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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 153/2012, CrI.M.A.Nos.3503 & 3505/2012

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Date of decision: 29th May, 2012

STATE OF J & K

..... Petitioner

Through : Mr. Sunil Fernandes and
Mr. Deepak Pathak, Advs.

versus

WASIM AHMAD @ ABU MOHAMAD & ANR....Respondents

Through : Mr. N.D. Pancholi, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

CRL.L.P. 153/2012

1. This petition has been filed by the State of Jammu and Kashmir under Section 378(4) read with Section 482 of the Code of Criminal Procedure, 1973 seeking leave to petition against the judgment dated 10th August, 2011 passed by Ms. Kaveri Baweja, Additional Sessions Judge – FTC (Central) in Sessions Case No.42/2009.

2. The case arises out of an alleged incident of carnage on the intervening night of 20th/21st March, 2000 at Chatisinghpura in the State of Jammu and Kashmir. It was alleged that police had recorded DD report no.20 of PP Mattan on receipt of a telephonic call that about 8:00 pm on the night

intervening 20th/21st March, 2000 some persons of Sikh community had been gathered and were indiscriminately fired upon with the intention to kill with illegal weapons. While some of the persons got killed on the spot and others were reported to be injured. The gunmen had fled away from the spot after committing such act. It was further reported that while fleeing the assailants set ablaze the building of Government Middle School, Chatisinghpura.

3. The record of the trial court notices that even during the investigation, no person came forward to identify the persons who had committed offence and such offenders could not be apprehended.

4. It appears that Mohd. Suhail Malik and Wasim Ahmed, the respondents before this court, were arrested by the police station Shergadi in the State of Jammu and Kashmir in connection with the case registered as FIR No.104/2000 whereupon they had disclosed their involvement also in the incident at Chatisinghpura on the night intervening 20th/21st March, 2000. These two persons were arrested as accused in the present case as a result and on 2nd September, 2000, their disclosure statements were recorded. As per prosecution, the respondents had disclosed that they had destroyed the weapons of offence by throwing them in the river Lidder.

5. The investigating agency recorded the statement of Ulfat Jan and Bilal Ahmed who had stated about their involvement in the incident at Chatisinghpura.
6. The efforts made by the investigating agencies to recover the weapons of offence from the river Lidder were unsuccessful.
7. The chargesheet against the respondents was presented on the completion of the investigation before the concerned court in the State of Jammu and Kashmir.
8. The accused respondents were charged with commission of offence punishable under Section 2/3 Egress and Ingress, Movement Control Order; Section 120B of the Ranbir Penal Code read with Section 302, 307, 436, 201 and 427 of the Ranbir Penal Code and Section 7/27 of the Arms Act.
9. It appears that while the trial was underway, a writ petition being W.P.(C)No.310/2005, Bhim Singh v. Union of India was filed before the Supreme Court. An order dated 10th November, 2008 was passed by the Supreme Court of India transferring the case for trial and adjudication to the District Court at Delhi.

10. In this background, evidence of six witnesses stood completed before the concerned court in Anantnag in the State of Jammu and Kashmir while the remaining prosecution evidence and proceedings were conducted before the District Court, Delhi in terms of the directions of the Supreme Court of India.

11. The matter was listed on 10th August, 2011 before the learned Trial Judge for the purpose of recording the statement of the accused persons under Section 313 of the Cr.P.C. which requires the court to put the entire incriminating evidence which has been brought on record to the accused persons giving them an opportunity to explain the same.

12. On a consideration of the matter, the learned Trial Judge found that the prosecution witnesses had not been able to support the case placed before the court. No incriminating evidence has been brought on record against the accused persons/respondents.

13. In this background, the learned trial court considered the evidence brought on record and recorded the judgment dated 10th August, 2011 holding that no incriminating evidence was brought on record against the accused persons and consequently recording of their statement under Section 313 of the Code of Criminal Procedure was required to be

dispensed with. The accused persons were thereafter consequently acquitted and a direction was issued that they may be released from the custody, if they are not required in any other case. This judgment has been assailed by the State of Jammu and Kashmir before this court.

14. Mr. Sunil Fernandes, learned Standing Counsel for the State of Jammu and Kashmir has urged that the State had proved the case against the accused persons and there was no occasion dispensing with their recording of statement under Section 313 of the Cr.P.C. It is urged that in fact the prosecution had brought ample evidence in support of the case for conviction of offence with which the accused persons have been charged.

15. We have heard learned counsel appearing in the matter and have carefully scrutinized the record. We may briefly notice the evidence which was led by the prosecution in support of the charge against the respondents.

16. The prosecution has examined Sardar Krishan Singh as PW-1 on the 10th of October, 2006. This witness has stated that he had heard the sound of gunfire at about 1715 hrs while he was going to sleep after taking his meals. He has given hearsay evidence of a cousin brother who had told the witness that some people had gathered outside his house and that the

terrorists wearing army uniforms had killed some persons near gurudwara. This witness proved the seizure memo of the dead body, Ex.PWK-5/6. This narration would show that the witness gives no testimony of either the occurrence or the persons involved therein. He has certainly not given any deposition against the respondents before the court.

