

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 18.03.2015

CRL.L.P.119/2015

THE STATE (NCT OF DELHI)

..... Petitioner

versus

MUKESH & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Neeraj Kumar Singh, APP
For the Respondents : None

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J. (ORAL)

1. The present leave to appeal petition assails the order dated 31.10.2014 passed by Shri Amit Bansal, Additional Sessions Judge, North-West, Rohini Courts, Delhi in S.C. No.150/01 arising out of FIR No.56/2007 dated 29.10.2007, under Sections 308/34 IPC, Police Station, Swaroop Nagar, whereby the respondents have been acquitted.

2. The facts in brief necessary for the adjudication of the present petition are that on 28.10.2007 at about 09:30 p.m., complainant/PW-1 Sunita along with her mother PW-7 Navli Devi were selling bangles on a Takht in front of Veterinary Hospital, H.No.56, Vishwanath Puri, Delhi. The accused Bhagwan Devi (respondent No.4), who was the neighbour of PW-1 and PW-7, also has a bangles' shop. It was the case of the prosecution that the accused Bhagwan Devi (respondent No.4) came to the shop of the complainant and told the latter that since she was selling bangles at lower rate, no customer was coming to the shop of accused Bhagwan Devi (respondent No.4) and a quarrel ensued thereafter. The accused Bhagwan Devi (respondent No.4) is purported to have called to her aid her family members i.e. Mukesh, Jai Kumar and Seema, who are respondents No.1 to 3 respectively, in the present petition.

3. It is asserted that accused Bhagwan Devi (respondent No.4) caught hold of PW-7 and accused Mukesh (respondent No.1) picked up a brick and hit it on the forehead of PW-7, whereas, accused Seema (respondent No.3) caught hold of PW-1 and accused Jai Kumar (respondent No.2) hit a brick on the forehead of PW-1. A call was made to the police, upon which the PCR came to the spot and took PW-1 and PW-7 to hospital, where they were medically examined. A DD entry being DD No.35B dated 28.10.2007, Police Station, Swaroop Nagar,

regarding the quarrel was recorded. The same led to the registration of the subject FIR.

4. After filing of the charge sheet, charges were framed against all the four respondents to which latter pleaded not guilty and claimed trial. After considering the relevant merits of the case, the Trial Court came to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt against all the accused persons. The Trial Court, after hearing the arguments on behalf of the prosecution as well as the respondents and after weighting the testimonies of PW-1 and PW-7 (who are the injured persons and the only two material witnesses), concluded that there are material contradictions in their testimonies. In this behalf, it has been recorded in the impugned order as follows:-

“13.PW-1 has deposed in her examination in chief and then in cross-examination also that the incident took place on 28.10.2007 at about 9.30 p.m. PW-7 to the contrary has deposed that the incident took place at about 8.00 p.m. It is a material contradiction in the testimony of PW-1 and PW-7 which raises a strong doubt over the testimony of both the prosecution witnesses. The misery of the prosecution is further highlighted by the fact that prosecution has failed to examine any independent public witness in support of its case. In this regard, PW-1 has deposed in her cross-examination that the incident took place on the eve of Karva Chauth festival and at that

time, there were large number of customers at their shop but she could not tell their exact number. She further deposed that there was heavy rush at their shop at that time and she could not notice any other thing due to heavy rush at her shop. She also deposed that there were other shops adjoining to their shop and the shop of accused and a full market and a subzi mandi also runs there. She also deposed that the said things (statements of accused persons at the time of incident) were also heard by other customers at their shop and the customers told that they will buy the bangles where they would like. It is thus evident that as per the testimony of PW-1 various customers were present at their shop at the time of case incident who also heard the conversation between the accused persons and PW-1 and PW-7 and also witnessed the case incident, however, the prosecution has failed to cite or examine any independent public witness in support of its case. In this context, PW-3 Ct. Abhimanyu has also deposed that public persons were present at the spot who informed that the injured had been taken to BJRM hospital. PW-4/IO also deposed that 3-4 public persons were present at the spot when he reached there at the spot, however, he did not record the statement of any of those public persons. It is thus clear that as per the case of prosecution various independent public witnesses were present at the spot, however, prosecution has not joined any independent public witness in this case despite their availability. No explanation whatsoever has come on record as to why the independent public witnesses despite their availability were not joined by the prosecution during the investigation of the case. It is a material lacuna in the case of prosecution which throws a strong doubt over the entire case of prosecution itself. The accused persons

being entitled to benefit of doubt are entitled to be acquitted in this case.

