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

Date of decision: 10th July, 2013

+ **CRL.L.P. 162/2012**

STATE

..... Petitioner

Through: Ms. Rajdipa Behura, APP for the State.

versus

NARENDER BHATIA

..... Respondent

Through: Mr. R. D. Sharma, Adv. with
Mr. Bhupendar M. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL J. (ORAL)

CRL.M.A. 3586/2012 (delay)

1. The application is not opposed by the learned counsel for the respondent. For the reasons as stated in the application, the delay of 41 days in filing the leave to appeal is condoned.
2. The application is accordingly allowed.

CRL.L.P. 162/2012

3. The State seeks leave to appeal against the judgment dated 08.02.2011 passed by the learned Additional Sessions Judge (ASJ), Rohini in Sessions Case No.725/2006 whereby the respondent (accused before the trial court) was acquitted of the charges punishable under Section 302 Indian Penal Code (IPC).

4. As per the prosecution version, on 16.04.2006 DD No.37-A was recorded in Police Station Jahangir Puri at 11:35 P.M. to the effect that one Manjeet Singh @ Buntty (the deceased) son of Balvinder Singh has been found in an injured condition. The DD was assigned to SI Vijay Singh (PW-17) who then reached the hospital. He obtained the MLC No.19470 of earlier said Manjeet Singh from the doctor which revealed that he (the deceased) was admitted to the casualty in a gasping state with alleged history of assault. At the time of admission, the doctor noticed a CLW 2 cm x 1 cm over right chest. The injured was declared unfit to make the statement. In the meanwhile, it transpired that deceased had succumbed to his injury. One Daljeet Singh met PW-17 and made his statement to the SI Daljeet Singh (PW-3) and informed the IO that his elder brother Manjeet Singh was carrying on business of *gota kinari* in Sant Nagar. He was in love with one Sonia, sister of Narender Bhatia @ Nonu. He (Narender Bhatia the respondent herein) was opposed to the relationship. His deceased brother informed him a week prior to the incident that the respondent had extended him (the deceased) threat to stay away from Sonia or else he would lose his life. Daljeet Singh further informed PW-17 that on that day, that is, on 16.04.2006 at about 10:45 P.M. he and his brother were standing near the small park in the street and were talking to each other; the respondent also reached there and called the deceased; the deceased went to him; there was an altercation between the two and all of a sudden the respondent took out a knife and caused injury on his chest. On raising alarm by the deceased, he (PW-3 Daljeet Singh) rushed towards the respondent. He (the respondent) escaped; his brother could not walk and so he sat down near house No.1670; he(PW-3) raised noise; some people got attracted on hearing the noise raised by him; some

people collected there and proceeded to remove him to the hospital; he went to his house to collect money and to inform his family members about the incident.

5. On the statement Ex.PW-3/A, PW-17 made an endorsement Ex.PW-17/A on the basis of which the present FIR was registered and the investigation was taken up.
6. During the course of investigation the respondent was arrested in the evening at about 7:00 P.M. He made a disclosure statement(Ex.PW-7/A). In pursuance of the disclosure statement, a bloodstained knife Ex.P-1 was recovered at the respondent's instance from the garbage lying in the colony. The respondent was found to be wearing a T-shirt containing some bloodstains. The said T-shirt was also seized by PW-19 by seizure memo Ex.PW-7/E. On completion of the investigation, a report under Section 173 Cr.P.C. was presented against the respondent.
7. On respondent's pleading not guilty to the charge, the prosecution examined 19 witnesses to bring home the respondent's guilt. Since the prosecution failed to adduce any evidence with regard to deceased's blood group, the trial court attached no importance to the alleged recovery of the knife at the respondent's instance and the recovery of the T-shirt, which the respondent was wearing at the time of his arrest.
8. Apart from these two circumstances, the prosecution relied on the testimony of PW-3 Daljeet Singh the deceased's brother, an eye witness to the occurrence and PW-1 Smt. Baljinder Kaur, the deceased's mother to whom the deceased allegedly made a dying declaration to the effect that he was stabbed by Narender @ Nonu, the respondent.

