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

+ **CRL.L.P. 29/2015**

% ***Judgment dated 28.01.2015***

STATE ( GOVT OF NCT OF DELHI) ..... Petitioner  
Through: Mr.Firoz Khan Ghazi, APP for State

versus

AMARJEET SINGH & ORS ..... Respondent  
Through

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**  
**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J (ORAL)**

**CRL.M.A. 848/2015 (EXEMPTION)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present leave to appeal arises out of a judgment dated 29.8.2014 and order on sentence dated 30.9.2014 passed by learned Additional Sessions Judge, by which the respondents were convicted under Section 308/34 IPC and absolved from the offence under Section 307/34 IPC and subsequently released them on probation of good conduct.
4. The case of the prosecution, as noticed by the learned trial Court is as under:

“1. Briefly facts of the case are that on receiving a DD No.22A, 23A and 24A, SI K.L. Yadav alongwith Ct. Daya Singh reached at

the spot near Arunachal Bhawan, Kautilya Marg, where they found gathering near dhaba of Arjun. Thereafter, both police officials reached at Army Battle Marg, near Taj hotel gate, where complainant Arjun Prasad Gupta met them, who handed over Amarjeet Singh along with his SAF, Ram Karan and Bhim Bahadur and also produced their car No.CH-01-AD-3092, white colour Fortuner. Thereafter, statement of complainant Arjun Prasad Gupta was recorded and the complainant stated that on that day i.e. 09.01.2012, at around 10.00-10.15 PM, three persons came to his dhaba in a Fortuner vehicle bearing No.CH-01-AD-3092 for dinner. He further stated that out of them one person was in a police uniform and he was also having black colour gun. Complainant also stated all the three have had the dinner and thereafter, he gave them bill of Rs.295/- for the dinner. On this, the person who was in police uniform told the complainant that they are from staff and they do not pay money. At this, complainant told them if they are from staff, then they may give little less amount and after that the other person, who was alongwith the person, who was in uniform had gave complainant Rs.200/-. When the complainant took Rs.200/- and put it in his drawer (galla), then the person who was in police uniform had tried to take the money back from the drawer (galla). When complainant tried to stop him from taking the money back from the galla (drawer), then all the three accused persons started beating the complainant. Complainant also stated that the accused who was in police uniform told him he will shoot him. On this, all the workers, who were working in the dhaba of complainant ran away from there out of fear. Complainant stated that the accused,

who was in police uniform had fired gunshot towards them but all of them including him escaped from the said gunshot. Thereafter, all the three accused persons ran away in their Fortuner vehicle from the spot. Complainant also stated that one person namely Rohit of their market followed the accused persons and Rohit informed him that the said vehicle of the accused had come at Taj Hotel at Sardar Patel Marg. He also stated that someone had called the police on 100 number and police also reached there. Thereafter, complainant also reached at the gate of Taj Hotel, where all the three accused persons along with their Fortuner vehicle found present there. Complainant alleged that all the three accused persons with their common intention to kill him had attached and fired gunshot towards him. On the statement of the complainant, FIR u/s.307/34 IPC was registered against all the three accused persons at P.S. Chanakya Puri. During the course of interrogation, the disclosure statement of Amarjeet Singh was recorded. Accused disclosed that he is Head Constable of Punjab Police and performing the duty of PSO with Mr. Neeraj Saluja and he along with Ram Karan and Bhim Bahadur came to Kautilya Marg to have some eatables in their Fortuner car and they had dispute over the bill and there was scuffle with the owner of the dhaba. Accused disclosed that he fired one shot from his service SAF and after that they ran away to Hotel Taj. During investigation, the service SAF along with eleven live cartridges were seized and one empty cartridge was found at the spot and empty cartridge was also seized by the police. The complainant as well as the accused persons were got medically checked in RML hospital. Statement of witnesses were also recorded. Accordingly,

accused persons were arrested and booked for the offence u/Ss.307/34 IPC.”