14. PW-1 has deposed in her examination in chief that she handed over her blood stained clothes to the police which were kept in a plastic panni and same were sealed with the seal of DS which was taken into possession vide seizure memo Ex.PW-1/B. She deposed that her mother i.e. PW-7 did not hand over the blood stained clothes, however, again said that she did not know whether her mother handed over blood stained clothes to the police or not. After taking permission from the Court, Ld. Addl. PP for the State put a leading question to the PW-1 to which she admitted that apart from her clothes, blood stained baniyan and blood stained blouse of her mother and her baniyan was also seized by the police. PW-7 in her cross-examination has deposed to the effect that the blood stained clothes were handed over to the police by her son Ramvir. Ex.PW-1/B i.e. seizure memo of said blood stained clothes shows that the same were handed over by PW-1 Sunita to the police. It is a material contradiction in the testimony of PW-1, PW-7 and Ex.PW-1/B. In this regard, PW-4/IO has deposed that he did not remember exactly but the seal after use might have been handed over to Ct. Abhimanyu (PW-3) and he did not record any statement regarding the handling over the seal. PW-3 has deposed that the said clothes were sealed with the seal of IO but he did not remember the mark of the seal, he did not remember to whom the seal was handed over by the IO after use and he did not remember whether the said seal was handed over to him or not. IO as well as PW-3 are thus not even sure to whom the seal was handed over after sealing the pulanda containing blood stained clothes. PW-3 even does not remember whether the said seal was handed over to him

or not. In these circumstances, it raises a very strong doubt over the actual handing over and seizure of blood stained clothes of PW-1 and PW-7. Moreover, the said clothes have not been sent to the FSL for examination to actually prove that the said clothes were in fact having blood stains of PW-1 and PW-7. The misery of the prosecution is further compounded by the fact that PW-3 has deposed in his cross-examination that the signatures of Sunita and Navali Devi were obtained on the seizure memo by IO in his presence. In fact, Ex.PW-1/B bears the signatures of PW-3 at point C, however, the said document does not bear any signatures of PW-7 Navali Devi but bears her right thumb impression. It shows that the said document was not thus even prepared in the presence of PW-3 and PW-3 has merely put his signatures as a witness on it after preparation of the said document. The said contradiction and lacuna again adversely reflects upon the authenticity and truthfulness of the prosecution witnesses and in turn the entire case of prosecution.

15. PW-1 has deposed in her cross-examination that at the time of incident, there were a large number of customers at their shop and there was a heavy rush at their shop at that time. She also deposed that there were other shops adjoining to their shop and the shop of accused and there was a full market and a subzi mandi also running there. She further deposed that accused persons entered their shop and asked them not to sell the bangles at lesser rate and the said conversation was also heard by other customers present at their shop. She further deposed that first of all accused Bhagwan Devi caught hold of her mother and thereafter accused Seema entered the shop and caught hold of her by her hands. She deposed that remaining accused persons threw bricks

on them after coming inside their shop and thereafter, they became unconscious. It is thus evident that as per the testimony of complainant/PW-1 there was rush of public persons inside their shop when the case incident took place and when the case incident took place and when accused persons threw bricks on them. The prosecution has failed to seize or prove any such weapon of offence i.e. bricks. It is very surprising that the accused persons entered the shop full of independent public persons, two accused caught hold of PW-1 and PW-7 whereas the remaining two accused persons threw bricks on PW-1 and PW-7 and thereafter, they ran away, however, the prosecution has failed to either examine any independent public witness or to seize and prove the said bricks. The prosecution has failed to mention any circumstance as to why it has not been able to seize any piece of brick i.e. weapon of offence and to prove it on record. In front of so many persons, the accused persons could not have taken away weapon of offence with them after assaulting PW-1 and PW-7. Moreover, there is not even a whisper regarding the case property in the testimony of PW-4/IO. It is very material lacuna in the case of prosecution which throws a strong doubt over the manner in which the case incident actually occurred and is absolutely fatal to the case of the prosecution. It is further pertinent to note that, as discussed above, the prosecution has failed to examine any independent public witness of this case.

