incapable of yielding any productive vegetation.

18. Stage 2 is the apprehension of respondent No.3 and the recoveries made pursuant to his disclosure statement.

19. Apart from PW-7, PW-9 and PW-22 even PW-8 claims to be associated with the apprehension of respondent No.3 and the recording of his disclosure statement Ex.PW-8/B as also the recoveries effected pursuant thereto.

20. Another witness is associated with the said recoveries being Ashok Kumar PW-4 the receptionist at Aman Hotel.

21. The taint found in the evidence of the prosecution by the learned Trial Judge pertains to the exact spot wherefrom respondent No.3 was arrested and the recoveries attributable to respondent No.3. For the time being, we ignore the

discrepancies in the testimonies of PW-7, PW-8, PW-9 and PW-22 qua the exact place where respondent No.3 was apprehended as claimed by the prosecution. We concentrate on the evidence pertaining to the recoveries effected at his instance and as recorded in the recovery memo Ex.PW-4/B.

22. Whereas PW-4 has stated that respondent No.3 was not even present when the police came to the hotel where he i.e. PW-4 was employed as a receptionist and that room No.205 where respondent No.3 was staying was searched and one attaché (suitcase) was seized, the other police officers claim that respondent No.3 was present. PW-4 deposed that the police took away some contents of the suitcase and that he does not know what was removed and taken away. The police officers claimed to have recovered the incriminating material from the suitcase. It is important to note that PW-9 admitted during cross examination that the key of the suitcase was not with respondent No.3 and that the suitcase was forced open and counterfeit currency was recovered. He admitted that some personal effects of Smt.Jagdish Kaur Dami were recovered from the suitcase but were handed over to her as she claimed that they belonged to her. We note that as per PW-4 another boy used to stay in the room No.205 along with respondent No.3.

23. We concur with the findings arrived at by the learned Trial Judge that under the circumstances it is doubtful

whether the recoveries attributable to respondent No.3 can be attributable as a case of conscious possession. Our reason is three-fold. Firstly, the room in question was occupied by respondent No.3 and another boy. Secondly, respondent No.3 did not produce the key of the suitcase. Thirdly, articles belonging to Smt.Jagdish Kaur Dami were recovered from the suitcase in question and were handed over to her. She was also occupying a room in the same hotel. No attempt has been made to bring on record the face of the said boy who was living in the room with respondent No.3. In fact, the testimony of PW-4 totally demolishes any recovery at the instance of respondent No.3.

24. Pertaining to stage 3 i.e. the recoveries effected at Jammu at the instance of respondents No.1 and 2, three witnesses namely PW-8, PW-9 and PW-22 have spoken about the same. All the three witnesses claimed that respondents 1 and 2 led the police officers to the banks of the river Ravi near Sambhal (Jammu) and dug the soil at a spot and recovered the incriminating articles as recorded in the memo Ex.PW-8/A. At the outset, the learned Trial Judge has found a very strange thing. Indeed, no site plan has been prepared with reference to the place where the recoveries were made. Surprisingly, the local police has not even been informed of the presence of the team of officers from Delhi. The three police officers conceded during cross examination that they did not report to their

counterparts at Jammu that a team of officers of Delhi Police were present in their territory to investigate an offence. Learned counsel for the State further concedes that the allegedly recovered articles have not even been deposited in the Malkhana.

25. The learned Trial Judge has noted serious discrepancies in the testimonies of PW-8, PW-9 and PW-22. Whereas PW-8 deposed that the police team reached Sambhal at 6:30 AM, PW-9 claims that the police reached Sambhal at 4:15 PM. Whereas PW-8 claims that a sabhal (iron instrument) was used by respondents 1 and 2 to dig the soil and get recovered the incriminating articles, PW-9 claims that the two shifted the soil with their bare hands. PW-22 claims that said respondents used wooden stick to shift the soil. Whereas according to PW-8 it took about 2 to 3 hours to effect recoveries at Sambhal, according to PW-9 everything was over in 40-45 minutes. As per PW-8, no public person was associated with the recoveries, since none was present. As per PW-9 attempts were made to associate public witnesses but they refused.

26. We agree with the finding returned by the learned Trial Judge that the evidence on record casts a serious doubt on the recoveries claimed to have been made by the police. Thus, just as the evidence pertaining to stage 2 is highly

contaminated, evidence pertaining to stage 3 is equally highly contaminated.

27. Pertaining to the recovery of counterfeit currency at the instance of respondent No.3 from his house at village Bhugreni District Hoshiarpur, Punjab i.e. the evidence qua stage 4 of the evidence led, the learned Trial Judge has found that the evidence of PW-7, PW-8, PW-9, PW-22 and ASI Rambir Singh PW-6 was most uninspiring. The learned Trial Judge has discussed the same in sub-paras vii to xiii of para VI. To summarize, the learned Trial Judge has held that from their evidence it was apparent that the house was the ancestral house of respondent No.3 and was inhabited by other members of the family being the parents of respondent No.3 and his children. It was not a case where the house was in the exclusive possession of respondent No.3. We find that there is no evidence that the room from where the recovery has been shown to have been made has been proved to be in the exclusive possession of respondent No.3. Counterfeit currency has been shown recovered. The exact place of recovery is alleged to be above an almirah lying in a room in the house. Assuming it was there, any family member could have kept it there. Surprisingly enough, no site plan of the house or the room has been prepared. That apart, the witnesses of the prosecution could not even describe the house in question. So much so that some speak of the house being a single storeyed

house and some speak of the house to be a double storeyed house. Further, some speak of no public witness being present and hence none being associated with the recovery, some speak of public witnesses refusing to join in the investigation stating that they would not do so because father of respondent No.3 was an ex-pradhan of the village.

28. We find that on every material aspect the evidence is wanting and lacks to inspire any confidence. We note that the learned Trial Judge has discussed the evidence spanning 50 pages. On the totality of the circumstances and the evidence led, we concur with the view taken by the learned Trial Judge as being a reasonable and a probable view. We hold that within the narrow confines of which the appellate court can re-appreciate evidence, no case has been made out justifying the grant of leave to appeal.

29. The petition seeking leave to appeal is dismissed.

**(PRADEEP NANDRAJOG)
JUDGE**

**(INDERMEET KAUR)
JUDGE**

**AUGUST 06, 2009
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