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

+ CRL.L.P.No. 174/2016 & CRL.M.A.No.4503/2016

% Date of decision : 16th January, 2017

STATE

..... Petitioner

Through : Mr. Varun Goswami, Adv.

versus

MADAN MOHAN & ORS

..... Respondents

Through : Mr. Ajay Burman, Sr. Adv.
with Ms. Sadhvi Gaur, Mr.
Harshit Khurana and Mr.
Karan Burman, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (Oral)

GITA MITTAL, J.

CRL.M.A.No.4503/2016

We have heard learned counsels for the parties.

For the reasons stated in the application, the delay in filing the leave petition is condoned.

The application is allowed.

CRL.L.P.No. 174/2016

1. We have heard Mr. Varun Goswami, Id. APP for the State on this criminal leave petition under Section 378(1) of the Cr.P.C. whereby the State has challenged the judgment dated 31st August,

2015 passed by the Id. Additional Sessions Judge (West), Tis Hazari Courts, Delhi in Sessions Case No.5/2009 arising out of FIR No.419/2006 registered by P.S. Rajouri Garden acquitting the respondents of the commission of the offence under Sections 304/34 IPC with which they were charged.

2. To the extent necessary, we note the essential facts of the case hereafter. On the 7th of April 2006 at 8:37 pm, the police control room received telephonic information (Ex.PW11/C) from Madan Mohan (respondent no.1 herein) who called from phone No.55338404 that quarrel and abuses were going on at C-140, Tagore Garden Extension, New Delhi. This information was logged by the police control room as DD No.11/C and communicated to the police station Rajouri Garden where it was logged at 8:45 pm as DD No.25A (Ex.PW1/A).

3. On receipt of DD No.25A, ASI Raj Pal Singh along with Constable Lachman Singh reached at the spot which was in the front of house No.C-140, Tagore Garden Extension, New Delhi where the dead body of Moti Ram son of Soni Ram resident of C-142, Tagore Garden Extension, New Delhi was lying.

4. Inquiries were made and the following statement of Manohar Lal son of the deceased Moti Ram was recorded by the police which was proved as Ex.PW2/A :

“House No.C-140, Tagore Garden Extn., New Delhi used to be their house and now he resides in House No.C-143, Tagore Garden Extn., New Delhi as a tenant. On the property bearing No.C-140, Tagore Garden Extn., New Delhi a dispute/quarrel is being going on

between Kailash Chand, Madan Mohan and Jai Prakash @ Balli (all sons of Shri Ram) with their sister namely Murti Devi and brother-in-law (damad) namely Prem Raj and a court case is pending between them. Today on 07.04.2006, he was present outside his house and his sister Nirmala Devi had come to them for Bhat ceremony (bhat nyotne ke liye) and after going back of her sister, he sat outside his house and his father also came there and when they were talking with each other about their house, in the meantime, at about 8.30 PM, Kailash Chand, Madan Mohan and Jai Prakash @ Balli also came there and told them that in the house no.C-140, Tagore Garden Extn., New Delhi they have no share and they all pushed his father, consequent to which his father became unconscious. Thereafter, he alongwith his brother-in-law (Jijaji) namely Rakesh Kumar, took his father to Guru Gobind Hospital, where doctor declared his father brought dead. They were not given any slip by the hospital. He prayed for getting the inquiry conducted regarding the death of his father and showed his desire to get the post-mortem of his father conducted.”

5. On the 7th of April 2006 itself, the deceased Moti Ram was removed to the Deen Dayal Upadhyay Hospital at 11:00 pm by the police van where MLC No.8347 (Ex.PW10/A) was recorded declaring that Moti Ram had been brought dead.

6. On the request of ASI Raj Pal, on the 8th of April 2006, a post-mortem was conducted by Dr. B.N. Mishra (PW-6) on the dead body of Moti Ram at Deen Dayal Upadhyay Hospital vide post-mortem report No.271/2006 (Ex.PW6/A). As per this report, the doctor had opined the cause of death of Moti Ram as “*due to head injury (extra dural haemorrhage)*”.

