

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

DECIDED ON: NOVEMBER 04, 2011

+ CRL. L.P. No. 399/2011 and Crl. M.A 9768/2011

STATE

..... Appellant

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

versus

ASHOK @ KALA

..... Respondent

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 of the learned Additional Sessions Judge dated 27th November, 2010 in S.C. No. 608/2009. The respondent/accused was acquitted for having committed the offences punishable under Section 307/120-B/34 IPC.

2. The prosecution allegations were that on 24.09.2001, information was received by P.S. Kashmere Gate that the complainant, PW-24, has received a gunshot injury near Mori Gate Senior Secondary School. The DD entry Ex. PW-19/A was recorded and

handed over to PW-19 S.I Risal Singh for necessary action. He reached the spot and discovered that the injured had been removed to Trauma Centre by CAT ambulance. Subsequently, the statement of the injured PW-24 Amrik Singh Layalpuri was recorded; the same was produced during trial as Ex. PW-19/B. On the basis of this intimation, Ex. PW-5/A was prepared and FIR was lodged. It was alleged in the statement Ex. PW-19/B that when PW-24, the victim was riding his scooter on the way to Tis Hazari, the respondent (with whom he had some dispute pending in the courts), pointed a fire alarm pistol and later shot him. It was alleged that the bullet hit the complainant (PW-24) on the left pelvic bone; he had to stop the scooter and was later taken to the hospital.

3. After completion of investigation, the respondent was arrested and charged for having committed the offence punishable under Section 307 IPC along with the other provisions. He pleaded not guilty and claimed trial. The Trial court relied upon the testimony of 26 eye witnesses besides material exhibits which included the recovery memo/seizure memo in respect of the bullet said to have been embedded in the scooter. During the course of investigation, the scooter too was seized. The Trial court after consideration of all the materials, concluded that the prosecution was unable to prove the respondent's guilt beyond reasonable doubt.

4. The core of the reasoning in the impugned judgment may be found in paras 10 to 16 of the impugned judgment which are in the following terms:-

10. After going through the testimony of PW-24, one thing becomes crystal clear that the complainant Amrik Singh Layalpuri received only one gun shot injury on his person on the relevant day. However, the MLC Ex.PW4/A shows that PW-24 also received lacerated wound of 0.5 x 0.5 cm on right upper thigh medial aspect. It is the own case of complainant that after receiving gun injury on his person, he did not fall on the road

and only his scooter fell on the left side. After receiving injury, he sat down as he was feeling pain. Since PW-24 did not fall on the ground after receiving the gun shot injury it cannot be said that lacerated wound might have been received by complainant on account of falling on the road. No explanation has been furnished by complainant PW-24 as to how he received this lacerated wound as mentioned in MLC Ex.PW-24/A.

11. It is worth noting that PW-19 SI Risal Singh, who is the initial I.O of this case, had taken into possession the scooter of complainant vide memo Ex. PW17/C. He has deposed that there was a hole in the front seat of the scooter. The seat cover of that scooter was cut and fired lead was taken out of the seat. The lead was put in a match box which was converted into a parcel and sealed with the seal of RS and was taken into possession vide memo Ex.PW17/A. The testimony of PW-19 SI Risal Singh is further corroborated with the testimony of PW-19 Constable Satender, who has also deposed on the same lines by deposing that there was a hole in the front seat of the scooter. Crime team had cut the seat and a lead of bullet was taken out. The lead was kept in an empty match box, which was converted into a parcel. Same was sealed with the seal of SI Risal Singh and was seized vide memo Ex.PW 17/A. A perusal of seizure memo Ex. PW 17/C, of scooter of complainant also shows that a fresh hole was there in the right side of the seat of scooter, when scooter was taken into possession. A combined reading of memos Ex. PW17/A and Ex. PW 17/C shows that a shot had been fired also at the seat of scooter of complainant as the hole was fresh on the seat and out of that hole, lead of bullet was taken out by I.O SI Risal Singh on 24.09.01.

12. It is worth noting that the alleged fresh hole is on the right side of the seat of scooter of complainant and not at the left side of the seat. It is further worth noting that as per MLC Ex. PW4/A complainant received punctured wound on his left gluteal region. Since no explanation has been furnished by complainant as to how the seat of his scooter received gun shot hole, the prosecution story that the complainant received only one gun shot on his person becomes doubtful.

