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

+ **CRL.L.P. 118/2016**

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Judgment dated 6th April 2016

STATE(GOVT OF NCT OF DELHI) Petitioner

Through : Ms. Anita Abraham, APP for State.

versus

LALLU RAM

.....Respondent

Through : None

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

CRL.M.A.3314/2016 (Delay)

1. This is an application under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure filed by the State seeking condonation of delay of 31 days in filing the present leave petition.
2. Having regard to the submissions made and in the interest of justice the delay in filing the present leave petition is condoned.
3. Application stands disposed of.

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4. Present leave petition has been filed under Section 378 (3) of the Code of Criminal Procedure, 1973 against the impugned judgment dated 19.10.2015 passed by the learned Additional Session Judge Sh. Dig Vinay Singh, NDPS, Rohini Courts, New Delhi in Session's

Case No. 88/2014 by which the respondent was acquitted of the charge under Section 302 of the Indian Penal Code.

5. The brief facts of this case, as noticed by the learned Trial Court are as under:

"1. On 27.05.2014 DD No. 11A was lodged in police station Vijay Vihar when an information was received from PCR that one person has been stabbed. The call was assigned to SI Virender who along with Ct. Sandeep went to the spot i.e. in front of House no. F-79, Vijay Vihar, Phase-2, Delhi. At the spot, lot of blood was found lying in the gali. The sub inspector came to know that injured has already been shifted to Baba Saheb Ambedkar Hospital (BSA for short). Ct. Yogender was called at the spot to guard the spot. SI Virender along with Ct. Sandeep then went to BSA Hospital where Santu @ Santram son of Sh. Kota was declared dead under MLC no. 6437. He had been admitted to hospital by none other than his wife Smt. Kamli with history of stab injury.

1.1 Since Smt. Kamli claimed herself to be an eye witness of the incident, her statement was recorded by the sub inspector. Smt. Kamli stated that her husband Santram was working as rajmistry and that she herself was working as a labour with her husband. She claimed that she and her husband were both working under the accused Lallu Ram who was the contractor and who belonged to the same native village Ladpura, District Mahua, Uttar Pradesh. Smt. Kamli claimed that Santram was demanding wages of himself and his wife Smt. Kamli from the accused for the last few days and the accused was not giving the wage amount. On 27.05.2014, in the morning at 8:30 AM, accused came to the house of complainant and started abusing her husband. Thereafter

accused caught hold of her husband and dragged him outside the house. The complainant also followed and came out of the house. As soon as the accused brought the deceased outside his house, the accused exhorted that the deceased had spoiled the reputation of accused and after it he stabbed the deceased with a knife on his stomach. After stabbing the deceased, accused fled from the spot. The complainant along with landlord Sohan Lal brought the deceased to the hospital.

1.2 On the complaint of Smt. Kamli, present case was registered under section 302 of the Indian Penal Code."

6. Charge under Section 302 of the Indian Penal Code was framed against the accused to which he pleaded not guilty and claimed to be tried.
7. To bring home the guilt against the accused, the prosecution has examined 19 witnesses in all. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure wherein he denied all the charges of the prosecution and reiterated his innocence. However, he did not lead any evidence in his defence.
8. The learned Trial Court, after scrutinizing the evidence adduced by the prosecution, held that the onus of proving the case beyond reasonable doubt had not been satisfactorily discharged and created a strong doubt in the case of the prosecution based upon which the accused was acquitted.
9. Ms. Anita Abraham, Additional Public Prosecutor appearing for the State submitted that the Trial Court disregarded the testimonies of the witnesses and failed to take into account the relevant material

available on record and based its findings on mere surmises and conjectures. Counsel further submitted that the quantity of evidence is of no consequence and it is the quality of evidence which is of prime importance and the prosecution has proved its case by leading unambiguous evidence that the respondent stabbed the deceased.