9. On appreciation of evidence, the trial court on the basis of PW-3's conduct and the circumstances proved on record opined that PW-3 was in fact not an eye witness to the occurrence. He was planted as a witness by the prosecution. The trial court declined to believe that PW-1 had reached the spot of occurrence immediately after the incident or that she was informed by the deceased that the respondent had stabbed him. Thus, the respondent was acquitted giving him benefit of doubt.
10. The trial court dealt with PW-1 and PW-3's conduct in detail. The reasoning given by the trial court is extracted hereunder:-

"30.... The case of the prosecution rests of the testimony of Daljeet who is the alleged eye witness of the murder of his brother. The evidence of PW 1 Smt. Baljinder Kaur and the evidence of PW 3 Daljeet Singh is relevant in this regard.

According to PW 1 her deceased son and Sonia sister of the accused were in love affair with each other and her son wanted to marry Sonia, sister of the accused. She has further deposed that her son Manjeet had told her that accused was extending threats of life to him on this score.

PW 1 has further deposed that on 1662006, at about 11/ 11:30 p.m the incident had taken place which according to her was witnessed by her younger son Daljeet. She further deposed that two persons of the locality came running to her house and informed her about the incident. She further deposed that she reached the spot and found her son Manjeet @ Bunty in injured condition and bleeding and her son Manjeet told her that he was stabbed by accused Narender @ Nonu. She further deposed that her son Manjeet @ Bunty was repeatedly crying "NONU NE MUJHE CHAKU MARA".

The other material witness is PW 3 Daljeet Singh, brother of the deceased who according to the prosecution was with his brother Manjeet @ Bunty when he was stabbed by accused Narender Bhatia. PW 3 has deposed that on 1642006, at about

10:45 p.m he along with his brother Manjeet had gone out of the house for a stroll and when they were standing near a park and were talking, in the meantime, accused Narender Bhatia @ Nonu came there.

He further deposed that at that time he and his brother Manjeet were inside the park and accused Narender Bhatia was outside the park. He further deposed that accused Narender Bhatia called his brother who went to him. He further deposed that accused and his brother started talking which developed into arguments and then accused took out a knife and stabbed his brother on his chest.

PW 3 further deposed that he rushed towards his brother so as to apprehend accused Narender Bhatia but he ran in a gali. He further deposed that his brother walked a few steps and fell down near house No. A1670. According to PW 3 his brother was bleeding profusely and there was blood on his clothes and on the ground. He further deposed that he raised hue and cry. Some neighbours came there and they started moving his brother to the hospital. He has further deposed that he rushed to his home to inform his mother and to arrange money and after collecting money from his house he came out of his house and he was told that his brother was taken to BJRM hospital so he reached there.

His statement was recorded by SI Vijay Singh at about 12:30 a.m which is Ex. PW 3/A. He has also deposed that his brother Manjeet @ Bunty was in love with the sister of accused Narender Bhatia and they wanted to marry but accused was against this marriage. He further deposed that on one occasion accused had even threatened that he would kill Manjeet.

Apart from stating on the facts, he has also stated about the other proceedings done by the police in his presence like collecting of exhibits, collecting of dead body, arrest of the accused, preparation of site plan.

Now from the documents on the record and other evidence in the form of testimony of the witnesses and also keeping in view the conduct of PW 3 it is to be seen as to whether he is the eye witness of this case and telling the truth.

The first document prepared in this case is the MLC No. 19470 Ex. PW 5/A of deceased Manjeet Singh. According to the MLC Manjeet was admitted in the hospital on 1642006 at about 11:10 p.m and as per the MLC he was brought by Rajinder Sharma S/o Ram Kishan R/o B799, Jahangir Puri. MLC only talks about the alleged history of assault and it is silent with regard to the name of the assailant or role of the assailant.

After the preparation of the MLC the next document which was prepared was DD No. 37 A which is Ex. PW 15/A. According to this DD the duty constable posted at BJRM hospital reported the matter at about 11:35 p.m that one Manjeet Singh injured in a fight has been admitted by Rajender Sharma and Satish. Another DD No. 38 A dated 1642006 Ex. PW 15/B was recorded at 11:45 p.m which is regarding the death of Manjeet Singh.

These three documents were prepared within a span of 30 minutes of the admission of the injured in the hospital. Till the time, these three documents were prepared, there was no trace of PW Daljeet Singh, though he has stated that he reached the hospital at about 11:15 p.m. / 11:30 p.m.

