

IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 19.08.2011

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CRIMINAL LEAVE PETITION NO.446/2010

STATE OF NCT OF DELHI

.....PETITIONER

Through : Mr. Saleem Ahmed, Addl. Standing Counsel

Vs.

HAZARA SINGH & ORS

..... RESPONDENTS

Through: Mr. Deepak Rawat, Advocate for respondent No.1.
Mr. Sameer Chandra, Advocate for respondent no.2.

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 (OPEN COURT)

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1. The State has, by this Petition, sought leave to appeal against a judgment and order of the learned Additional Sessions Judge dated 18.01.2010 in S.C. No. 410/2006, by which the three accused (hereafter referred to as “the respondents”) were acquitted of the charge of having committed offences punishable under Section 302/392/397 IPC.

2. The prosecution case is that on 12.08.2005 Lakhbir Singh (the deceased) with his family

members was present at his house, A-31/D, Deepak Vihar, Nagloi and that at about 08:30PM PW-1 Gurpreet Singh (son of the deceased) came out of the house and saw that one of the two bicycles parked outside their house was missing; he went inside and informed the deceased about this. The deceased and PW-2 Sharabjeet Kaur (daughter of the deceased) went out and saw three boys taking away the bicycle; on seeing the deceased they threw the bicycle and started running. The deceased caught hold of one of the boys and they started grappling. The deceased was stabbed with a knife and all the boys ran away. The police was informed on No. 100 and a PCR van took the deceased to Sanjay Gandhi Memorial Hospital where he was declared brought dead. On the basis of PW-1's statement an FIR bearing No.812 of 2005 was registered. All three accused were arrested. Hazara's disclosure led to recovery of a knife, which was used in the commission of the offence and the shirt he was wearing at the time of the incident. It was alleged that Accused Sonu Singh's statement led to recovery of the shirt he was wearing at the time of the incident and a wrist watch belonging to the deceased. A charge was framed against the accused persons under sections 392/34 IPC. Accused Hazara Singh and Sonu Singh were also charged under section 302/34, 397/34. They pleaded not guilty and claimed trial.

3. The prosecution examined 25 witnesses and relied upon several exhibits. The Trial Court, after considering the same and after recording the statement of the respondents under Section 313 Cr.PC concluded that the prosecution was unable to bring home the guilt of the respondents beyond reasonable doubt and, therefore, acquitted them of all charges.

4. The learned APP argued that the Trial Court erred in not convicting the respondents, even though there was adequate material to implicate them for commission of the offences they were charged with. It was argued that a cumulative reading of the depositions of PW-1 and PW-2, the two eye-witnesses would prove beyond reasonable doubt that the accused persons had in fact tried to steal the bicycle and in the process killed the deceased.

5. It was contended by the Learned APP that the Trial Court committed an error in not relying on the recovery of the blood stained knife at the instance of accused Hazara and recovery of the deceased's wrist watch at the instance of accused Sonu. It was further contended that the Trial Court should have taken note of the fact that the accused refused to participate in the Test

Identification Parade. The Trial Court did not take note of these incriminating circumstances.

7. The Learned Counsel for the Respondents urged that the Trial Court's judgment is well reasoned and does not call for interference. It was contended that there are material contradictions in the testimonies of the two eye-witnesses i.e. PW-1 and PW-2 and therefore they are unreliable. Further, as per the record accused Mahender Singh and Hazara Singh were arrested on 19.08.2005 and accused Sonu was arrested on 23.08.2005 however PW-2 in her deposition states that,

"I had gone to the police station after three days of the aforesaid incident as the accused were arrested by the police. I along with my brother had gone to the police station and at the police station the accused persons were shown to both of us."

"....The police on that day had shown me accused sonu and thereafter I came to my house. It is correct that police had told me that Sonu is one of the accused persons..."

