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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing & decision: 5th September, 2011

+ CRL.L.P. 119/2011

STATE

..... Petitioner

Through: Ms. Richa Kapoor, APP for the State.

versus

NAVEEN

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G. P. MITTAL

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

J U D G M E N T

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The State seeks leave to prefer an appeal by this petition against the judgment and order of learned Addl. Sessions Judge dated 19.10.2010 in SC No.82/2009 acquitting the Respondents (hereinafter referred to as 'accused') for the offences punishable under Section 304/34 IPC.
2. Briefly the prosecution case against the Respondent was that one Jagdish Prasad was attacked on 08.09.2007 at 10:30 P.M. when he had collapsed on a *Chabutara* in front of his house after dinner. The prosecution case concededly was that every family member was inside the house; it was alleged that victim had old enmity with Chinu who attacked him with some sharp edged object on hip, cheek and

arm. Upon informing the police, the victim was taken first to DDU Hospital where the MLC Ex. PW-4/L was recorded. Subsequently, he was shifted to RML Hospital and again brought back to DDU Hospital. The prosecution relied on the testimonies of about 13 witnesses; primarily the material witnesses in this case were PW-1, PW-2 and PW-3. The victim died on 10.09.2007; the prosecution alleged that before his death, statement was recorded; same was produced in court and was sought to be proved; in that statement, he implicated that the Respondents have inflicted injuries upon him.

3. The Trial Court after considering the submissions of the parties, taking into account the material led before it, concluded that the Respondents were not guilty and the prosecution could not bring home the charges beyond reasonable doubt. Some of the material aspects, which in holding the impugned judgment were as follows: -
 - (i) Discrepancies in the statements of PW-1, PW-2 & PW-3, which was both internal as well as *inter se*, the prosecution case was concededly that none of them has actually witnessed the incident.
 - (ii) All the said three witnesses did not support the prosecution case at all. As far as the involvement of Respondent Nos.2 & 3 were concerned, the Trial Court admitted the prosecution story about the recording of the statement by the injured on 10.09.2007.
4. Learned APP argued that this is an appropriate case where the court should grant leave, having regard to the overall facts and circumstances. It was submitted that since the deceased was taken to the Hospital at the earliest available opportunity and his statement was recorded, which was in all material aspects corroborated by the testimonies of PW-1, PW-2 & PW-3 (showing motive of the Respondent), these should be considered while granting the leave to appeal. We have gone through the Trial Court record. The core of the Trial Court's reasoning in

concluding that the prosecution could not prove its case, may be found from the following extracts of the impugned judgment: -

“26. On the other hand the counsel for the accused submitted that PW-1 did not see accused causing injuries. According to PW-1 he simply saw the accused running having knife in his hand, after causing injuries to his father. When the witness was not present at the spot and came outside only on hearing the noise of his father, there was no occasion for the witness to see accused causing injuries his father.

27. The counsel for the accused further urged that PW-1 to PW-3 did not support the prosecution regarding involvement of accused Mahesh and Surrender either in examination in chief or in cross-examination by Ld. APP.

28. The counsel for the accused drew my attention towards lot of improvement in statement of PW-2 over her statement u/s 161 Cr.P.C. The same makes the statement of PW-2 un-reliable.

29. The counsel for the accused did not miss to argue that all the three PWs viz PW-1 to PW-3 admitted that Pawan brother of PW-1 was facing trial for murder of Umesh/ Jeeja of accused Naveen. The same establish motive for false implication of the accused.

30. The counsel for the accused also urged that PW-1 to PW-3 consistently admitted that deceased was suffering from Asthma, lungs problem and heart problem. Thus the possibility of natural death cannot be ruled out.

31. I find considerable force in the arguments of counsel for the accused. As regards statement of deceased it may be observed that the same is short of dying declaration. The same was given two days after the incident. Permission of the Doctor was not obtained at the time of recording said statement. Earlier permission from doctor of different hospital is of no use because at that time the injured did not give any statement. The statement has been recorded by IO only and neither attested by the doctor nor was got recorded before Magistrate.

32. To conclude I find that case of the prosecution is not free from doubt. Benefit of doubt is given to the accused and they are acquitted. File be consigned to Record Room.”

5. We also notice that in this case the first MLC Ex. PW-4/L, recorded injuries on the hip, face and hand. However, the postmortem report did not substantiate it, at least as far as the injury on the arm was concerned. The prosecution alleged that the second MLC is Ex. PW4/M. Strangely, this MLC is dated 09.09.2007. The prosecution case was further that after treatment the victim was discharged. He apparently reported later of abdomen pain. We notice that postmortem report Ex.PW-4/A listed yet another injury on the abdomen i.e. “stitched surgical wound”. The prosecution inability to explain this wound and absence of its mention in the first available document Ex. PW-4/L casts a serious doubt on its entire version. Since, none of the family members actually witnessed the incident; the court did not believe the prosecution story of declaration on 10.09.2010. We also notice that when the statement was recorded on 10.09.2007, the victim’s ability to record it was not certified unlike on 08.09.2007 when he was fit to record his statement, as mentioned explicitly in Ex. PW-4/L.
6. It has been often said that High Court has to be satisfied while considering petition for leave to appeal preferred by the State against a judgment of acquittal that there exist substantial and compelling reasons to adopt such course of action; which includes; serious lapses, overlooking of material facts or wrong application of law in appreciation of evidence. Having regard to this standard, we are of the opinion that the Trial Court’s reasoning acquitting the Respondent in his case is sound and does not call for any interference. The petition is, therefore, dismissed.

S. RAVINDRA BHAT, J.

G. P. MITTAL, J.

SEPTEMBER 5, 2011

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