

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

DECIDED ON: DECEMBER 09 2011

+ CRL.L.P. 437/2011

STATE Petitioner
Through: Mr.Amit Gupta, Advocate.

versus

RAJESH @ RAJU Respondent
Through: None.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MS. JUSTICE PRATIBHA RANI

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 Addl. Sessions Judge dated 25th May, 2011 in SC No.72/2008. By the impugned judgment, the Trial Court acquitted the respondent/accused of the charge of having committed an offence punishable under Section 302/34 IPC.

2. The prosecution case before the Trial Court was that on 12.12.2007, information was received through Control Room of Police Station Mangol Puri regarding a firing incident near A/B Block, Subji Mandi. The DD entry was made and the same was

assigned for investigation. On reaching the spot, Inspector Mahesh Kumar discovered that the incident had occurred at Street No.1 at the corner of House No.B-30. Empty cartridge and some blood were found at the spot. The said Inspector also discovered that the injured had been taken to SGM Hospital. The other police officers also reached the spot; investigation thereafter proceeded in a fair and routine manner. Inspector Mahesh Kumar along with other Constables recorded the statement of Ravinder Kumar PW-2, who claimed to be an eye witness as well as brother-in-law of the injured i.e. Naresh, who subsequently died. His statement recorded under Section 161 Cr.P.C. formed the basis of the FIR. During the investigation, the prosecution also relied upon the statement of another alleged eye witness (PW-3). After collecting necessary materials, the chargesheet was filed in the Court. On the basis of statement of PW-2, the FIR was registered. The respondent was charged with committing the crime to which the respondent/accused pleaded not guilty and claimed trial.

3. The co-accused, who stood trial along with the appellant, i.e. Balbir @ Fauzi, died during the proceedings. After considering the materials on record, the Trial Court concluded that the prosecution has been unable to bring home the respondent's guilt beyond reasonable doubt.

4. Learned counsel appearing on behalf of the petitioner/State argued that the Trial Court fell into error in overlooking the very material aspect that PW-2, the crucial eye witness discovered on

13.12.2007 that despite his specifically mentioning the present respondent's name, the FIR had omitted this crucial aspect. Learned counsel emphasized that in the circumstances the complainant (PW-2) had written a complaint which was exhibited during the trial as Ex.PW-2/E. Despite benefit of all these and the categorical deposition of the witnesses, the Trial Court concluded that his statement could not be given credulity. The learned counsel for the State also argued that even though PW-3 turned hostile, yet the Court ought to have considered that in his previous statement he specifically named the respondent.

5. We have carefully gone through the impugned judgment and the Trial Court records. We have also had the benefit of considering the statement of the witnesses. The Trial Court in paragraphs 35 to 37 of its judgment, while appreciating the testimonies of PWs-2 & 3, observed as under:-

“35. PW 2 has made marked improvements in his testimony in the Court and all the relevant questions have been confronted with his previously recorded statement which is Ex.PW 2/A. This witness has also made an application to the police which is Ex. PW2/E but this letter does not bear the receiving date of the police station nor it has been stated by the then SHO Mangol Puri that any such letter was written by PW Ravinder. So no reliance can be placed on it. Moreover, during the cross examination the witness has further made improvements on this letter as well.

36. PW 3 is also one of the alleged eye witnesses but he has not supported the case of the prosecution. According to this witness in his examination in chief he stated that accused Rajesh

had caught hold of the hands of accused Balbir and pushed his hands towards the sky. This witness has completely changed the case of the prosecution and from his examination in chief it appears that accused Rajesh was trying to prevent accused Balbir from firing but in his cross examination by the Ld. APP he stated that he had seen accused Rajesh catching hold of Naresh from behind and further went on to state in the cross examination that he had not seen the occurrence and stated so at the instance of other public persons. This witness is blowing hot and cold at the same time and he is a wholly unreliable witness in view of the testimony of other public as well as official witnesses whose testimonies have already been discussed above. PW 1 Lalit has not stated about the presence of PW Ravinder and PW Sarvesh at the spot. Similarly PW Ravinder has not uttered a word regarding the presence of PW 1 at the spot or the incident having been witnessed by PW 3 Sarvesh. PW Sarvesh has also not stated about the presence of PW 3 and PW 1 at the spot and no suggestion to that effect has been given by the Ld. APP.

37. To sum up the prosecution has failed to prove beyond reasonable doubt that accused Rajesh was present at the spot and he played any role in the murder of Naresh.. The presence of the witnesses at the spot at the time of the incident is also not beyond doubt. So the benefit has to be extended to the accused. Therefore, I hold that the prosecution has failed to prove the case against the accused Rajesh beyond reasonable doubt. He is, therefore, acquitted. File be consigned to Record Room”.

6. So far as the argument concerning the testimony of PW-2 and the material document (Ex.PW-2/E) is concerned, we have gone through the testimony of PW-2. No doubt, he does mention that a complaint or letter was written to the police a day after the alleged incident, yet having regard to the overall conspectus that the FIR did not record the name of the respondent and the further circumstance

that the other two alleged eye witnesses i.e. PW-1 and PW-3 did not support the prosecution's case, the Trial Court in our opinion took the correct view in coming to the conclusion that there were two opinions possible and that the reliance on the testimony of PW-2 whose statement was riddled with confrontation, apparently he made several improvements in the court to his previous statement recorded by the police, was unsafe.

7. Having regard to the standard which the Courts are bound to follow, while considering the petitions for leave against the orders of acquittal passed by the Trial Court i.e. existence of substantial and compelling reasons (which mean gross mis-appreciation of evidence or law in the Trial Court's approach which would lead to manifest miscarriage of justice), we are of the opinion that this is not an appropriate case for grant of leave.

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

**S. RAVINDRA BHAT
(JUDGE)**

**PRATIBHA RANI
(JUDGE)**

**DECEMBER 09, 2011
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