PW Daljeet Singh has deposed that he has raised hue and cry when his brother was stabbed and neighbours gathered there and took his brother to the hospital. As per the record of the case the injured was removed to the hospital by Rajinder and Satish but it is not understood as to why PW Daljeet has failed to name the above said two persons who were responsible for taking his injured brother to the hospital when he is saying that neighbours took his brother to the hospital. PW Daljeet is claiming himself to be the eye witness but it is quite surprising that instead of taking his brother to the hospital, he ran towards his house to collect money rather in such a situation the immediate reaction of such a near relative is to immediately remove the injured to the hospital without caring for anything else.

As per PW Daljeet many neighbours had gathered at the spot and if money was the only consideration, he could have definitely asked the neighbours present there to inform his mother about the incident and ask her to come to the hospital with money. But he did not do so and left his brother in a serious condition at the mercy of

other persons.

The conduct of PW Daljeet is really startling, neither from the hospital nor from the spot he had taken any steps to inform the police and it was only after the death of Manjeet when the doctor handed over the death summary of Manjeet to SI Vijay Singh, then PW Daljeet told SI Vijay Singh that he is the brother of the deceased and an eye witness to the incident.

The presence of Daljeet Singh at the spot further becomes doubtful because had he been there in the hospital, he would have met the doctor or the duty constable in the hospital to inform about the incident and the assailant and to inquire about the condition of his brother but that is not so. According to PW 3 Daljeet he had reached the hospital at about 11:15 p.m / 11:30 p.m. and SI Vijay Singh according to Daljeet had reached the hospital after about 1 hr. / 1 ½ hrs. of his reaching the hospital. But there is nothing on record to show as to what Daljeet kept on doing during this 1 hr. / 1 ½ hrs when he must have definitely come to know that his brother had expired. Even at that juncture he had not taken any steps to inform the police about the incident from his own side.

The incident had occurred at about 10:45 p.m and the FIR was registered at 1:35 a.m after about more than 2 and a half hours. PW 3 Daljeet Singh who is the brother of the deceased had not made any complaint to the police when the police station is hardly 500 yards from his house. The conduct of this witness has been quite abnormal and throws a serious doubt about his presence at the time of the incident.

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PW Satish has stated that he remained in the hospital for about 2 hours and the record shows that he along with one Rajinder had reached the hospital along with the injured at about 11:10 p.m meaning thereby he was in the hospital till 1:10 a.m on 1742006, and by that time neither the police nor any person related to the injured met him, further it is the case of PW 3 Daljeet that some neighbours were shifting his brother to the hospital and it is highly improbable that Daljeet would not know the name of his neighbours. Daljeet had not even stated that PW Satish and

Rajinder had met him in the hospital which is again highly improbable because Satish and Rajinder belong to the same locality and they were the one who had admitted Manjeet in the hospital. PW 3 Daljeet had also reached the hospital at about 11:30 p.m. According to PW Satish he was in the hospital with Rajinder for about 2 hrs. from the time of admission of Manjeet in the hospital. Meaning thereby PW Satish and Rajinder must have been in the hospital till about 1 / 1:15 p.m. Now according to PW Daljeet he also reached the hospital at about 11:30 p.m and remained there till 3:00 a.m. It is surprising that three of them never met each other in the hospital which further creates a doubt about the presence of Daljeet. Moreover, it is not in dispute and is admitted case of the prosecution that the injured was removed to the hospital by PW Satish and Rajinder.

According to PW 3 Daljeet after the incident after three four minutes he rushed back to his home to inform his mother and bring money and when after taking money he came out of the house, somebody told him that his brother had been removed to BJRM hospital so he went to BJRM hospital. PW 1 who is the mother of PW 3 does not say that PW 3 had told her that Manjeet had been stabbed by accused Narender Bhatia but according to PW 1 she was informed about the incident by two persons of the neighbourhood. PW 3 Daljeet has also stated that after remaining at the spot for about 3 – 4 minutes he has rushed to his house but he has not uttered a single word regarding his meeting with his mother PW 1 on the way or in the house. There is a total silence on this aspect.

According to PW 1 she has reached the spot where she found her son Manjeet lying in injured condition and saying that “Nonu ne mujhe chaku mara”. She has been confronted on this aspect with her statement Ex. PW 1/DA where it was not so recorded further she has made improvements on her statement given by her to the police and is not a reliable witness.

