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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 02.12.2011

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CRL.L.P. 454/2011  
CRL. M.A.11338/2011

STATE ..... Petitioner  
Through: Mr. M.N. Dudeja, APP.

versus

TERA NAM & ANR ..... Respondents  
Through: None.

**CORAM:**  
**MR. JUSTICE S. RAVINDRA BHAT**  
**MS. JUSTICE INDERMEET KAUR**

**MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)**

% The State seeks leave to appeal against the judgment and order of the learned ASJ dated 10.03.2011 passed in Sessions Case No.99/2009; that judgment acquitted the respondents of the charges of having committed offences under Section-302/394/397/34 IPC.

2. Briefly, the prosecution's case was that on 21.08.2009, an intimation - recorded as DD No.30-A (Ex.PW9/A) was received at Police Station Kashmere Gate from the PCR that someone had been stabbed under GPO Flyover. The information was given by

Constable Mohan, from a PCR. The investigation was marked to SI Pratap Singh (PW-9) who reached the spot and was told that the injured had been taken to Aruna Asaf Ali Hospital by some police constable who later who later turned out to be PW-16. PW-9 went to the hospital where he obtained the copy of the MLC (Ex.PW3/A) which stated that the injured (who had by then died and was later identified as Nitin Mohan Sharma) was declared brought dead. The MLC also stated that the deceased had been taken to the hospital by PW-16. The formal FIR was subsequently lodged at 09:55 PM and investigation was conducted. During the course of the investigation, the statements of PW-5, PW-16 and PW-21 were recorded. The police alleged that on the basis of the secret information received by them, the accused were arrested on 06.09.2009. They were charged with having committed the offences mentioned above. They entered the plea of not guilty and claimed trial.

3. The prosecution relied upon the testimonies of 22 witnesses besides several material exhibits. On an overall consideration of these, the Trial Court held that the prosecution was unable to establish the respondents'/'accused' guilt and accordingly acquitted them.

4. It is urged that the Trial Court committed an error in discarding the ocular testimony of PW-16 who had witnessed the incident. This witness, urged the APP, had no reason to falsely implicate the accused. It was urged that the testimony was recorded at the earliest point in time and he even mentioned that he witnessed the incident

along with other members of the public and that he tried to catch hold of the accused but was unable to do so.

5. We have considered the submissions. We also had the benefit of going through the Trial Court's records which were requisitioned for this purpose. The Trial Court disbelieved the testimony of PW-16 on several counts. The most prominent amongst these were the circumstance that Ex.PW-3/A which was the most contemporaneous document did not mention about any attack; instead it recorded as follows: -

*“Alleged H/o the boy lying in injured state from Chatta Rail about 15-20 minutes back as told by the police”.*

The Trial Court also disbelieved PW-21, and went on to conclude that PW-16 could not be relied upon as his statement did not appear to have been recorded in the manner as alleged by the prosecution.

6. Before proceeding to deal with the petitioner's contentions, it would be worthwhile to record the core of the Trial Court's reasoning in the impugned judgment which may be found in the following extracts: -

*“15. Be that as it may, the plea of the defence is that it is doubtful that PW16 HC Bijla Oraon was present as an eye witness to the incident appears quite plausible in as much as in the MLC of the injured Ex.PW3/A wherein it is recorded that the injured boy was admitted by Ct. Bijla Oraon, no.857/N, the doctor also made a remark of”Alleged H/o the boy lying in injured state from Chatta Rail about 15-20 minutes back as told by the police; this remark written by the doctor could only have*

*been written on the information given by PW16 who had brought the injured to the hospital. During the course of arguments, on the request of Mr. Saini, Ld.Amicus Curiae the court looked into the case diary and interesting observation came to fore that though Ct.Bijla Oraon appears to have joined the investigation later in the night on 21.08.2009, his statement was not recorded which was quite unnatural on the part of the IO. All the more for the reason that PW16 in his cross examination deposed that though he did not know the two accused prior to the incident by names, but he had seen them by their faces and he had seen them many times in he area of Chatra Railway and around Korla Pul. That indicates that PW16 had had a good glimpse of the offenders at the time of the incident, but surprisingly in his statement he did not give any physical description of the offenders. The statement under Section 161 Cr.PC. is dated 22.08.2009 and it is also in the evidence that striking the no.2 it has been over written as 1 so as to present a view that it was recorded on 21.08.2009. It bears repetition that the case diary does not indicate that the statement of PW16 was recorded soon after the incident. The inference is that PW16 had reached the place of occurrence and he had no occasion to have seen the perpetrators of the crime and introduced later by the police in order to strengthen its case against the accused.*

