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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : AUGUST 04, 2015

DECIDED ON : AUGUST 24, 2015

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CRL.REV.P. 444/2014 & CrI.M.A.11742/2014.

RAKESH SEHGAL & ANR

..... Petitioners

Through : Mr.C.P.Vig, Advocate.

versus

STATE & ANR

..... Respondents

Through : Mr.Amit Ahlawat, APP for the
State/R-1.

Ms.Aruna Mehta, Adv., for R-2

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present revision petition has been preferred by the petitioners to challenge the legality and propriety of an order dated 06.05.2014 of learned Additional Sessions Judge in CrI.A.No.117/13 arising out of FIR No.50/91 registered at Police Station Sarai Rohilla by which they were

convicted for committing offence under Section 323/506 (2) and 451 read with Section 34 IPC after setting aside acquittal order dated 01.06.2010 of learned Metropolitan Magistrate. They were ordered to be released on probation for a period of two years besides payment of ₹50,000/- as compensation to the complainant. The revision petition is contested by respondent No.2/complainant.

2. Briefly stated, prosecution case was that on 27.02.91 at 7.45 a.m. at A-653, Shastri Nagar, the petitioners along with their mother (since expired) and an 'unknown' individual physically assaulted Sanjiv Mehta and Krishna Mehta after committing house-trespass. They also criminally intimidated and threatened to kill them. DD No.9A dated 27.02.1991 about the occurrence came into existence. The Investigating Officer lodged First Information Report on 28.02.1991 at Police Station Sarai Rohilla after making endorsement (Ex.PW10/D) over it. The complainant was medically examined. Statements of witnesses conversant with the facts were recorded. The accused persons were arrested. Upon completion of the entire investigation, a charge-sheet was filed in the Court against the petitioners and their mother Sawarna under Sections 452/506/323/34 IPC. By an order dated 17.11.1993, the accused persons were charged for committing offences under Sections 451/506/323 IPC to

which they pleaded not guilty and claimed trial. In order to establish its case, the prosecution examined ten witnesses in all. The accused persons denied the allegations and pleaded false implication in 313 statements. During pendency of the trial, Sawarna expired and proceedings against her were dropped as abated. After considering the rival contentions of the parties and appreciating the evidence on record, the learned Metropolitan Magistrate by an order dated 01.06.2010 acquitted the petitioners of the charges. Aggrieved by it, the complainant challenged it in appeal under Section 372 Cr.P.C. By the impugned order, the learned Additional Sessions Judge reversed the findings of the Trial Court and convicted the petitioners for the offences mentioned previously. Being aggrieved and dissatisfied, the instant revision petition has been filed.

3. Learned counsel for the petitioner urged that the appellate court did not appreciate the evidence in its true and proper perspective and overlooked major infirmities and discrepancies in the statements of the prosecution witnesses. The complainant had prior animosity as his sister Meenakshi Gupta had attempted to evict them from the rented premises i.e. Flat No.9, Apna Ghar Cooperative Group Housing Society Pitam Pura. Meenakshi Gupta was not examined during trial. Prosecution was unable to seize victim's blood stained clothes; to recover weapon of crime

and produce original of DD No.9A. Reliance has been placed by the petitioners on *K.Chinnaswami vs. State of Andhra Pradesh* AIR 1962 SC 1788; *Mohit vs. State of UP* 2013 (3) JCC 2250; *Dinesh Kumar vs. State & Anr.* 2013 (3) JCC 2218; *Amit Kapoor vs.Ramesh Chander* 2012 (4) JCC 2885; *Kumar etc.vs.Karnataka Indust.* 2013 (1) JCC 731; *Mohd.Hammad vs. The State* 2012 (10 JCC 424; *Govinda Raju vs. State* 2012 (3) JCC 1714; *Amit Singh Bedi vs.State* 2012 (2) JCC 901; *Narender Pal Kaur vs.Manjit Singh* 2012 (2) JCC 1166; *State vs.Sushil Kumar* 2014 (2) JCC 1076; *State vs.Ravi* 2014 (3) JCC 1649; *State vs.Arun* 2013 (4) JCC 2492; *Pudhu Raja vs.State* 2012 (4) JCC 2751; *Murugesan vs.State* 2013 (1) JCC 188; *Suryakant vs.Dalip* 2014 (4) JCC 2356; and *Directorate of Revenue vs.Mohd.Anwar* 2013 (3) JCC 120.

4. Learned counsel for the complainant urged that the statements were recorded after a considerable period and minor discrepancies emerging therein are of no consequence. FIR was lodged promptly on the day of incident. There is no inconsistency between ocular and medical evidence. Independent witness PW-2 (Bishamber) has corroborated the complainant's version in its entirety.