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In the instant case, the brief facts were prepared at 10:00 a.m on 17-4-2006. PW 3 Daljeet has deposed that on 17-4-2006, at about 10:00 a.m he reached mortuary BJRM hospital where

Inspector Rohtash had prepared the document concerning the dead body. He has further deposed that he was present when brief facts Ex. PW 19/B were prepared. In the brief facts, there is no mention about the name of the assailants, role played by the assailants, as to who had lodged the FIR and who witnessed the occurrence. The inference which can be drawn is that up to 10:00 a.m on 17-4-2006, Daljeet PW 3 was not aware about the assailant nor the IO was in the knowledge of presence of Daljeet and the assailants.

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PW 3 Daljeet has stated that there was blood on the cloths of the deceased. He has stated in his cross examination as follows “I was holding my brother Manjeet while I was present at the spot for 34 minutes, my clothes were not blood stained while blood was oozing from the body of the deceased”. He has further stated in his cross examination that “my brother was bleeding profusely from the injuries” and has also stated in his cross examination that he was holding his brother. Now when his brother was bleeding so profusely how it is possible that the clothes of PW 3 Daljeet did not get stained by even a single drop of blood. This also throws a serious doubt about his presence at the spot. As already discussed herein above the conduct of PW3 Daljeet is beyond comprehension.....”

11. The learned counsel for the State urges that the trial court committed an error in disbelieving PWs 1 and 3. Different persons react differently to a given situation. It was not unnatural for PW-3 to have proceeded to his house to collect some money as also to inform his family. Simply because, the names of PWs 1 and 3 were not mentioned in the deceased's MLC, there was no reason for the trial court to come to the conclusion that PW-3 was not a witness of the occurrence and PW-1 had deposed falsely about the knife injury given by the respondent.
12. In our view, the trial court has given detailed reasons for disbelieving PWs 1 and 3 and we are not inclined to take a different view. It may be

noticed that the place of incident is very close to the house of the deceased and PWs 1 and 3. PW-3 Daljeet Singh in cross-examination stated that it took 2-3 minutes from their house to walk down to the park. In his further cross-examination recorded on 21.10.2009 PW-3 stated that it took about 8-10 minutes in returning to the spot from his house after collecting the money. As per PW-3 his injured brother was already removed to the hospital in those 8-10 minutes. As per prosecution version, particularly as per the testimony of PW-3 the incident took place at 10:45 P.M. The deceased was brought to the casualty of Babu Jagjivan Ram Memorial (BJRM) hospital. If we believe PW-3 that he returned to the spot within 8-10 minutes and the admitted position (including the version of PW-6 that the hospital is at a distance of one km. from the spot), the TSR would not have taken more than a few minutes in removing the injured to the hospital from the spot. At the same time, it must have taken some time to hire the auto (by PW-6) in which the injured was removed to the hospital. If PW-3 had really seen the incident as is the case of the prosecution and had gone to his house to collect money and to inform his family and then had returned to the spot within 8-10 minutes, the deceased would still have been at the spot at the time PW-3 returned there. Thus, it is unbelievable that the deceased would have been removed to the hospital before arrival of PW-3 at the spot. Moreover, even if we believe PW-3's testimony that he returned to the spot within 8-10 minutes and his deceased brother had already been removed to the hospital and that he proceeded to the hospital on his two wheeler even then it goes without saying that a person reaches a place more quickly on a two wheeler than in a TSR. In fact, due to the urgency in PW-3's mind he would have taken just a couple of minutes in reaching

the hospital on his two wheeler. Moreover, it would always take some time at least a few minutes, in taking out an injured from a TSR and carrying him to the casualty. Even if, we accept that PW-6 and other persons were able to hire a TSR in PW-3's absence, still PW-3 would manage to reach the casualty by the time his deceased brother was taken there. Thus, absence of PW-3's name in the MLC and the mention of the name of one Rajender, son of Ram Kishan, as the person who had brought the deceased to the hospital is an important circumstance to negate the presence of PW-3.