16. The prosecution has also failed to examine one Ramvir stated to be brother of PW-1 and son of PW-7. As per the testimony of PW-1, in the meanwhile of the case incident, her brother Ramvir came down from the first floor of their house and made a call at 100 number. PW-7 has also deposed that call was made at 100 number

by her son Ramvir. PW-7 further deposed that her blood stained clothes were handed over to the police by her son Ramvir. Similarly, PW-1 has deposed in her cross-examination that she came back from the hospital with her mother and her brother Ramvir Singh. It thus shows that PW-4 is a material witness for the prosecution who came during the occurrence of the incident, called at number 100 for calling PCR, as per PW-7 handed over the blood stained clothes to the police and even went to the hospital and came back with the injured persons. Perusal of the record, however, shows that the prosecution has failed to cite or examine said Ramvir Singh. In this regard, PW-4/IO has specifically deposed in his cross-examination that he had not record the statement of Ramvir (brother of PW-1), he did not make any inquiry about Ramvir and even did not enquire anything about Ramvir from PW-1. The non-examination of a material witness like Ramvir raises a cloud of suspicion over the case of prosecution. The benefit of doubt goes in favour of the accused persons who are entitled to acquittal in the present case.

17. PW-1 has deposed in her examination that after she was hit by a brick she became unconscious, she regained consciousness in the hospital and she did not remember the time when she regained consciousness. PW-7 has also deposed that the call at number 100 was not made by her son Ramvir in her presence as she was unconscious at that time. The MLC of PW-1 i.e. Ex.PW-6/A, however, shows that when PW-1 was brought in the hospital then she was conscious and oriented and even fit for statement. It thus falsifies the testimony of PW-1 that she only regained her consciousness in the hospital and did not remember the time when she regained her consciousness.

PW-1 has deposed in her cross-examination that the papers which she signed were already written, the said papers were got signed by the police from her and the police did not explain her before they obtained her signatures on the said papers. PW-7 also deposed in her cross-examination that police officials obtained her thumb impression on certain papers but she did not remember on how many papers her thumb impression were obtained and she was not read over the contents of the documents by the police on which her thumb impression were obtained. This testimony of PW-1 and PW-7 again throws a doubt over the case of prosecution and the investigation done by the police officer.

PW-4/IO has deposed to the effect that after PW-1 and PW-7 came to their house, he prepared site plan on the pointing out of PW-1 and PW-1 produced her blood stained clothes. He further deposed that thereafter, both the injured accompanied them and went in search of accused persons but all in vain. PW-1 on the other hand deposed to the contrary that after she was discharged from the hospital at about 11:00-12:00 in the night and after coming back from the hospital, her sister-in-law Lata met them and she slept. Both PW-1 and PW-7 in their examination in chief did not depose to the effect that they accompanied police officials in search of accused persons but all in vain. This material contradiction further highlights the falsity of the case of prosecution which raises strong doubt over the truthfulness of the prosecution witnesses. The benefit of doubt accrued goes in favour of the accused persons who are entitled to acquittal in the present case. The prosecution has thus failed to prove beyond reasonable doubt that on 28.10.2007 at about 09:30 p.m. in front of H.No.56, Vishwanath Puri, Opposite Veterinary Hospital, Delhi, they all in furtherance of their common intention assaulted PW-1 and PW-7 with bricks with such intention or knowledge and under such

circumstances that if by that act, they had caused the death then they would have been guilty of culpable homicide not amounting to murder. All of the above said four accused persons are thus liable to be acquitted u/s.308/34 IPC.”