10. Counsel for the State further submitted that the Trial Court committed serious error in discarding the cogent, credible and trustworthy testimony of the eye witness PW4, Kamli, wife of the deceased. It is strenuously argued by the counsel that the Trial Court erred in ignoring the testimonies of other material witnesses i.e PW7 Kallu Ram and PW9 Sohan Lal and that the contradictions and inconsistencies in their depositions are minor and therefore, cannot be discarded.
11. Counsel for the State also urged that the description of the particulars of the assailant in the MLC could not be the conclusive proof so as to rely solely on the said particulars to extend the benefit of doubt to the respondent. Further, it was urged that the Trial Court erred in concluding that there was an unexplained delay in sending the copy of FIR to the *Ilaqa Magistrate*.
12. Counsel further submitted that the fact that weapon allegedly used to commit the offence was not recovered and the same does not materially affect the case as is clear from the postmortem report that the stab injury was caused by a sharp edged weapon while murdering the deceased which is corroborated by oral evidence of PW4 i.e. the wife of deceased.

13. We have heard the learned counsel for the State, perused the record and have also examined the impugned judgment in detail rendered by the trial court.
14. Undoubtedly, Santram, deceased, died a homicidal death. PW16 Dr. Vijay Dhankar, who conducted the post-mortem examination on the dead body of Santram, noticed *"Stab wound 13 cm X 5 cm present over the lower part of right lateral side of chest, almost vertically placed with the upper end 12 cm below the right nipple, front side 11 cm from the midline and lower end 11 cm from the umbilicus. The lower angle is acute while the upper angle was comparatively obtuse. The margins were clean cut. The ribs and intercostal muscles are exposed and cut corresponding to the injury."* PW16 opined that ***"the death is due to hemorrhagic shock consequent to penetrating injury to the chest and abdomen. All injuries are ante-mortem and fresh before death. Injury No. 1 was caused by an elongated one sided sharp edged weapon and is sufficient to cause death in the ordinary course of nature."***
15. From the above, it is clear that the cause of death of the deceased was a result of a stab wound but it needs to be answered whether the same was caused by the respondent.
16. The entire case of the prosecution mainly rests upon the testimony of the sole eye-witness of the occurrence i.e. PW4 Kamli, wife of the deceased. Undoubtedly, conviction can be based on the sole testimony of an eye-witness which rule is subjected to the limitation that the testimony of such a witness should be trustworthy and consistent and the court finds it safe to fully rely upon the deposition

of such a witness in regard to the nature of the occurrence and the involvement of the accused. In order to test the trustworthiness and consistency of such witness, by way of prudence, the court looks for corroboration from other evidence. It is safe to convict the accused on the testimony of the sole eyewitness only when the testimony of a sole eye-witness is supported by other evidence.

17. The law on the point is well settled that a conviction can well be founded upon the testimony of a sole witness if the same inspires confidence, credible and should not leave doubt in the mind of the Court. In ***Ramnaresh & Ors. Vs. State of Chhattisgarh*** reported in **(2012) 4 SCC 257**, the Hon'ble Apex Court held as under :

"The statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime."

18. In ***Yakub Ismailbhai Patel Vs. State of Gunjrat*** reported in **(2004) 12 SCC 229**, the Hon'ble Apex Court held that:

"The legal position in respect of the testimony of a solitay eyewitness is well settled in a catena of judgments inasmuch as this Court has always reminded that in order to pass conviction upon it, such a testimony must be of a nature which inspires the confidence of the Court. While looking into such evidence this Court has always advocated the Rule of Caution and such corroboration from other evidence and even in the absence of corroboration if testimony of such single eye-witness inspires confidence then conviction can be based solely upon it."