*16. That being urged to the testimony of PW 21 Ajay. Though PW21 Ajay corroborated the version of PW16 HC Bijla Oraon also corroborating that accused Tera Nam was the one who had caught hold of the deceased while the victim boy was stabbed by accused Akram, there is -----more to his testimony than to meet the eyes. The statement of the said witness under Section 161 Cr.PC. appears to have been recorded on 22.08.2009 and he was also produced before the Ld.MM for recording his statement under Section 164 Cr.PC. on 16.09.2009. The statement Ex.PW19/Y runs ditto as per the*

*testimony in the court except for the fact that the witness also stated before the Ld.MM that during the investigation he was associated at the instance of SHO and while searching for the offenders two of the offenders have been sighted by him who were then arrested at his instance. He also stated before the Ld.MM that the accused who was identified by him in TIP in Jail No.3 was the one who was carrying the knife.*

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*18. It is also a matter of record that PW21 was a vaga bond and he was not traceable by the police despite several opportunities and finally he appeared on (date)-----and the first thing that has come out in his evidence is that his presence was manipulated by the police who was never served at his native place but all the time was available in the concerned area and having regard to his antecedents there is an inescapable conclusion that he has acted as a stock witness for the police.*

*19. The above said evidence has to be weighed in the light of the fact that no physical description of the offenders were revealed by PW21 in his statement to the police. In fact his version in the cross examination was that three of the offenders were very tall in height and I must make a care observation that the two accused appearing in the court for such a long time are nor more than 5'.3" in their height but stoutly built.*

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*21. Lastly, so far as the recovery of bag Ex.P-1 with contents Ex.P-2is concerned, the same appears to have been effected at the joint pointing out of the accused persons from a busy/open public place much after the date of incident. It has come during the evidence that the incident occurred on a day when there was heavy rains. Surprisingly, none of the -----were wet or*

*soiled. In the absence of public witnesses and in the light of the fact that the recovery was effected by the IO in the alleged presence of subordinate police officers, such recovery at the behest of the accused persons is also not inspiring confidence.*

*22. In the said view of the discussion, I have no hesitation in holding that the prosecution has miserably failed to bring home the guilt of the accused persons beyond reasonable doubt. The accused Tera Nam and Akram are acquitted.”*

It is well settled that High Courts while considering Petitions for leave to appeal against judgment of acquittal do not enter into a close appellate review. The Court has to be satisfied that the judgment impugned before it should disclose substantial or compelling reasons which by and large are confined to serious or grave mis-appreciation of evidence, wrong application of law and an approach which would lead to manifest miscarriage of justice. The reasons given by the Trial Court in this case for disbelieving the testimony of PW-16 are weighty; his statement is at variance with the MLC (as observed earlier the most contemporaneous document) which clearly recorded that the deceased was found lying under the bridge. Had PW-16 really witnessed the incident, the record of the MLC would have been different. Furthermore, the Trial Court took pains to consider the case diaries and satisfied itself that the statement of this witness was not in fact recorded at that time. The Trial Court noticed that the prosecution had no explanation forthcoming during the trial as to why PW-16, a police official, did not report the incident; concededly, the

matter was reported and DD entry was made pursuant to the PCR call given by one Mohan, who was not examined. So far as testimony of PW-21 is concerned, the Trial Court noticed that his statement was recorded later and that his account was highly suspect.

7. On a careful consideration of all the materials, we are of the opinion that the Trial Court's reasoning is sound and unexceptionable. On an application of the settled parameters with regard to the High Court's correct approach while considering petition to grant the leave to appeal, we are of the opinion that this is not a case for granting leave to appeal.

8. The petition - Crl. L.P.454/2011 is, therefore, dismissed as unmerited.

**S. RAVINDRA BHAT  
(JUDGE)**

**INDERMEET KAUR  
(JUDGE)**

**DECEMBER 02, 2011**  
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