5. Reliance has been placed on *M/s Tata Steel Ltd. vs.M/sAtma Tube Products Ltd. & Ors.* in CRM-790-MA-2010 (O&M) dated Crl.A.444/2014

18.03.2013; *Keser Singh vs.Dheeraj Kumar in CRM-A-547-MA-2011* (O&M) dated 18.03.2013; *Shyamal Ghosh vs.State of West Bengal* 2012 (6) SCALE; *Parmeshwar Mandal vs.State of Bihar vide Cr.Appeal No.1078/2012* dated 26.11.2013; *Jeewan and Ors.vs.State of Uttrakhand JT 2012 (12) 473 SC*; *Mritunjoy Biswas vs.Pranab @ Kuti Biswas & Anr.*2013 AIR SC 3334; *Japani Sahoo vs.Chander Shekhar Mohanty* (2007) 7 SCC 374; *Manjeet Singh @ Kukku vs.State (N.C.T.) of Delhi* 2000 AIR(SC) 1062; *Pramod Kumar vs.State (GNCT) of Delhi* AIR 2013 SC 3344; *Jeewan & Ors. vs.State of Uttarakhand JT 2012 (12) SC 473.*

6. The occurrence took place on 27.02.1991 at around 7.45 a.m. DD No.9A (Mark PW3/1) is on record. However, during investigation, original of DD 9A as recorded by the Investigating Officer either on oral statement of the complainant or on his written complaint could not be produced. Neither the I.O nor the complainant furnished reasonable and believable explanation about its whereabouts. In the absence of original DD No.9A on record, its genuineness and authenticity is under cloud. It is unclear at what exact time the incident was reported to the police by the complainant. DD No.9A mark (PW-3/1) reveals that at the time of incident, the petitioners were accompanied by an ‘unknown’ individual. However, no specific role was assigned to the said ‘individual’ and his

identity could not be ascertained. The Investigating Officer did not give any plausible explanation as to why FIR was not lodged on 27.02.1991 itself soon after recording DD No.9A. Contents of DD No.9A reflect that the complainant had gone directly to Police Station Sarai Rohilla from the spot to lodge First Information Report and had expressed willingness to get himself medically examined.

7. In Court statement, the complainant (PW-3) introduced new facts and stated that he was hit by a fist blow by Rakesh Sehgal. He had a 'kara' in his hand as a result of which blood started oozing from his left eye and nose. After the assailants fled the spot, a TSR was arranged by Mr.Bishamber Lal and he was taken to Hindu Rao Hospital for medical examination by his mother. There, the doctor on duty after hearing the incident declined to provide him medical treatment and insisted to first lodge complaint in the Police Station. Since there was no duty constable at Hindu Rao Hospital that time, he went to ACP office and met ACP Dahiya who advised him to go to Police Station Sarai Rohilla to lodge complainant assuring to make a telephone call there. Thereafter, he went to Police Station, Sarai Rohilla; lodged the complaint and was medically examined at Hindu Rao Hospital at around 12.40 p.m.

The complainant did not reveal doctor's name who had declined to provide medical treatment at first instance and had insisted him to first lodge the complaint. The complainant had no occasion or justification to contact and approach ACP Dahiya to intervene when police officials at Police Station Sarai Rohilla had not declined to lodge report for the incident happened in their jurisdiction. Instead of getting first aid at a nearby hospital/clinic, the complainant went all the way to Hindu Rao Hospital covering a distance of 5/6 kilometer. He did not get any medical treatment till he was finally examined at Hindu Rao Hospital at around 12.30 p.m. The complainant was conspicuously silent as to why no information about the occurrence was conveyed at the earliest to PCR at 100 and why at first instance, he avoided to lodge complaint at Police Station Sarai Rohilla. It appears that the complainant was interested only to get himself medically examined to strengthen his version. As per MLC (Ex.PW-5/A) proved by a record clerk from Hindu Rao Hospital, the complainant had suffered only swelling over left lower lid and multiple abrasions/swelling on nose. Nature of injuries was opined 'simple' by blunt object. There was, thus, no urgency/emergency for the complainant to rush to Hindu Rao hospital for treatment of injuries at first instance. No weapon of offence including 'kara' was recovered during

investigation. In DD No.9A the complainant omitted to record if Rakesh had a 'kara' in his hand as a result of which he sustained injuries on eye and nose. None of the accused persons was armed with any 'deadly' weapon at the time of occurrence. It is not the complainant's case that injuries were inflicted with 'kara' deliberately.

