

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

% **Date of Decision :10th May, 2013**

+ **CRL.L.P.9/2006**

STATE

.....Petitioner

Through: Mr.Pawan Sharma, Standing
Counsel with Mr.Sahil Mongia,
Adv.

versus

SUBHASH SHIVA & ORS.

.... Respondents

Through: Mr.O.P.Malviya, Adv.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

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PRATIBHA RANI, J. (ORAL)

Crl.L.P. No.9/2006

1. The State seeks leave to appeal against the judgment dated 29.08.2005 passed by learned Metropolitan Magistrate whereby the accused persons namely Subhash Shiva, Raj Kumar Arora and Siddharth International Hotels (India) Ltd., (respondents herein) were acquitted in case FIR No.20/1986 under Section 304-A IPC, PS Vasant Vihar.
2. In brief, the case of the prosecution is that on the night intervening 22/23.01.1986, a fire broke out in Siddharth International Hotel, Vasant Vihar and in the fire 37 persons died whereas 39 persons suffered injuries. Initially, the FIR was registered under Section 436 IPC but later on substituted to Sections 304-A and 337 IPC.

3. After completion of investigation, chargesheet was filed against Subhash Shiva, Security Inspector; Raj Kumar Arora, senior most Administrative Officer (Lobby Manager) and Siddharth International Hotels (India) Ltd.
4. During trial, prosecution examined 30 witnesses. PWs-31 to 33 were tendered for cross examination without getting their examination-in-chief recorded.
5. Learned Trial Court, after considering all the material available on record, concluded that prosecution failed to prove criminal negligence on the part of the accused persons in the matter and that merely because large number of persons died in the tragic incident, in itself was not sufficient to prove the criminal negligence. Learned Trial Court while observing that suspicion cannot take place of proof, acquitted all the accused persons.
6. Mr.Pawan Sharma, Standing Counsel for the State/petitioner submitted that a major fire broke out in Siddharth International Hotel on the night intervening 22/23.01.1986. Referring to the statement of PW-1 Mr.S.K.Dheri, he submitted that though the fire was noticed at about 1.45 am, information was conveyed only at 2.36 am and PW-1, the Chief Fire Officer reached the scene of fire at 2.38 am and the fire was declared major at 3.05 am. He further submitted that there was total darkness in the hotel and even master key was not readily available leading to increase in the number of casualty. It is further submitted by learned Standing Counsel for State that public address system was not used thereby warning the guests about the fire. He urged that as these facts have not been considered by learned MM while acquitting the

accused persons, it is a fit case for grant of leave to appeal.

7. TCR has been requisitioned in this case and perused.

8. On behalf of respondents, Mr.O.P.Malviya, Advocate has also made submissions to the effect that there is no evidence available on record to prove the criminal negligence on the part of the hotel. It is further submitted that master key was handed over and there was total darkness in the hotel because the DESU disconnected electricity supply to the hotel in view of outbreak of fire. Learned counsel for the respondents submitted that every effort was made to save the guests by the hotel staff and whatever fire fighting equipments were available in the hotel were used to control the fire which ultimately was declared major. It has been submitted that the reasoning given by learned MM while acquitting the accused persons does not call for any interference as all the contentions raised by the State before this Court while praying for grant of leave have been duly considered by learned Trial Court, hence leave to appeal may be declined.

9. The core of reasoning, in the impugned judgment, can be deduced from paras 14 to 25. The reasoning given by learned Trial Court to arrive at the conclusion that prosecution has failed to prove criminal negligence, are as under :-

(i) Learned Trial Court disbelieved the statement of PW-1 Mr.S.K.Dheri, the Chief Fire Officer that he received the information at 2.36 am in the midnight and reached the scene of fire at 2.38 am observing that if he is believed, he reached the scene of fire within two minutes of his receiving the information which seems to be improbable since if the information was received by this witness at such odd hours in

the midnight, it would certainly have taken some time for him to get out of the bed and get ready and reach the hotel and that this witness did not tell the place of his residence and the place where the said information was received as well as the distance between his residence and the site of fire. Learned Trial court disbelieved that PW-1 reached the scene of occurrence within two minutes of receiving the information and opined that he must have received the information much prior to 2.36 am.

(ii) As per PW-5 Shyam Lal, who was posted at Safdarjung Fire Station, the call was received at 2.12 am and two vehicles of fire brigade left for the spot at 2.14 am.

(iii) PW-3 Mr. J.C. Sharma, Deputy Chief Fire Officer received the second call about the fire and asked for the vehicle and left at 2.17 am meaning thereby that call was much prior to that.

(iv) Mere failing to inform the fire brigade immediately would not itself be called a criminal negligent act as the hotel staff tried to extinguish the fire themselves and when they could not, they informed the fire brigade, thus no criminal negligence can be imputed.

(v) The prosecution failed to prove that master key was in the custody of accused No.1 and 2 nor it was the case of prosecution in the chargesheet.

(vi) Non-working of wet riser systems and the fire pumps and darkness in the hotel was due to non-availability of electricity which cannot be attributed to the accused persons.

(vii) Testimony of guests staying in the hotel to the effect that they were helped in escaping by the hotel staff with the help of torch light shows that the hotel staff personally rescued the guests which is contrary

to the case of prosecution that no help was provided.

(viii) The contention that underground water tanks were not approachable by the fire fighting engines of high pressure was not considered to be sufficient to prove the criminal negligence as it was not prosecution's case that the inbuilt fire fighting system of the hotel was not working.

(ix) The prosecution failed to prove the exact cause of fire and the expert opinion revealed the probable cause of fire as accidental combustion of LPG. Learned Trial Court observed that there is no evidence to suggest that the accused were in any manner negligent in the break out of fire, rather the report of the expert is that the fire was a result of accidental combustion of LPG and that the accidental break out of the fire cannot be treated at par with fire caused due to negligence or criminal negligence. Learned Trial Court also observed that prosecution failed to prove criminal negligence on the part of the accused persons.

10. The law with regard to the grant of leave is well settled by catena of judgments. Leave to appeal can be granted where it is shown that the conclusions arrived at by the trial court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain petition merely because another view is possible or that another view is more plausible. In *Arulvelu and Anr. Vs. State represented by the Public Prosecutor and Anr.* 2009 (10) SCC 2006, while referring with approval the earlier judgment in *Ghurey Lal vs. State of Uttar Pradesh*, (2008) 10 SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an appeal against acquittal. The principles are:-

‘1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court’s acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellant court can re-appreciate the entire evidence on record. It can review the trial court’s conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. 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.

5. If two reasonable or possible 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.

6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court’s view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either ‘perverse’ or wholly unsustainable in law.”

11. The learned Trial Court has dealt with all the contentions while arriving at the conclusion that the major fire at Siddharth International Hotel, Vasant Vihar was due to accidental combustion of LPG and not

due to any criminal negligence on the part of accused persons.

12. On considering the evidence adduced by the prosecution in the light of settled legal principles to determine whether any case for grant of leave to appeal is made out and having regard to the totality of the circumstances, this Court is of the view that the reasoning given by learned Trial Court in arriving at the conclusion that the major fire was due to accidental combustion of LPG and not due to any criminal negligence on the part of accused persons, does not call for interference by this Court in exercise of its jurisdiction to grant leave to appeal. The petition is unmerited and the same is, therefore, dismissed.

13. LCR be sent back alongwith copy of this order.

PRATIBHA RANI, J

May 10, 2013
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