

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

Date of decision: 22nd January, 2013

+ **CRL. L.P. 361/2011**

STATE

..... Petitioner

Through: Ms. Rajdipa Behura, APP

versus

NARAYAN SINGH & ORS.

..... Respondents

Through: Mr. H.S. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Petitioner(the State) seeks leave to Appeal against the judgment dated 27.11.2010 whereby the Respondents No.1 to 3 were acquitted of the charge under Section 308 read with Section 34 Indian Penal Code (IPC).

PROSECUTION CASE:

2. In nutshell, the case of the prosecution is that on 22.11.2005 the three Respondents came to the house of injured PW-1 Kartar Singh (the complainant). There was an altercation between PW1 and the Respondents as the complainant had put some sand in front of his house to clear the water accumulated there. PW1 pacified the Respondents and they left.

3. It is alleged that at about 7:15 PM, the Respondents again appeared. When Yogesh (PW1's son) came out of the house, the Respondents started beating him. When the complainant ran outside, the Respondents followed him; one of the Respondents hit PW1 with a pipe whereas the other gave a *saria* blow. He fell down. When, PW-3 (PW1's wife Smt. Kamla Devi) came out to rescue PW1, she was also attacked and given a rod blow on her head. The police was informed. The injured were removed to Safdarjung Hospital. PW1 and his son Yogesh (PW2) were discharged from the Hospital after giving first aid, whereas injury on the person of Smt. Kamla (PW3) was found to be grievous and she was discharged from the Hospital after a couple of days.
4. On 23.11.2005, PW1 made a statement to the IO (SI Mahinder Singh). He (the IO) made an endorsement on PW1's statement on the basis of which the FIR was registered. The Respondents were arrested and a blood-stained iron rod was recovered at the instance of complainant Kartar Singh. On examination of the rod by FSL, human blood could not be deciphered on the said rod.
5. After the case was committed to the Court of Session a charge for the offence punishable under Sections 308/34 IPC was framed to which the Respondents pleaded not guilty.
6. In order to establish its case, the prosecution examined 13 witnesses. PWs1, 2 and 3 are the injured and the material witnesses who deposed about the quarrel and the injuries suffered by them at the hands of the Respondents.

7. On appreciation of evidence, the learned Additional Sessions Judge (“ASJ”) found that the prosecution had failed to establish its case against the Respondents beyond reasonable doubt. The Respondents were accordingly acquitted giving them benefit of doubt.
8. The learned ASJ found it very intriguing that two DD entries, that is, DD No.69B (Ex.PW12/A) and DD No.31A (Ex.PW8/A) were recorded at 7.32 PM and at 8.30 PM, respectively. The learned ASJ observed that even at the time of recording the second DD at 8:30 PM, the quarrel was continuing which would mean that there was a quarrel for over one hour which was not possible. He observed that both the DD entries were regarding the quarrel at House No.K-296, Mahipalpur. The learned ASJ found it very strange that on the basis of DD No.69B, ASI Mahender Singh reached the alleged spot of occurrence, whereas on the basis of DD No.31A, (PW8 ASI Dilbagh Singh) reached Safdarjung Hospital though he is completely silent as to how he came to know that the injured had been taken to the Hospital. The Trial Court found that although as per SI Mahinder Singh, PW12(ASI at the time of the incident) reached the spot immediately on receipt of DD No.69B (Ex.12/A), he claimed that Kartar Singh did not want to make any statement at the time of the visit of the IO. Though, as per the prosecution version, Kamla Devi (PW3) had sustained head injuries resulting in lot of bleeding and soiling of her *chunni* with blood, yet he preferred neither to take the injured to the Hospital nor he seized the weapon of offence from the spot. The learned ASJ noticed various improbabilities and contradictions in the prosecution case. The main reasons given for acquittal of the Respondents as discussed by the learned ASJ are extracted hereunder:

“15. Counsel for the accused has further argued that the whole story was an afterthought and cooked up story as the FIR in this case has been registered after about 28 hours of the incident i.e. the incident had taken place on 22.11.2005 at 7.15 am and the FIR was registered on 23.11.2005 at 11.50 pm. The charge sheet as well as the statement on which FIR was registered along with endorsement of the IO Ex.PW12/B on record perused. It is mentioned therein that IO had gone to the spot on 22.11.2005 after receipt of the DD he found complainant Kartar Singh present there but he stated that he would give his statement later on. Thereafter, on the next day, he went to the hospital, he found Kamla Devi admitted there with the alleged history of assault but she was declared unfit for statement. Then on 23.11.2005, he went to the house of complainant Kartar Singh and recorded his statement and made his endorsement on the same at 11.35 pm on 23.11.2005. IO does not explain as to why the DD was kept pending all this while. There is no plausible explanation as to why complainant Kartar Singh refused to give statement at that time when he was fit for statement and present at his own house.

