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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. L.P.92/2016

Reserved on: 18th August, 2017

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Date of Decision: 12th September, 2017

STATE OF NCT OF DELHI

..... Petitioner

Through

Ms. Megha Bahl, Advocate for Mr.
Avi Singh, Advocate

versus

MONU

..... Respondent

Through

Ms. Inderjeet Sidhu, Advocate with
Insp. Rajneesh Sharma, P. S. N. S.
Place

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioner, by way of this petition, is seeking leave to appeal against the impugned judgment of acquittal dated 30.05.2015 passed by Learned Additional Session Judge-Fast Track Court (North West) Rohini, Delhi in FIR No.270/2011 under Sections 302/307/34 IPC registered at Police Station Subhash Place.

2. The case of the prosecution as noticed by the Trial Court is that complainant Sohaib along with his cousin Dulare (son of his mausi) had gone towards Samrat Chowk on 07.07.2011 at about 11:00 p.m. for taking ice-cream. They reached the ice-cream cart but ice-cream seller was not there, so they started waiting for him. In the meanwhile, respondent Monu

along with Mohd. Arif (juvenile offender) came there, respondent Monu all of a sudden gave a strong slap on the face of Sohaib and abused him without any reason. Respondent Monu along with co-accused Mohd. Arif then took both of them to a nearby place, accused Mohd. Arif took out one knife from his dub and attacked Dulare and gave him a forceful blow in his abdominal region. In the meanwhile, Sitare (real brother of Dulare) also reached there for his rescue. Thereafter, respondent picked a brick from the road and caused injuries to Sitare by hurling the same towards him. Sohaib took both the injured brothers to their house situated at I-581, Shakurpur Delhi, lot of public persons gathered there and someone informed the police. Police reached there and took both the injured to Bhagwan Mahavir Hospital. PW-26 SI Sandeep Kumar reached the hospital and on the statement of the complainant Sohaib, the case was registered under Sections 307/34 IPC vide FIR No.270/2011.

3. After registration of the FIR, investigation was carried out, the respondent was apprehended and the weapon of offence was also recovered.

4. By order dated 30.09.2011, the Trial Court framed charges under Section 302/307/34 IPC against the respondent. The prosecution in order to prove its case examined 27 witnesses. The respondent herein did not lead any defence evidence. The statement of the respondent was recorded under Section 313 Cr.P. C. whereby he pleaded not guilty.

5. The Trial Court after examining the evidence reached to a conclusion that the testimony of PW-1 Sohaib did not show any sharing of common

intention between the respondent and the co-accused (Monu and Mohd. Arif). Recovery of the weapon does not clearly prove guilt of the respondent and make him liable for injuries caused to PW-19 Sitare, primarily on account of the hostile testimony of PW-1 Sohaib and also because of disparity between the medical and ocular evidence, as it was not clear as to how many other persons were present at the spot along with the respondent and also for the reason that there was contradiction found in the statement of material eye witness PW-19 Sitare, regarding the injuries received by him.

6. Learned ASC for the State submits that the learned Trial Court has failed to examine the testimonies of the material witnesses in its right perspective. It is contended that the order of the acquittal dated 30.05.2015 is illegal, arbitrary and has led to miscarriage of justice.

7. It is further contended by learned ASC for the State that learned Trial Court failed to appreciate the evidence of PW-19 Sitare who supported the prosecution case and his testimony has not been materially impeached. PW-19 in his testimony had categorically specified the role of the respondent. Learned counsel for the State further stated that learned Trial Court has not taken into consideration the substantial part of the statement of PW-1 in his complaint, which clearly stated that both the respondent and co-accused came and started hitting them (PW-1 himself and the deceased Dulare) without any reason. It is further submitted that impugned judgment did not consider that PW-1 who turned hostile, had later on stated that accused Monu was rather intervening to save Dulare from co-accused Mohd. Arif,

whereas in his complaint he stated that it was respondent Monu who came at the spot and slapped Sohaib without any reason. The fact that respondent Monu allegedly tried to save Dulare was brought up later on, the supplementary cross examination of PW-1 indicates the extraneous considerations were the cause of PW-1 turning hostile.

8. It is also contended that as per the MLC of the injured PW-19 Sitare, he received two injuries one on his head i.e. on forehead and another on his scalp parietal region, which was also not considered by the Trial Court.

9. It is further contended that the recovery of the knife, which is proved to be the murder weapon has not been properly considered and appreciated in the impugned judgment. The failure to join public witnesses is not sufficient in itself to negate the recovery of the knife on the disclosure of the respondent Monu.

10. On the other hand, learned counsel for the respondent has submitted that PW-1 was examined and cross examined on 08.05.2012 wherein new facts contradicting the case of the prosecution were elicited by the defence during his cross examination of involvement of 3-4 persons in occurrence of the crime and respondent acted as an intervener during the occurrence.

11. Learned counsel for the respondent has also contended that as per the testimony of PW-1, PW-19 came at the place of occurrence after the stabbing took place, while PW-19 did not state about the presence of PW-1 at the time of stabbing and therefore submitted that the testimonies of these

two material witnesses along with the medical evidence i.e. MLC Ex. PW-3/B does not corroborate on the material aspects.

12. Learned counsel for the respondent has also submitted that there was no evidence of any previous history of enmity or quarrel between the parties, neither there was any evidence to infer prior meeting of minds nor were they carrying any weapon or had any knowledge about weapon being carried by co-accused (Mohd. Arif).

