

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

% Decided on: 18th January, 2023

+ **CRL.L.P. 165/2022**

STATE OF NCT OF DELHI

..... Petitioner

Represented by: Mr. Prithu Garg, APP for State with
SI Suresh Kumar, PS New Usmanpur.

versus

RAJU KUMAR & ANR.

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J. (ORAL)

1. By this petition, State seeks leave to appeal against the impugned judgment dated 31st October, 2019 whereby the learned Trial Court acquitted the respondents for offences punishable under Sections 302/174-A/34 IPC.
2. Case of the prosecution is based on the statement of PW-1/ brother of the deceased Johny who stated that he along with his family members including Johny were residing in the house belonging to their grand maternal father (Nanaji). In the year 2010 his brother was doing the job of repairing radio cover. On 14th April, 2010 at about 8.30 PM he along with his brother and neighbour Vijay Chopra were going to Three and a Half Pushta for a walk when 'P' (CCL) came riding on a scooter and he put scooter between the two legs of his brother Johny. On this Johny asked 'P' "*Dekh kar nahin chal sakta*". 'P' got enraged and slapped his brother. However, the matter

was closed. Thereafter, on 15th April, 2010 his brother along with Vijay Chopra and Sheru were present near the Masjid behind Lal Hospital. At around 8.00 PM 'P' again met his brother and some altercation took place between his brother and 'P'. His brother slapped 'P' 5 – 6 times when 'P' left after threatening his brother that "*mein tujhe dekh lunga*". On 16th April, 2010 he along with his brother Johny, Vijay Chopra and Sheru were standing at the square in front of Lal Hospital. In the meantime 'P' came along with his 2 – 3 accomplices to the spot. 'P' caught hold of his brother and thereafter 'P' and his accomplices started beating his brother and threw him on the ground. Vipin Kumar, the witness, further stated that he along with Sheru, Vijay Chopra and another neighbour Sonu tried to save Jony but 'P' said that he would avenge his insult. 'P' asked his accomplices to kill his brother. Thereafter, 'P' took out a knife and stabbed Johny in the chest. 'P' and his accomplices escaped from the spot.

3. This testimony of PW-1 is not supported by any of the other three eye-witnesses who have turned hostile and de-hors the material contradictions and improvements pointed out in his testimony, it may be noted that the role assigned to the two appellants who are stated to be the accomplices are that they came along with 'P', 'P' caught hold of PW-1's brother and thereafter 'P' and others started beating and threw him on the ground. This beating was obviously by fists and kick blows, as no weapon of offence has been attributed at this stage and is also not evident from the post-mortem report. When the witness along with Sheru, Vijay Chopra and Sonu tried to save him, it is again 'P' who stated that he will avenge his insult and told his accomplices to kill his brother. However, none of the accomplices has been attributed any act thereafter and it is 'P' who takes out the knife and stabs

Johny, the brother of the witness in the chest.

4. As per the post-mortem report one stab injury has been found on the left side of the chest. The track of the wound goes through the skin, subcutaneous tissue, 5th rib, 5th intercostal space and finally cutting through lower lobe of left lung to a depth of 8 cm. The two other injuries were two bluish bruises on the mandible portion which could have been due to the fall as well. 'P' being a juvenile, an inquiry qua him was conducted before the Juvenile Justice Board and before the learned Additional Sessions Judge, the two accused i.e. Raju Kumar and Vinod Kumar, who are the respondents herein were tried and acquitted.

5. From the testimony, as noted above, it is evident that no specific role except of beating physically, nor of any exhortation, nor of acting pursuant to exhortation has been attributed to the respondents herein. Thus, even ignoring the contradiction and improvements, at best a role under Section 323 IPC has been attributed to the respondents. A perusal of the Trial Court Record reveals that respondent Raju Kumar has been in custody for nearly two years and even Vinod Kumar was granted bail after the witness failed to identify him in the TIP proceedings.

6. Further, the other alleged eye-witnesses have not supported the prosecution case. PW-2/Sheru stated that he did not know anything about the incident. PW-4/Sonu stated that on 16th or 17th April, 2010 at about 8.30 – 9.00 PM while he was going to purchase some articles at Kirana shop, he saw some boys quarrelling with Johny. He tried to pacify the quarrel. Johny received injury in the quarrel. After separating Johny from the said boys, he went to his home. Later Vipin i.e. PW-1/ brother of deceased Johny, came and took him to hospital. He denied having any knowledge as to who

stabbed Johny. Even Vijay Chopra who appeared as PW-9 and was present on all the three occasions along with Johny, though corroborated the testimony of PW-1 in regard to the incident on 14th and 15th April, 2010, however as regards 16th April, 2010 incident is concerned he stated that on 16th April, 2010 at about 8.00 – 9.00 PM while he along with Johny, Sheru, Sonu and one other boy was standing, ‘P’ along with few others came there. One associate of ‘P’ slapped Johny. ‘P’ told his associates pointing towards Johny that he is the same boy who had beaten him, whereafter ‘P’ and his associates cordoned Johny. In the meantime, his mother called him from a grocery shop as she had come to purchase some articles, and he did not see what happened with Johny. After some time, when he came back, he saw Johny was running towards his house and had fallen on the stairs of temple. Thus, this witness also does not support the testimony of Vipin Kumar, the brother of the deceased.

7. Be that as it may, as noted above, taking the testimony of PW-1 on the face of it, no offence under Section 302/304 IPC can be attributed to the respondents. The respondents were also charged for offence punishable under Section 174 IPC and have been acquitted of the said charge for the reason no witness in this regard was examined before the learned Trial Court.

8. Learned APP for the State vehemently submits that Insp. Arjun Singh appeared as CW-1 before the learned Metropolitan Magistrate who proved the proceedings under Section 82/83 carried out against Raju Kumar and Vinod. The examination of Insp. Arjun Singh took place before the learned Metropolitan Magistrate as CW-1 and after the charge for offence punishable under Section 174-A IPC was framed, no witness was examined much less

permitting cross-examination of CW-1 to the respondents. Hence the testimony of Insp. Arjun Singh as recorded before the learned Metropolitan Magistrate cannot be considered for convicting the respondents for offence punishable under Section 174-A IPC.

9. In view of the discussion aforesaid and finding no infirmity in the impugned order, we find no ground to grant leave to appeal to the State.

10. Petition is dismissed.

11. Copy of the judgment be uploaded on the website.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JANUARY 18, 2023
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