16. It was further argued by the Counsel for the accused persons that only the injured themselves have been produced as the witnesses in this case, who are all interested witnesses and no independent person has been arrayed as a witnesses. It is also argued by him that the complainant examined in the case was not able to tell the names of all the accused persons and nor he was able to tell as to who out of these accused was holding which weapon; he was not able to tell as to who had hit whom and at which part of the body and hence the statement of the complainant could not be taken as conclusive enough to bind the accused. I am unable to accept this contention of the Ld. Counsel for the accused persons. Merely because no public persons have individually been joined as the witness in this case, the statement of the complainant and other injured persons cannot be discarded. But of course, their statements have to be read with caution. It is only the injured themselves who can say as to who had caused injuries to them and all the three injured have identified the accused present in the court as the same persons who had inflicted injuries on them. The accused persons have also been named in the FIR. When three

accused persons shad attacked three of the injured, in the melee, one cannot say as to who had caused injury to whom or who was carrying which object/weapon and who had hit at which part of the body of which of the victims i.e. the manner in which the individual injuries were inflicted and the sequence of inflicting of those injuries cannot be given by any witness when he himself is the victim of the said incident. There may be discrepancies on this aspect between the various victims but unless they were glaringly contradictory to each other in as much as they could not co-exist, these discrepancies cannot be material or relevant.

17. The counsel for the accused further argued that the sequence of the incident as given by the prosecution is not possible i.e. PW8 ASI Dilbagh Singh has stated that when he had gone to Safdarjung Hospital, he had found that Kartar Singh, Kamla and Yogesh had been admitted and he had collected the MLC of all the three injured and had reported the matter to SHO. On the other hand, it was argued that at the same time, SI Mahender PW12 has stated that on the said date, when he went to the house of the complainant at Mahipalpur Extension, he had found Kartar Singh, Kamla Devi and Yogesh present there. ASI Dilbagh Singh has been examined in this case as PW8 and SI Mahender Singh has been examined as PW12. While ASI Dilbagh Singh had gone to the Safdarjung Hospital on receipt of DD No.31A on the said date, SI Mahender Singh had gone to the house of the complainant on receipt of DD No.69B on the said date. DD No.31A is Ex.PW8/A which has been recorded at 08.30 PM on 22.11.05 in the PS on receipt of the information about quarrel at K-296, Mahipalpur, whereas the DD No.69B Ex.PW12/A was recorded at 7.32 PM on the same date and is about the same quarrel. Thus, DD Ex.PW12/A was received first in the PS about the quarrel at Mahipalpur Extension on which SI Mahender Singh had reached the spot with Ct. Subhash where the injured were found present. The DD Ex.PW8/A i.e. DD No.31A was recorded at around 8.30 PM about quarrel at Mahipalpur which DD was handed over to ASI Dilbagh Singh who went to Safdarjung Hospital with Ct. Ramkishan and saw Kamla Devi admitted there. Injured were brought to Sardarjung hospital after recording DD No.31A. Though the DD records that ASI

Dilbagh Singh left for the spot with Ct. Ramkishan, in his evidence, he has stated that he went to Safdarjung hospital and found Kartar Singh, Kamla Devi and Yogesh admitted in the hospital. He did he know that injured were admitted in Sasfdarjung hospital. It is not the case of SI Mahender Singh that he had taken the injured persons Kartar Singh, Kamla Devi and Yogesh to the hospital from the spot. He states that he found them all at the spot when he reached there and that Kartar Singh had stated that he would give his statement on some other day. After one hour, these injured are seen admitted in Safdarjung Hospital by ASI Dilbagh Singh. Not to miss that PW2 Yogesh stated that injured were taken to the hospital by PCR. The PCR officials are not examined. The MLCs of the injured persons were collected by ASI Dilbagh Singh. The MLC of injured Kamla is Ex.PW10/A, that of injured Yogesh is Ex.PW13/A and that of injured Kartar Singh is Ex.PW11/A. These also show that MLC of Kamla Devi was prepared at 9.15 PM and that of Yogesh was prepared at 9.30 PM and that of Kartar Singh was prepared at 9.40 PM. It also shows that all the injured were examined by different doctors on that day. It is also noted with concern that is mentioned in the MLC of all the three injured that they have been brought by ASI Balak Ram(Ram Balak). This ASI Balak Ram/Ram Balak has not been examined. In fact he has not even been cited by the prosecution as a witness nor does the charge sheet mention anything about this fact of ASI Balak Ram bringing the injured to hospital.

