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IN THE HIGH COURT OF DELHI AT NEW DELHI

**RESERVED ON: 21.02.2012
PRONOUNCED ON: 29.02.2012**

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CRL.A. No. 1112/2011 & CrI.M.A. 10627/2011

SH. AMIT SINGH BEDI

..... Appellants

Through : Mr J.N. Singh, Advocate

Versus

STATE OF NCT OF DELHI & ORS

..... Respondent s

Through : Ms. Richa Kapoor, APP for the State

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. This is a victim's appeal, under proviso to Section 372 Cr. PC, challenging the acquittal of the respondents/accused, who were charged with committing offences punishable under Section 307/323/34 IPC.

2. The prosecution case briefly was that on 03.02.2006, the appellant had gone to visit his aunt at Rama Park Mohalla, Uttam Nagar. It is alleged that he went in the evening for a walk with Pooran Pandeshwar, PW-1; both heard cries for help ("*bachao bachao*") and rushed to the place of incident where the first accused Parvesh Kumar *alias* Ghungru was threatening Ravi Awasthi, PW-7, in connection with an incident which had occurred two days earlier. Ghungru took out his knife;

two others, i.e. Rakesh, the third accused and Binta also reached there and stood behind Ghungru. He then attacked Ravi with his knife but the latter escaped. Then Ghungru attacked Shiva (PW-8), who sustained injuries. Binta and Rakesh allegedly caught hold of Ravi and caused injuries on his nose by fisticuffs. In the meanwhile, PW-2 (the appellant) and PW-1 reached the spot and tried to save Ravi and Shiva. The accused caught hold of them. Rakesh caught hold of the appellant and Binta caught hold of Pooran. Both of them reportedly said, “*Maar saale ko*”; Ghungru said “*Wo dono toh bach gaye par tumko nahi chodunga*”. Ghungru then stabbed the appellant in the abdomen; Pooran too was criminally attacked. The injured were taken to the hospital; PW-7 Ravi Awasthi made a complaint, Ex. PW-7/B. His statement, Ex. PW-14/B was recorded upon which the FIR was lodged. On the basis of information provided to the police by the injured, all the accused were arrested. After conclusion of the investigations, they were charged with committing the offences. They denied guilt and claimed trial.

3. In the trial, the prosecution examined 19 witnesses, including the injured Pooran, PW-1; the appellant, PW-2, a public witness; PW-3, the doctor who examined the injured; Ravi, another injured, PW-7 and Shiva, the fourth injured person – PW-8. The appellant was in the hospital for a considerable period of time. During the trial, most of the prosecution witnesses, including the three injured – except the appellant, who was consistent with the previous version recorded by him – turned hostile. On an overall appreciation of the materials emerging from the record, the Trial Court concluded that the accused’s guilt had not been proved beyond reasonable doubt, and therefore, acquitted them.

4. It is urged by the appellant that the impugned judgment discloses grave errors in appreciation of evidence. Learned counsel submitted that right from the

earliest narrative, i.e. the D.D. entries, information received by the police and the complaint lodged by PW-7, it was clear that four victims had been criminally and murderously attacked by the accused. Their identity was never in doubt and the nature of injuries inflicted also indicated their intention to kill the victims. The doctor's testimony as well as the other material documents, such as their medical records conclusively proved that the nature of injuries were grievous and would in all probability have resulted in death, had medical treatment not been given effectively. It is argued that the Trial Court fell into error in unduly emphasizing that three witnesses turned hostile. PW-7, the complainant, in fact did not deny his signatures on the document produced by the police. Even though he might have turned hostile, he gave no explanation as to why the police had gone to record his statement. These, coupled with his admission about the attack on the day of the incident, corroborated the appellant's version in which all the accused had been identified and the events which occurred on that day were deposed to in detail.

5. Learned counsel next urged that it is the quality and not the volume of evidence which is material. Even though the accused were able to ensure that some witnesses turned hostile, the fact remained that the doctor who examined them was able to identify and mention that they were victims of an attack. Furthermore, the police witnesses, who had taken the statements of the victims, corroborated the version given by PW-2. These were in turn supported by other external factors in the form of documentary evidence which the Court should not have overlooked.

