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

+ **CRL.A. 49/2002**

STATE

..... Petitioner

Through: Ms. Kusum Dhalla, APP along with S.I.
Satish, P.S. Kashmere Gate.

Versus

NAVIN KUMAR JHA & ORS.

..... Respondents

Through: None.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER
30.11.2017

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1. The State is in appeal against the judgment dated 18th April, 1998 passed by the learned Additional Sessions Judge, Delhi acquitting the respondents in FIR No.30/1992 registered at P.S. Kashmere Gate for offences under Sections 302/34 IPC.

2. There were four accused in the case. The charge was that Navin Kumar Jha, Accused No.1 (A-1) armed with a *danda* and Raghubir Kumar, Accused No.2 (A-2) armed with a *saria* along with the co-accused Pramod Kumar, Accused No.3 (A-3) armed with a piece of stone and Ashok Kumar (A-4) (absconding accused) in furtherance of a common intention caused fatal injuries to the deceased Prabhu Dutt while A-4 caught hold of him and thus committed the offence under Section 302 read with 34 IPC.

3. One Giriraj Sharma (PW-1) was projected as the eye witness. According to PW-1, his uncle Prabhu Dutt had stepped out of his house to see off his friend Subey Singh. At some distance from the house, the four accused had abused Prabhu Dutt because during the day his grandfather had objected to A-1 sitting on the wall of his house. At this stage, Prabhu Dutta and Subey Singh asked the four persons not to abuse them. On this, A-4 caught hold of Prabhu Dutt, the other three attacked him and Subey Singh with the *danda*, *saria* and stone.

4. Apart from PW-1, the prosecution also relied on the evidence of Manoj Kumar(PW-2), Subey Singh (PW-4) and Mohan Lal Sharma (PW-5) for fixing the identity of the assailants.

5. PW-5 turned out to be an unreliable witness as he admitted in his cross-examination that he had in fact not seen the incident of assault.

6. PW-4 stated that when he and the deceased had gone some distance, A-1 to A-3 and A-4 got down from a three wheeler scooter. This was not mentioned by PW-1 at all. There was also contradiction on whether in fact PW-1 accompanied the police party from the hospital to the spot. PW-1 also did not mention about the presence of PW-4 who was also supposed to be injured.

7. The Duty Constable Sudhir Kumar (PW-13) was told by Giriraj Sharma (PW-1) that the injured have been assaulted with *lathis* and stones by 10-12 persons and this was recorded in DD No.48-B. According to PW-1, there was one stone at the spot which was bloodstained. This was not mentioned

by any of the police officials who were examined. According to PW-1, there was no blood on the *danda* and *saria*. However, the said blood stained articles when were produced in the Court were not in a sealed condition.

8. As far as PW-2 was concerned, the trial Court noted that he had made significant improvements in his deposition in Court over his statement recorded in the course of the investigation. In his cross-examination, he was unable to state which of the accused were giving beatings on which part of the body of the deceased. PW-5 also did not support the prosecution since in his cross-examination he admitted to not seeing the incident. The trial Court found PW-1, PW-4 and PW-5 to be unreliable witnesses.

9. The trial Court also held that although the prosecution had proved the death of the deceased to be homicidal, there was no explanation why the blood stained cloth of PW-1 were not taken into possession. Further the exhibits collected from the spot were not sealed to enable the police to lift chance prints. This was a major lapse on the part of the prosecution. The failure to mention the names of the assailants in the MLC itself was also taken to be a significant omission which gave rise to the reasonable doubt regarding the involvement of the accused. PW-4 was also held to be an unreliable witness.

10. The detailed analysis undertaken by the trial Court of the evidence of each of the witnesses leaves no manner of doubt regarding their unreliability as to the manner in which the incident occurred. They have all been rightly disbelieved by the trial Court.

11.. The Court finds that no grounds are made out for interfering with the impugned judgment dated 18th April, 1998 of the learned ASJ. The appeal is accordingly dismissed.

S. MURALIDHAR, J

I.S. MEHTA, J

NOVEMBER 30, 2017
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