

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

Date of Hearing & Decision: 27th May, 2011

+ CRL. L.P. 160/2011

STATE

Through: Petitioner
Mr. Jaideep Malik, APP for the State.

versus

SHYAM LAL @ GANJA

Through: Respondent
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

G. P. MITTAL, J (OPEN COURT)

1. The State seeks leave to file an appeal against a judgment dated 19.10.2010 in Sessions Case No.53/2009 whereby respondent/ accused Shyam Lal @ Ganja was acquitted of the charge for the offence punishable under Section 307 Indian Penal Code.
2. The case was registered on the basis of the statement of complainant Raghunath Sharma made to HC Lala Ram (the first IO) in Deen Dayal Upadhyay (DDU)

Hospital. Raghunath Sharma informed the IO that he used to run a *Paan Biri* shop near Aggarwal Lassi. On 11.03.2009 a person named Ganja who was resident of Jhuggi No.24, Sadar Bazaar came to his shop at about 9:00 A.M. The aforesaid Ganja owed some money to him (the complainant) on account of *Paan Biri*. He demanded money from him on which he took out a sharp edged object in his hand and inflicted the same on the left side of his stomach and on the right side of the chest and fled from the spot. A case for the offence punishable under Section 307 IPC was registered. In the course of investigation, the respondent Shyam Lal @ Ganja was arrested. It is alleged that the respondent made a disclosure statement Ex. PW-13/DA and got recovered a small scissor. The sketch Ex. PW-13/C of scissors was prepared and the same was seized by memo Ex. PW-13/D. The blood stained clothes of the complainant were seized in the Hospital and on serological examination the same were found to be stained with 'O' group blood. The pair of scissors allegedly recovered at respondent's instance was found to be stained with human blood. However, there was no reaction to the blood group. By MLC Ex. PW-3/A Dr. Amit Aggarwal opined the injury suffered by the complainant to be dangerous. After recording statements of the witnesses and completion of the investigation a report under Section 173 Cr.P.C. was filed in the court.

3. The respondent pleaded not guilty to the charge for the offence punishable under Section 307 IPC.
4. In order to bring home the guilt of the respondent, the prosecution examined 14 witnesses. The respondent was given an opportunity to explain the incriminating evidence by his examination under Section 313 Cr.P.C. The respondent denied having made confessional/ disclosure statement Ex. PW-13/DA or recovery of the scissors Ex. PW-13/D by him. He stated that he was innocent and had been implicated in the case.
5. By the impugned judgment the Trial Court opined that there were doubts in the prosecution case with regard to the manner of the incident as also to the identity

of assailant. The Trial Court opined that the prosecution case was not established against the respondent beyond reasonable doubt. The respondent was, therefore, acquitted of the charge framed against him giving him benefit of doubt.

6. The reasoning of the Trial Court for disbelieving the prosecution version and the complainant on the identity and the manner of assault are contained in paras 9, 10 and 17 of the impugned judgment. The same are extracted hereunder: -

9. *Injured Raghunath has been examined by the prosecution as PW1. In his examination before the Court as PW1, he has given a totally different story of the incident. He has deposed that Ganja did not owe him any money, but it was a friend of injured himself, who owed him money. Ganja was simply accompanying that friend of the injured, who owed money to the injured. He has further deposed that a scuffle took place between himself and his friend, when he demanded money from that friend. That friend of injured told accused Ganja that injured Raghunath Sharma is hurling abuses at him, on which accused Ganja caught hold of him and a quarrel took place. He further deposed that in a state of anger, accused brought a scissor from the cart of his friend, on which his friend used to sell fruits, and stabbed the injured with the scissor on his stomach and chest. Thereafter, he fled. He further deposed that he was demanding money from his own friend and the accused intervened without any cause. In his cross-examination, he deposed that he knew the accused by the name of Shyam Lal for the last 10/15 years and added that he did not name the accused as Shyam Lal in his statement to the police. He was also confronted with his statement to the Police U/s. 161 Cr.PC (Ex.PW1/A).*

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10. *The aforesaid material contradictions in the statement of injured Raghunath Sharma create a well founded doubt about the involvement of the accused in the offence. The injured himself, as mentioned herein-above, states that he knew the accused only by the name of Shyam Lal. Therefore, how did he mention in his statement to the police Ex. PW1/A that he was stabbed by Ganja is not understandable and is even not explained anywhere by the injured. In his statement to the police Ex. PW1/A, he states that accused Ganja owed him money and attacked him when he demanded the money whereas in his deposition before the Court, he states that Ganja was accompanied by a friend of the injured at the time of incident and it was that friend of the injured, who owed him money. In the statement Ex.PW1/A, the injured states that*

accused was carrying a sharp edged weapon in his hand at that time but in the statement before the Court, he states that accused brought a scissor from the cart of his friend, on which that friend of accused used to sell fruits. These contradictions are not so minor as to be ignored, keeping in view the fact that the injured was called upon to depose before this Court just after eight months of the incident. The incident is stated to have happened on 11.3.09 and the injured Raghunath Sharma deposed before this Court on 24.11.09. Therefore, by any stretch of imagination, the details of the incident would have been fresh in his mind.