5. It is argued by Mr. Neeraj Kumar Singh, learned APP appearing on behalf of the State that the statements of the injured witnesses are duly corroborated by the medical evidence on record and that the impugned order placed undue weightage on the trivial lacunae and minor contradictions in the testimony of the prosecution witnesses. It is further urged by the learned APP that non-recovery of the bricks, used as a weapon to commit the offence, was not fatal to the case of the prosecution.

6. The argument of the learned APP does not hold water, as perusal of the impugned judgment clearly demonstrates the presence of vital lacunae in the case of the prosecution. Furthermore, there exist major contradictions in the testimonies of prosecution witnesses.

7. The first contradiction recorded by the trial court is that PW-1 in her examination-in-chief had deposed that the said incident took place on 28.10.2007 at about 9:30 pm whereas on the contrary, PW-7 had deposed that the said incident took place at about 8:00 pm. The second contradiction recorded is that, PW-1 had deposed in her examination in chief that she had

handed over her blood stained clothes to the police which were kept in a plastic *panni* and the same were sealed and taken into possession vide seizure memo Ex. PW-1/B. Whereas PW-7 in her cross examination deposed that the blood stained clothes were handed over to the police by her son Ramvir. The seizure memo of the said blood stained clothes i.e. Ex. PW-1/B indicates that the same were handed over to the police by PW-1. The third contradiction recorded is that in her cross examination, PW-1 deposed to the effect that she was hit by a brick whereby she became unconscious and only regained consciousness in the hospital. She did not remember the time of regaining consciousness. Likewise PW-7 also deposed that she was unconscious when the call to 100 number was made. The MLC report of PW-1 i.e. Ex. PW-6/A is adverse to the said depositions, the report divulge that PW-1 was brought to the hospital in a conscious state, thereby falsifying the testimony of PW-1 that she regained consciousness in the hospital and did not remember the time of regaining consciousness. And the fourth major contradiction recorded by the trial court is that PW-4/IO in his deposition stated that after PW-1 and PW-7 had returned to their house from the hospital, he along with PW-1 and PW-7 prepared a site plan. He further stated that thereafter both the injured persons (PW-1 and PW-7) accompanied him in search of accused persons however this effort was in vain. PW-1 on the other hand deposed to the contrary that after she was discharged

from the hospital at about 11:00pm to 12:00am she met her sister-in-law Lata and thereafter she slept.

8. As also accorded by the trial court, the case of the prosecution suffers various serious lacunae. As per the testimonies of PW-1, PW-3 and PW-4/IO there was presence of public persons at the place of incident. However, no explanation was made to the Trial Court as to why the independent witnesses were not examined. No FSL examination was conducted to the effect that blood stains of PW-1 and PW-7 were present on the said clothes (Ex. PW-1/B). Moreover, prosecution failed to mention any material circumstance as to why it was not able to seize the weapon of offence i.e. bricks. Furthermore, prosecution failed to examine one Ramvir stated to be the brother of PW-1 and the son of PW-7. Both PW-1 and PW-7 in their depositions stated that the call to 100 number was made by the said Ramvir. In addition, PW-7 also deposed that her blood stained clothes were handed over to the police by Ramvir. PW-1 also in her cross examination stated that she came back from the hospital with her mother (PW-7) and brother (Ramvir). The trial court concurred that the said Ramvir was a material witness. Over and above, PW-1 had deposed in her cross examination that the papers which were signed by her were already written and the police did not explain the contents of the said papers before obtaining her signatures. PW-7 also deposed in her cross examination that police officials

obtained her thumb impression on certain papers but she did not remember the exact number of papers on which her thumb impressions were obtained and she was not read over the contents of the said documents by the police. The testimony of PW-1 and PW-7 again throws a doubt over the case of prosecution and the investigation done by the police.

9. In view of the detailed consideration accorded by the Trial Court to the evidence on record, I do not see any reason to grant the special leave to appeal. Consequently, the petition for grant of special leave to appeal is dismissed.

MARCH 18, 2015
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SIDDHARTH MRIDUL, J