

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. REV. P. NO. 526/2003

% Judgment decided on: 3rd February, 2011

RAM PRAKASH

.....PETITIONER

Through: Mr. Keshari K. Tiwari, Adv.

Versus

STATE (N.C.T. OF DELHI)
& ORS.

....RESPONDENTS

Through: Mr. M.P. Singh, APP for the
State with SI Shivji Singh,
P.S. Tilak Marg.
Mr. Ajay Verma, Mr. Gaurav
and Ms. Swati, Advs.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

A.K. PATHAK, J. (Oral)

1. Respondent Nos. 2 and 3 (for short hereinafter referred to as "private respondents") have been acquitted by the Additional Sessions Judge, New Delhi of the charges under Section 307 read with Section 120-B IPC. Aggrieved by their acquittal, petitioner (injured) has approached this Court by way of present petition under Sections 397/401 read with Section 482 Cr.P.C. praying therein that impugned judgment

be set aside and private respondents be convicted under Section 307 read with Section 120-B IPC.

2. Prosecution case as unfolded is that petitioner Ram Prakash (PW2) had gone to a temple near jhuggi basti, opposite Gate No. 1, Pragati Maidan on 10th June, 2001 at about 7/7:30 AM for doing pooja. When he reached there he saw Sohan Singh Gosain (respondent No. 3) standing at the gate along with Shobhnab Singh (respondent No. 2) and Mahender Sharma (since deceased). Respondent No. 3 exhorted 'MAR SALE KO MANDIR PE KABZA NAHI HONE DETA', Mahender shot at him from pistol resulting injuries on his abdomen. Petitioner fell down on the ground. Mahender handed over the pistol to respondent No. 2. Thereafter, Mahender and respondent No. 2 ran away towards the railway line, while respondent No. 3 ran away in different direction. Ram Sarup Sharan Phalahari (PW1), who was pujari of the temple, came there. Public persons gave a chase to Mahender and respondent No. 3 and apprehended them near the railway line. Later, Mahender and respondent No. 3 were handed over to the police, which arrived at the spot. Petitioner was removed to the hospital. FIR was registered on the statement of PW1. Subsequently, respondent No. 2 was also apprehended. Weapon of offence could not be recovered.

3. FIR was registered on the statement of Ram Sarup Sharan Phalahari, who has been examined as PW1.

4. Besides PW1 Ram Sarup Sharan Phalahari, petitioner and two other public witnesses, namely, Raj Kumar and Gopal Jha have been examined before the Trial Court as PW3 and PW12 respectively. Trial Court meticulously examined their testimonies and found them untrustworthy and unreliable witnesses in view of the inherent discrepancies in their statements, inasmuch as, PW3 had completely turned hostile and did not support the prosecution case. As regard PW12 is concerned, Trial Court has returned a finding that he was a false witness. Testimonies of PW1 and PW2 were also found to be inconsistent. Trial Court has noted that PW1 had deposed that after reciting *arti* he came out of the temple and found petitioner lying on the ground and weeping. He informed that Mahender had shot him and respondent Nos. 2 and 3 were accompanying him. However, PW2 deposed that after receiving injuries he fell unconscious and had not informed PW1 that he was shot by Mahender, who was accompanied by respondent Nos. 2 and 3. As per the prosecution, Mahender and respondent No. 3 were apprehended by public persons within 5/10 minutes of the incident, while they were trying to flee away. However, in FIR PW1 had stated that Mahender had himself returned to the spot and was caught and handed over by the public persons to the police. While in witness box he said that public persons chased Mahender and respondent No. 3 and apprehended them and brought them at the spot. Non-

recovery of weapon of offence was also taken as adverse circumstances against the prosecution. It was also noted by the Trial Court that there was previous litigation pending between the parties, therefore, false implication of private respondents cannot be ruled out. By taking over all view of the circumstances emanating from the evidence led by the prosecution, Trial Court concluded that prosecution had failed to prove its case beyond shadow of reasonable doubt that private respondents were sharing common intention with Mahender to cause such injuries on the person of petitioner so as to cause his death.

