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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 27.05.2011

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CRL.L.P. 162/2011

STATE

..... Petitioner

Through: Mr. Jaideep Malik, APP.

versus

SURENDER & ORS

..... Respondents

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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| 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, by this petition, seeks leave to appeal against the judgment and order of the learned Additional Sessions Judge dated 09.08.2010, whereby he acquitted the respondents/accused from the charge of having committed the offences punishable under Section-302/34 IPC.

2. The prosecution case was that on 12.08.2005, Sukhbir Singh, the maternal uncle (mama)

of PW-3 was accompanying him to E-Block, Relief Camp, where he resides, when at around 1:30 PM, the respondents stopped them and after holding out threat that he would not be left alive, started beating him. It was alleged that the respondent/accused Azad was armed with an iron rod, Somesh with a danda and Surender's role was spelt out as having caught the deceased. After receiving severe beatings, the Sukhbir Singh fell down. The accused/respondents left the spot. The prosecution alleged that intimation of the attack was received through a PCR message upon which the DD entry was made. The police reached the spot and after registering the FIR, carried out investigation. The accused were arrested and recoveries were made pursuant to the disclosure statement made by them. On the basis of the material, a charge sheet was filed alleging that the accused had committed the offences. On being charged, accused denied their involvement and entered the plea of not guilty, claiming trial. The prosecution examined 15 witnesses besides relying on several exhibits. By the impugned judgment and order the Trial Court acquitted the respondents.

3. It is urged by the learned APP that the impugned judgment contains infirmities and has given undue importance to the alleged discrepancies. Learned counsel urged that the consistent eye witnesses both PW-2 & PW-3 supported the prosecution about the nature of the attack, time, as well as the identity of the accused. It was submitted that the alleged lacunae in the DD entries not containing mention about the presence of the PW-2 & PW-3, or for that matter, the absence of mention of PW-3 who accompanied the deceased along with the PCR van could not be fatal to the prosecution if the essential and material facts were proved. It is argued that in the totality of the circumstances, the Trial Court has unduly highlighted the minor discrepancies, which ought not to have been the case and this is a fit case for grant of leave to appeal.

4. The Trial Court analyzed the ocular and documentary evidence placed before it. The

impugned judgment discloses that the main reasons for acquitting the respondents/accused were:

- (1) Despite the knowledge of the eye witnesses about the identity of the accused, their names were not mentioned in the DD Entry;
- (2) One of the accused i.e. Surender was not named in the FIR.
- (3) The DD Entry recorded by the police, in the first instance, did not reveal the presence of PW-2 & PW-3 as eye witnesses.
- (4) The recoveries made particularly that in the case of Somesh were disbelieved; and
- (5) The Trial Court further noticed that no independent witness was made to join the proceedings at the stage of recovery of the articles allegedly made pursuant to the disclosure statement.
- (6) The evidence pointed to the presence of 10-15 witnesses at the spot, even at the stage, police had visited it, yet the prosecution made no attempt to join even a single one of them in the course of the trial or the investigation so as to give credence to the allegations leveled against the accused.

5. Lastly, the special report in this case was proved to have been received by the Magistrate under Section-157 Cr.P.C. only on 16.08.2005. The Trial Court stated that the prosecution is unable to explain this delay, which considerably weakens its case.

6. From the above discussion, it is evident that the respondents were charged with having committed the murder of Sukhbir Singh on 12.08.2005 who died as a result of serious injuries received by him on account of beating administered by them with the help of an iron rod and stick (danda). The role of different accused was that Surender is alleged to have facilitated in the attack by holding the deceased. Azad and Somesh were allegedly the assailants attacking with the iron rod and danda. The prosecution had heavily relied on the ocular testimonies of PW-2

and PW-3 who are relatives. Trial Court disbelieved the prosecution's version not merely because the two eye witnesses were related to the deceased, but for various other reasons which have been outlined above.

7. It would be useful to extract the relevant portions of the Trial Court's judgment, in this context, which are as follows: -

"9. PW-3 Baljeet Singh, claims to have seen the beatings given by accused to his maternal uncle Sukhbir Singh after concealing himself behind a wall and also claims that he had accompanied Sukhbir Singh to the hospital in the PCR van. However, as per MLC Exbt. PW-10/DB, Sukhbir Singh was brought to the hospital by ASI Hari Prakash. As per MLC, Sukhbir Singh was brought to the hospital with the alleged history of beatings given by mob. If Baljeet Singh had taken his maternal uncle to hospital and himself had seen the occurrence, the alleged history recorded in the MLC would have been different. In cross examination, Baljeet Singh states that PCR officials had made enquiries from him and Asha and that he had told the brief to the police officials and the same was noted down by them. PW-2 Smt. Asha also states in cross examination that PCR officials had made enquiry from her and that she had stated the facts to PCR officials. On the other hand, ASI Hari Prakash states in cross examination that he had made enquiries from public persons gathered at the spot but no one disclosed anything about the person whom they had taken to hospital. He admits that he had told the doctor that the person had been beaten up by the mob. Thus, ASI Hari Prakash contradicts the two eye witnesses who have stated that they had narrated the incident to him. There is no reason why ASI Hari Prakash despite knowing that the injured/deceased was beaten up by the accused persons, would give a false history before the doctor. PW-3 in his cross examination states that he had taken Sukhbir Singh in his arm from Gypsy upto the place he was attended by the doctor in the hospital. If he had taken the deceased in his arm to the doctor, blood from the injuries of the deceased would surely have fallen on his clothes but the clothes of Baljeet Singh have not been seized which could have proved his presence at the hospital. There is endorsement on the MLC regarding handing over of the belongings of the deceased to his relative Tarsem Singh, father of Baljeet Singh. Tarsem Singh admits in cross examination that some of the articles of the deceased were handed over to him on 13.08.2005. If Baljeet Singh had gone to hospital on 12.08.2005, as stated by him, the articles would have been returned to him on that very day. Baljeet Singh states in cross examination that Tarsem Singh reached the hospital in about 15 minutes of giving telephone call to him but Tarsem Singh states that he was informed about the incident by the neighbours and only police officials met him in the hospital. He admits that Baljeet had not given the information about the incident. If Baljeet Singh had accompanied the deceased to the hospital and his father reached the hospital after 15 minutes, he would have surely given the information to his

father. Thus, the presence of PW-3 Baljeet Singh either at the spot at the relevant time and also accompanying the deceased to the hospital appears doubtful.

