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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 08.09.2011

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CRL.A. 874/2011

STATE

..... Appellant

Through: Mr. M.N. Dudeja, Advocate.
SI Bhoopendra Kumar, PS Burari.

versus

SAWA NAND & ANR

..... Respondents

Through: Mr. Shailender Dahiya, Advocate.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The State seeks leave of the Court against judgment and order of the learned ASJ dated 03.08.2010 whereby the Respondents i.e. Swanand and Meghraj were acquitted of the charges of the offences punishable under Sections-304/34 IPC.

2. The prosecution alleged that in the night of 23.08.2009, a quarrel took place between Rakesh Kumar (who deposed as PW-1 during the trial) and Chitarpal (the deceased) on the one hand and Vishal, Varun, Meghraj and Girish (hereinafter referred to

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as the accused party) on the other. The quarrel apparently was resolved and the accused party moved on. The prosecution's case - premised on the initial statement recorded at the instance of PW-1, was that he along with the deceased went near Girish's house. At that point of time, the accused party - this time comprising of Sawanand (Girish's father), Girish, Varun and Meghraj attacked the deceased. PW-1 stated that as a result of the fist blow received, the deceased collapsed; the blows were allegedly given by Girish and Varun whereas the role of Sawanand and Meghraj was supportive - catching hold of the deceased by the hair. The records reveal that the deceased was taken initially to the Kaya Kalap Hospital where he was declared dead. The prosecution placed on record PW-3/A, the MLC issued by that Hospital. The deceased was later taken to the Government Hospital - Aruna Asaf Ali Hospital where the second MLC - PW-4/A was issued; the same was later brought on record.

3. After recording the statement under Section-161 Cr.P.C., of the eye witnesses, PWs-1, 5 & 6, the Respondents and the other accused were charged with having committed the offences punishable under Section-304/34 IPC, as mentioned earlier. The Respondents in this appeal - Meghraj and Swanand were acquitted. Other accused i.e. Girish and Varun were convicted as charged but under Section-304, Part-II read with Section-34 IPC and sentenced to undergo five years rigorous imprisonment with fine.

4. The State urges in this appeal that the Trial Court adopted an erroneous approach in the appraisal of evidence. Although the testimonies of all the implicated accused who were made to stand trial, yet, on a selective reading of the ocular testimony, the Trial Court convicted only two accused and acquitted the respondents. This, according to counsel, requires interference by this Court.

5. Learned counsel relied upon the testimony of PW-1 who mentioned the specific role of each accused and submitted that once the Court accepted the credibility of the witnesses, it was not open for it to draw distinctions as far as the role played by the other accused were concerned.

6. The learned counsel for the Respondents relied heavily upon the observations of the Trial Court and contended that the acquittal of the Respondents was justified. It was submitted that PW-1's testimony so far as it implicated the acquitted accused i.e. the Respondents was unworthy of credence. Here, learned counsel emphasized that the Trial Court correctly read the evidence in the context of PW-8's admissions that the initial quarrel did not involve any aged person and that the complainant as well as the accused party were all young. In this case, both the Respondents are in their late fifties and both are public servants. Learned counsel emphasized that the prosecution did not bring out the entire story and has hidden certain facts from the Court which persuaded the Trial Court in adopting the approach that it did in the impugned judgment. Here it is argued that the Respondents and the other accused had relied upon the defence witnesses to say that there was a fight in which members of the public were involved which led to injuries on the deceased. Learned counsel highlighted the testimonies of three defence witnesses in this regard and submitted that their versions is in fact corroborated by the I.O. PW-12 who deposed during the course of the trial, of having interviewed them and also that they were present at the site.

7. Before discussing the relative merits of the appeal, it would be necessary to extract the relevant observations of the Trial Court which doubted the involvement of Sawanand and Meghraj at least in the manner alleged by the prosecution. The relevant

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findings of the Trial Court are as follows: -