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17. As per statement of injured Raghunath Sharma in assailant Ganja was known to him as he had borrowed Paan Biri from him. As per his statement to the police Ex. PW1/A, assailant Ganja was residing in Jhuggi No.24, Sadar Bazar, Delhi Cantt. Accused Shyam Lal @ Ganja is stated to be residing in Jhuggi No.158/69, Tal Ki Jhuggi, near Jain Mandir, Sadar Bazar, Delhi Cantt. There is nothing on record to show that Investigating Officer took care to establish the identity of the accused and to ascertain whether accused was the same person, who attacked the injured on the day of incident. In view of the confusion regarding name of the assailant and in the absence of accurate address of the assailant, it was necessary for the investigating agency to conduct TIP, which has not been done. This also raises a serious doubt regarding involvement of accused Shyam Lal @ Ganja in the offence in the present case.

7. Thus it may be noticed that Raghunath Sharma (PW-1) made wholesale improvements and omissions in his statement in the court vis-a-vis his statement Ex. PW-1/A recorded by HC Lala Ram. On the identity of assailant, PW-1 Raghunath Sharma stated in the court (Ex. PW-1/A) that the person named Ganja came to his shop and stabbed him when he (PW-1) asked for the money, which said Ganja owed him. In his examination, as PW-1, he deposed that Ganja did not owe him any money rather it was the respondent's friend who owed him money and that Ganja had simply accompanied that friend to his (PW-1's) shop and that initially a scuffle took place between him and his friend when he (PW-1) had demanded money from that friend. There was improvement not only as to how the quarrel started and how PW-1 was assaulted but there was contradiction as to the weapon used by the assailant in this witness' statement in the court. PW-1

testified that the injuries were caused with the scissors, which was brought by the assailant from the fruit *Redi* (cart) whereas in the statement Ex. PW-1/A it was stated that Ganja was carrying a sharp object and used the same when quarrel ensued.

8. It is quite intriguing to note that though PW-1 made a statement in the court that he knew accused Shyam Lal for the last 10/15 years. In the light of this, why he had not been named in the FIR remains a mystery. PW-1 was confronted with his statement Ex. PW-1/A with regard to the identity of the accused. This is further compounded as in the statement Ex. PW-1/A the address of the said Ganja is given as Jhuggi No.24, Sadar Bazaar, Delhi Cantt. but in the arrest memo Ex. PW-11/A and personal search memo Ex. PW-11/D as also in his examination under Section 313 Cr.P.C. the accused had given his address as Jhuggi No.158/69, Tal Ki Jhuggi, near Jain Mandir, Sadar Bazar, Delhi Cantt. The prosecution has not given any explanation about this discrepancy.
9. Further, there is contradiction between PW-2 Manju and PW-5 Sushila's testimony as well. PW-2 Manju, who claimed herself to be the sister of PW-1 deposed that after dinner while taking a stroll she went to the house of PW-1 where she found him writhing in pain and his clothes were soaked in blood. She stated that she removed the injured (PW-1) to DDU Hospital. She testified that PW-1 had informed her that the injuries were caused by Ganja. PW-2's testimony was discounted by PW-5 Sushila (wife of injured PW-1) when she stated in her examination-in-chief that a lady, who used to sell fruits and in front of whose shop the incident occurred, brought PW-1 to the house. When she (PW-5) saw her husband bleeding from his injury, she immediately removed him to DDU Hospital. She deposed that the police did not make any inquiry from her or her husband about the incident. She was allowed to be cross-examined by the learned APP and deposed that her husband was not in a position to speak when he was brought to the house. She denied the suggestion that her husband had told her that he had been injured by Ganja with some pointed object. She also denied having stated to the police that Shyam Lal @ Ganja had caused injuries to her husband.

10. Again the prosecution version is suspicious not only as to the weapon used but also with regard to the disclosure statement and the recovery of the scissors in pursuance of the said statement. A confessional statement Ex. PW-13/DA was alleged to have been made by the accused on 17.03.2009 wherein he was silent as to where the weapon was kept by him. As per PW-13 Inspector Rajender Singh (IO), the accused was brought out from the lock-up on 19.03.2009 and was taken to the place of incident. He was asked to recall about the weapon of offence and at that time he disclosed that he could get the scissors recovered from “*dher of earth and kura*”. According to PW-13, thereafter the accused got recovered the scissors and its sketch Ex. PW-13/C was prepared. It is highly improbable that an accused would be silent either about throwing or concealing a weapon of offence on 17.03.2009 and would voluntarily disclose about the same 2 days later on 19.03.2009. Moreover, it is unbelievable that recovery of small scissors would be effected after 7 days of the incident from a place like a *kuredaan* (dustbin).
11. Though the presence of human blood on the scissors alleged to be recovered at accused’s instance does not connect the accused with the offence, yet it is important to note that at the time of recovery of the scissors the IO did not notice any blood stains on it, despite this he preferred to send it to the FSL. It is also improbable, rather impossible, that there would be blood stains on the scissors, which had been lying in the heap of dirt for 7 days after the incident. This is indicative of the fact that the investigation was not conducted fairly and properly by the IO.
12. It has been repeatedly held that the standard to be applied by the High Court while considering whether or not to grant leave to appeal against the order of an acquittal is to see if there are substantial or compelling reasons to do so. The High Court would review the Trial Court’s judgment against acquittal when there are glaring errors in appreciation of law; overlooking material evidence; or there is grave miscarriage of justice etc.

13. In view of the foregoing discussion and having considered the record, we find that no such reasons are forthcoming which warrant the grant of leave and the Trial Court's findings are well reasoned and do not call for any interference. The leave petition is therefore, dismissed.

G. P. MITTAL, J.

S. RAVINDRA BHAT, J.

MAY 27, 2011
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