19. In *Joseph Vs. State of Kerala* reported in *AIR (2003) SC 507*, the Hon'ble Supreme Court held that Evidence of solitary eyewitness has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by other witnesses or evidence as recorded. The Hon'ble Supreme Court further stated that Section 134 of the Indian Evidence Act does not provide for any particular number of witnesses and it would be permissible for the Court to record and sustain a conviction on the evidence of a solitary eye-witness. But, at the same time, such a course can be adopted only if evidence tendered by such a witness is credible, reliable, in tune with the case of the prosecution and inspires implicit confidence.
20. In *State of Haryana v. Inder Singh and Ors.* reported in *(2002) 9 SCC 537*, the Hon'ble Supreme Court of India held that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused. The testimony of a sole witness must be confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.
21. Applying the aforesaid principles laid down by the Hon'ble Apex Court, we shall now examine the testimony of PW4 Smt. Kamli, wife of the deceased who claimed to be the eye-witness of the occurrence. According to PW4 she and her husband Santram worked for the accused and on 27.05.2014 at about 8:30 a.m., the accused came to their house and started abusing her husband and also dragged him outside the house. Accused told Santram that he (Santram) had maligned his reputation in the society by demanding money and stabbed her husband with a knife and fled away from the spot. She

along with PW7 Sohan Lal removed her husband to the hospital where he died.

22. During cross examination, PW4 stated that :

"The deceased was taken to hospital in a car which was of white colour. The said car belonged to one neighbour but I do not remember the name of that neighbour. It was driven by the owner. The said owner resides in the same gali and therefore, I had seen him earlier also. I do not know his house number and I also do not know his name. He must be around 60-70 years. Again said, 60 years. In the vehicle, myself, my husband, driver, one Kallu and Sohan Lal went to the hospital. I sat on the backseat of the car when travelled to the hospital. My husband was sitting on the front seat.

After incident, blood oozed out of the injuries of my husband. Blood stains also came on my saree which I was wearing at the time of the incident. I did not hand over my saree to the IO, nor he asked it from me. Vol. only a small blood stain came on my saree. On the clothes of Sohan Lal and Kallu also, some blood stains came. Vol. when the deceased was lifted, some blood stains came on the clothes. No one was sitting along side my husband in the car. Vol. He was made to lie on the seat. My husband was partially conscious "thoda thoda hosh tha ", while we were going in the car to the hospital. When we reached the hospital, at that time also, my husband was partially conscious. I stayed in the hospital for half an hour. We might have reached at about 9AM in the hospital. From the hospital, I returned to the spot. Vol. I returned to my room.

Police arrived at the spot after Sohan Lal called the police and then we went to the hospital. Police followed us to the hospital. Police made enquiries from me at the spot also. Vol. I had gone to hospital

where the police met me, police made enquiries from me at the spot."

23. According to PW4, the accused came to her house and dragged the deceased outside the house and stabbed him with a knife whereas PW7 in his examination in chief deposed that "On 27.05.2014 at 8 AM, I went to the house of Santram as Santram had called me to help him in settlement of dispute between him and the accused. I spoke to the accused as well as Santram outside the house of Santram on that day and both of them were present at that time, and I tried to make both of them understand and told them not to fight." PW9 landlord of the deceased deposed that "On 27.05.2014, in the morning at about 8 AM when I came out of my house after taking bath, I saw that deceased Santram was present with his chacha Kallu. The accused Lallu Ram who also resides nearby was also present. They were talking to each other. Santram at that time was sitting in front of the house adjoining our house. Deceased Santram was to recover money from Lallu Ram and they were talking about it. Initially, they were talking peacefully. To a leading question asked by the learned Prosecutor, PW9 categorically stated that "It is wrong to suggest that any abusing took place between the deceased and the accused on the date of incident prior to the incident of stabbing. Vol. both of them were talking to each other calmly."
24. A close reading of testimonies of PW7 and PW9 would show that there was no altercation or exchange of abuses nor any fight had taken place between the deceased and the accused prior to the alleged

incident of stabbing which falsified the version of PW4 that the accused abused and dragged her husband from the house.