5. The prosecution has examined 12 witnesses, however, no evidence was led by the defence and statement under Section 313 of the Code of Criminal Procedure was recorded of the three accused persons. The case of the prosecution was supported by the witness, PW-4 (Arjun Prasad Gupta), who was running a *Dhaba* at Subzi Market, Kautilya Marg, Chanakyapuri.
6. This witness (PW-4) being the star witness, we deem it appropriate to discuss his evidence in detail. According to PW-4 he was running a *Dhaba* at Subzi Market, Kautilya Marg, Chanakyapuri; and on 9.1.2012 between 10:00 and 10:30 p.m. three persons came in a fortuner vehicle with the registration of Chandigarh. All the three persons had their meal at his *Dhaba*. Two persons were in civil dress and the third person, whose name was later on revealed as Amarjeet Singh, was in police uniform. Since the said three persons refused to pay the bill on the pretext that they were staff, PW-4 requested them to pay a little less. According to PW-4 instead of Rs.295/- a sum of Rs.200/- were paid, but Mr. Amarjeet Singh, put his hand in the *galla* and tried to take back Rs.200/-, which resulted in a scuffle. In the meanwhile, Mr.Amarjeet Singh fired from his gun at him, but he escaped the gun injuries. The public gathered at the spot and chased the three persons upto Taj Hotel. Police also reached at the gate of Hotel Taj. Public persons gave beating, consequent to which three persons sustained injuries.
7. PW-4 identified two persons, who were present in court. Mr.Amarjeet Singh, whose presence was exempted, was also identified since his counsel did not oppose the same. PW-4 also pointed out the place of

occurrence and a site plan was also prepared at his instance. The accused persons were arrested with separate arrest memo *Ex.PW-4/B*, *Ex.PW-4/C* and *Ex.PW-4/D*. From the site the police also recovered a cartridge and the same was taken in possession vide seizure memo *Ex.PW-4/K*. The gun was also taken into possession along with vehicle. The gun was later on identified as a Carbine.

8. Learned APP for the State submits that although the prosecution has been able to prove their case beyond any shadow of doubt but the trial court erred in convicting the respondents herein under Section 308 of the Indian Penal Code instead of Section 307 of the Indian Penal Code. It is also contended that the trial court has failed to consider that there was no discrepancies and inconsistencies in the version of the prosecution, particularly in the testimony of PW-4.
9. It is also contended by learned APP for the State that the respondents has used a dangerous weapon and opened firing indiscriminately. Counsel also submits that the trial court has erred in taking a lenient approach and releasing the respondents on probation on good conduct.
10. We have heard learned APP for the State and given our thoughtful consideration to the matter. The testimony of PW-4 gives a vivid description with regard to the sequence of events which took place on 9.1.2012 between 10:00 to 10:15 at night. We also find from the evidence of PW-4 that Mr.Amarjeet Singh had fired from his “*Bandook*” at him. This witness also testified that he escaped the gun shot injuries. The evidence placed on record would show that in fact only one gun-shot was fired and the cartridge was seized, sketch of which was prepared and exhibited as *Ex.PW-4/K-1*.
11. A careful reading of the testimony of the witnesses would show that all the persons including three respondents and the complaint were at

extremely close distance. The site plan would also suggest the same. We also notice that the scuffle took place at the spur of moment and the respondents, Mr.Amarjeet Singh had fired one shot; and as per the evidence of PW-4 the gun was aimed at him. In case the gun was aimed at him, having regard to the nature of weapon his surviving would have been impossible. We find that the trial court has correctly discussed the law and rightly reached the conclusion that the present case under Section 308 of the Indian Penal Code is made out as the testimony of the witnesses would show that there was no intention to commit murder.

12. The Apex Court in the case of **Ghurey Lal vs. State of U.P.**, reported at 2008 (10) SCC 450 has laid down the following principles before granting leave to appeal against an order of acquittal:

“1. 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.

A number of instances arise in which the appellate court would have 'very substantial and compelling reasons' to discard the trial court's decision. 'Very substantial and compelling reasons' exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;
- ii) The trial court's decision was based on an erroneous view of law;
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material

documents like dying declarations/report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable 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.

13. We have carefully examined the judgment of the trial court. Having regard to the principles laid down by the Apex Court in the case of **Ghurey Lal** (supra), we do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses. Accordingly, no grounds to interfere are made out and the leave to appeal is dismissed.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**JANUARY 28, 2015**

**ssn**