7. It is pointed out by Mr. Ajay Burman, Id. Senior Counsel for the respondents, that the post-mortem report does not record external injuries of any kind on the dead body.

8. On a consideration of the statement (Ex.PW2/A) of Manohar Lal and the post-mortem report dated 8th April, 2006, FIR no.419/06 was registered under Section 304 of the IPC by the P.S. Rajouri Garden. On the 28th of April 2006 itself, the respondents were arrested in this case.

9. During investigation, SI S.S. Rathi prepared a site plan of the alleged place of occurrence.

10. The viscera and sample seal were taken into possession on 8th April, 2006 from the post-mortem doctor which was sent to the Forensic Science Laboratory, Kolkata vide R.C.No.157/21 on the 8th of May 2006. After a forensic examination, by a report dated 15th December, 2006, the laboratory reported that no common poisons were deducted in the body of the deceased.

11. After completion of investigation, on 12th May, 2008, a chargesheet under Section 173 Cr.P.C. was filed against the respondents before the court of concerned Metropolitan Magistrate who committed the case for trial to the courts of Session. After considering the material brought on record by the prosecution, on 16th January, 2010, the Id. Additional Sessions Judge framed the charges under Section 304/34 IPC against the accused persons to which they pleaded not guilty and claimed trial.

12. The prosecution examined 19 witnesses in support of the charges against the respondents who were given an opportunity to

explain the incriminating circumstances under Section 313 of the Cr.P.C. The respondents rebutted the entire evidence as fabricated and pleaded innocence.

13. The Id. Trial Judge considered the entirety of the matter in great detail and finally by the judgment dated 31st August, 2015 found that the prosecution had failed to make out a case against the respondents and acquitted them of the charges which had been levelled against them. The State has filed the present petition seeking leave to appeal against the impugned judgment contending that the trial court has gravely erred in construing the evidence brought on record and that the prosecution had established the case beyond doubt.

14. We have given our considered thought to the submissions given by both sides and have also examined the record of the lower court. We find that the trial court in para 10 has set down the reasons which have weighed with it in the judgment which has been passed which we extract hereunder :

- (i) The prosecution had failed to discharge the burden of establishing the guilt of the respondents beyond reasonable doubt entitling them to an order of acquittal.
- (ii) The manner and place of incident was shrouded in mystery and the entire story propounded by the prosecution was improbable.
- (iii) No information was given to the police from the place of incident immediately after it occurred.
- (iv) The complainant Manohar Lal and his family were closely

related to the deceased and did not bother to call the police. On the contrary, the evidence on record established that it was the respondents who had first called the police with regard to the quarrel which was taking place. It was established in evidence that the police was given intimation by Madan Mohan, one of the accused persons, who had called from the landline No.55338404 at 8:37/39 pm which stood installed in the premises bearing No.C-140, Tagore Garden Extension, New Delhi where the accused persons were residing.

(v) The body of the deceased was not taken to his own house or to the house of the complainant after death. Instead the dead body was taken and placed outside the premises bearing No.C-140, Tagore Garden Extension, New Delhi where the respondents were residing.

15. It was the case of the prosecution that the deceased had been pushed by the respondents. The Id. Trial Judge has noted that as per the MLC and the post-mortem report, there were two internal injuries in the head of the deceased which were not possible because of a single fall.

16. Mr. Varun Goswami, Id. APP for the State contends that the post-mortem doctor has opined that both the internal injuries on the body of the deceased were possible by a fall. Even if this was so, the prosecution still had to establish deceased had fallen and that the fall was as a result of the assault by the respondents beyond any measure of reasonable doubt. The prosecution has miserably failed to establish such circumstances beyond reasonable doubt.