25. Regarding removal of the deceased to the hospital, PW4 stated that the deceased was made to sit on the front seat of the car whereas PW9 deposed that "*Santram was made to lie down on the backside row of the van. I sat on the seat in front of the seat where Sant Ram was lying. Those two rows of seat on the back side of van where in front of each other. Kamli Sat along with Santram towards his head side. Gajraj sat alongside me.*" The aforesaid contradicted statements of witnesses casts serious doubt on the story of the prosecution. Moreso, the prosecution has neither examined the driver of the van nor seized the van in which the deceased was removed to the hospital.
26. The prosecution has relied upon the MLC report Ex.PW18/A as per which the history of alleged assault has been recorded as "*Pt. brought in casualty i.e. alleged H/o stab injury by some unknown person as stated by accompanying person (wife) 1/2 hour back today.*" Had PW4 been present in the hospital, she would have definitely named the accused as the assailant and his name would have been mentioned in the MLC report moreso when PW4 has admitted that she was acquainted with the respondent and there is absolutely no reason as to why PW4 would not disclose the name of the respondent if she had been an eye witness to the alleged incident and instead stated '***unknown person***' in the MLC report. Further, the presence of PW4 in the hospital is doubtful as her name seems to have been inserted at a later stage in the MLC report Ex.PW18/A on the left hand corner in a different ink than all other particulars in the MLC report.

27. The first information about stabbing was received by the PCR at 8:37:02 A.M. by Sohan Lal that "*Yahan par ek aadmi ko kisi ne chaaku maar diya hai*" on which PCR Van reached the spot and at 8:59:06 A.M. an information was transmitted that the deceased was stabbed by the accused and family members of the deceased had removed him to the hospital. At 9:22:51 A.M. another message was transmitted about the hospitalization of the injured in BSA Hospital and that Dr.Gurjeet had opined that the stabbing was on the right side near the kidney of the deceased. In the PCR Form Ex.PW14/H the name of Investigating Officer SI Virender and Dr. Gurjeet has been mentioned and the name of PW4 nowhere appear which inevitably leads to one and only conclusion that PW4 was not an eye witness.
28. From the above discussion, the contradictions and discrepancies in the testimonies of PW4, PW7 and PW9 as highlighted above, it would be right to conclude that the testimony of PW4 is not worthy of being relied upon.
29. PW7 Kallu Ram and PW9 Sohan Lal who have been cited as material witnesses by the prosecution as being present at the spot before the incident took place also cannot be relied upon as there are major contradictions in their testimonies. The perusal of testimonies of these two witnesses do not find corroboration and casts serious doubt on their presence at the spot. According to PW7 on 27.05.2014 at 8:00 A.M., he went to the house of Santram (since deceased) as he had called him to mediate between him and the accused and he deposed that as soon as he left after making them understand not to fight, he heard the shriek of Kamli and he was at a distance of 60-70

feets and rushed backward and saw the deceased lying on the ground and the accused was running away from the spot. This version of PW7 does not find support from the statement Ex.PW4/A of PW4 wherein she categorically stated that *"Mein Aur Mera Makaam Maalik Sohan Lal Mere Pati Ko BSA Hospital Rohini Lekar Aaye."* The testimony of PW7 is doubtful as no explanation has come forth why his statement was recorded after five days of the incident when he was available in the hospital along with the injured/deceased. The observation of learned Trial Court that PW7 during cross examination was found to have written the date of occurrence as well as date of recording his statement on his palm can not be overlooked.

30. Another material witness PW9 Sohan Lal who also claimed to be available at the spot just before the alleged incident took place deposed that *"Santram also told me that accused Lallu Ram has stabbed him. His wife Kamli also told me that accused Lallu Ram has stabbed him."* Perusal of statement of PW9 recorded under Section 161 of Code of Criminal Procedure shows that the aforesaid fact is not mentioned in the statement which clearly suggests that PW9 improved his version and cannot be relied upon. For the sake of arguments, even if it is assumed that deceased named the accused as the person who stabbed him, why PW9 failed to name the accused Lallu Ram as an assailant when he made a call for police assistance at 100 number and instead stated that *"yahan par ek aadmi ko kisi ne chaaku maar diya"*.
31. From the above, it is difficult to come to a conclusion that PW7 and PW9 were present at the spot soon before the alleged incident.

