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

+ **CRL.A. No.(number to be given)**

Date of decision: 20th February, 2014

VED PRAKASH Petitioner
Through Mr. Pavan Kumar and Mr. Prithvi Pal,
Advocates.

versus

STATE & ORS. Respondents
Through Ms. Rajdipa Behura, APP.
Mr. K.S. Rana, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE G.P. MITTAL

SANJIV KHANNA, J. (ORAL):

We do not think that leave to appeal is required to be filed after amendment and substitution made by way of proviso in Section 372, Code of Criminal procedure, 1973. The Registry will accordingly treat the present petition for leave to appeal as criminal appeal and it will be registered accordingly.

2. The complainant Ved Prakash impugns judgment of acquittal dated 21st May, 2013 passed in Sessions Case No.16/2008 arising out of FIR No.1991/2005 police station Sultan Puri under Section 307/506/34 of the Indian Penal Code, 1860.

3. The respondents in the present case are Vinay and Sunil and the allegation is that they had come to the residence of the complainant on the intervening night of 12 and 13th December, 2015 at about 12 midnight on a motorcycle and had fired two gun shots at the complainant, who was standing in the balcony of the first floor of his house. They had abused the complainant and had asked him to withdraw the case pending in the Crime Against Women Cell. Sunil is brother of Anil and Vinay is brother-in-law of Anil, i.e., husband of Raj Rani sister of the complainant.

4. Learned counsel for the appellant submits that the trial court has erred in acquitting the two respondents on the basis that the respondents were not named in the FIR. He relies upon decision of the Supreme Court in *Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Another*, 2013 (10) SCALE 129 and that Sunil, one of the respondents was arrested on 13th December, 2005 immediately after the occurrence. It should be accordingly held that involvement of the two respondents was stated and asserted by the complainant. He has also drawn our attention to the statement made by the complainant Ved Prakash, who has deposed as PW-1 and his sister Raj Rani (PW-4), who was residing in the same premises with the complainant.

5. We have examined the aforesaid contentions, but do not find any

ground or reason to admit the present appeal. The impugned judgment has referred to contradictions and improvements in the Court testimony of Ved Prakash (PW-1) and Raj Rani (PW-4). Reference can be made to the following paragraphs of the impugned judgment:-

“31. PW 1 has categorically stated in his testimony that on the intervening night of 12/13-12-2005, at about 12 midnight he was present inside his room on the first floor of his house. He heard the noise in the gali and thereafter he came out from his room and saw both the accused persons i.e. Sunil and Vinay along with their two associates standing in the gali.

32. He further deposed that they were on two bikes and exhorting “Dahej ka case wapas le lo warna jaan se mar denge”. He further deposed that in the meantime accused Vinay fired from a small pistol type weapon which he was carrying in his hand towards him but the bullet did not hit him as he changed his position. He further deposed that after hearing the sound of firing his sister PW 4 Raj Rani and other family members came out of the house. Then accused Vinay again fired towards them but the bullet did not hit them and hit the door of their house. He further deposed that his statement Ex.PW1/A was recorded by the police and the same bears his signature at point A. He further deposed that accused Vinay is known to him as he is the brother-in-law of accused Sunil.

33. Now one thing is very clearly coming out from the testimony of this witness that both the accused were known to him and his sister PW4 Raj Rani. They both and other family members of their's have come out of the house after hearing one shot and the second shot was fired by the accused Vinay towards all of them. Meaning thereby they all were standing on the

first floor of their house.

34. Now in his cross examination he has categorically stated that he had got recorded the name of both the accused persons in his complaint. The relevant portion of his cross-examination is as follows: “I had got recorded the name of Sunil and Vinay in my complaint Vol. I had told to IO in respect of both.” Confronted with Ex.PW1/A where the names of accused are not recorded”. He has further stated in his cross examination that he had told to the IO the number of the motorcycle on which accused Vinay and Sunil had come to his house. He was confronted with his statement Ex.PW1/A where the number has not been mentioned. He further stated in his cross examination that the make of the motorcycle was Pulsar and he told the same to the IO. But again he was confronted with his statement Ex.PW1/A where he has not mentioned the make of the motorcycle. The witnesses admitted in his cross-examination that his only one statement which is Ex.PW1/A was recorded by the police.

35. So it is matter of deep concern, when PW1 knew the accused persons why he failed to mention their names in his statement Ex.PW1/A. He has not even mentioned the number and make of the motorcycle on which according to him the accused persons were riding. He has definitely made improvements in his testimony and these improvements cannot be said to be minor improvements and according to me these improvements shake the entire case of the prosecution.

36. PW1 has clearly lost his credibility because despite knowing the names of the accused persons from day one why he did not mention their names in his statement Ex.PW1/A for the reasons best known to him.”

6. In *Mritunjoy Biswas (supra)*, the Supreme Court, as we find, has held that failure to mention name of the accused in the FIR is not fatal and it has to be examined on the basis of evidence of each case, whether this has dented the prosecution version, even when the perpetrator or culprit was known to the complainant. In the facts of the present case, we do not think that the ratio of the said decision would help and assist the appellant. The trial court has specifically referred to statement of ASI Sajjan Singh (PW3), who has deposed that on reaching the spot of occurrence on the night of the incident, he had spoken to the complainant at about 12.30 a.m. and at that time, names of the accused persons were not disclosed. However, the complainant had suspected and raised suspicion about in-laws of his sister. PW-3 in the cross-examination accepted that sister of the complainant was present when he was writing the 'rukka' i.e. the complaint.