17. The prosecution has also failed to establish its version that after the incident, the deceased was first taken to the Guru Gobind Singh Hospital by his sons, that the doctors at that hospital declared him dead and refused to record any documentation. The Id. Trial Judge has noted that in these circumstances, the information would have been given to the duty constable in the hospital regarding the incident of an assault. No such thing had been done, falsifying the case of the prosecution.

18. The Id. Trial Judge has also faulted the prosecution case for the reason that the assault, which was the first incident in which the deceased suffered the injury, was not reported to the police.

19. The Id. Trial Judge has also doubted the veracity of the testimony of Manohar Lal (PW-2) as well as his brother Phool Chand (PW-3) pointing out that they did not even disclose their correct address. The Id. Trial Judge has discussed the evidence on record in great length to the effect that Nirmala daughter of Manohar Lal had come on that day for the traditional *bhat nyotana* ceremony at the house bearing No.C-136 and C-132, Tagore Garden Extension, New Delhi of her father and mother and that all had gathered there.

20. Mr. Ajay Burman, Id. Senior Counsel for the respondents has pointed out that the Id. Trial Judge has carefully analyzed the evidence brought on record noting that no one was present near the house bearing No. C-140, Tagore Garden Extension, New Delhi or C-143, Tagore Garden Extension, New Delhi where the assault alleged to have been made.

21. So far as the assault location of the houses being C-139 and C-140, Tagore Garden Extension, New Delhi are concerned, our attention is drawn to the testimony of Manohar Lal (PW-2) wherein he stated thus :

“During cross examination, he confirmed that at the time of incident, he was residing with his family at House No.C-132. Phool Chand his brother was also residing in C Block in the back side after two streets and his House number he does not remember. He further stated that his father Late Sh. Moti Ram and his mother were residing in House No.C-136 after leaving 2-3 houses from his house. If he stands facing House No.C-140, the House No.C-139 and C-138 could be in the left of the said house. Both these House are adjacent to House No.C-140. He conceded that after House no.C-138, there is a street which leads to the house No.C-136 where his father and brother were residing and House No.C-132 is also situated in the same street after the house No.C-136.”

22. This testimony by itself establishes that the deceased was nowhere near the house bearing No.C-140, Tagore Garden Extension, New Delhi and no incident took place where the body had been placed later by Manohar Lal and his family members.

23. The evidence on record supported the defence version that Manohar Lal and his family were residing nearby in a gali at H.No.C-132 and C-136, Tagore Garden Extension, New Delhi who placed the dead body of the deceased outside the house of the respondents at C-140, Tagore Garden Extension, New Delhi and thereafter started quarrelling and wrongly accused the respondents as being responsible for the death of Moti Ram.

24. These circumstances had led the respondent Madan Mohan calling the police which information was logged by the police control room as DD No.11/C and communicated to the police station Rajouri Garden where it was logged at 8:45 pm as DD No.25A (Ex.PW1/A).

25. We find that in para 10 of the impugned judgment dated 31st August, 2015, the Id. Trial Judge has noted that “*the testimonies of PW-3 Phool Chand, PW-4 Phool Singh and PW-5 Ramesh Kumar are also not reliable in the back ground that they were having enmity against the accused persons*”. This clearly supports the defence plea of false implication.

26. After considering the manner in which the events unfolded on the fateful day, the Id. Trial Judge had noted that even if the allegations were taken at face value and in their entirety, the prosecution has established that the respondents were completely unarmed and there is no evidence that they had the knowledge that the single push could result in a death of a person. For this reason, the essential ingredients for bringing home the culpability of the accused person for commission of the offence under Section 304 IPC has not been made out.

27. We find that the Id. Trial Court has discussed the evidence in great length and concluded that the acts attributed to the deceased were without any intention to cause death or any bodily injury.

Our perusal of the record shows that the findings of the Id. Trial Court are supported by the evidence on record.

28. For all these reasons, we see no reason to disagree with the

findings rendered by the ld. Trial Judge.

We find no merit at all in this leave petition which is hereby dismissed.

GITA MITTAL, J

ANU MALHOTRA, J

JANUARY 16, 2017

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