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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 06.04.2011

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CRL.L.P. 13/2011
CRL. M.A.220/2011

STATE

..... Petitioner

Through: Mr. Sanjay Lao, APP.

versus

HITESH

..... Respondent

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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)

% **Crl. M.A.220/2011 (U/S 5 of the Limitation Act) in Crl. L.P.13 /2011**

There is a delay of 228 days in filing the appeal. The delay is condoned for the reasons as mentioned in the application.

CRL.L.P. 13/2011

1. In this petition, the State seeks leave to appeal against the judgment and order of the learned Additional Sessions Judge dated 23.01.2010 in Sessions Case No.78/2009.

The respondents were charged with having committed an offence punishable under Section-307 IPC read with Sections-25, 54 & 59 of the Arms Act.

2. The prosecution's case was that one Kuljeet Singh went to the Jawala Heri Market for daily collection (he professionally being the money lender) and was attacked by the 4 respondents after one of them i.e. Hitesh questioned him why he has quarreled with one of his friend two days ago. It is stated that the arguments were between the said Kuljeet Singh (hereafter mentioned as complainant) and the accused. On public intervention, the respondent - accused went away and Hitesh threatened to "see the complainant". It was further alleged that while the complainant was conversing with PW-4 Charanjit Singh, all the 4 respondents reached there; Yogesh and Ravinder caught hold of the complainant and the respondent accused gave him 2-3 blows with an iron pipe on the foot of the complainant and the accused Hitesh told him "TU JAWALA HERI MEIN DADA BAN RAHA THA, AB TUJHKO SABAK SIKATE HAIN" and took out a katta and fired at him with a view to kill him. The complainant alleged that he narrowly escaped. It was also alleged that PW-4 chased the accused but the accused persons fled from the spot. Upon the matter being reported to the police, the FIR was lodged and the respondent was subsequently apprehended. The prosecution alleged that the desi katta and two live cartridges were recovered from the possession of Hitesh.

3. On the basis of the investigation, the prosecution filed a charge-sheet. The accused/respondents were charged for having committed the offence.

4. The prosecution relied upon the evidence of 10 witnesses, the principal being PW-4 and PW-7. After considering the material on record, the Trial Court acquitted all the accused.

5. Learned APP argues that the Trial Court committed an error in not considering the deposition of PW-7 closely. It is argued that the said witness had clearly implicated Hitesh and the others and had even described them in the statement recorded under Section-161 Cr.P.C. at the earliest point in time which was exhibited as PW-7/A. Learned counsel pointed out that not only the identity but also the description of the accused particularly Hitesh was disclosed as well as the specific role played by them. In the circumstances, the Trial Court ought not to have given the verdict of acquittal.

6. The Trial Court considered the evidence of PW-4 & PW-7. PW-4 who is alleged to have been an eye witness to the incident and with whom the complainant PW-7 was conversing did not support the prosecution story at all. He flatly denied having been witness to the incident or even chased and raised alarm. As far as the complainant is concerned, the Trial Court noticed

that though he named Hitesh in his deposition in the proceedings before the Court, he did not support the statement made earlier in entirety. In this regard, the Trial Court noted that in the earlier police statement, the complainant had attributed the motive of the accused persons - which was missing in the deposition before the Court, where he denied about the identity of accused except Hitesh. At this stage, it would be useful to extract the relevant portion of the Trial Court's reasoning at paragraph-7 which reads as follows: -

“7. From the evidence of PW-7 Kuljeet Singh, it becomes evident that accused Hitesh was not known to him prior to the incident. It is also evident that accused Hitesh was not apprehended by the police in his presence, contrary to the police story. It also becomes evident from his testimony that he had not given the names of the accused including accused Hitesh and had given only the description. However, statement Exbt. PW-7/A contains the names of the accused and not their description. The testimony of Kuljeet Singh that he had signed only blank papers, thus appears to be truthful, in as much as, it look probable that the statement was made up after obtaining the signatures of Kuljeet Singh on blank paper. Since accused Hitesh was not known to the complainant from before and if it is to be believed that he had not given the name of accused Hitesh to the police and accused Hitesh was not arrested in his presence or on his identification, the identification of accused Hitesh for the first time in court by Kuljeet Singh without prior TIP is therefore no identification in the eyes of law. Complainant himself states that he does not know whether the gun was aimed at him or in the air and had not seen the revolver. He has stated about the revolver only on the basis of guess work made by him on hearing the sound. If the complainant had not seen the accused aiming the gun at him, the intention to cause death of the complainant is not proved. Admittedly, fired cartridge could not be recovered by the police immediately after the occurrence. As per IO, fired cartridge was recovered on the pointing out of accused Hitesh from BG-6 Block Road. However, the seizure memo of the fired cartridge Exbt. PW-5/B does not bear the signatures of accused Hitesh nor there is any mention in the seizure memo that the fired cartridge was recovered at the instance of accused Hitesh. The recovery of the fired cartridge (empty shell) at the instance of accused Hitesh therefore appears to be doubtful. CFSL report also does not establish that the recovered fired cartridge was fired from the improvised gun (pistol) recovered from accused Hitesh. There is another shortcoming in the prosecution case. The learned Additional PP gave suggestion to PW-7 Kuljeet Singh that the iron pipe Exbt. P-1 was taken into possession by police from the spot vide memo Exbt. PW-5/C but PW-8 SI Narender Singh, IO of this case has stated that the iron pipe was recovered on the pointing out of accused Robin and that the same was lying underneath the bed of his room.”

7. After analyzing the above as well as the depositions of the other witnesses, particularly, PW-4, the Trial Court concluded that the prosecution's case is brisling with serious

contradictions and that the case against the accused has not been proved beyond reasonable doubt. It is also note worthy that from the evidence, it was proved that the complainant himself was facing criminal charges as being involved in a case and alleged to have committed the offence punishable under Section-302 IPC apart from another case involving violation of the Arms Act.

8. It is well settled that while considering the petition for leave to appeal, the High Court would interfere only if there are substantial or compelling reasons which persuade it that the approach of the Trial Court was grossly erroneous and in contravention of the law or if there was grave mis-appreciation of evidence. These standards have been repeatedly emphasized in several Supreme Court's judgments including *Chandrappa & Ors. v. State of Karnataka* (2007) 4 SCC 415. On an application of the said standards, this Court is satisfied that in the present case, the prosecution has not made out a case to grant the leave to appeal. Accordingly, CRL.L.P. 13/2011 has to fail and is, therefore, dismissed.

S. RAVINDRA BHAT, J

G. P. MITTAL, J

APRIL 06, 2011

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