32. The next contention of learned counsel for the State is that the trial Court erroneously concluded that there is an unexplained delay in sending the copy of FIR to the *Ilaqa Magistrate*.
33. Undoubtedly, the unexplained inordinate delay in sending the copy of the First Information Report to the *Ilaqa Magistrate* may affect the prosecution case adversely or an adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there was every chance of manipulation in the First Information Report by roping innocent person as accused.
34. In ***Shivlal and Another Vs. State of Chattisgarh*** reported in ***AIR 2012 SC 280***, the Hon'ble Supreme Court held that :

" This court in Bhajan Singh Vs. State of Haryana : (2011) 7 SCC 421, has elaborately dealt with the issue of sending the copy of the FIR to the Ilaqa Magistrate with delay and after placing reliance upon a large number of judgments including Shiv Ram V. State of U.P. and Arun Kumar Sharma V. State of Bihar, came to the conclusion that Cr.P.C. provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 Cr.P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control the investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or the investigation is not fair and forthright. In a given case, there may be an

explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to the Ilaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case."

35. It has been held by Hon'ble Apex court in ***Ashok Kumar Chaudhary and ors vs. State of Bihar*** reported in ***AIR 2008 SC 2436*** that mere delay in lodging the first information report is not by itself fatal to the case of the prosecution. Nevertheless, it is a relevant factor of which the Court is obliged to take notice and examine whether any explanation for the delay has been offered and if offered, whether it is satisfactory or not. If no satisfactory explanation is forthcoming, an adverse inference may be drawn against the prosecution. However, in the event, the delay is properly and satisfactorily explained; the prosecution case cannot be thrown out merely on the ground of delay in lodging the First Information Report. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case.
36. In ***Bijoy Singh Vs. State of Bihar*** reported in ***(2002) 9 SCC 147***, the Hon'ble Supreme Court held that :

"Sending the copy of the special report to the Magistrate as required under section 157 Cr.P.C. is the only external check on the working of the police agency imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as the court was the same version as earlier reported on the FIR or was

the result of deliberation involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 Cr.P.C. is the mandate of law. Delay whenever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if tendered, no adverse inference can be drawn against it."

37. In the instant case, the FIR was registered in the police station Vijay Vihar, Delhi at 10:43 AM and the same was sent to the Ilaqa Magistrate, Rohini Courts, Delhi through Special Messenger Ct.Jagbir Singh vide DD No. 19 Ex.PW1/C-1 recorded at 11:25 AM. The *Ilaqa Magistrate* happened to be on leave and the FIR was placed before the Duty Magistrate, who made his/her endorsement at 4:30 PM. The normal time taken to reach Rohini Court from the police station Vijay Vihar, Delhi would be about half an hour whereas the delay of about 4:30 Hrs. has not been explained and a possibility of manipulation can be drawn.
38. A passing reference by the defence counsel was also made that the weapon of offence was not recovered. It is true that the prosecution failed to recover the weapon of offence over and above the contradiction and inconsistencies in the testimonies of the material witnesses examined. The prosecution also failed to seize the van used in removing the deceased to the hospital, produce the driver of the van

and the blood stained clothes of PW4, PW7 and PW9 further weakening the case of the prosecution. The prosecution miserably failed to prove its case.

39. In ***Mrinal Das and Ors. Vs. The State of Tripura*** reported in ***AIR 2011 SC 3753***, the Hon'ble Apex Court held that :

"It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for

interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

40. In the case of *State of Madhya Pradesh v. Dal Singh & Ors.*, reported in **2013 (8) SC 625**, the Hon'ble Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant materials have been unjustifiably ignored, it would be a compelling reason for interference.
41. Keeping in view the above settled law, we find no illegality or infirmity in the judgment of the trial court impugned before us which would call for any interference. Accordingly, the leave to appeal petition is dismissed.
42. Trial Court record be returned.

SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

APRIL 6, 2016

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