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

+ CRL.L.P. 485/2012

% *Judgment dated 20th January, 2015*

STATE OF NCT OF DELHI

..... Petitioner

Through : Mr.Sunil Sharma, APP for the State
along with Inspr.Rajeev Ranjan, P.S.
New Usman Nagar.

versus

KUNWAR PAL @ KP

..... Respondent

Through : Mr.K.K. Sharma, Adv. for the respondent.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT (ORAL)

CRL.M.A. 16794/2012

1. This is an application filed by appellant seeking condonation of 220 days' delay in filing the present appeal.
2. Heard and for the reasons stated in the present application, the same is allowed. Delay in filing the present appeal is condoned. Appeal is taken on record. Application stands disposed of.

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3. Present leave to appeal petition has been filed by the petitioner/State under Section 378 (4) of the Code of Criminal Procedure against the judgment dated 8.2.2012 passed by learned District Judge-Cum-Additional Sessions Judge: (Incharge), NE District, Karkardooma, Delhi, in Sessions Case No.97/10, whereby the respondent has been acquitted by the trial Court for an offence alleged to have been committed under Section 302 of the Indian Penal Code.
4. The case of the prosecution before the learned trial Court was that on

1.8.2010 at around 7.00 p.m., in Gali No.2, Pehla Pushta, New Usmanpur, the respondent caused death of one, Wakil by inflicting danda blows on his head. FIR was registered on the statement of Head Constable Dharam Singh, PW-2, who claimed to be the eye-witness of this case. Head Constable Dharam Singh has testified that he along with Constable Sandeep, PW-1, then posted in Police Station, Beat No.1, were on patrolling duty on the date of the incident. At around 7.00 p.m., they were present at Gali No.2, Pehla Pushta, and saw the respondent, who is a bad character, holding a danda in his hand and quarrelling with another person. The respondent uttered to that person that despite residing in the area he was not obeying the respondent and he would kill him. The respondent thereafter inflicted 2/3 danda blows on the head of that person. The respondent was apprehended from the spot. A phone call was made to the PCR and the injured was removed to the hospital.

5. Learned Additional Public Prosecutor for the State submits that in the statement recorded under Section 313 of the Code of Criminal Procedure the respondent admitted that he had given one danda blow on the head of Wakil and further he has also admitted of his having been arrested from the spot of the incident. Learned APP further submits that on account of the lapses of the State the trial Court has acquitted the respondent.
6. We have heard learned counsel for the parties, considered their rival submissions and also perused the record and judgment dated 8.2.2012 passed by learned trial court.
7. It may be noticed that the learned trial Court while passing the impugned judgment has carefully examined the evidence of PW-1 and PW-2, the Police officials, who claimed to be the eye-witness of the incident. In their testimony, PW-1, Constable Sandeep, and PW-2, Head Contable Dharam Singh, has testified that when they were patrolling the area they

had seen a crowd at the place of the incident when they reached the spot. They had also seen the respondent holding a danda in his hand and he was quarrelling with the victim. Both the witnesses had heard the respondent threatening the victim and after uttering the threats 2/3 danda blows were given by the respondent on the head of the victim.

8. It may further be noticed that although only one public person i.e. PW-10, owner of the tea shop near the place of occurrence, was associated with the investigation, however, he did not support the case of the prosecution. It may also be noticed that the trial court has rightly considered that there are serious contradictions in the evidence of PW-1 and PW-2 and in fact PW-1 has admitted in his cross-examination that he had not seen the respondent assaulting the victim whereas in DD No.25A, recorded in the Police Station, it has been pointed out that a mad person had assaulted another person and that mad person had been taken away by the police. Another important factor is that it is not the case of the prosecution that PW-1 and PW-2 having apprehended the respondent on the spot had removed him to the police station.
9. There is no explanation before the trial court that in case PW-1 and PW-2, both Police officials, were present at the spot of the incident, as to why the information of assault was not conveyed to the Police Control Room by them and the same was conveyed by some public person. It may also be noticed that the public witness, PW-10, who had given a call to the Police has not supported the case of the prosecution and he has denied having seen the respondent assaulting the victim. The trial Court has also examined the medical evidence and reached a conclusion that the same does not coincide with the depositions of PW-1 and PW-2. Even the post-mortem report is in conflict with the MLC, PW-12/A. We may also notice that despite being a crowded place, no independent

witness was associated or examined, which creates a doubt in the case of the prosecution and makes the evidence of PW-1 and PW-2 unreliable. The MLC, PW-12/A, also shows that the victim was brought to hospital by the PCR officials. As per the MLC there was no history of loss of consciousness, patient was conscious and injuries were noticed. The victim died after a period of one week of the incident. There is no explanation why the statement of the victim was not recorded.

10. It is a settled legal position that the powers of the court in appeal against an order of acquittal are limited. 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.

11. It is settled law that the burden of proof lies on the prosecution and the prosecution has to prove a charge beyond reasonable doubt, being a settled principle of criminal jurisprudence. The accused has a right to fair trial and the presumption of innocence is in favour of the accused.
12. 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 by the learned trial court in disbelieving the case of the prosecution. This court cannot lose track of the settled law that interference is called for only when there are substantial and compelling reasons for doing so.
13. In view of the aforesaid facts, we do not find any infirmity in the impugned judgment passed by learned trial court. Consequently, leave to appeal stands dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 20, 2015 msr