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* IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : 04.04.2011
PRONOUNCED ON: 04.05.2011

+ CRL.L.P. 40/2011 & CRL. M.A. 847/2011

STATE Petitioner
Through : Sh. O.P. Saxena, APP.

versus

SHAHID HUSSAIN Respondent
Through : Nemo.

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

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1. The State by this petition under Section 378 Cr.p.C. seeks leave to appeal against the judgment and order of the learned Additional Sessions Judge (hereafter called "Trial Court") dated 31.05.2010 in SC No.83/2008.
2. The prosecution alleged that the respondent with one Sirage on 04.09.2000 at about 11.15 AM, committed robbery from the property of Gulam Rasul (PW-3) in house No.84 D, Naseem Bagh, Tikona Park, Village Okhla, New Friends Colony. The prosecution also alleged that while committing the robbery the said accused caused hurt to PW-3's wife, Rafia Begum (PW-2). The respondent had absconded and was declared a proclaimed offender. In the meanwhile his co-accused Sirage was named in the charge sheet but was subsequently discharged in respect of the offence. The respondent Shahid was subsequently arrested and stood trial for allegedly committing the offence punishable under

Crl.L.P.40/2011

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Sections 394/397/34 IPC and 25/54/59 Arms Act. By the impugned judgment the respondent was acquitted of the charges. The prosecution had relied upon the testimony of PW-1 Mohd. Daud, an eye witness as well as PW-2 Rafia Begum and PW-3 Gulam Rasul. It also relied upon the testimony of PW-8, and the recoveries made in this case as per the seizure memos Ex. PW3/G, PW 3/H and PW 3/L regarding the recoveries of illegal arms and ammunition found from the respondent's possession. He was arrested by the memo, Ex. PW4/D.

3. It is contended by Mr. O.P. Saxena, the learned APP that leave has to be granted because the impugned judgment has over looked vital facts. Elaborating on this, it is submitted that even though PW-1 Mohd. Daud, an eye witness turned hostile during the trial the Court was under an obligation to consider the conspectus of the entire evidence which clearly pointed out to the respondent's guilt. According to the learned APP the conclusion and the findings in the impugned judgment are erroneous because it completely over looked the recovery of illegal arms and ammunition which had been duly proved by the concerned IO, PW-8. It was next submitted that the case was one of broad day light robbery and PW-2 Rafia Begum was an injured person. She clearly deposed, to being present in the house when the assailants entered, threatened her husband PW-3 with the country made pistol and a knife and about the injury caused by the respondent upon her head with his knife. These core facts would remain unshaken despite the cross examination. It is pointed out that PW-3 similarly supported the prosecution story and deposed to having opened his entrance gate on 04.09.2000 upon hearing the door bell when the accused pushed him aside, entered the house, took out his pistol, threatened him. He also clearly stated that all 3 assailants had pistol and knife, threatened him by the knife ("put the knife on the head") and asked him to hand over cash and jewellery. He deposed having put his hands on Shahid due to which the pistol fell from his hand.

4. The learned APP submitted that besides the testimony of PW-2 and PW-3 who had corroborated with each other, PW-8 clearly deposed that PW-3 and PW-1 were present on the main road and that PW-1 had produced the accused i.e. the present respondent and Sirage. He also supported the recoveries in this case and sketch map prepared by him.

5. It was argued that by ignoring all these materials and circumstances the Court has solely acted by the fact that PW-1 had turned hostile and therefore concluded that the prosecution did not prove the charges beyond reasonable doubt.

6. In this case this Court notices apart from considering the circumstances that the sole independent eye witness PW-1 had turned hostile, the Trial Court also notices that no TIP (Test Identification Parade) had been conducted in the case and that PW-2 and PW-3 claimed to have identified the accused respondent in Court.

7. There was no explanation for this omission by the prosecution. The impugned judgment also notices that if the prosecution version about the accused being apprehended and handed over by PW-1 Mohd. Daud to PW-8 was correct, there was no reason why he ought not to have joined as a witness in the alleged recoveries relied upon in the case i.e. said to have been recorded in Ex. PW 3/G, PW 3/H and PW 3/L. The court notices significantly that instead of involving an independent witness such as PW-1 Police had shown an interest in an eye witness PW-3 to support the alleged recoveries. It was held that similarly in respect of arrest memo Ex. PW4/D, Mohd. Daud (PW-1) who was allegedly present at that time, was not made a witness. Most importantly the Trial Court notices PW-3 Gulam Rasul, as follows – *"It has been admitted by the complainant PW-3 Gulam Rasul in his cross-examination on behalf of the accused persons "that he did not recover the knife, arms or cartridges from the accused nor he handed over the same to the Police whereas the seizure memo being relied upon by the prosecution against the accused in this regard i.e. Exts. PW 3/G, PW 3/H and PW 3/L are bearing the signatures of the said witness on the same as the alleged presenter/witness to the recovery of the alleged illegal arms and ammunition from the possession of the accused as alleged....."*

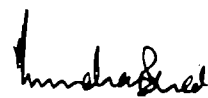
The above circumstance was held to be fatal to the prosecution version about the veracity of PW-3 and recoveries relied upon in this case.

8. The Trial Court in this case further notices that the respondent/accused's consistent stand in the defence had been that PW-3 had falsely implicated him because he (Gulam Rasul PW-3) owed the respondent Rs.20000/- for preparing his passport and a job which had not been done by him and despite which he had not returned the money. The Court further held that PW-3 in the cross-examination admitted that he used to do ticketing work about 5-7 years before the date of his deposition. The respondent had also maintained the same position in his statement to the Court under Section 313 Cr.P.C. The Court further noticed that there were material contradictions between the testimonies of PW-4 and PW-8 and also that PW-5 Smt. Shehna Parveen, an alleged eye witness too had turned hostile and not supported any material particulars or facts alleged by the prosecution.

9. Furthermore the Court notices material and serious infirmities in the testimony of the alleged eye witness PW-3. He had in the previous statement recorded by the Police identified the names of the accused and given other particulars such as addresses, parentage. However, in his depositions recorded in the Court, he claimed ignorance of even the names and identities. He was duly confronted with his previous statement.

10. The standard or criteria applicable in cases where the State seeks leave to appeal to the Trial Court judgment in cases of acquittal are well settled. Petitions for grant of leave to appeal against the judgments of acquittal is entertained only where the appellate court feels that there are compelling and substantial reasons for doing so i.e. if the impugned judgment is clearly unreasonable or relevant and convincing materials have been unjustifiably eliminated in the process (Refer *Syed Peda Aowlia Vs. Public Prosecutor High Court of A.P.*, 2008 11 SC 394 and *Bhagwan Singh Vs. State of Madhya Pradesh* (2002 4 SCC 85)).

11. After carefully considering the submissions and materials as well as the reasoning (in the form of Trial Court records) contained in the impugned judgment, this Court is un-persuaded that the petition merits consideration. The lack of any explanation why TIP was not conducted; two independent witnesses not supporting the prosecution version; the material contradictions in the version of PW-3 and the possible motive of falsely implicating the respondent by PW-3 and the reasons which persuaded the Trial Court for not believing the alleged recoveries, are based on sound reasoning. There are no substantial or compelling reasons which can persuade this Court to consider the grant of leave sought by the State in this proceeding. For all these reasons, the petition has to fail and is accordingly dismissed.


(S.RAVINDRA BHAT)
JUDGE


(G.P. MITTAL)
JUDGE

May 04, 2011