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15. In the present case also, independent witnesses of the public, although present, have not been examined as witnesses, no blood has been lifted from the spot, there is doubt regarding the place of occurrence and there is material contradiction in the testimonies of two alleged eye witnesses and their presence at the spot is also doubtful.

16. Prosecution is also relying on the recovery of iron rod and danda, allegedly used in the commission of the offence. Admittedly, there is no independent witness of recovery of iron rod and danda. PW Baljeet is stated to be the witness of recovery of iron rod at the instance of accused Azad. As per prosecution story, iron rod was sealed at the spot itself but iron rod produced in court was in an unsealed condition. It is therefore doubtful as to whether it is the same iron rod which was recovered at the instance of accused Azad. PW-3 Baljeet Singh has deposed that on the next day i.e. 13.08.2005, he was going to his residence from Relief Camp and on the way, he saw accused Somesh and it was 5.30 pm. He went to police station and told the police officials. Police officials accompanied him and arrested accused Somesh and accused Somesh pointed out some place and on his pointing out, one danda was recovered. On the other hand, Inspector Narender Chawla stated that accused Somesh was arrested on 09.09.2005 on the identification of Baljeet Singh and that accused Somesh got recovered a lathi from bushes near railway track Peera Garhi on 10.09.2005. There is thus contradiction with regard to the date of arrest of accused Somesh and the recovery of lathi/danda at the instance of accused Somesh. The seizure memo of the danda Exbt. PW-8/D does not bear the signatures of Baljeet Singh as witness. Baljeet Singh has not given the place from where, danda was recovered. The recovery of danda in the presence of Baljeet Singh therefore appears doubtful. Constable Dinesh Kumar (PW-8) also claims to be the witness of recovery of danda at the instance of accused Somesh. As per his testimony, the danda was recovered on 09.09.2005 but the seizure memo exbt. PW-8/D shows that it was recovered on 10.09.2005. Constable Dinesh Kumar admits in cross examination that there was no blood stains on the danda and there was no specific identification mark on the danda. He admits in cross examination that there was no specific identification mark at the bushes at railway track from where accused Somesh got recovered the danda. He admits in cross examination that the bushes were at an open place and anyone can go there. Inspector Narender Chawla (PW-13) also admits in cross examination that the place of recovery was an open space and accessible to general public. He also admits that no blood stains were found either on the rod or on the danda. Admittedly, the alleged weapons were not sent to FSL to confirm the presence of blood on them. In the case of Jaivir Singh Vs. State 1995 (2) CC Cases 442 (HC), Hon'ble Delhi High Court held that the recovery of knife made from open public place cannot be given much

importance unless it is in evidence that it was concealed in bushes and not visible to anyone nor sufficient blood was detected on the blade of the knife for analysis to show group of blood appearing on the knife to link it with the group of blood of the deceased. In the present case also, the recovery has been made from an open space accessible to general public. There is no evidence that danda was not visible to anyone. The recovery is therefore doubtful. Moreover, there is no evidence to connect the rod and danda with the offence as no blood has been found on the rod and danda. The alleged recovery of danda and rod is therefore inconsequential.

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18. The incident, as per PW-3, took place at about 1.00. 1.30 pm. ASI Hari Prakash, Incharge PCR Van states that he reached the spot on PCR van at 2.20 . 2.25 pm and that the hospital was at a distance of about 8 to 10 kilometers from the spot. In cross examination, Baljeet Singh states that they had reached the hospital within seven minutes. If that is only the time taken in reaching the hospital, how come the time of arrival of the deceased in the hospital is shown as 4.00 pm.”

8. The Court also notices that the Trial Court had relied upon several judgments notably *K. Ashokan & Five Others v. State of Kerala*, 1998 (2) JCC (SC) 170, *Satish Kumar v. State*, 1995 JCC 592, and *Mathura Yadav @ Mathura Mahato & Ors. v. State of Bihar*, (2002) 6 SCC 451, in support of its reasoning that the absence of one or more witnesses at the spot in the initial documents including the FIR presented by the police can be under certain circumstances fatal to the prosecution. It was also noticed that lack of independent corroboration by witnesses and persons who are shown to have been present also weakens the prosecution's story.

9. It has been repeatedly reiterated that the standards to be applied by the High Court while considering the petitions for leave to appeal against acquittals is one where the prosecution establishes substantial and compelling reasons, which by and large are confined to serious or grave mis-appreciation of evidence, wrong application of law and an approach which would lead to complete miscarriage of justice. In the present case, the Trial Court has listed various grounds on which it acquitted the respondents/accused. All of them, to our mind, are reasonable and

none of them can be termed as misapplication of law or wrongful appreciation of the evidence placed before the Court by the prosecution.

10. Applying the existing standards , we are satisfied that the acquittal recorded by the Trial Court is based on sound reasoning and analysis which does not call for interference.

11. For the above reasons, petition has to fail and is dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**G.P.MITTAL
(JUDGE)**

MAY 27, 2011
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