18. It is thus, seen that the information was received in the PS about the alleged incident and recorded in the PS vide DD Ex.PW8/A and Ex.PW12/A. There is a difference of more than two hours between these two DDs, however, the information contained in both the DD is same practically, be that an information was received that quarrel had taken place at K-296, Mahipalpur. One is left to wonder how two calls came to be made in a gap of more than 1 hour about the same quarrel? Did the quarrel continue for the said one hour? Were both the calls made by the same callers or different persons? There is no answer provided by the prosecution to these queries. The complainant had stated that he had called the police at no.100 at Control Room; however no record from Control Room has

been produced. Even in both the said DD entries Ex.PW8/A and Ex.PW12/A, there is no mention of the telephone no. of the caller who had called to the Control Room to give this information. There is no tracing back of this information to confirm the authenticity of the query or of the information. The prosecution does not explain how on receipt of this information one IO decided to go to Safdarjung Hospital and one IO decided to go to the spot. Then the IO PW12 SI Mahender Singh who goes to the spot finds all the injured persons present at the spot whereas the IO PW8 ASI Dilbagh Singh who goes to the hospital finds injured persons there. It is the case of the prosecution that PCR had taken the injured to the hospital. But the said PCR personnel is not examined.

19. The IO SI Mahender Singh who had reached the spot shows nothing about having examined the spot on that day. Even if he had been told by the complainant that he would give the statement later on, there was no reason why the IO kept the DD pending. When he had reached the spot on that night, he should have examined the spot to verify whether such incident had taken place. He could have recorded the statement of neighbours. He should have examined the spot i.e. it is the case of the prosecution that Smt. Kamla had received grievous injuries and there was so much of excess bleeding that her chunni was stained with blood; she had fallen down on the ground on being hit by iron rod. He should have examined the spot where the injured Kamla had fallen and whether it was required to call the crime team to lift the blood from the spot. He does not make any mention if he had examined the spot and or if he had found any blood splattered on the ground where Kamla had fallen down on being hit by the said iron rod. Even if the complainant Kartar Singh was not ready to give his statement that day, he should have recorded the statement of injured Yogesh who was also allegedly present at the spot.

20. The PCR who took the injured to the hospital has not been examined. All the injured were examined by different doctors at different times. In the circumstances, the very genesis of the FIR becomes doubtful. The statement of the complainant has been recorded after 24 hours in which he has named the accused persons. The names of the accused persons

as to who assaulted the injured has not been given by any of the injured to the respective doctors who examined them. The names of the accused persons have not been given by any of the injured to anybody till the recording of the FIR after more than 24 hours i.e. the names of the accuse persons are not mentioned by the caller who called the PCR, it is not mentioned to any of the PCR officials who reached the spot; it was not mentioned to any of the police officials and even to any of the doctors who examined these injured. None of them told the doctors even the fact that they had been assaulted by the neighbours or that the persons who assaulted them were their neighbours.

21. As regards the incident itself, it is seen that the witness/injured Yogesh while appearing in the witness box as PW2 introduced a person by the name of Munshi i.e. he deposed that these three accused persons had come to his house and started abusing his parents and when he came out, they started beating him on which his father came out; that there was one person Munshi who gave iron rod, pipes and danda to the accused persons. This person (Munshi) has neither been produced in the witness box nor has he been cited by the prosecution. This witness Yogesh has given a totally different version of the incident. First and foremost, he had stated to the doctor who prepared his MLC that his father's name is Shankar. Even in the complaint Ex.PW1/A before the IO it is stated that injured Yogesh was nephew of Kartar Singh. However, when examined in courts, the complainant as PW1 Aand Yogesh as PW2 have stated that Yogesh was son of complainant Kartar Singh. It is seen that even in the statement under Section 161 Cr.P.C. of this witness, this witness Yogesh is referring to the complainant and his wife Kamla as uncle and aunti and not as father and mother. It is argued by the counsel that no son could have made such a slip under any circumstances. Yogesh also stated in the cross-examination that he was taken to the hospital by his uncle Randhir Singh. He(Randhir Singh) has neither been examined by the IO nor has been cited as prosecution witness. In his cross-examination, he has taken different stands at different times, i.e. he first stated that they were moved to the hospital by PCR then he has stated that he was taken to the hospital by a relative, then he stated that only his parents were taken to the hospital

