

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

DECIDED ON: NOVEMBER 11, 2011

+ CRL. L.P. No. 345/2011 and CrI. M.A 8415/2011

STATE

..... Petitioner

Through: Mr. Saleem Ahmed, ASC with Mr. H.S. Nanda,
Adv.

versus

JOGINDER SINGH & ORS

..... Respondents

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MS. JUSTICE PRATIBHA RANI

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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)

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1. The State seeks leave to appeal against the judgment and order dated 22.02.2011 in SC No.70/2008, of the learned Addl. Sessions Judge, Delhi, whereby the Court acquitted the respondents/accused of the charges of having committed the offences punishable under Sections 143/149/452/307/506 IPC.
2. The prosecution alleged before the trial court that in the evening of

24.06.1999 at 6:03 PM a wireless message was received by Police Station Mehrauli about a quarrel which took place near the DLF, Chhatterpur Farm 186, Quarter No.10. The police party reached the spot and arrested six persons including the five respondents arrayed as accused during the trial. The sixth accused i.e. Ranvir Singh was apparently dropped by the Trial Court at the time of framing of charges. The FIR was registered. The statement of the informant, Dalbir Singh (PW-1) was recorded and produced as Ex.PW-1/J. The complainant/informant stated that he was residing at Farm House No.186, DLF Chhatterpur and was an agriculturalist owning about 8 ½ acres of land. He claimed to be in possession of the land and residing there with his sons namely Harcharan Singh, Swaran Singh and Surmender Singh, with their families. He further stated that some people belonging to the Govind Sadan Gurdwara wished to take possession of his farm which led to his lodging an FIR on 12.03.1997 at Police Station Mehrauli. He further claimed that on 24.06.1997 at about 5:30 PM when he along with his sons Harcharan Singh, Surmender Singh, Swaran Singh and Sheela, wife of Shri Harcharan Singh along with their daughters Kamla and Vimla were present at the farm house, 9 or 10 persons entered the farm from the eastern side of the wall; two were allegedly armed with rifles, while others were armed with lathis and sword. It was claimed that one of the trespassers fired in the air and his sons tried to stop the assailants, upon which they started beating the PW-1 and his family members. They also threatened that in case they (the complainant's family) stayed there any more they would be killed. It was alleged that PW-1 ran to a neighbouring

Doctor's farm and called the police. The respondents and other accused were arrested and subsequently charged with committing the offences mentioned in the previous part of the judgment besides Section 27 of the Arms Act, to which they pleaded not guilty and claimed trial.

3. The prosecution relied upon the testimonies of 15 witnesses which included the complainant/PW-1 Dalbeer Singh, PW-2 Shri Kulbeer Singh, PW-4 Shri Surmender, PW-5 Shri Harcharan Singh and PW-6 Smt. Bimla Devi. After considering the statements of these witnesses and other materials on record which included the record of proceedings pending before the Revenue Authorities and Civil Courts pertaining to the disputes between the parties about the possession of the farm land, the Court concluded that the prosecution was unable to prove the guilt of the respondents beyond the reasonable doubt.

4. The learned Addl. Public Prosecutor for the petitioner/State argued that the trial court fell into a material error in overlooking the medical evidence which clearly established a pre-planned attack by the assailants. Counsel relied upon the testimony of the Doctor which had opined that the injury had been caused upon the PW-2, PW-4, PW-5 and PW-7 with the help of a sharp object. Thus, it was submitted that the nature of injuries ruled out any possibility of a sudden fight; on the other hand the accused party had gone to the disputed place with the intention to taking possession and if necessary using force to achieve their object for the purpose of which they were armed with deadly weapons which included guns, swords etc.

5. The trial court took note of the civil litigation pending before the Revenue Authorities and Civil Court and held that the prosecution was unable to prove that the complainant party was at the material time in possession of the disputed land. The Trial Court discussion is to be found in the following extracts of the impugned judgment:-

“24. DW1 in the course of his testimony has placed on record as Ex DW1/E (colly), the Sale Deeds executed in December, 1995 and August 1996 in favour of DW1, inter alia, in terms of which the possession of land in question had been conveyed by the executor of the Sale Deed Mr. Goel. DW1 claimed that the land in question was mutated in revenue records in his name pursuant to the registration of the Sale Deeds. Also on record has been placed the copy of Ex. DW1/A in terms of which DW1 had obtained the interim injunction order dated 23/06/97 in his favour and against PW1 and another copy of the plaint of civil suit Ex DW1/A stated to be pending in the Hon'ble High Court pursuant to the orders of the Hon'ble Supreme Court Mark DX1.

25. The pendency of the civil litigation and proceedings before the SDM have been admitted by PW1 and his family members, other witnesses, as herein above elicited. Parties were admittedly at loggerheads. Also was admitted by PW1 and his aforesaid family members that Jarnail Singh, son-in-law of PW1 had got the land registered in the name of one Sh. Goel who subsequently sold the land to Ranvir Singh, DW1. The aforesaid elicited Sale Deeds in favour of DW1 have yet not been cancelled by the competent court of jurisdiction.

26. Though PW1 and his family members claimed to be in possession of the land in question as on the date of occurrence, yet on record neither they submitted any document to the investigating agency nor produced in court, regarding their proof of residence in such land in years 1996, 1997 by filing or proving on record any documents like Khasra Girdawari, Khatoni of years 1995, 1996 or later or even other documents for example Identity Card(s) issued by Election Commission of India, the electricity bills, telephone bills etc. of year 1997 or even any document of any school of any of the child in the family of PW1, to prove them to be residents of said place.”

6. So far as attack upon the complainant party and injuries received by PWs-2, 4, 5 and 7 are concerned, the Court noticed material discrepancies in the testimonies of each one of the prosecution witnesses as well as their inter se inconsistencies in the evidence related to the nature of the attack; nature of the weapons allegedly held by the assailants; the timing of the statements recorded by the police of the concerned witnesses etc. The Trial Court also compared the nature of injuries that the kind of weapons which were allegedly used by the assailants, with what were inflicted. It was noticed significantly that despite PW-2's claim that a shot had been fired in the air, there was no mention about this fact in the MLC or in the earlier version recorded by the police, nor did the MLC contain the history of any alleged assault by the rifle butt etc. Further, PW-6 apparently had given a contradictory version to one alleged by the prosecution stating that her brother was dragged outside by being pulled by the hair and she tried to save him, upon which the accused gave beatings to her. This version was not supported by any other prosecution witness. PW-6 admitted that she was unable to say how many attackers had gone to the spot. Similarly, the Court noticed several improvements and serious discrepancies in the evidence of PW-2 and PW-4. All these led it to conclude that the prosecution could not prove its allegations of injuries which constituted the offence of attempted murder and punishable under Section 307 IPC.

7. We have carefully considered the submissions and have also gone through the

trial court records which were summoned for the purpose of this proceedings. It has been reiterated time and again that High Courts, while considering the petitions seeking grant of leave to appeal, are to satisfy themselves that the impugned judgment of acquittal discloses substantial or compelling reasons such as gross mis-appreciation of evidence or mis-understanding of law etc. which results in manifest miscarriage of justice. In the present case, the Trial Court has considered the entire material evidence which included documentary evidence and held that two reasonable views are possible in the event of which the one favouring the accused was to be adopted. We see no infirmity with this reasoning of the trial court which does not call for any interference.

8. This Court, therefore, finds that the leave petition is lacking in merits, it is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

PRATIBHA RANI
(JUDGE)

NOVEMBER 11, 2011
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