

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

**RESERVED ON : 06.04.2011
PRONOUNCED ON : 12.05.2011**

+ CRL.L.P. 264/2009

STATE Appellant
Through: Ms. Richa Kapoor, Advocate.

versus

JAI PRAKASH & ORS. Respondents
Through: Mr. Ajay Verma, Advocate for R-1.
None for Respondent No.2.

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

%

1. By this petition, the State seeks leave to appeal against a judgment and order of the learned Addl. Sessions Judge dated 31.07.2009 in S.C. 40/2002.
2. The prosecution story was that the respondents (hereafter referred to as “the accused”) were guilty of having committed the offences punishable under Sections 302 and 307 IPC read with 397/455/34 IPC and Sections 25 and 27 of the Arms Act. It was alleged that on 08.01.2002, somewhere between 11.00 am and 01.15 pm, the accused, in furtherance of common intention, killed Satpal in the premises – C-91 MMTC Colony,

Police Station Malviya Nagar. It is also alleged that the accused intentionally injured Smt. Maya Devi, PW-25 with the intention of killing her.

3. PW-5, whose statement was recorded at 04:15 PM on 08.01.2002, stated that she was living with her husband; the latter used to work as Section Officer in MMTC. She was alone in the house when, at 11:00 AM, the door bell rang. She did not open the door and enquired as to who was at the door, when those outside, asked if it was the house of Suresh Chand. PW-5 allegedly opened the door slightly and saw the respondent Jai Prakash, whom she knew faintly and another boy, aged 22/23 years. They forced their entry into the house, took her to a room and started enquiring about Kamala. PW-5 stated that Kamala and Jai Prakash had illicit relations for several years but of late, they were not on cordial terms and Kamala was residing with her mother after leaving him, the accused Jai Prakash. Kamala was PW-5's childhood friend. Jai Prakash had left his wife and wanted to keep Kamala with him at any cost. It was alleged that Jai Prakash pressed PW-5 to call Kamala, which she declined. In the meanwhile, the other accused bolted all the doors and windows of the premises, drew the curtains, put his hand on her mouth and took-out a pistol. Jai Prakash also allegedly took-out a knife/*chura* like weapon and threatened her (PW-5) that he would not spare her or Kamala, and inflicted an injury upon her abdomen.

4. The informant, PW-5 suffered other injuries on the right hand finger, thumb, right knee etc. She further alleged that in the meanwhile, Satpal, the deceased had called her; he was PW-5's husband's friend. She asked him to visit the house. It was also alleged that 2/3 other calls were received from Kamala by PW-5 as they had planned to visit a temple; she was permitted to receive these calls. After some time, Satpal rang the bell and PW-5 opened the door and went out of the flat. The accused, who followed her out of the premises saw Satpal near the entrance and assaulted him with a *Chura*; alleging that he was PW-5's sympathizer. She ran downwards to save herself and raised a hue and cry.

5. After recording the FIR, investigations were carried-out and subsequently, the accused were arrested and charged with having committed the offences. They denied the charges and claimed trial. The Trial Court, by its impugned judgment acquitted the

accused. The Trial Court noticed that the main witness in the prosecution case was PW-5, Maya Devi. It was satisfied that the blood sample of the earth seized from the spot matched with the blood group of the deceased. However, it noticed that the I.O. did not lift blood samples from all the rooms to get it examined, and carry-out investigations as to whom that blood belonged. Further, it was noticed that the FSL report showed that the bed sheet had blood of human origin and it was of blood group 'B'. Significantly, a pant found on the bed in the premises also had group 'B' blood stains; no reaction could be determined as regards blood stains on the jersey/shirt lying on the bed. The Court further noticed that no investigations was carried-out as to how the bed sheet on the cot in the room, in the premises had blood stains of PW-5 and how the trouser/pant bearing the blood stains of the injured victims blood group were found in the premises. The Court further noticed that a pair of gloves was found in the premises/in the toilet which contained blood stains of group AB. The Court, after considering these and other evidence, reasoned as follows:

“XXXXXX

XXXXXX

XXXXXX

If blood of deceased has been found on a mat inside the room in the flat then a serious doubt arises in the testimony of PW-5 that deceased was attacked and assaulted while he was just outside the flat and finally his body was found in the stairs. The entry door of the flat found bolted from inside leaves no chance for any such circumstance that deceased still entered inside the house and his blood happened to drop. Investigating officer as observed above has not lifted blood sample from other rooms of the flat and thus it remains a serious question mark as to whose blood it was there in the rooms or other parts of the flat. Certainly victim injured Maya having sustained bleeding injury must have shed some blood but then examination of blood sample would have determined that point which presently remains unanswered particularly when mat (dari) has been found bearing bloodstains of deceased.

