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

DECIDED ON : 20th January, 2012

+ CRL.L.P.538/2011

STATE (GOVT. OF NCT OF DELHI) Petitioner

Through: Ms.Richa Kapoor, APP.

versus

NARESH & ANR. Respondents

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P.GARG

S.P.Garg, J. (Open Court)

1. This judgment will dispose of a petition by which the State seeks leave to appeal against the judgment of the Ld. Additional Sessions Judge dated 11.05.2001 in SC No.263/07 by which the Respondents were acquitted of the charge of having committed an offence punishable under Section 302/34 IPC.

2. The prosecution story is that on 17.01.2006 at about 2.57 P.M. a Daily Diary (DD) entry No.16 was received at Police Post SGM Hospital, PS Mangol Puri about a stabbing incident near S-300 Park, Mangol Puri MCD School. It was alleged that SI R.K.Mann reached the spot and was informed that injured had been taken to SGM Hospital and 3-4 boys had run away after injuring the individual. He thereafter, reached the hospital and secured the MLC of an unknown person in which he had been declared 'brought dead'. Finding no eye witness at the spot or at the hospital, SI R.K.Mann prepared the rukka and lodged the FIR.

3. The prosecution further alleged that subsequently Manoj @ Chiggal and Ct. Rajbir of police station Mangol Puri came forward and stated that they had seen both the Respondents causing injuries, with a knife and a cricket bat on the victim. Their statements under Section 161 Cr.P.C. were recorded. Their statements were the basis of apprehension of both the Respondents. It is further alleged that the Respondents made disclosure statements and got the weapons of offence i.e. knife and cricket bat recovered. IO recorded statements of various witnesses; sent the exhibits to FSL, collected the FSL reports, and on completion of investigation filed a challan against the Respondents.

4. On the basis of the evidence collected, the Respondents were charged with the offence punishable under Section 302 IPC, the murder of an unknown person. The Respondents entered the plea of not guilty and claimed trial.

5. The prosecution relied upon the testimonies of nineteen witnesses and also produced several exhibits. After considering them, the Trial Court, by the impugned judgment, concluded that the Respondents' guilt had not been proved beyond reasonable doubt and accordingly, acquitted them.

6. Ld. Addl.PP for the State urged that the Trial Court fell in error in not appreciating the depositions of PW-4 Manoj @ Chiggal and PW-5 Ct. Rajbir in its proper perspective. He urged that both these witnesses clearly revealed the identity of the assailants i.e. Naresh @ Mental and Vicky @ Anda. The Trial Court ought not to have disbelieved them merely on the assumption that there were some discrepancies in their statements. It was urged that the prosecution had produced several

materials including recovery of weapons of offence to establish the Respondents' guilt. PW-4 Manoj @ Chiggal and PW-5 Ct. Rajbir had no ulterior motive to falsely implicate the Respondents.

7. The Trial Court analyzed the testimonies of both PW-4 Manoj @ Chiggal and PW-5 Ct. Rajbir to disbelieve the prosecution case. The relevant part of its discussion in the impugned judgment is as follows :

“I find considerable force in the said submissions made on behalf of the accused as perusal of the record reveals that the presence of both these eye witnesses i.e. PW-4 Manoj @Chiggal & PW-5 Ct.Rajbir at the spot at the time of incident was doubtful. In his testimony, it has been stated by the PW-4 Manoj @Chiggal that he reached the PS at about 4.30 P.M. and remained there for about three hours. In addition to his, PW-5 Ct. Rajbir stated that he met SI R.K.Mann at about 3.15 P.M. at the spot and he further stated that he told the names of accused persons to SI R.K.Mann when he met him at the spot at about 3.15 P.M. PW-5 also stated that his statement was recorded by the IO at about 3.40-4.00 P.M. In these circumstances, it is clear that the names of the assailants were known to SI R.K.Mann at about 3.15 P.M. or latest by 3.40-4.00 P.M., however it has not been explained on behalf of the prosecution as to why the names of assailants did not find mention in the rukka (Ex.PW-6/B) which was sent by the initial IO- SI R.K.Mann at about 4.45 P.M., although SI R.K.Mann was aware of the names of the assailants as was evident from the testimony of PW-5. In fact, the perusal of the record reveals that in the said rukka (Ex.PW-6/B) it has been stated by the initial IO SI R.K.Mann that none of the eye witnesses met him at the spot or in the hospital and he came to know that 3-4 boys came from the side of S-300 Park, Mangol Puri and assaulted on the person of the injured and thereafter they ran away. Accordingly, initial information available with

the IO was that injured have been assaulted by the 3-4 persons, although PW-4 & PW-5 have stated that they have told about the assailants, who were two in number to the IO at the spot. In these circumstances, had the IO met the alleged eye witnesses i.e. PW-4 & PW-5 at the spot, the names of the assailants would have definitely found mention in the rukka (Ex.PW-6/B) and as such, in the absence of the names of assailants in rukka (Ex.PW-6/B), the presence of PW-4 & PW-5 at the spot becomes doubtful.