7. The assertion made by the learned counsel for the appellant that Sunil was arrested on 13th December, 2005 is contrary to the deposition of Inspector Suraj Bhan (PW13). PW13 has stated that on 15th December, 2005, he had recorded statement of Raj Rani (PW-4) and the complainant and they in their statement had disclosed the names of the respondents Sunil and Vinay. As per the arrest memo Ex.PW7/A, Sunil was arrested on 15th December, 2005 at 8 p.m. Vinay was arrested on 6th July, 2006 at 3 p.m. vide arrest memo Ex.PW3/C. This

apart, we have testimony of Moti Yadav (PW6), a neighbour of the complainant/appellant, who has deposed that at about 11.30/12.00 midnight, he was woken up by his wife on hearing noise of firing and when he came out, he noticed four persons in muffled face on two motorcycles. The said persons were standing in front of the house of Sheru Mal @ Khen Chand Sharma, i.e., father of the complainant. He noticed complainant Ved Prakash standing on the terrace of the first floor of his house abusing the said persons. PW-6 inquired about the matter from Ved Prakash and was told that the said persons were ‘gundas’ and had fired upon him. He was cross-examined by the Additional Public Prosecutor, but denied the suggestion that he had made a statement to the police that the persons on motorcycles were threatening the appellant to withdraw the case, otherwise he would be killed. The fact that there were two motorcycles as initially alleged by the complainant is also reflected in the site plan marked Ex.PW1/DA, wherein it is recorded that point M1 and M2 represent position of the motorcycles.

8. The alleged weapon of offence has not been recovered in this case but the bullets in question were found on the first floor. As per the site plan Ex.PW-1/DA, a misfired bullet was found inside the room behind the door and was recovered. Nothing incriminating was recovered/lifted from the road, where the motorcycles were standing.

9. Learned counsel for the appellant has referred to the testimony of Constable Raman (PW7), who has deposed that after 'rukka' was prepared, it was handed over to him for registration of the case and he went to the police station and got the case registered. Crime team had also visited the spot. He has further stated that in the night he along with SI Suraj Bhan and ASI Sajjan Singh visited the residence of Sunil, who was not available in the house, but was found in the house of his neighbour. Sunil was interrogated and was served with the notice to join investigation. Sunil joined investigation on 15th December, 2005 and was arrested vide memo Ex.PW7/A. However, we have noticed the testimony of Inspector Suraj Bhan (PW13), who has stated that on 15th December, 2005, he had recorded the statement of Raj Rani (PW-4) and the complainant Ved Prakash (PW-1) and they had disclosed/named the respondents Sunil and Vinay for the first time. He has also stated that Sunil was called to the police post Budh Vihar by giving notice under Section 160 of the Code of Criminal Procedure, 1973. In the cross-examination Suraj Bhan (PW13) has stated that he came to know about the names of the respondents only on 15th December, 2005.

10. ASI Sajjan Singh, who appeared as PW-3 has stated that on 15th February, 2006, further investigation of the case was assigned to him on the order of the SHO. He has stated that they were not able to

recover the fire arm in spite of the efforts. In the cross-examination he has stated that the complainant had not disclosed the name of the respondents, but had placed suspicion on the in-laws of his sister, but this fact was not mentioned in the 'rukka'.

11. In view of the aforesaid factual position, we do not find any infirmity for accepting the reasoning given by the trial court to hold that the prosecution has not been able to prove the case beyond reasonable doubt.

- The complainant Ved Prakash (PW-1), Raj Rani (PW-4) till 15th December, 2005 had not named Sunil and Vinay as the culprits, who had fired the gun shots. Subsequently, Sunil was arrested at 8 P.M. on the same day and Vinay was arrested on 6th July, 2006 at 3 P.M.
- In the initial statement and in the FIR Ved Prakash (PW-1) and his sister Raj Rani (PW-4) had only suspected the involvement of the in-laws but did not name any particular person.
- Motorcycle number and other particulars like model number etc. were not mentioned in the statements of Ved Prakash (PW-1) and Raj Rani (PW-4) made under Section 161 Cr.P.C.
- Moti Yadav (PW-6), a neighbour has categorically deposed/stated that 4 persons in muffled face had had come on

two motorcycles. The two motorcycles theory is also mentioned in the site plan (Exhibit PW-1/DA).

- Moti Yadav (PW-6) further deposed that the complainant-Ved Prakash had stated that the said persons were gundas and had fired at him but had denied suggestion in the cross-examination conducted by Additional Public Prosecutor that the persons on motorcycles were threatening the appellant to withdraw the case or otherwise he would be killed. This is contrary to the deposition of Ved Prakash (PW-1) and Raj Rani (PW-4).
- The weapon of offence was not recovered.
- The bullets were found in the premises of the appellant and nothing incriminating was recovered/lifted from the road, where the motorcycles were standing. Misfired bullet was found inside the room behind the door.
- The trial court after examining the said evidence and material has reached the conclusion that it has not been conclusively proved and established that the two respondents had come on the motorcycle and one of them had fired the shot.
- Possibility of some other person cannot be ruled out.

12. The view and opinion formed by the trial court is reasonable keeping in view the facts and circumstances of the present case. The

appeal is accordingly dismissed at the admission stage itself.

SANJIV KHANNA, J

G.P. MITTAL, J

FEBRUARY 20, 2014
NA/VKR