17. The other public witness by the prosecution was Rauf Ahmed Sufi as PW-2 who gave his evidence on 28th March, 2007. This witness testified that he was a driver of the bus bearing No.JKC-5698 in which his brother Reish Ahmed Sufi was working as a conductor which had been driven by him from Anantnag towards Chatisinghpura. All passengers had got down from the bus at Chatisinghpura and the bus was parked in the village for the night. This witness also deposes about hearing gunfire outside the bus in the night without giving any evidence about the incident or about the identity of the gunmen.

18. The prosecution also examined Reish Ahmed Sufi as PW-7 (brother of PW-2) who was working as a conductor on the said bus. His testimony was similar to that of PW-2. He stated that he could not see the persons who were firing due to darkness. The witness categorically testified that he could not even state as to the number of persons who were engaged in

the firing. The witness was cross-examined by the Special Public Prosecutor of the State of Jammu and Kashmir whereupon other than vaguely mentioning that out of those persons (the assailants) some persons had long beard whereas others had small beard, he said nothing more. There is nothing in the testimony which could enable the court to identify the accused persons or to pinpoint the involvement of the respondents before this court as the persons involved in the incident.

19. The prosecution has examined Dr. Reyaz Ahmed as PW-8 (wrongly typed as PW-11) who proved the MLC of the deceased persons as Ex.PW7/2 to Ex.PW7/36. PW-9, Gurmukh Singh was also a public witness examined by the prosecution. However, he has also stated that he was not in a position to identify the accused persons. In fact, Gurmukh Singh had stated that he went to the place of occurrence after the firing. PW-10, Nanak Singh was one of those who were injured in the incident. In his testimony, he states that he became unconscious after the incident so he did not see the assailants. He therefore, deposed that he could not say as to whether the respondents were part of the group which was involved in the firing.

20. It appears that the prosecution had examined PW-11, Karamjit Singh for the reason that he was an eye-witness to the incident. He however turned hostile in the witness box. He states that a total number of 35 persons were killed in the incident. This witness stated that on 20th March, 2000 around 7:00 – 7:15 pm, he was returning to his house after purchasing milk for his child when some unknown gunmen in ready position in army uniform met him and told him to go to gurudwara as they wanted to search the village. This person had stated that they told him that some militants had entered in the village and they had to conduct a search for which reason he should go to the gurudwara. Though he had gone to the gurudwara where already villagers were sitting in a line but as his infant child was ill and he was tense because he has to take the milk for him, he had requested the commanding officer of the group to let him go. PW-11 had escaped from the group as he was worried about his child. He further stated that it was dark as there was no electricity. After he reached his house, he heard the noise of firing and when he came out of the house after half an hour, he had seen dead bodies scattered on the ground. This witness had however, also stated that he could not identify the persons who he had met or who had told him to go to the gurudwara in the evening. He

was cross-examined as hostile witness, he had denied that the accused persons in the court (respondents before this court) were also amongst the persons who had met him on that day.

21. The prosecution examined other official witnesses in support of the investigation which was undertaken which included recovery of empty shells from the spot; recording of the statement, etc.

22. PW-12, S.I. Mohd. Ishaq had proved the recording of DD No.20A by the police station, Anantnag resulting in commencement of investigation.

23. Two public witnesses, namely, Ulfat Jan and Bilal Ahmed could not be traced by the prosecution during trial and brought into the witness box despite best efforts. SSP, Anantnag made a report to the court that these PWs were not traceable. Subsequently, an application filed by the prosecution under Section 311 of the Cr.P.C. for recalling these witnesses were withdrawn by the prosecution and so dismissed vide an order recorded on 12th August, 2011.

24. It is therefore, clearly evident that there was no legal evidence at all, placed on record to support the case of the prosecution or to bring home the charges levelled against the accused respondents. No witness has identified them as persons involved in the incident. There was certainly no

incriminating material against the respondents before the learned Trial Judge who had no option at all but to dispense with the recording of the statement under Section 313 of the Cr.P.C. In the above background, there was no evidence against the respondents before the learned Trial Judge and the learned Trial Judge had rightly directed their release from custody in case they were not required in any other case.

25. Mr. Fernandes, learned Standing Counsel for the State of Jammu and Kashmir has not been able to point out any evidence before us from the record which has been produced before us as well to challenge the findings returned by the learned Trial Judge. The present petition in this background is hopelessly misconceived and deserves to be rejected.

We accordingly dismiss the present petition and direct the respondents to be released from the custody if they are not required in any other case.

Learned counsel for the respondents submits that the respondents are the Pakistani nationals. In this background, the petitioner shall proceed in the matter in accordance with law and take all steps for their deportation which may be required by law.

Crl.M.A.No.3503/2012 and Crl.M.A.No.3505/2012

We have heard the state on the merits of the petition and have dismissed the same. In this background, no orders are required to be passed in these applications.

GITA MITTAL, J

J.R. MIDHA, J

MAY 29, 2012
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