In addition to above, there are material contradictions/discrepancies regarding time and manner of meeting of alleged eye witnesses i.e. PW-4 & PW-5 with the IO at the spot. It has been stated by the PW-6 SI R.K.Mann that he came back to the spot for the second time at about 5.00 P.M., when he met Cr.Rajbir and public witness- PW-4 Manoj @Chiggal, whereas PW-5 Ct.Rajbir stated that he met SI R.K.Mann at about 3.15 P.M. He further stated that he had told the names of the accused persons to the SI R.K.Mann, when he met him at the spot at about 3.15 P.M. and his statement was also recorded by the IO at the spot at about 3.40-4.00 P.M. On the other hand, it has been stated by the PW-4 Manoj @Chiggal that two police persons came in the Sabji Mandi and he went with them to PS and reached the PS at about 4.30 P.M. and remained there for about three hours.

Ignoring the aforesaid material contradictions/discrepancies, even if it is assumed that version being given by the initial IO SI R.K.Mann is correct and he in fact met PW-4 Manoj @Chiggal & PW-5 Cr.Rajbir at the time of his second visit to the spot after 5.00 P.M. In that event, the versions being given by the PW-4 Manoj @Chiggal & PW-5 Ct.Rajbir becomes doubtful, which again is fatal to the case of the prosecution in the fact and circumstances of this case.

Even if it is presumed that initial IO-SI R.K.Mann came to know about the names of the assailants after sending the rukka, even then the fact remains that

admittedly, as per his own version, he came to know about the names of the assailants on the day of incident itself i.e. 17.1.2006. This fact has also been admitted by the main IO Insp.Satyapal Singh, who stated that on 17.1.2006, from the statements of PW-4 Manoj @Chiggal & PW-5 Cr.Rajbir, they were having knowledge as to who were the assailants in the present case and in that event, the names of the assailants should have found mention in the Message Form dated 18.1.2006 and brief facts of the inquest papers dated 23.1.2006, however therein, it has been mentioned that deceased was assaulted by the unknown assailants which again creates doubt in the version of the incident being put forward on behalf of the prosecution. In fact, in his testimony, PW-19 Insp.Satyapal Singh (IO) has specifically stated that he has not mentioned the fact regarding the involvement of the accused- Naresh and Vicky in the present case as assailants in the brief facts of the inquest papers dated 23.1.2006 and he also did not tell the names of the accused being the assailants to the doctor, who prepared the postmortem report of the deceased and he also admitted that in the Message Form dated 18.1.2006, it has been written that deceased have been stabbed by some unknown assailants. It is pertinent to note that no explanation whatsoever has been brought on record on behalf of the prosecution as to why the name of accused as assailants did not find mention in the brief facts of inquest papers of Message Form, although admittedly, the name of the assailants were known to the IO on 17.1.2006 as has also been admitted by him in this testimony. The non mentioning of the names of the assailants in the brief facts of inquest papers is also fatal to the case of the prosecution.”

8. Besides above, we find that both PW-4 and PW-5, the eye witnesses did not intervene when the Respondents were allegedly inflicting injuries upon the victim; they did not inform the police or PCR

and did not take the victim to the hospital to ensure medical aid. This conduct, of both the PWs seems unnatural and creates doubt about their presence at the spot, especially when they were alleged BCs of the area. Both the Respondents were known to PW-5, a police official.

9. Prosecution failed to establish motive of the Respondents to commit the crime as it did not collect material to show how and under what circumstances, an altercation between the victim and the Respondents had taken place. The identity of the victim could not be established. The Police failed to collect any material to ascertain who was the deceased and where he was residing. The dead body remained unclaimed.

10. The circumstance of recovery of the knife and the cricket bat was not believed and, in our opinion, rightly so, by the Trial Court. No independent public witness was joined at the time of alleged recoveries. As per FSL report, no blood group was conducted on the knife. Mere recovery of knife and cricket bat is not enough to infer that these weapons were used for committing the crime.

11. It has been repeatedly reiterated that the standards to be applied by the High Court while considering the petitions for leave to appeal against acquittals is one where the prosecution establishes substantial and compelling reasons, which by and large are confined to serious or grave mis-appreciation of evidence, wrong application of law and an approach which would lead to complete miscarriage of justice. In the present case, the Trial Court has listed various grounds on which it acquitted the Respondents/Accused. All of them, to our mind, are reasonable and none of them can be termed as misapplication of law or

wrongful appreciation of the evidence placed before the Court by the prosecution.

12. Applying the standards while hearing leave petition, we are satisfied that the acquittal recorded by the Trial Court is based on sound reasoning and analysis which does not call for interference.

13. In view of the above, we are satisfied that there are no substantial or compelling reasons to grant leave to appeal to the State against the impugned judgment. In the circumstances, the petition is unmerited and is consequently dismissed.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

January 20, 2012
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