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IN THE HIGH COURT OF DELHI AT NEW DELHI

**RESERVED ON: 27.04.2011
PRONOUNCED ON: 11.05.2011**

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CRL.REV.P. 389/2008

DHIMESH KUMAR Petitioner

Through: Mr. Dinesh Kumar Tiwary, Advocate.

versus

STATE OF N.C.T. OF DELHI &ORS. Respondent

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

Mr. Tarun Kumar, Advocate for Resp-2&3.

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

% This Revision Petition under Section 401 of the Criminal Procedure Code is directed against a judgment and order dated 23.04.2008 of the learned Additional Sessions Judge. The petitioner is the deceased's brother and complains to being aggrieved against the acquittal of Lakhbir Singh and Mehraj (hereafter called the respondents).

2. The prosecution alleged that on 16.07.1999, information was received from PCR van at Police Post Govind Puri that a lady had received knife injuries at 168, Tilak Khand, Giri Nagar.

The subsequent information was that the lady was murdered. The police reached the spot when it was discovered that an injured (hereafter referred to as “deceased”), Madhu, had been taken to the AIIMS Hospital in the PCR. The deceased’s mother PW-1 Durga Devi deposed that she had started living with the deceased since she was ill and on that relevant date, her grand children had gone to School. Her son-in-law Lakhbir Singh had gone out on duty at 09:00 AM; she was alone with the deceased who had returned a day before (the incident) from the hospital. The prosecution’s case further is that at around 11:00 AM, three boys entered the house on the pretext of renting a room and after 7-8 minutes, one of them aged 30-32 years, caught hold of her and forcibly made her sit down on a chair in the drawing room. PW-1 further stated that another boy aged 22-23 years, was standing near the door and the third one aged 30-32 years, started quarreling with her daughter - he was with her in her room. After some time, that boy came out with a knife and blood on his hands and allegedly stated “*Budhia tuje bhi mar doonga, nahi to paise or jewer bata kahan rakhe hai*”. That boy tied her with a plastic rope and fired at her twice with his gun. The bullets passed through the window pane and thereafter he gagged her with a handkerchief. The three boys later left with two polythene bags and a leather bag. PW-1 claims that she could identify the three boys as well as the goods.

3. The FIR was registered under Sections 394/397/302/34 IPC. After investigation was completed, the six accused were arrested and articles were seized; the chargesheet was filed. All accused pleaded not guilty and claimed trial.

4. The Trial Court considered the depositions of PW-1 and the other witnesses and the materials/exhibits placed on the record. The Court concluded - on the basis of the materials and depositions - that the prosecution had established the involvement and role of two accused i.e. Manish and Mehfooj. It further held that there was no evidence as against Lakhbir Singh and Mehraj. Two of the accused i.e. Ramesh and Pushkar did not stand trial as they were declared as proclaimed offenders.

5. The learned counsel for the petitioner argues that having regard to the clear testimony of PW-1 who was an eye witness to the incident, the Trial Court ought not to have acquitted Lakhbir Singh and Mehraj. It was submitted that the evidence available on record showed recovery of the bullets as well as cartridges; PW-1 specifically mentioned about the role of the acquitted accused. The evidence of the expert PW-2 and his opinion Ex.PW-2/B established that

the injuries on the deceased were in fact the result of the weapon i.e. dagger. It was also argued that the blood group on the deceased's clothes was of 'A' group, and that found upon the dagger and T-shirt recovered also matched with the same blood group.

6. Learned counsel submitted that the accused had entered the deceased's house on the pretext of renting a room and were allegedly sent by Lakhbir Singh, one of the acquitted respondents. Mehraj had tied PW-1's hands; she clearly recognized him. He also fired at her, though the shot did not hit her and passed through the window pane. He opened the almirah and took out the bag containing the gold and silver ornaments. It was argued that the Trial Court fell into error in not appreciating that Lakhbir Singh did not have cordial relations with the deceased and had an affair with someone else. He, therefore, had a motive to get rid of the deceased so that he could marry according to his wishes. It was further argued that Lakhbir Singh's extra judicial confession was spoken to by PW-5 whose testimony remained unshaken despite cross examination. Having regard to all these facts, the Trial Court fell into error in acquitting the two respondents i.e. Lakhbir Singh and Mehraj.

