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

DECIDED ON: 23.01.2012

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CRL.L.P. 527/2011

STATE

..... Petitioner

Through: Ms. Richa Kapoor, APP.
SI Sanveer Sulin, PS Aman Vihar.

versus

SUNIL @ AKASH @ SAGAR

..... Respondent

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% 1. The State seeks leave to appeal against the judgment and order of the learned Additional Sessions Judge dated 17.02.2011 in Session Case No.138/2009. The respondent (hereinafter referred to as accused) Sunil was acquitted of the charge of having committed murder of Suraj (hereinafter referred to as deceased), punishable under Section-302/34 IPC.

2. The prosecution's case was that Rahul (PW-6), Ravi (PW-7) and the deceased were returning on 15.08.2009 at around 08:30 PM from the shop of

one Bhura Halwai after purchasing milk. It was alleged that Sunil and Vipin (the co-accused) who was declared proclaimed offender confronted them from the opposite direction in a drunken condition and told Suraj that he was a bad character (“tu badmash hai apni gali ka dada banta hai”). The deceased apparently asked Sunil and Vipin to talk over their differences in the morning since they were drunk. Sunil held the deceased’s hand from the back and Vipin inflicted knife injuries on Suraj on chest and then both accused fled the spot. The police was called and Suraj was taken to the SGM Hospital where he was declared dead. The statement of PW-6 Rahul formed the basis of the FIR recorded as FIR No.271/2009. After collecting the postmortem report and other materials, the respondent Sunil was charged for having committed the offence. Since Vipin could not be traced, he was declared proclaimed offender and not subjected to trial. The Trial Court concluded that the material presented before it could not form the basis for conviction under Section-302/34 IPC. The relevant part of its reasoning is found in paragraph nos.15 and 19 of the judgment which reads as follows: -

Common Intention

“15. The incident pertains to 15.8.09. It is also proved that fatal injuries, as per the Post Mortem Report Ex. PW 3/A, were inflicted by the accused Vipin @ Bona who could not be arrested. As per the prosecution, the accused Sunil @ Akash only hold the hands of the deceased from the back when the accused Vipin @ Bona inflicted fatal injuries by knife to the deceased. PW-18 SI Rajesh Kumar alongwith PW-9 Ct. Nagender after receipt of DD no.43B Ex. PW 11/A reached at SGM hospital where the statement Ex. PW 6/A was recorded.

The statement Ex. PW 6/A perused. In the statement Ex. PW 6/A, PW-6 Rahul stated that on 15.8.09 at about 8.30 pm he along with PW-7 Ravi and deceased were coming back from the halwai shop and when they reach near the electric transformer then accused Vipin @ Bona met them along with one of his friend. Thereafter the accused Vipin @ Bona uttered the words to the deceased that .Tu bahut zayada gali ka pradhan banta firta hai tatha bari dadagiri karta hai. and then deceased asked the accused Vipin @ Bona that they would talk in the morning as the accused Vipin @ Bona was in drunken condition. Thereafter the accused Vipin @ Bona told the deceased that today he will teach a lesson to him (deceased) and got angered and asked his friend (accused Suraj @ Akash) to hold him (deceased) from back and on this the accused Sunil @ Akash caught hold the deceased and accused Vipin @ Bona took out a knife from the pocket of his pant and inflicted injuries on the chest of deceased. What is reflecting from the statement Ex. PW 6/A made by PW-6 Rahul to PW-18 SI Rajesh Kumar that the accused Vipin @ Bona out of anger asked the accused Sunil @ Akash to caught hold of the deceased and thereafter suddenly he took out a knife and inflicted fatal blows by using knife on the chest of deceased. PW-6 Rahul made improvements in his deposition and as per the deposition that accused Sunil @ Akash and accused Vipin @ Bona came together and thereafter accused Sunil @ Bona hold the hands of the deceased from back and accused Vipin @ Bona stabbed a knife on the chest of deceased.”