Place of incident is a well habited area and there are number of flats in the complex. Site plan shows that there are 3-4 further flats on the first floor and it is admitted by Maya Devi that these flats were occupied at the time of incident and occupants were complete families. Maya Devi further states that she was living in her flat C-91 since she had been got married in 1982 meaning thereby she was residing since about two decades and thus must be having and maintaining relations with

neighbouring flat occupants. It would have been a normal natural human conduct and behaviour that when deceased Satpal was attacked or that victim Maya had been caused stab injury in her abdomen half an hour before attack on the 27 deceased, both the victims would have shouted abruptly for help and any one from the nearby occupied flats would have seen any such assault if it took place on the entry gate of the flat C-91. Absence of any other witness from nearby flats creates again a doubt in the prosecution case that deceased Satpal was in fact assaulted on the entry gate of the flat. Victim Maya states that when accused Jai Prakash assaulted Satpal with knife, she ran down stairs and raised hue and cry. There is no explanation as to why no one from the flat occupants came out at least to see the presence of accused Jai Prakash and other accused Sydney Philip. How accused persons escaped when they have already thrown their weapon knife on the place of incident and were even not noticed by anybody in the MMTC residential complex which is enclosed by a boundary wall and entry gates of the complex are manned by watchman as has been admitted by Maya. All these circumstances and facts create a serious doubt if really this incident took place where deceased Satpal was assaulted on the entry door of the flat C-91.

XXXXXX

XXXXXX

XXXXXX”

6. Learned APP submitted that the leave ought to be granted since the grounds on which the witness's testimony (that of PW-5) was rejected, are flimsy and trivial. It is argued that the prosecution case about the attack/the identity of the accused, and the manner in which injuries were inflicted, were testified without any serious cross-examination. Nothing was elicited in the cross-examination of PW-5 to impeach her credibility. Under these circumstances, by highlighting trivial factors that the Trial Court committed an error and rejected her testimony. It is further argued that the Trial Court also committed an error in holding that insufficient explanation was given for the delay in recording the FIR. Learned APP argued that the delay in delivery of the special report to the Magistrate by itself cannot be fatal. In this case, all other evidence, such as recording of the *rukka*, its transmission to the concerned police station, recording of statement of the eyewitness and the registration of the FIR disclose that the FIR was registered within three hours of the occurrence of the incident. Having regard to these facts, the Court ought not to have concluded that there was a delay in the registration of the FIR.

7. This Court has carefully considered the submissions as well as the Trial Court records, which was requisitioned in the present proceedings. It is worthwhile recollecting that while dealing with applications or petitions seeking leave to appeal, the High Court must be conscious that not every error but only those which are substantial and compelling (i.e. the misappreciation of the evidence; wrong application of the law, and omission to consider relevant and material facts) which would lead to miscarriage of justice are the only relevant criteria for permitting leave to the State to appeal against an acquittal. Equally, the salutary principle underlying such a criteria is that an accused made to face trial and having been acquitted wears affirmation of the badge of innocence which is available throughout to him in our criminal justice system.

8. Having regard to the above circumstances, this Court is satisfied that the reasons which impelled the Trial Court to reject the solitary eyewitness testimony of PW-5, i.e. unexplained blood stains on articles to the identity and origin of which were not known and not investigated; the mismatch between the testimony where the attack occurred; the discrepancy in the blood groups on the different articles found, and the lack of any explanation by the prosecution on those aspects, coupled with the delay in transmitting the Special Report mandated by Section 157, Cr.PC, were of a serious nature, that justified the Trial Court in rendering findings as it did, and in proceeding to acquit the accused. This Court is unpersuaded that the petition discloses any features that amount to substantial and compelling reasons or factors which warranted the grant of leave to the State to appeal against the impugned judgment.

9. For the above reasons, the petition has to fail and is accordingly dismissed.

(S.RAVINDRA BHAT)
JUDGE

12th May, 2011

(G.P. MITTAL)
JUDGE