by PCR and that he had told the police that he did not get any treatment as he had not received much injuries whereas record shows that PW 2 Yogesh has been examined vide MLCA Ex.PW13/A. He had stated that PCR had come home at around 8 PM and he had returned from the hospital at around 11 PM. Before that his father had also returned home. In the normal course of conduct, it sounds equally strange that husband would leave his wife who had received grievous injuries and was admitted in the hospital and come back home himself. This witness Yogesh further states that the names of the accused persons were told to him by his neighbours.”

9. The principles which govern and regulate the hearing of Appeal by the High Court, against an order of acquittal passed by the Trial Court are well settled by a catena of judgments of the Apex Court.
10. Relying on ‘*Ajit Savant Majagvai v. State of Karnataka*’, (1997) 7 SCC 110, the Apex Court in ‘*Prem Kanwar vs. State of Rajasthan*, (2009) 3 SCC 726’, reiterated the principles which must be kept in mind while hearing an Appeal against acquittal. These are:-

“(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High court has also to keep in mind that the trial court had the advantage of looking at the demeanor of witnesses and observing their conduct in the court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”

11. As stated earlier, ASI Mahender Singh (IO) reached the spot on receipt of DD No.69B (Ex.PW12/A). He found all the three injured in their house. He preferred not to record their statements allegedly on the pretext that Kartar Singh (PW1, the complainant) did not want to make a statement at that time. ASI Mahender Singh obviously could not have compelled PW1 to make any statement but he was under obligation to make his own assessment, seize the blood lying at the spot and remove the three injured to the Hospital. It is very strange that the IO merrily preferred to return to the Police Station, whereas on the basis of another DD, i.e. DD No.31A (Ex.PW8/A), ASI Dilbagh Singh very intriguingly proceeded to Safdarjung Hospital although there was no mention in the DD entry that the injured had been removed to that Hospital. There also, ASI Dilbagh Singh did not record the statement of any of the three injured. The learned ASJ observed that even if the complainant had informed ASI

Mahender Singh that he would make the statement later on, there was no reason for the IO to keep the DD entry pending. It was observed that ASI Mahender Singh should have inspected the spot, recorded the statements of the neighbours, and should have called the crime team to lift blood samples from the spot. The Trial Court observed that in the report lodged by the police, Yogesh (PW2) has been mentioned as PW1's nephew who in fact is PW1's son. Even, Yogesh in his own statement referred to the complainant and his wife as his uncle and aunt. Thus, the explanation given by PW1 regarding the delayed FIR (delay of 24 hours) that he was perplexed and, therefore, did not go through his statement (Ex.PW12/A) before signing the same (describing Yogesh as his nephew) was not very convincing. Moreover, as observed by the Trial Court, it is not believable that a son would refer to his parents as uncle and aunt.

12. It is well settled that an accused cannot be acquitted simply on the ground that the investigation is faulty. But, it is not a case of mere faulty investigation. PW1 did not know the assailants by name. In his statement in the Court, he was unable to pinpoint as to which of the accused had inflicted injury on him and which one on his wife. All these objections raised on behalf of the Respondents would have lost their significance if the complainant had immediately lodged the report on the arrival of ASI Mahender Singh. It is apparent that the complainant was definitely hiding something from the police or, so to say, the police was helping the complainant in hiding the true facts and that is why even PW12 did not want to proceed in the matter of his own in spite of the fact that some blood was lying at the spot and PW3 had suffered head injury. The learned ASJ rightly concluded that the prosecution had failed to establish its case beyond shadow of a reasonable doubt. In view of the

judgment of the Supreme Court in *Prem Kanwar*, even if two views are possible, the High Court would not interfere in an order of acquittal.

13. In the circumstances, this Court will be loath to interfere in the order of acquittal passed by the learned ASJ.
14. The Petitioner State has failed to make out any ground for grant of leave to file the Appeal.
15. The Leave Petition is devoid of any merit; it is accordingly dismissed.
16. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 22, 2013
pst