Therefore, submitted the Counsel for the Respondents that it is clear that the accused persons were arrested before 19.08.2005 (date of arrest as per record) and that they had been shown to PW-1 and PW-2 from before. Therefore an adverse inference cannot be drawn against their refusal to participate in the TIP.

8. The Trial Court had, in this case observed that there were contradictions regarding the time and venue where PW-1's statement had been recorded. PW-6 ASI Kishan and PW-12 Anand Prakash deposed that PW-1's statement was recorded at the spot by PW-21, SI Kishore Kumar. PW-8 Constable Jagdish and PW-21 SI Kishore Kumar stated that PW-1's statement was recorded in the hospital. According to PW-1 his statement was recorded in the police post. The Trial Court further observed that according to PW-6, the son of the deceased never left the spot and was with him all throughout and only PW-21 along with PW-8 had gone to the hospital. PW-8 stated that he along with PW-21 and PW-1 went to the spot from the hospital whereas PW-1 in his testimony states that from the hospital he went to his *mausi's* house and from there he along with his sister went to the police post. The Trial Court noticed that there were contradictions in the testimonies of the two eye-witnesses i.e. PW-1 and PW-2. PW-1 deposed that the deceased

apprehended one of the three boys i.e. accused Sonu whereas PW-2 deposed that the deceased apprehended two boys i.e. accused Hazara Singh and Mahender Singh. According to PW-1 accused Sonu gave the first knife blow to the deceased whereas, according to PW-2 Hazara Singh gave the knife blow to the deceased. Furthermore, according to PW-1 the deceased's clothes were blood stained whereas according to PW-2 the deceased was only wearing a pant and no *baniyan* or shirt.

9. The Trial Court further observed that PW-2 in her deposition had testified that 3/4 days after the incident the police brought the three accused persons, in handcuffs, to her house; they were paraded in the locality and the police told them that these were the accused persons who killed their father. The Trial Court noticed that from the testimonies of PW-2, PW-12 and PW-21 it has come to light that there was insufficient light at the spot.

10. The Trial Court observed that the wrist watch recovered from accused Sonu Ex.P-1 did not match the description of the deceased's watch. PW-1 stated that the word "LS" was engraved underneath the wrist watch of his father; however no such mark was found on Ex.P-1. Further according to PW-1 his father's wrist watch did not have a leather strap; however Ex.P-1 had a leather strap. The Trial Court further noticed that there were no public witnesses to the recovery of the wrist watch and the knife and due to all the above reasons, the Trial Court acquitted the accused persons.

11. The jurisdiction of the High Court, while considering a petition for leave to appeal, by the prosecution, is well defined. The court does not examine the impugned judgment as an appellate court; it has to be alive to any exceptional features in the Trial Court's judgment, which compel the exercise of its discretion to grant leave, and hear the appeal. Mere errors, in the Trial Court's order are insufficient; the legislature has advisedly not permitted appeals, a factor which has led the courts to say that a judgment of acquittal is an affirmation of the accused's innocence, which should not be lightly interfered with by the High Court, except for substantial and compelling reasons. As to what constitute such reasons, has been spelt out in *Chandrappa & Others v. State of Karnataka* (2007) 4 SCC 415 as follows:

“In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal :

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution.”

12. In this case, as we noticed in the preceding part of our judgment, the prosecution had relied on circumstances allegedly incriminating the accused Respondents, such as recovery of the wrist watch, recovery of the shirt and recovery of a knife. All of them were disbelieved by the Trial Court. Furthermore, this court is unpersuaded that the Trial Court fell into error in not attaching credence to the testimonies of PW- and PW-2. The impugned judgment has pointed to several discrepancies which quite correctly did not inspire confidence in the trustworthiness or reliability of the said two witnesses. Having given our anxious consideration to the submissions

made, and after going through the Trial Court records, we are in agreement with the reasoning in the impugned judgment, and find no reason to grant leave to the State, to appeal against that decision. The petition, consequently, being bereft of merit, is dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

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

AUGUST 19, 2011