"Therefore, whereas in their initial statements, before police, the complainant party had shown accused Sawanand and Meghras as cooperating in the offence but in their statements before the Court, they had attributed the main role to accused Sawanand by stating that accused Sawanand brought a danda from his house and hit Chitarpal with danda on his head four or five times as a result of which Chitarpal fell down on the road and could not get up. Similarly, there is major improvement regarding the role of Meghraj to whom it is attributed that he made caste remarks against Ved Parkash @ Sonu at Dhiraj Chicken Corner. I may point out that there is big age difference between accused Meghraj and accused Girish and Varun. Accused Girish and Varun are aged about 20 years, whereas accused Meghraj is aged about 58 years. Therefore, it is highly doubtful that he would be in company with such young boys to spend his evening in an Eating House. PW1 Rakesh in cross-examination has admitted that his relations with Meghraj had been inimical prior to the incident. In view of the sustained efforts to improve upon the prosecution story and even changing the role of accused Sawanand, creates a serious doubt that either role of accused Sawanand and Meghraj is being exaggerated or they are being falsely implicated in view of previous strained relationship or on account of being highly anguished due to the death of their near and dear one. It is important to note that accused Sawanand is the father of accused Girish. Ld APP argues that accused Sawanand being Sub Inspector in Delhi Police, police did not record the correct statement of the witnesses to help him, I do not find any substance in this submission because as per the testimony of PW1, one Ram Khilari a relative of PW1 is also in Delhi Police and he reached in the Kaya Kalp Hospital on receiving the telephonic message about the incident. This shows that the complainant party was also having the support of a police official of Delhi Police from the very beginning. In such circumstances, it does not appeal to the mind that police would record an incorrect statement of the witnesses. It is pertinent to note that complainant has duly put his signatures on his complaint/statement Ex.PW1/A which is written in Hindi language. Thereafter, the benefit of reasonable doubt would have to be given to the accused persons on this account. It is a social reality that when there is enmity between the parties, there is normal tendency to implicate even innocent relatives and supporters of the actual offenders. As I have already stated that the manner of testimony before this court with regard to accused Sawanand and Meghraj is of highly doubtful nature. The question is whether the court should hold the testimony of the prosecution witnesses to be mere exaggerations or to straightway give benefit of doubt to these accused persons. I am of the opinion that once a testimony of the witnesses in respect of a particular accused is not free

from taint, it would be safer to acquit him than to put him under a doubtful guilty verdict. In these circumstances, I am of the opinion that accused Sawanand and Meghraj deserve benefit of reasonable doubt and I acquit both of them."

8. Besides we noticed that three defence witnesses unequivocally mentioned that each one of them was present when the second incident occurred which ultimately led to the death of Chitrapal. They also outlined the role of Girish and Varun clearly implicating them but at the same time they also state that Meghraj and Sawanand had no role. The I.O. PW-12 admitted having recorded their statements. Besides, we noticed that PW-8, the owner of the "Dhiraj Chicken Corner" where the cause for the incident i.e. the quarrel which preceded it took place, denied that any elderly person or people other than youth were involved. The Trial Court noticed that Meghraj is aged 58 years and Sawanand, Girish's father, is above 50 years. This led the Trial Court to question the prosecution's version. The Trial Court also noticed that the initial statement recorded by PW-1 only mentioned the fist blows. However, prosecution tried to improve its allegations by introducing the theory that "danda blow" was given on Chitrapal's head at the instance of Sawanand. This apparently was an afterthought because of the Post Mortem Report which recorded some head injury.

9. During the course of the hearing, counsel relied upon the decision of the Supreme Court in State of U.P. v Kishanpal & Ors JT 2008 (8) SC 650 which stated that where the accused party belongs to the same family and general allegations are leveled against them, the Court should scrutinize the evidence with care and be satisfied that there is no false implication. The Court's observations are as follows: -

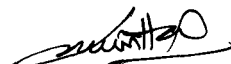
"Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their

evidence with great care, caution and circumspection and be very careful too in weighing such evidence."

10. It has been often said that the High Court would take a view different from that of the Trial Court - undoubtedly after complete appraisal and independent scrutiny of the evidence, only if the Trial Court's reasoning betrays gross mis-appreciation of facts or mis-appreciation of law. It would not be open to the High Court acting as an Appellate Court to substitute its views merely because another possible view can be taken about the prosecution version. In other words, if the approach of the Trial Court and the findings rendered by it are based on reasonable basis and proper appreciation of law, the High Court would not be justified in interfering with those findings. Adopting this approach, we are of the opinion that the impugned judgment calls for no interference and the reasoning of the Trial Court is sound.

11. For the above reasons, we find that the appeal is bereft of merit; it is accordingly dismissed.


S. RAVINDRA BHAT, J


G. P. MITTAL, J

SEPTEMBER 08, 2011
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