6. The occurrence in this case took place on 03.02.2006. The accused were arrested the next day, i.e. on 04.02.2006 at 07.00 PM. The MLCs of the appellant (PW-2); Pooran, PW-1; Shiva-PW-8 and Ravi-PW-7; produced as Ex. 4/A, 4/B, 15/A and 7/A list the several injuries. Except in the case of Shiva, (whose MLC

categorized injuries as “simple”), the other MLCs stated that the injuries inflicted and found on the victims were either dangerous or grievous. In these circumstances, there can be no doubt that the incident alluded to by the witness, i.e., the appellant, resulted in dangerous injuries at least to him and three other witnesses. The question however is whether the Trial Court could have held, on the face of inconsistencies by the prosecution witnesses, regarding the fundamental aspect, i.e. the identity of the accused that they were perpetrators of the attack, and ought to have been convicted.

7. At the outset, we notice that the injured were taken to the hospital around 10.00 PM; the FIR in this case was registered at 12.15 AM on 04.02.2006. No Test Identification Parade (TIP) at least so far as the appellant is concerned, was conducted. As far as Shiva and Ravi were concerned, undoubtedly, such a TIP would have been worthless since they were shown to have been witnesses to the arrest of the accused. Further the prosecution case was that the appellant, PW-2 was so injured as to have been hospitalized and that his statement was recorded much later. Although a TIP is not considered to be substantive evidence, yet if the proceeding is conducted, and the accused are identified by the witness or victim, as the case may be, that would go a long way in lending assurance to the Court that the witnesses were aware about the identity of the accused. Of course, the Court would ultimately rely upon dock identification.

8. In this case, although the other victims, PWs-1, 7 and 8 mentioned about the attack and even mentioned that some statements were recorded, they flatly denied to identify the accused at the trial proceeding. They also claimed that they had not offered statements and that the police merely obtained signatures on blank papers. Each one of these victims and witnesses and also those who were eyewitnesses

were examined, through leading questions at the permission of the Court, by the prosecution. However, they denied having made the statements they were alleged to have made during the police investigations, under Section 161 Cr.P.C.

9. At this stage, it would be relevant to extract the following observations and findings of the Trial Court:

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17. It may be mentioned that Mr. Ravi Awasthi, the complainant of the case, who has been examined as PW7 is hostile and he has failed to identify all the accused persons as the culprits who has assaulted him and Mr.Shiva, Mr Amit Bedi and Mr. Puran Paneshwar. He has infact deposed that in fact no incident had taken place. On 03.02.2006, he along with his friend Mr.Shiva had come by bus at Sewak park when at about 08.00-0830 PM, 4-5 persons had attacked and one of them had given a punch below his nose due to which he became unconscious. The police had called him to identify the accused who are present in the court and he had told the police that they are not the same persons. The police had taken his signatures on blank paper and his statement was not recorded on the date of incident. He has been cross-examined at great length by the Additional Public Prosecutor but nothing material has come forth. He has admitted his signature on the arrest memos, personal search memos, sketch of the knife/chura and disclosure statement of accused Mr.Parvesh Kumar @ Ghunghuk but has denied the contents. He has also denied that he had made any complaint to the police.

18. The evidence of Mr. Ravi Awasthi indicates that he was not assaulted by the accused persons as he has not supported the prosecution case and has not deposed anything incriminating against the accused persons.

19. Mr. Shiva Sahota PW7 is also hostile and has also not identified the accused persons as the culprits and has not assigned any criminal role to them. He has, in fact deposed, that he can not identify any persons who caused injury to him. Even he was cross-

examined at length by the Additional Public Prosecutor but nothing material has come forth which could be in the favour of the prosecution case. He has in fact denied making the statement Ex.PW8/B to the police. He has also deposed that he does not know any one by the name of Mr.Amit Bedi and Mr.Puran Paneshwar.

20. PW1 Mr. Puran Paneshwar also has not supported the prosecution case and is hostile. He has stated that he cannot tell who had inflicted injury on him. He has also failed to identify the churi/knife. Even he was cross-examined at length by the Additional Public Prosecutor but nothing material has come forth which could be in the favour of the prosecution case. He has, in fact, denied making the statement Ex.PW1/A to the police.

