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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRIMINAL LEAVE PETITION No. 655/2015

Date of decision: 18th November, 2015

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CRL.L.P. 655/2015

STATE (NCT OF DELHI)

..... Petitioner

Through: Ms. Aashaa Tiwari, APP
SI Gaurav from P.S. Jahangir Puri.

versus

AMIT @ VICKY

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J. (ORAL):

Crl.M.A.No.13491/2015 (Delay)

1. This leave to appeal by the State is belated and delayed by 252 days. Accordingly, an application Crl.M.A.No.13491/2015 has been filed for condonation of delay. However, before issuing notice on the said application, we deem it appropriate to examine the trial court record and the statements of the injured witness Ashiq-ul-Amin @ Chunnu (PW-3) and purported eye-witness Wasim (PW-6), to decipher whether the contentions raised in the leave to appeal have merit.

2. Respondent Amit @ Vicky and Rajvinder Singh @ Arjun Singh were charged under Sections 307 and 341 read with 34 of the Indian Penal Code,

1860 (“IPC”, for short). During the trial, Rajvinder Singh @ Arjun Singh expired and the proceedings against him stood abated vide order dated 2nd July, 2014. As per the prosecution version in the charge-sheet, Rajvinder Singh @ Arjun Singh was the prime perpetrator who had inflicted injuries on the chest of Ashiq-ul-Amin @ Chunnu (PW-3) with a scissor. The respondent to the present petition, Amit @ Vicky, was charge-sheeted by relying upon Section 34 of the IPC on the ground that he had shared common intention and would be vicariously liable. The trial court in the impugned judgment dated 9th September, 2014 has elaborately dealt with the factual matrix emerging from the ocular testimonies and held that the prosecution has not been able to prove the charge against the Amit @ Vicky beyond reasonable doubt. Amit @ Vicky has been acquitted.

3. Ashiq-ul-Amin @ Chunnu (PW-3) in his deposition asserts that on 2nd October, 2005 he alongwith his friend Ajay, while returning home, had stopped at the barber shop of Wasim. There one Gyani i.e. Rajvinder Singh gave him a blow with a scissor on the left side of his chest. At that time, Amit @ Vicky was present. No role or words were attributed and given to Amit @ Vicky, when the aforesaid injury was caused. Amit @ Vicky had, thereafter, as per PW-3, had caught him, as Gyani i.e. Rajvinder Singh had again tried to stab PW-3 with the scissor. PW-3 had pushed Amit @ Vicky aside and escaped. PW-3 has alleged that both Rajvinder and Amit @ Vicky had kicked and given fist blows to his friend Ajay. The said Ajay has not deposed and appeared as a witness. Ashiq-ul-Amin @ Chunnu (PW-3) has not elaborated and given reason and cause as to why the occurrence had happened. The cause of dispute and injury remains unexplained.

4. Wasim (PW-6) has given a different version. He affirms that on 2nd October, 2005 both Rajvinder and Amit @ Vicky had come to his shop at

about 9:00 PM. They were drunk and sat inside the shop. In the meantime, PW-3 came to the shop and started talking to “him” (PW-6). Subsequently, Rajvinder and Amit @ Vicky went outside the shop. PW-6 had heard noise and Rajvinder suddenly came inside the shop and picked a scissor. When PW-6 went out of the shop, he noticed that PW-3 was bleeding from his stomach. There was hue and cry and PW-6 closed his shop. Referring to Amit @ Vicky, PW-6 has stated that he was the same person who had come with Rajvinder. For the record, we note that Rajvinder had expired before the testimony of PW-6 was recorded.

5. On reading and examining the versions given by Wasim (PW-6) and Ashiq-ul-Amin @ Chunnu (PW-3) it is apparent that the latter was stabbed with the scissor. PW-6 is categorical that Rajvinder had suddenly come inside, picked up the scissor and went outside. By the time PW-6 came outside of his shop, injuries had been inflicted and PW-3 was bleeding. PW-6 does not attribute any role to Amit @ Vicky, except that he had accompanied Rajvinder. PW-6 has not stated that Amit @ Vicky had come inside the shop when Rajvinder had come and picked up the scissor. Having examined testimony of PW-3, we notice that, in the first part of his statement, he has not named or attributed any act or spoken words to Amit @ Vicky. He has stated that after the injury was inflicted, Amit @ Vicky had caught hold of him, but PW-3 had managed to escape. No second injury was inflicted. It is this portion of PW-3’s testimony which has been debated upon in the impugned judgment. It has been held and observed that the second part of the testimony by PW-3 does not apprise confidence and should not be accepted. The difference in the version given by Wasim (PW-6) is palpable. He had not seen PW-3 escape or being caught by Amit @ Vicky. According to PW-6, PW-3 was already bleeding and Amit @ Vicky

was standing.

6. In view of the aforesaid discussion, we do not see any reason to interfere with the impugned judgment, which takes a possible view based on facts on record. Accordingly, we are not inclined to issue notice on the application for condonation of delay and the said application will be treated as dismissed. Consequently, the leave to appeal would be also treated as dismissed.

SANJIV KHANNA, J

R.K.GAUBA, J

NOVEMBER 18, 2015

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