13. It is worth noting that in the present case, only lead of bullet has been taken out by the I.O (PW-19) on 24.09.01 from the seat of scooter of the complainant and no bullet has been recovered and taken into possession. PW-10 K.C. Varshney has deposed that on 28.12.01 he received three parcels, which were duly sealed with the seal as per the specimen enclosed. Parcel No. 3 was containing a bullet, which was given

mark Ex. EB-1. It is worth noting that none of the prosecution witnesses has deposed as to when and where the said bullet was seized and sealed, which has been received by PW-10. It is further worth noting that the bullet Ex. EB-1 received by PW-10 was a cartridge of .30 bore, which was a standard ammunition of .30 caliber fire arm as per the report Ex. PW10/A prepared by PW-10. In other words, the bullet Ex. EB-1, was a cartridge of .30 bore [although not proved on record as to when and where it was seized]. However, the hole marks Ex. H1 to Ex. H6 on Ex. C1 to Ex. C5, which are pant, shirt, vest, underwear and scooter of complainant, were caused by 'cupro jacketed bullet', as per the testimony of PW-10. In other words, the bullet Ex. EB-1 received by PW-10 is the cartridge of .30 bore but the hole marks Ex. H1 to Ex. H6 are not caused by the said cartridge but were caused by another bullet namely "cupro jacketed bullet". The non-explanation in this regard on the part of prosecution creates a serious doubt in the truth of prosecution story and amounts to material omission.

14. Besides the above said material omission and infirmities in the prosecution case, I am of the considered view that PW-24 is also not trustworthy and reliable. In his testimony, PW-24 has deposed that he remained in the hospital for three days and thereafter, he was discharged as there was shortage of bed in the hospital. However, a perusal of MLC Ex. PW4/A shows that PW-24 was discharged on the next day i.e. 25.09.04 and no fact of shortage of bed is mentioned on the MLC Ex. PW4/A.

15. In his testimony, PW-24 has deposed that accused pulled out pistol from his pocket and threatened him that either he should withdraw his case against the builder Mahender Nigam or he would kill him then and there. But in the statement Ex. PW19/B, it is recorded that since the complainant has not withdrawn the complaint against builder Mahender Nigam, he is going to finish him then and there.

16. From the testimony of PW-24 it is not clear as to when and where he met the accused for the first time. At one point of time, he has deposed on page 6 that on 09.12.04 he met the accused for the first time, about one and half years prior to incident at the house of councilor Ram Lal but at the same time, on page 7, he has deposed that he had seen the accused for the first time on 24.09.01 just before the incident. But again he has deposed that he might have met accused three/four times, prior to the occurrence, in the house of councilor Lala Ram Lal and talked with accused there.

5. The learned APP has argued that the Trial court fell into an error in disbelieving the testimony of PW-24. It was submitted that the so-called contradictions highlighted by the Trial court were not material enough to cast suspicion on the story of PW-24 which was recorded in the earliest instance and form the basis of the FIR i.e. Ex. PW-19/B. It was submitted that the complainant was clear about the identity of the assailant i.e. respondent and had also categorically deposed about the motive for the attack as well as sequence of events which led to the attack. Having regard to this, the Trial court ought not to have acquitted him on technical grounds by doubting the injuries. Learned counsel argued that the medical evidence clearly showed that the victim had been shot in the left pelvis.

6. It has been held time and again that the High Court when considering petitions for grant of leave to appeal, would consider allowing the State to appeal only if the impugned judgment discloses substantial or compelling reasons which, prima facie, would necessitate interference. Such substantive or compelling reasons extend to gross misappreciation of facts, mis-application or wrongful understanding of law or the Trial court adopting the approach which leads to manifest ends of justice.

7. This court notices that the Trial court has given three cogent reasons for disbelieving the testimony of PW-24. One of these pertain to an objective fact or circumstance i.e. that the victim was fired upon from the left side and received injuries in the left pelvic region; however, during the course of investigation, and a fact which emerged during trial it was revealed that the bullet was embedded and recovered from the right side of the seat in the scooter. This, in this court's opinion, fatally contradicts the

testimony of PW-24. The court also notices that there is no medical evidence forthcoming as to the direction which the bullet took, or the location of the exit wound. If in fact the bullet travelled rightwards, the nature of injuries would have been graver possibly leading to the shattering of the pelvic bone altogether. Having regard to the totality of circumstances, this court is of the opinion that the Trial court's reasoning is unexceptionable and does not call for interference in exercise of jurisdiction to grant leave.

8. The petition being unmerited and is, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

PRATIBHA RANI
(JUDGE)

NOVEMBER 04, 2011
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