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

+ **CRL.L.P. 574/2011, CRL.M.A. 19098/2011**

% ***Judgment dated 10.02.2015***

STATE OF NCT OF DELHI

..... Petitioner

Through : Mr. Firoz Khan Ghazi, APP for the State

versus

SANJAY @ SONU

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CRL.M.A. 19098/2011

1. The present application is for condonation of 236 days delay in filing the present leave to appeal.
2. Heard. For the reasons stated in the application, delay is condoned.
3. Application is disposed of.

CRL.L.P. 574/2011

4. The present leave to appeal arises out of a judgment dated 03.01.2011 passed by Ld. ASJ in Sessions case no. 50/2010 , whereby the respondent was acquitted of the charges U/S 302 IPC and 25 Arms Act.
5. The facts of the case noticed by the Ld. Trial Court are as under:

“2. The case was registered on the statement of Rohit Kumar/cousin brother of the victim. The same reveals that on 17.04.2008 he along with the victim had gone to Liberty Cinema for viewing a picture. They could not get cheaper ticket and tickets of balcony were costly, so they did not see the picture. His cousin told him to return via Lal Park. He and Raju reached the park where accused was already sitting. He knew the accused from before because earlier the accused was residing in jhuggi in Dev Nagar. The accused and victim also knew each other from before. On seeing the victim the accused uttered that again he had come there. This led to exchange of hot words. The accused grappled with victim and hit his head on the face of victim. The victim fell down. Accused told in crying voice that he would finish the victim on that date. The accused took out a knife from his Lungi and hit the same on the back of victim. The accused dragged victim by catching hold of collar of T Shirt and made the victim to fall down in mud. Thereafter the accused attacked with knife on legs of victim several times. The accused ran back towards his rikshaw garage. Complainant requested several persons to help victim but all left. He went to the house of victim and informed the matter. He brought the mother of victim to the spot where police was also standing. PCR van came and took the victim to hospital. He also accompanied along with the mother of victim to hospital in the vehicle of police. The Doctor declared the victim as brought dead.”

6. Mr. Firoz Khan Ghazi, APP for State submits that the learned trial court did not properly appreciate the evidence on record and wrongly arrived at a conclusion to pass the impugned order of acquittal in favour of the respondents for the offences charged under Section 302 of the Indian Penal Code. Learned APP further submits that the prosecution has been able to establish its case beyond any shadow of doubt even though PW-8, the eye witness had turned hostile. It is contended that the knife was recovered at the instance of the respondent and PW-8 identified the knife Ex. P-2 as the one used by the accused in the commission of offence. The doctor has opined that the knife could have been the weapon of offence.

7. Learned APP for the State further submits that the Ld. Trial Court did not properly appreciate the evidence on record and wrongly arrived at the conclusion. Counsel also submits that Trial Court has erred in not relying upon and believing the eye-witness PW-8, Rohit Kumar, when accused, despite opportunity being given, did not examine said witness. Counsel further submits that PW-8 had supported the case of the prosecution on 25.4.2009, however he turned hostile on 22.9.2009. On re-examination by Ld. APP, he reiterated that his statement recorded on 25.4.2009 was correct. Learned trial court ought to have realized that PW-8 was won over and could have ignored the hostile portion of the testimony of PW-8.
8. Learned APP for state next submits that the trial Court failed to appreciate the statement of PW-1, Smt.Kamla, mother of the deceased by applying the principle enshrined in section 6/8 of the Evidence Act and ignored the fact that it was she who accompanied the deceased to the hospital. He also submits that, what PW-8 had stated to PW-1 immediately on commission of crime was a relevant fact and ought to have been relied upon by the Trial Court.
9. Learned APP for the State also submits that the Trial Court ignored the evidence that accused refused to undergo judicial TIP. It is further submitted that the knife used in crime was recovered at the instance of accused and as per FSL report, blood was found on the knife. The presence of blood on the knife was not explained by the accused and even the doctor opined that injuries on deceased could have been caused by the said weapon.
10. We have heard Mr. Firoz Khan Ghazi, APP for State and also carefully examined the evidence which has been placed on record. We have also examined the judgment of the learned trial court and we find no infirmity in the said judgment. The learned trial court has duly considered the fact

that the only eye witness PW-8 had turned hostile and did not support the case of the prosecution. PW-8 is the complainant on whose statement the case was registered. Although he proved the statement to the Police as Exhibit PW-8/A and identified the knife as the one used by the respondent in the commission of the offence yet in the cross-examination he stated that the respondent was not known to him. His statement was recorded after two or three days without being read out to him or the contents being explained to him. He has also testified that he had not seen the respondent giving knife blow to anyone and also testified that the person, who gave the knife blow, was not present in the Court.

11. Additionally, we have also examined the record of the learned trial court and find that even in the MLC the name of PW-8 or the mother of the victim has not been mentioned and MLC shows that the victim was brought to the hospital by PW-6 ASI Roop Chand. Thus the presence of PW-8 and PW-1 is doubtful at the time of the incident. The MLC does not support the case of the prosecution and the MLC also does not show that the victim had any injury on the upper portion of his body. We find PW-8 not to be a reliable witness. We also find that the incident had taken place in the day time approximately 3:00 pm. in a congested area, however, we find that no public witness were associated in this matter. We also find that PW-8 being cousin of the victim had taken no effort either to save him or intervene in the matter nor did he took the help of any other person.

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. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality, perversity or infirmity. Merely because two views are possible, the court of appeal

would not take the view which would upset the judgment delivered by the court below.

14. For the reasons stated above it can be said that the view taken by the trial court was plausible and reasonable on the basis of evidence adduced. We find no merit in the present leave to appeal. There is no infirmity in the judgment of learned trial court. The leave petition, therefore, has to fail. The same is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 10, 2015

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