

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

Date of decision: 26th August, 2011

+ CRL.L.P. 253/2011

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through: Mr. M.N. Dudeja, APP for the State.
versus

MIRZA IFTAHAR HAJI @ MUNNA & ANR. Respondents
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? No.
2. To be referred to the Reporter or not? No.
3. Whether the Order should be reported in the Digest? No.

J U D G M E N T

G.P. MITTAL, J. (ORAL)

CrI. M.A.6750/2011 (Under Section 5 of the Limitation Act)

1. There is a delay of 123 days in filing the petition. The delay is condoned for the reasons as mentioned in the application.

CRL.L.P. 253/2011

2. The State seeks leave to appeal against the judgment dated 25.10.2010 in Sessions Case No.14/07 whereby the Respondents (the accused) were acquitted of the charges under Sections 307/323/34 of the Indian Penal Code (IPC). The facts of the case leading to the filing of a report under Section 173 Cr.P.C. against the accused can be fruitfully extracted from Para 2 to 5 of the Trial Court judgment. These are :-

“2. The three accused persons have faced this trial on the allegations that on 04.10.2004 at about 9.45 PM at a place near house No.3145 Gali Waqil Wali, Kucha Pandit within the jurisdiction of PS Hauz Qazi, they, along with the juvenile, in furtherance of the common intention, voluntarily caused injuries to PW-5 and PW-8A on the vital parts of their bodies with sharp edged weapon with such intention and knowledge and under such circumstances that if by such acts they had caused the death of said two persons, they would be guilty of the offence of murder and further that on the said date, time and place they had also caused simple hurt on the person of PW-2.

3. The case of the prosecution may be taken note in brief at this stage. At 10.20 PM, DD No.25 A (Ex.PW-11A) came to be recorded in Police Station Hauz Qazi (hereinafter, “the police station”), on basis of information received from the Police Control Room (hereinafter, “the PCR”) about a quarrel having taken place in Gali Waqil Wali, Kucha Pandit, Hauz Qazi. This information was passed on for inquiry to SI Horem Singh (PW-12). PW-12, the Investigating Officer (the IO) went to the scene of occurrence, where he learnt that the persons injured in the quarrel had been taken to LNJP Hospital (hereinafter, “the hospital”). The IO then proceeded to the hospital where he found PW-8A and PW-5 having been examined against MLCs. While PW-5 was declared by the doctor attending on him to be unfit for statement, PW-8A was certified to be fit for such purpose.

4. At that stage, PW-2 met the IO and gave his statement (Ex.PW-2/A) which indicated offence under section 307/34 IPC to have been committed. The IO made endorsement (Ex.PW-11/B) and got a case FIR (Ex.PW-1/A) registered in the Police Station. In the course of investigation that followed, the IO collected the MLCs and the connected medical records/opinion.

5. It is stated that the three accused persons were arrested and interrogated. It is alleged that they made disclosure statements which were recorded whereby their involvement in the incident came to be confirmed. It is claimed that the juvenile was also arrested in due course and, under interrogation, he also made a disclosure statement and on that basis at the instance of the juvenile, the knife which had been used as the weapon of offence was recovered and seized after necessary formalities. The IO had also collected the sample of the blood of PW-8A and PW-5 besides taking into possession the blood stained shirt and vest carrying a cut mark and blood stains of PW-8A. The exhibits so collected, initially deposited in the malkhana, were

eventually sent to Forensic Science Laboratory (FSL) which in due course issued reports Ex.PW-7/A and Ex.PW-7/B.”

3. In order to establish its case, the prosecution examined 17 witnesses. In their examination under Section 313 Cr.P.C., the accused denied prosecution allegations and pleaded false implication.
4. By the impugned judgment, the Trial Court opined that there were contradictions in regard to the quarrel alleged by the prosecution, the place where it occurred and the role attributed to each accused. The Trial Court held that the dangerous injury sustained by PW-5 Abdullah was attributed to Mohid @ Muhid, the juvenile and in view of the contradiction as to how the incident occurred, it was doubtful if the other accused (who stood trial) shared the common intention with the juvenile. The juvenile had been let off and the case was closed against him. The Court reasoned that the accused facing trial before it could not be fastened with criminal liability, particularly, with the aid of Section 34 IPC. It was further held that although PW-8A Mohd. Khalid, the injured was declared fit to make a statement, yet the IO PW-12 SI Horam Singh preferred not to record his statement in LNJP hospital and get the first hand information and instead examined PW-2, who claimed to have sustained injuries in the incident yet did not get himself medically examined. The Trial Court further opined that there was a delay in recording of the FIR which could have led to embellishment and manipulation in making out the case.
5. We have heard Mr. M.N. Dudeja, learned APP for the State and have perused the record.
6. As per the MLCs of PW-5 and PW-8A they reached the hospital at 11:00 PM and 10:30 PM respectively. PW-12 SI Horam Singh admitted in cross-examination that he reached the LNJP hospital right from the spot (which is not far from the spot) and met the complainant at 10:30 / 10:45 PM, yet the IO preferred to record his statement only after 12:00 in the night as the rukka was dispatched from the hospital only at 12:20 AM. The importance of prompt recording of the FIR can never be

underestimated as it dispels the chances of embellishment and introduction of the coloured version.