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19. It is apparent from the respective testimonies of PW-6 Rahul and PW-7 Ravi and statement Ex. PW 6/A that accused Sunil @ Akash and Vipin @ Bona were not having any common intention to cause the death of the deceased by inflicting injuries. The

accused Sunil @ Akash and Vipin @ Bona met deceased, PW-6 Rahul and PW-7 Ravi on the way when they were returning back to home from the shop of halwai and at that place an altercation took place between the accused Vipin @ Bona and the deceased. The accused Vipin @ Bona got angered as the deceased refused to talk with him and asked accused Sunil @ Akash to caught hold the deceased from back. The accused Sunil @ Akash only caught hold the deceased on the asking of accused Vipin @ Bona. What is material at this stage is that the accused Vipin @ Bona suddenly took out a knife and caused stab injuries to the deceased which proved to be fatal. At that time, accused Sunil @ Akash was not having any knowledge that the accused Vipin @ Bona would inflict knife blows to the deceased, although, the accused Vipin @ Bona was carrying a knife at that time. The accused Sunil @ Akash took the deceased in his grip by holding his hands but till that time the accused Vipin @ Bona had not communicated his intention to cause fatal injuries to the deceased. Even no common intention was developed at the spot between the accused Sunil @ Akash and Vipin @ Bona. PW-6 Rahul in statement Ex. PW 6/A also stated that the accused Vipin @ Bona inflicted injuries to deceased suddenly by taking out a knife. What is proved by the prosecution is that accused Sunil @ Akash took the deceased in his grip by holding his hands on the asking of accused Vipin @ Bona but he has not shared the common intention for causing fatal injuries to the deceased. The fatal injuries caused by the accused Vipin @ Bona by taking out the knife suddenly when there was an altercation between the accused Vipin @ Bona and deceased. PW-6 Rahul had made improvements in his deposition to prove the common intention between both the accused developed at the spot over his statement Ex. PW 6/A. PW-6 Rahul was an interesting witness being the relative of the deceased. It was held in the case of **Badrudin Rukonddim Karpude and Ors. V State of Maharashtra**, 1981 CRI L.J. 729 that reliance could not be placed on the statement of interesting witnesses when the witness

made improvement in the prosecution story propounded by them at the investigation stage in material particulars.”

3. Ms. Richa Kapoor, Additional Public Prosecutor urges that the Trial Court omitted to consider the material part of PW-6’s evidence which clearly stated that Suraj was held by Sunil at the exhortation of Vipin and that the latter took out a knife and stabbed the deceased. It was argued that this clearly constituted a case where Sunil facilitated the commission of the offence and shared his intention with the PO Vipin by virtue of Section-34, IPC.

4. As noticed previously, the Trial Court held that Sunil could not be said to have shared a common intention with Vipin for the murder or the homicidal attack on the deceased since the knife by all accounts was whipped out all of a sudden. The Trial Court analyzed Section-34 in paragraph-16 and 17 of its judgment. The Court concluded that no prior meeting to inflict the homicidal injuries upon the deceased could be inferred from the surrounding circumstances and the materials available.

5. We have carefully considered the submissions and have also gone through the Trial Court’s records, which was requisitioned for the purpose of this proceeding. Both, in the earliest intimation recorded by the Police Ex.PW-6/A as well as the deposition in Court, Rahul (PW-6) clearly stated that Sunil had held the deceased’s hand and Vipin took out the knife. Now, apart from this statement, there is nothing to further prove that Sunil even had the knowledge that the Vipin was armed with a knife and was bound to use it. In the absence of any such allegation, much less the proof, the Court could not have concluded otherwise than it did.

6. It has been emphasized time and again that High Court does not exercise its appellate jurisdiction to reverse findings of acquittal unless it is persuaded that there are substantial or compelling reasons for it to do so; such phrases include gross mis-appreciation of evidence, or law, or adopting an approach which leads to manifest miscarriage of justice. We are satisfied that the present petition does not disclose any such reasons warranting our exercise of jurisdiction to grant leave to the State.

7. For these reasons, the petition - CRL.L.P.527/2011 - lacks in merit; it is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

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

JANUARY 23, 2012
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