

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order : 7th October, 2016

+

CRL.L.P. 551/2016

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms. Aashaa Tiwari, Additional Public
Prosecutor for the State

versus

NAZAR ALI & ORS

..... Respondents

Through: Sub-Inspector Shailendra Kumar
Singh, Police Station Bhajanpura,
Delhi

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

%

07.10.2016

GITA MITTAL, J. (ORAL)

Crl. M.A. No.15981/2016 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**CRL.L.P. 551/2016 & Crl. M.A. No.15980/2016 (condonation of
delay)**

1. By way of the present petition under Section 378 of Cr.P.C., the
State seeks leave of this court to appeal against the judgment dated

11th March 2016 whereby the respondents stand acquitted for commission of the offence with which they were charged in the case arising out of FIR No.57/05, registered under Section 147/148/427/186/353/307/323 read with Section 149 of IPC by the Police Station Bhajanpura, Delhi.

2. Thirty five persons (present respondents) were arrayed to stand trial in the charge sheet which was filed by the police after conclusion of the investigation in the above case. The trial court framed charges on 2nd December 2013 against the accused persons under the aforesaid sections. All the accused persons had pleaded not guilty and claimed trial. The first charge against the accused is under Section 147 read with 149 IPC that on 14.02.2005 at about 1.30 PM, all the accused alongwith Mohd. Babu, Sharma Pahalwan and Jeet Pahalwan (not arrested) formed unlawful assembly with common object of using criminal force against MCD officials and others and caused injuries to MCD officials thereby obstructing them from performing their lawful duties and used force against them and assaulted.

3. To prove the charges, the prosecution examined 29 witnesses. The statement of the respondents under Section 313 of Cr.P.C. was recorded. No defence evidence was led. After consideration of the entire matter, the trial culminated in acquittal by the impugned judgment.

4. For the purposes of expedience, we are persuaded to extract herein the relevant observations of the learned trial court. In the

impugned judgment, after consideration of the entire evidence, the trial court recorded as under:

“7. After going through the testimonies of all PWs, it is clear that none of the prosecution witness has convincingly identified any of the accused persons who was part of unlawful assembly during the incident. Rather, all PWs have given a different description of mob. Some deposed that it was comprising of 50-60 people, whereas some of them deposed that mob was comprising of 100-125 people. PW1, PW1, PW6, PW10 and PW11 have specifically pointed out that the mob was led by Mukhia Gujjar, but they have failed to identified him beyond doubt that he was part of the mob. Mainly the abovesaid witnesses have identified him thereby pointing out towards him, but during cross-examination, they have denied his identity. The incident took place on 14.02.2005 and their statements were recorded in the year 2014 and after the gap of such a long period, it was not possible to remember it. All the abovesaid PWs have deposed that they did not see accused Mukhia Gujjar or other accused during this period.

.....

9. Another charge has been framed against the accused under Section 427 r/w 149 IPC that all the accused formed unlawful assembly and caused damage to MCD vehicles by playing mischief. However, after going through the testimonies of all PWs, it is clear that the PWs have failed to identify the accused who were part of mob and caused damaged to the vehicles. Even the vehicles have not been produced before the witnesses to identify that the same were damaged and even witnesses have failed to identify the accused or to disclose the registration numbers of vehicles which were allegedly damaged during the incident. Prosecution has failed to prove that mischief was played by the accused in causing

damage to the government vehicles and damage was for more than the value of Rs.50/-. As such, in the absence of identity of accused or vehicles, it also could not be proved by the prosecution that accused committed such offence.

10. Another charge under Section 186/353 r/w 149 IPC has been framed against all accused. Similarly, in the absence of identity of accused persons who were part of mob/ unlawful assembly or obstructed MCD officials to perform their duties, it could not be proved that all the accused persons committed the offence and prosecution has failed to prove these charges also.

11. Another charge has been framed under Section 307/323 r/w 149 IPC. To prove these offences, prosecution was required to prove that all the accused with common object tried to kill the injured/complainant with intention and knowledge that their act was going to kill them. Even it was also to be proved that accused caused simple hurt to the injured persons.

12. I have already observed hereinabove that the identity of accused is not ascertained and none of the PW has identified the accused in this case. Some of PWs identified the accused Mukhia Gujjar, Meharban and Khurshid, but again their identity could not be ascertained in view of disputed identity and contradictory statements of PWs. The witnesses who identified the accused in their examination in chief, they have disclosed that the identity of accused was disclosed by Police officials. To convict an accused in a criminal case, irrespective of charge, the identity of accused is a material fact alongwith intention or knowledge of the accused to kill the injured or to cause bodily injury, but in this case, the identity of accused could not be ascertained. Even no knowledge or intention could be attributed to the accused in the absence of previous

knowledge or enmity. Even there was no specific motive to kill the complainant/injured. As such, in any case, prosecution has failed to prove that all the accused persons with common object caused injuries to the injured or tried to kill the complainant or other staff members of MCD who conducted raid to remove illegal diaries and to catch stray animals.”

5. In view of the above discussion and evidence placed by the prosecution, the learned trial court which had no option but to acquit the respondents for the charges for which they were charged. The judgment of the trial judge cannot be faulted as the same is in consonance with the evidence led by the prosecution. No evidence with regard to either the injuries suffered by the victim or the vehicles which had been damaged in the alleged incident was placed on record. No photographs were taken by the investigating officer. There is no evidence at all of the manner in which the incident had taken place and which was alleged to have led to the registration of the case by the police.

6. Ms. Aashaa Tiwari, learned Additional Public Prosecutor for the State has not been able to point out anything to us which would enable us to take a different view from that of the finding written by the learned trial court.

7. Apart from the aforesaid, there is a delay of 79 days in preferring the present leave petition, which is not explained.

8. We find no merit in the application for condonation of delay.

Consequently, the criminal leave petition as well as application for seeking condonation of delay in preferring the petition are dismissed.

GITA MITTAL, J

P.S.TEJI, J

OCTOBER 07, 2016

pkb