8. Conflicting versions have emerged about number of assailants who had arrived the spot. PW-1 (Smt.Krishna Mehta) and PW-3 (Sanjiv Mehta) have described that the assailants were 'four' in number. PW-2 (Bishamber Lal) who had allegedly arrived at the spot at the time of incident, however, did not corroborate their version on this aspect and merely spoke about the presence of a 'lady' and a gent i.e.Rakesh who had assaulted Sanjiv Mehta. PW-2 (Bishamber Lal) did not disclose about the presence of the petitioner Navdeep Sehgal and the 'unknown' boy; no role was assigned to them. PW-4 (Krishan Kr.Sachan) who had allegedly reached the spot on hearing the noise spoke about the presence of a lady and three individuals running from the spot. However, he was unable to identify the assailants as he had seen them from behind. Apparently, PW-4 (Krishan Kr.Sachan) was not a witness to the incident. He was declared hostile and was cross-examined by the learned Additional Public

Prosecutor. He was specific and definite to say in the cross-examination also that he had not seen the quarrel and had heard it only from the public.

9. Relations between the parties were hostile before the incident. Flat No.9, Apna Ghar Cooperative Group Housing Society, Pitam Pura was let out for two years w.e.f. 1.08.1987 through complainant's mother. In the cross-examination, the complainant admitted that after two years when the flat was not vacated as stipulated, his sister Meenakshi Gupta pressurized his mother to mediate. After getting power of attorney from his sister, his mother visited the accused at Flat No.9, Apna Ghar Cooperative Group Housing Society, Pitam Pura in the first week of April, 1990 but they refused to vacate it. The dispute arose for the first time in April, 1990. It has further come on record that earlier also the tenant had persisted complainant's sister and her husband to sell the flat which offer was declined by them. Complainant admitted in the cross-examination that there was enmity between them and the accused persons before 27.02.1991 as the accused persons were trying to grab the flat of his sister let out through his mother who acted as a mediator. Admittedly, no complaint, whatsoever, was lodged against the petitioners that time. The complainant volunteered to add that certain 'common friends' were involved to settle the dispute. However, no such

common 'friend' was examined. Since the complainant, Meenakshi and her family had earlier declined to sell the tenanted premises to the petitioners, apparently there was no cause for the petitioner suddenly to visit the complainant in the early morning hours with the sole purpose to pressurize them to sell it. Since relations between the parties were strained, it is unbelievable that the petitioners would take their mother along to the complainant's residence to assault them after committing house-trespass. As observed above, none of them was armed with any lethal weapon. The investigation conducted is not upto the mark. No photographs of the scene of incident were taken; no blood stained material was lifted from the spot; blood stained clothes of the victim were not seized; and, no weapon could be recovered.

10. Material discrepancies/infirmities have emerged in the statements of PW-1 (Smt.Krishna Mehta) and PW-3 (Sanjiv Mehta). Initially, there was hot exchange of words with PW-1 for sufficient duration. Strange enough, the complainant present in the house reading newspaper did not reach the spot to intervene. Only when the accused persons allegedly abused his mother and came in the drawing room, the complainant happened to arrive there. It is not expected that the petitioners would hurl filthy abuses in the presence of their mother. No

independent public witness from neighbourhood was associated and examined. PW-2 (Bishamber) had good relations with the complainant. His presence at the spot is suspect as he did not take the victim to the hospital; he did not report the incident to the police; his statement was recorded subsequently. PW-4 (Krishan Kr.Sachan) did not speak about PW-2's presence at the spot. He did not implicate the petitioners for committing house trespass and assaulting the complainant. Puran Chand expired before he could be examined in the court.

11. Considering the inherent defects in the prosecution case and material infirmities appearing in the statements of prosecution witnesses, the Appellate Court was not justified to reverse the findings of acquittal recorded by the learned Trial Court. This jurisdiction is to be exercised only in exception cases when there is glaring defect in the procedure or there is a manifest error on a point of law and consequently there is a flagrant miscarriage of justice.

12. In the light of the above discussion, the impugned order dated 06.05.2014 of learned Additional Sessions Judge in Crl.A.No.117/13 arising out of FIR No.50/91 registered at Police Station Sarai Rohilla on conviction and sentence cannot be sustained and is set aside giving benefit

of doubt to the petitioners. The petitioners are acquitted of the offence charged.

13. The revision petition filed by the petitioners is allowed. Trial Court record (if any) along with a copy of this order be sent back forthwith.

(S.P.GARG)
JUDGE

AUGUST 24, 2015
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