7. Let us come to the prosecution case. According to PW-2 Rehan, the author of the FIR Ex.PW-1/A, the incident occurred in two parts on 04.10.2004. The first at about 09:45 PM when PW-2 was standing in the street near the Masjid opposite the house of Mirza Sarfaraz Ali and the second a little later outside his own house. PW-2 stated in cross-examination that the accused's house was adjacent to the Mosque whereas his own house was 50-60 steps away from that place. This distance was given as 40-50 meters by PW-8A Mohd. Khalid. PW-2 Rehan, deposed to standing near the Mosque close to the accused's house at about 9:45 PM. Mirza Sarfaraz Ali's wife threw water on him from upstairs. When he asked her why she did so, she persisted that if he (PW-2) would stand there she would throw water and also hurl bricks at him. PW-2 deposed that thereafter he went to his house. According to him, the three accused along with Mohid (the juvenile) went to the house and called him outside. He (PW-2) went out of his house and the three accused, and the juvenile caught hold him and started beating him. On hearing his cries, his brothers PWs 5 and PW-8-A came out and tried to intervene. It was at this stage that the juvenile took out the *churri* and started waving it in the air. Accused Mirza Iftahar Haji @ Munna caught hold of PW-5 while Mirza Sarfaraz Ali caught hold of PW-8 and Mirza Mumtaz Ali started beating PW-2. Mohid (the juvenile) inflicted the injuries in the chest of PW-5 with the *Churri*. Then he attacked PW-8A's head with the weapon. PW-2 disclosed to the IO that thereafter the four assailants ran away and the people started collecting in the street.
8. PW-5, of course was not a party to the first part of the incident. He testified that on 04.10.2004 at about 9:30/9:45 PM he was present in his house. On hearing some noise, he came down from the second floor. He came to know from some people that his brother Mohd. Rehan was being beaten near the Masjid. He along with his brother Mohd. Khalid reached there and he saw accused Sarfaraz, Mumtaz, Munna

and Mohid Ali son of Munna beating his brother Rehan. When he tried to intervene, he was caught hold by Mirza Iftahar Haji @ Munna whereas his brother Mohd. Khalid was caught hold by accused Mirza Sarfaraz Ali. Mirza Mumtaz Ali continued to inflict injuries upon his brother Mohd. Rehan. PW-5 further testified that accused Mirza Iftahar Haji @ Munna exhorted others to eliminate the three brothers and thereupon, the juvenile wiped out the weapon and stabbed PW-5 in the heart.

9. PW-8A Mohd. Khalid, the third injured came out with a story different from PWs 2 and 5. He deposed that when he came down from his house after taking meals at about 9:45 / 10:00 PM, he saw the three accused persons and the juvenile beating his brother Mohd. Rehan. He deposed that his younger brother (PW-5) also reached the spot. Thus, according to PW-5, he and PW-8 reached the spot together on getting the information that their brother PW-2 was being beaten up near the Masjid. PW-8A does not say that he accompanied PW-5 to the spot. It can, therefore, be noticed that as per PW-2 Mohd. Rehan, the incident took place outside his house whereas as per PWs 5 and 8A, the incident took place near the Masjid i.e. near the house of the accused persons. As per PW-5 he and PW-8A reached the spot together whereas PW-8A deposed that he reached there first and thereafter PW-5 also reached there.
10. The Trial Court noticed that PW-8A was not specific about the role of each accused. He deposed that all the accused caught hold of him and PW-8A and the injury was inflicted on PW-5's chest by the juvenile. The Trial Court noticed that according to all three witnesses examined by the prosecution i.e. PWs 2, 5 and 8A, PW-2 was first assaulted. In fact, PWs 5 and 8A were in the second floor of their house when they got information about PW-2's attack by the accused. They must have taken sometime to reach the spot. It is also note worthy that the cause of quarrel was not PW-5 and PW-8A, rather, it was PW-2 whose whiling away the time outside the accused' house was not liked by Mirza Sarfaraz Ali's wife who threw water on him. Given the opportunity, the three accused and the juvenile would have beaten PW-2 black and blue and would have inflicted serious injuries on him rather than on PW-5. Faced

with this situation, PW-6 Dr. Manjot Singh's opinion that the injuries could be received by PW-5 by a fall on some pointed sharp object also assumes importance. Similarly, the injuries on PW-8A not being found to be caused by a sharp edged weapon by PW-9 Dr. Srinivas also rules out the possibility of use of knife by the juvenile inflicting injuries on the person of Mohd. Khalid.

11. Since it is not known as to where the incident took place i.e. whether outside the house of the accused persons or the complainant, it would be difficult to state that there was any previous concert or meeting of minds rendering the three accused vicariously liable for the alleged use of knife by the juvenile who, as stated above, had been discharged by the Juvenile Justice Board.
12. In view of the above discussion, it cannot be said that there was gross misappreciation of facts or law by the Trial Court resulting in miscarriage of justice to impel this Court to interfere with the order of acquittal passed by it.
13. We do not find any compelling or substantial reason to interfere with the order of acquittal. The leave petition, in our opinion, has to fail being without any merit. The same is accordingly dismissed.
14. The leave petition is dismissed in the above terms.

G. P. MITTAL, J.

S. RAVINDRA BHAT, J.

AUGUST 26, 2011

vk