5. Learned counsel for the petitioner has vehemently contended that Trial Court has not appreciated the statements of PW1 and PW2 in correct perspective. It has committed an error in disbelieving their versions. PW2 had deposed that weapon of offence was handed over by Mahender to respondent No. 2, who had succeeded in escaping. Thus, non-recovery of weapon of offence was inconsequential. Learned counsel has placed reliance on the statements of PW1 and PW2 for contending that their testimonies are trustworthy and reliable. From their statements, it is established beyond the shadow of reasonable doubt that on the fateful day Mahender along with respondent Nos. 2 and 3 had arrived at the temple. Respondent No. 3 exhorted to kill the petitioner, at which

Mahender shot at petitioner resulting injuries to him. It is contended that findings returned by the Trial Court are not in conformity with the evidence adduced by the prosecution and suffers from perversity.

6. As against this, learned counsel for the private respondents has vehemently contended that jurisdiction of High Court to interfere with the order of acquittal, while exercising its revisional jurisdiction under Section 401 Cr.P.C. in a Revision Petition by a private party against the judgment of acquittal, is very limited. The revisional court does not function as a court of appeal and cannot reappraise evidence and take a different view than what had been taken by the Trial Court. Order of acquittal cannot be interfered with unless it is shown that it is an exceptional case of some procedural irregularity or overlooking of material evidence or misreading of the same which has resulted in flagrant miscarriage of justice. He has contended that testimony of witness cannot be re-appreciated so as to take a different view than what had been taken by the Trial Court. Reliance has been placed on **Baleshwar Ghelot & Anr. vs. Siri Chand & Ors., 2008 Crl.L.J. 306** and **Thankappan Nadar and Ors. vs. Gopala Krishnan and Anr., (2002) 9 SCC 393**. As per the learned counsel, present case is not an exceptional case resulting in flagrant miscarriage of justice, thus, the judgment of acquittal passed by the Trial Court cannot be

interfered with and the Revision Petition is liable to be dismissed.

7. I have considered the rival contentions of both the parties. It is well settled that revisional jurisdiction vested in the High Court under Sections 397/401 Cr.P.C., cannot be exercised lightly in a Revision Petition filed by a private party against an order of acquittal, which could have been, otherwise, appealed against by the Government. Revisional jurisdiction can be exercised by the High Court only in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or prevention of gross miscarriage of justice. In other words, the revisional jurisdiction of the High Court cannot be invoked merely because the lower court has taken a wrong view or misappreciated the evidence on record. In **Mahendra Pratap Singh vs. Sarju Singh and Anr.** AIR 1968 SC 707, where the High Court in exercise of its revisional jurisdiction had, at the instance of a private party, directed re-trial of the accused, Supreme Court held that High Court was wrong in entering into minute details of evidence, while examining the decision of the Sessions Court.

8. In **Baleshwar Ghelot's case (supra)**, a Single Judge of this Court has held that powers of the High Court in exercise of its revisional jurisdiction under Section 401 Cr.P.C., in a revision petition filed by a private party against an order of

acquittal are very limited. The revisional court does not function as a court of appeal and cannot re-appreciate or reappraise the evidence adduced before the Trial Court. It cannot also interfere with an order of acquittal unless it is an exceptional case of some procedural irregularity or overlooking of material evidence or misreading of the same, which is manifest and which results in flagrant miscarriage of justice.

9. In **Akalu Ahir vs. Ramdeo Ram, (1973) 2 SCC 583**, Supreme Court has held that the appraisal of evidence of the trial Judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial.

10. Keeping in mind the facts of the present case, I do not find any justification to direct a retrial when Trial Court has considered the evidence in detail and has concluded that statements of witnesses suffer from inherent discrepancies and it was not safe to base conviction thereon. As per the Trial Court, there were grave doubts about the prosecution case. These doubts had arisen in view of the inherent discrepancies and contradictions in the testimonies of PW1 and PW2, which otherwise were found to be in variance with

the prosecution case. Sufficient reasons have been given as to why their testimonies were untrustworthy and unreliable. On the basis of evidence adduced before it, Trial Court has returned a finding that prosecution had failed to prove its case beyond shadow of reasonable doubt. I find no reason to set aside the order of acquittal passed by the Trial Court and order for retrial, in the fact of this case, more so when there is nothing to indicate that the judgment of Trial Court suffers from any perversity or defect of procedure or manifest illegality of such a nature as would result in miscarriage of justice.

11. For the foregoing reasons, petition is dismissed.

A.K. PATHAK, J.

FEBRUARY 03, 2011

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