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

+ **CRL.A. No.1072/2013**

Date of Decision: 09.11.2016

STATE

..... Appellant

Through Ms.Aashaa Tiwari, APP for
State.

versus

SONU @ SUNIL & ANR

..... Respondents

Through Ms.Inderjeet Sidhu,
Advocate for R-1 (*Amicus
Curiae*)

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

GITA MITTAL, J (Oral)

1. A status report dated 08.09.2016 under the signatures of Inspector Manjeet Tomar, SHO, Police Station GTB Enclave has been filed confirming that respondent No.2 Pawan Sharma expired on 6.11.2014. A copy of the death certificate has been placed on record. In view thereof the appeal qua respondent No.2 abates.

2. We have heard Ms.Aashaa Tiwari, learned APP for the State and Ms.Inderjeet Sidhu, *amicus curiae*, for respondent No.1.

3. In this appeal by the State against the acquittal of the

respondent in the case S.C No.31/10 arising out of FIR No.336/08 registered by Police Station M.S.Park, the respondent Sonu @ Sunil and Pawan Sharma (since deceased) were charged for commission of an offence under Section 394 read with 34 IPC vide judgment dated 20.07.2011. Respondent No.1 was also separately charged for commission of an offence punishable under Section 397 IPC. These respondents had pleaded not guilty and claimed trial.

4. In support of the case, the prosecution examined twelve witnesses.

5. The incriminating circumstances proved by the prosecution were put to the accused in order to give him an opportunity to explain the same in compliance with Section 313 of Cr.P.C.

6. After considering the entirety of the case, the learned Additional Sessions Judge opined that the prosecution had failed to establish the case beyond reasonable doubt against the respondents and consequently by a detailed judgment dated 20.07.2011 acquitted the accused persons of the charges against them.

7. The State has filed the present appeal contending that the learned Trial Court has failed to consider the material circumstances and evidence against the appellants.

8. We find that the learned trial Judge has rightly concluded that the evidence led by the prosecution is completely unreliable and does not support the finding of guilt of the accused persons. In para 27 of the impugned judgment, the trial Judge has correctly analysed the evidence led by the prosecution and concluded that as

per the prosecution at 7:30 p.m. when the offence took place, the accused Sonu was quarrelling with Babloo at a spot other than the place of the incident. In fact, the defence led the evidence that the respondent Sonu was handed over to the appellant on 6.10.2008 at about 5:10 p.m. by his relatives. The defence led the evidence of DW-1 Daryao Singh in this regard and DW-2 Veer Singh Mohalla Pradhan/social worker in the area as well as DW-9 Babloo.

For this reason, the learned Trial Court has rightly disbelieved the case of the prosecution that Sonu was arrested on a subsequent date 7.10.2008 at 2:30 a.m.

9. The record of the case shows that the investigating agency has hopelessly messed up the documentary evidence. Infact, the daily diary entries which have been proved on record in the present case do not pertain to the incident with which the respondents were charged. The record of the PCR also does not relate to the case in hand. The evidence led on record relates to an incident of commission of offences under Section 392/394 and 397 IPC. The prosecution also led the evidence of PW1 Gopal Singh as an injured eye-witness. However, his testimony suffers from grave contradictions and material particulars and does not inspire confidence.

10. In view of the above, the judgment of the trial Court suffers from no infirmity which is in consonance with the evidence led by the prosecution.

11. We, therefore, find no merit in this appeal which is hereby

dismissed.

GITA MITTAL, J

NOVEMBER 09, 2016

ANU MALHOTRA, J

SV

