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

+ CRL.L.P. 124/2015

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Judgment dated 15.02.2016

THE STATE

..... Petitioner

Through : Ms.Aashaa Tiwari, APP.

versus

MAHENDER & ANR

..... Respondents

Through : Mr.Rakesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present leave to appeal petition arises out of a judgment dated 20.11.2014 passed by the learned trial court in Session Case No.137/13 whereby the trial court has acquitted the respondents herein.
2. We may note that the case of the prosecution before the trial court is as under:

“1. The facts necessary for the decision of present case are that one Chote Lal/Complainant (PW2) lodged a complaint before the police stating that while he was on duty at some tent house, he received a phone call from his nephew namely Sonu/PW5, wherein he informed that PW2/Chote Lal that the accused Mahinder and Krishan @Nandu were beating his son PW3/Laxman. The PW2/complainant Chote Lal rushed to his house, wherein he saw that the accused persons were beating his son PW3/Laxman. When the PW2/complainant Chote Lal intervened, the accused Krishan @Nandu caught hold of the PW2/complainant Chote Lal and the accused Mahinder brandished the knife and stabbed at his abdomen and also caused injuries in his left hand. Both the accused fled from the scene. The PW5 Sonu removed the

PW2/complainant Chote Lal to hospital.

2. FIR was registered consequent to the complaint made by the PW2/complainant Chote Lal. Investigation commenced, the chargesheet was filed and case was committed to this court.

3. Prima facie case u/s 307/34 IPC was made out against the accused Mahinder & Krishan @ Nandu. The accused persons did not plead guilty to the formal charge and claimed trial.”

3. In order to support its case, the prosecution had examined PW-1, HC Ram Karan (Duty Officer); PW-2, injured/complainant Chotey Lal; PW-3, Laxman (son of the complainant); PW-4, Dr.Rajnish Gupta; PW-5, Sonu (nephew of the complainant); and PW-6, Ct.Yaswant Kumar.
4. The trial court reached the conclusion that upon reading of the testimonies of the public witnesses it was found that they did not support the case of the prosecution properly. In para 12 of the judgment the trial court has made the following observations:

“12.Since the PW2/injured/complainant Chote Lal, PW3 Laxman/injured/eye witness and PW5 Sony/eye witness resiled from their earlier statements, it would have been utter wastage of time to proceed further with the trial as the remaining witnesses were formal in nature. Therefore, the prosecution evidence was closed and the statement of the accused u/s 313 CrPC was dispensed with as there was nothing incriminating against the accused persons on record and there was no likelihood that prosecution would bring any incriminating material against the accused persons.”

5. Learned counsel for the State submits that the learned trial court has failed to examine the testimonies of the material witnesses in the right perspective. Learned counsel further submits that the complainant, Chote Lal, (Victim) has categorically testified that Mahinder had stabbed him while the other two persons had caught hold of him. Learned counsel also

submits that in view of the categorical testimony of PW-3, the trial court could not have reached the conclusion of acquittal. It is further contended that even during the pendency of the matter, Chote Lal, complainant/victim had filed a protest petition before the trial court bringing to the notice of the trial court that the concerned SHO is not producing all the witnesses, which would have an adverse effect on the outcome of the case, which is evident from the order sheet dated 30.5.2012, which forms part of the trial court record.

6. Learned counsel for the respondents submits that since the prosecution was unable to establish its case beyond any shadow of doubt, the trial court has rightly reached the conclusion and acquitted the respondents. Counsel further submits that the High Court should be slow in upsetting the judgment of the trial court, especially when there is no perversity or there is no illegality in the same. Counsel also contends that since the material witnesses have already examined their testimonies they cannot be improved.
7. We have heard learned counsel for the parties, considered their rival submissions, examined the trial court record and also the judgment passed by the trial court.
8. Without expressing any opinion on the merit of the matter, we are of the view that the present case would require retrial in view of the testimonies of the eye-witnesses and for the reason that the trial court has failed to examine all the prosecution witnesses, which had been cited.
9. Accordingly, we remand the matter back to the trial court to enable the trial court to record the testimonies of the remaining witnesses and thereafter pass a reasoned order in accordance with law, unaffected by the observations made by this Court in the judgment passed today. List this matter before the trial court on 18.3.2016. Let the trial court record be sent

back forthwith.

10. Criminal Leave to appeal petition stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 15, 2016

msr