7. The Trial Court in its judgment analyzed the evidence of PW-1 Durga Devi in the following manner: -

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28. *The prosecution star witness PW-1 Durga Devi has specifically deposed that on 16.7.99 at around 11 AM day she was present at the house of her daughter Madhu when **three boys** came to take house on rent as there was a house at 5th floor vacant and asked her for the key, on their asking to see the house for taking on rent she asked them why they want to see as they had earlier seen it, at this they replied that the person who has to live has come that day and he wanted to see the premises. She has further deposed that **she identified those persons as accused Ramesh, Pushkar and Manish** who had come to the house on the day of incident. She has further deposed that Pushkar had asked her for the key and took the key from her. She has further deposed that they had told her that they were sent by Lakhbir, present in court. Here it is relevant to mention during cross-examination by the Ld. APP for the State she clarified that **Mehfooj entered the room of her deceased daughter and stabbed her and it is correct that accused Ramesh had not gone to the room of her deceased daughter**). She has further deposed that Mehraj tied her and also fired at her which did not hit her and passed through the window. She has further deposed that Mehraj opened the Almirah took out the bag containing gold and silver ornaments and third was on the gate, was Manish and pointed out towards Manish. She has further deposed*

that thereafter they run away and some one telephoned to his son in law. She has further deposed that she can identify the rope and knife. She has further deposed that somehow she reached near the window and knocked the window, public persons came and untied her rope. She has further deposed that after few months to incident she had come to court and identified accused persons after seeing them. She has further deposed that house in which her daughter was killed was purchased from Lakhbir by her younger daughter Meena to her knowledge accused Lakhbir had to pay some money to her younger daughter Meena, she was not very clear. She has further deposed that her daughter Meena was expected to come after three days of the incident. She identified the knife Ex. P-1 and rope Ex. P-2. She also identified belonging of her daughter small purse Ex. P-3, Big Purse Ex. P-4.

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8. It was noticed that in the cross examination, PW-1 deposed that she had gone to Patiala House Courts to identify the accused; however, she denied the suggestion about identifying them at the behest of the police, stated that having named Lakhbir Singh and Ramesh and identify the others by face only. The Trial Court held that through the evidence of PW-1, prosecution had managed to establish that Mehfooj entered the deceased's room and stabbed her; he was wearing a red coloured T-shirt at the time of the incident. The Trial Court also concluded that by those testimonies, it was proved that Manish was standing near the gate and keeping a watch. PW-1 had also given the description of the accused in her statement before the police as Ex.PW-1/A. However, so far as Mehraj was concerned, the Court held that the prosecution failed to prove his presence. The Court also held that the only circumstance against Mehraj, was the disclosure leading to the recovery of a purse Ex.P-4 and thaila P-5 seized by memo Ex.PW-10/O. However, so far as Mehraj was concerned, the Trial Court held that the prosecution failed to prove his presence primarily since PW-1 had not identified him as one amongst the three who had entered the house. The recovery of the *thaila* and purse was, in the circumstances, held to be insufficient to amount to proof beyond reasonable doubt. So far as Lakhbir Singh's role was concerned, beyond allegations leveled by PW-1, the prosecution could not establish any other fact. In view of all these, the Trial Court acquitted Lakhbir Singh and Mehraj.

9. This Court has carefully considered the petitioner's submissions. The standard of proof in criminal cases is well known i.e. that the prosecution has to establish its allegations beyond reasonable doubt. PW-1, in this case, had stated about the attack by three assailants. She clearly

identified the others but failed to identify Mehraj. The Trial Court, in our opinion, correctly applied the law that the recovery of some articles on the basis of a disclosure statement which is admissible only to that extent under Section-27 is insufficient to infer the guilt of an accused. There has to be other positive and corroborative evidence linking the recoveries with the accused. That vital link is missing. Similarly, Lakhbir Singh's role though specifically alleged could not be established.

10. From a long time, it has been held that the standard that the High Court has to apply in considering a leave petition complaining of erroneous acquittal of accused, is existence of substantial and compelling reasons why interference is required. In the present case, the petitioner invokes the revisional jurisdiction of the Court. No material irregularity or illegality in the appreciation of facts or application of law has been pointed out which can persuade this Court to exercise that jurisdiction.

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

**S. RAVINDRA BHAT
(JUDGE)**

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

MAY 11, 2011

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