13. There is an important contradiction in the testimony of PW-1. Initially, she deposed that she went to the hospital along with Satish, Rajender and her son Baljeet Singh (PW-3) in the TSR. After awhile she deposed that her son Baljeet Singh (PW-3) was following the TSR in which the deceased was being removed to the hospital and she was sitting on the pillion of the two wheeler driven by PW-3. Had it been so, again the name of PW-3 or PW-1 would have been mentioned as the persons who removed the deceased to the hospital. Moreover, PW-3 is completely silent if his mother (PW-1) had accompanied him on his two wheeler to the hospital. Rather, in cross-examination he came up with a story that his mother met him on the way while he was proceeding to his house to collect money. In that event also, it was natural for PW-1 to have accompanied the deceased to the hospital in a TSR.
14. Another circumstance to disbelieve PW-3 being an eye witness to the occurrence as noted by the trial court is that in the brief facts prepared by PW-19 Inspector Rohtash Singh who took up the investigation, he did not mention the name of the assailant and the name of the witnesses to the

occurrence. A perusal of brief facts Ex.PW-19/B reveals that the IO (PW-19) had taken pains to mention that the injured was brought to casualty in a gasping state with alleged history of assault. The description of the injury and the fact that he was declared unfit for the statement was also mentioned but at the same time the name of the assailant, that is the respondent and the solitary eye witness, that is, PW-3 was not mentioned. This circumstance coupled with other circumstances would strengthen the trial court's belief that PW-3 was not an eye witness of the occurrence.

15. The trial court noticed that PW-6 Satish Kumar along with one Rajender Sharma removed the deceased to the hospital at about 11:10 P.M. In cross-examination PW-6 deposed that they remained in the hospital for about two hours and during this time neither the police nor any relation of the injured met him in the hospital. This is further fortified from the fact that in the DD Entry 5-A dated 17.04.2006 recorded at 2:35 P.M. after recording the instant FIR, the particulars of the assailant were not mentioned and in spite of examination of PW-12 who allegedly delivered the special report at the residence of the learned Metropolitan Magistrate (MM), no evidence was brought by the prosecution to prove the delivery of the special report and the time at which it was delivered to the learned MM.
16. PW-1 tried to project herself as a witness of the dying declaration when she deposed that her deceased son disclosed to her that he was attacked by a knife by Nonu but she was confronted with her statement under Section 161 Cr.P.C. recorded by the police where she had not disclosed this fact to the IO. The same was, therefore, discarded by the learned trial court being an improvement.

17. The motive for committing the deceased's murder is stated to be the love affair between the deceased and respondent's sister Sonia. Sonia was not examined as a prosecution witness. During investigation, no evidence except the statements of PWs 1 and 3 was recorded in this regard. Thus, the prosecution failed to establish any motive for commission of the offence. Otherwise also, enmity is a double edged weapon. If it is a motive for commission of an offence, it may be a ground for false implication as well because PWs 1 and 3 might have suspected that the respondent could be behind the murder because of his objection to the proximity between the deceased and his sister.
18. The learned counsel for the State refers to the recovery of the T-shirt containing the human blood of B group and the recovery of the knife at the respondent's instance in pursuance of his disclosure statement as the piece of evidence to nail the respondent. The same was rightly discarded by the trial court as it leads us nowhere. The trial court disbelieved that a person would roam about wearing a bloodstained T-shirt even after more than twenty hours of the incident. Secondly, no connection with the blood group allegedly found on the T-shirt worn by the respondent was established in the absence of the deceased's blood group.
19. The alleged recovery of knife from the garbage is not only shrouded in mystery but is otherwise of no consequence in view of the fact that it nowhere establishes the deceased's death with the knife Ex.P-1. In view of the fact that the human blood allegedly found on it could not be connected with the blood of the deceased and thus it cannot be said that the injury on the deceased was reflected with this very knife. Although, the doctor (PW-2) opined that the injury is possible with this knife. The

injury in question could be caused by any knife and in the absence of any evidence that the injury was possible only with the knife Ex.P-1, there is no discovery of any fact relevant to the death of the deceased. No portion of the disclosure statement Ex.PW-7/A is, therefore, admissible in evidence and alleged recovery of the knife Ex.P-1 does not advance the case of the prosecution.

20. We do not find any error or infirmity in the impugned judgment. The State is, therefore, not entitled to leave to appeal. The Leave Petition is meritless and has to fail; it is accordingly dismissed.

(G.P. MITTAL)
JUDGE

(G.S. SISTANI)
JUDGE

JULY 10, 2013
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