21 .It is clear from the evidence of PWs 7, 8 and 1 that they are hostile and they have not supported the prosecution case. They have failed to identify the accused persons as the culprits and have also failed to identify the weapon of offence.

22. PW2 Mr. Amit Bedi has deposed that he as assaulted by the accused persons whom he has identified in the Court. However, I find that the veracity of his testimony recorded as examination-in-chief is shattered in his own cross-examination. He has deposed that he came to know about the name of the accused persons after the incident from Mr. RaviAwasthi while Mr. Ravi Awasthi as PW7 has categorically deposed that he had not told the police that the accused persons are the assailants and has also deposed that he had seen the accused persons for the first time in the police station and thereafter in the court on the date of his evidence.

23. Further PW2 has stated that there were 2-3 more persons with accused Mr.Parvesh Kumar @ Ghunghuk, Mr.Rakesh and Mr.Binta but there is no such deposition by PWs 7, 8 and 1. He has also further deposed that “yeh saat (seven) bande marne ke liye aaye the” but there is no evidence by the other injured persons that there were 7 assailants. If the calculation is made that there were 2-3 more persons besides the three accused, then the number of assailants would be 5-6 then how PW2 has said “yeh saat bande....” which shows that the assailants were seven in number. This material contradiction in the

testimony of PW2 has neither been explained by the prosecution nor by PW2.

24. Further PW2 has admitted the suggestion that he had identified the accused persons at the instance of Mr. Ravi Awasthi. This part of the deposition of PW2 shows that he himself is not certain about the identity of the accused and has identified them only at the instance of Mr. Ravi Awasthi. Needless to mention here that Mr. Ravi Awasthi has himself not identified the accused persons. PW2 has deposed that he had told the description of the accused to Mr. Ravi Awasthi and then he had pointed out the names to him but there is no such deposition by PW7 who has not deposed even an iota of evidence against the accused persons.

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10. We also notice that PW-2, the appellant admitted that he was unacquainted with the accused before the incident. This is damaging to the prosecution because if he did not know their identity, there was no question of his knowing them. The appellant had stated that he knew Ravi and Shiva, PWs-7 and 8 through Pooran, PW-1. However, Shiva, PW-8 denied that he knew Pooran and the appellant. The other inconsistency noticed by the Trial Court was that PW-2 claimed his statement was recorded by the police in the hospital 4-5 days later; yet the prosecution had not showed any document indicating that the appellant had in fact been hospitalized, as claimed by him. Further, PW-4, the doctor who examined PWs-1 and 2, admitted in cross-examination that he had not prepared the MLC and merely signed them. Likewise, PW-19, who was relied upon by the prosecution, to prove Ravi’s MLC, conceded that he had not medically examined PW-7.

11. We are conscious of the fact that the appellant was grievously attacked with a knife and injured seriously. Equally, the other injured also suffered from attacks on them by the accused and the condition of one of them was said to have been

grave. Yet, in order to prove that the accused were responsible for the attack, the prosecution should have produced convincing evidence. No doubt, the appellant was an injured witness and the Court would give due weight to the ocular testimony of such an individual. However, at the same time, the other three injured, PWs-1, 7 and 8 also deposed in Court. Each one of them failed or was unable to identify the accused. In these circumstances, if TIP had been conducted, at least as far as the appellant was concerned, the accuseds' involvement could possibly have been proved. In its absence, the Court had to grope with the available materials which were riddled with inconsistencies. These included inconsistencies in the version given by PW-2, who apparently did not know the names or identities or who did not know the accused prior to the incident. Coupled with this, he was not even acquainted with two other injured, as was clear from their testimonies.

12. In criminal cases, while dealing with appeals against acquittals, the High Court is alive to the circumstance that a finding of innocence by the Trial Court is the affirmation of the badge of innocence which every citizen is entitled to, under our law. 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."

13. Upon a careful consideration of the evidence led before the Trial court, and the other materials placed before it, and after considering the submissions made by counsel, we are of opinion that no substantial or compelling reasons exist which

warrant a second look into the case, as an appellate court. For these reasons, the appeal, being unmerited, requires rejection. It is, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

February 29, 2012