13. Learned counsel for the respondent also submitted that the presence of the respondent at the spot did not show his intention to hurt the deceased. Learned counsel for the respondent also contended that as far as recovery of the knife i.e. weapon of offence is concerned it was recovered from the co-accused, Mohd. Arif.

14. Now reverting back to the deposition of PW-1, it is evident that PW-1 Sohaib stated that there were 3 to 4 persons present at the place of incident, while on the PCR form it is mentioned that there were 7-8 persons. The crime report also referred to a group fight. Hence, deposition of PW-1 supported the defence of the respondent. PW-1 first stated that the deceased was first taken home by him and thereafter PCR came. The blood stained clothes were removed at their house and the same were subsequently handed over to the police, recovery of the weapon does not prove the respondent's guilt. There is nothing on record that there was previous enmity with Monu nor any evidence has come on record with respect to the co-accused Mohd. Arif. Even otherwise mere presence of the

respondent at the place of the incident does not show that he shared the motive of the respondent to kill the deceased. Keeping in mind the evidence on record, we do not find any perversity or any irregularity in the impugned judgment.

15. A bare perusal of the charge-sheet clearly demonstrates that it is the case of the prosecution against the respondent Monu, that he gave a slap on the face of the PW-1 Sohaib but PW-1 had stated in his evidence that it was Mohd. Arif who slapped him. He has also deposed that in the meantime PW-19 Sitare reached the spot and one of the accused inflicted brick blow on the head of the Sitare but he had not seen who had inflicted the brick blow to Sitare. Thereafter, both the respondent and co-accused ran away from the spot. He also testified that blood was oozing out from the head of PW-19 Sitare and then he took both the injured to their house situated at I-581, Shakurpur, Delhi.

16. PW-1 Sohaib did not fully support the case of the prosecution and he was cross examined by the prosecution with the permission of the Court but despite his cross examination nothing material came on record which may incriminate the respondent. Further he admitted in the cross-examination that when accused Mohd. Arif reached the place of occurrence, 3-4 other boys were also with him. He also stated it to be correct in his cross-examination that respondent Monu even tried to save him, when Mohd. Arif and his 3-4 associates were beating them. In his re-examination by learned ASC, PW-1 also stated that Mohd. Arif told him that Monu did not inflict injury and further stated that Monu had come to the spot later on.

17. The Trial Court has at length evaluated the deposition of PW-19 Sitare. The deposition of PW-19 does not inspire confidence in as much as the role of respondent Monu is concerned. There is no doubt that PW-19 has deposed that the respondent and the co-accused were beating Dulare when he reached at the spot at subsequent point of time and he was not aware about the reason.

18. It has also come in the cross examination of PW-19 Sitare that respondent Monu picked a piece of brick and hit the same on his head. As far as PW-1 Sohaib is concerned, he did not know who had inflicted brick blow on the head of Sitare. However, as per the MLC of the injured PW-19 Sitare, he had received two injuries i.e. one on forehead and another on his scalp parietal region, which was also not considered by the Trial Court. PW-3 Dr. Nand Kishore deposed that the MLC of Dulare showed that Dulare was having injury with a sharp object over lower abdomen and anus, and was in a state of hypovolemic shock. PW-3 also deposed that the MLC of Sitare showed that he was having injury with sharp object over forehead, however no other external injury was detected.

19. The injury seems to be on the right side of the head which was attributed to Monu. However, if we enact the act of hitting a person from behind, then, as per in this case it is stated that Sitare had been hit from behind, the injury would not be there on the forehead. This fact also proves that the statement by PW-19 cannot be relied upon as he stated that he was hit by the respondent Monu from behind, therefore, benefit of this discrepancy should go to the respondent.

20. There is also discrepancy about the persons who were present at the spot PW-1 had claimed that 3-4 boys reached the place of the occurrence while the prosecution's own documents i.e. PCR form indicate the presence of 7-8 persons accomplices of the respondent. Thus, it is quite perceptible that the prosecution has not come with the requisite precision and transparency. It is also not clear as to how the clash had actually originated, further, it is not clear as to how many persons were there on the side of the respondent and co-accused. If PW-1 Sohaib is to be believed, the respondent Monu had no role to play and he was rather trying to save them. As far as the brick blow caused to Sitare is concerned, there is a mismatch between the ocular evidence and medical evidence and therefore, there is clearly some uncertainty in the case of prosecution.

21. In the present case, the genesis of occurrence was not known, no evidence of any previous history of enmity or quarrel between the parties, neither there is any evidence to infer prior meeting of minds nor any provocation by the respondent nor was he carrying any weapon nor had any knowledge about the weapon being carried by the co-accused. Mere presence of respondent at the place of occurrence will *per se* not attract Section 34 IPC so as to hold respondent having common intention to cause hurt to deceased. Hence, we do not find any flaw in the findings of the Trial Court holding that there is no sufficient material to uncontrovertibly hold that the respondent had shared common intention with the co-accused or in furtherance of such common intention, co-accused gave fatal blows to the deceased.

22. Similarly, we also do not find any substance in the submission of the learned ASC for the State that the recovery of knife/murder weapon, not being properly considered and appreciated by the Trial Court. In this case, the co-accused was arrested on 8.7.2011 at 5:30 pm, thereafter, the respondent was alleged to be arrested at 8:20 pm from the bus stand on information provided by a secret informer and knife was allegedly recovered thereafter at the instance of the respondent from a park. It is to be kept in mind that the co-accused, who used the knife, was already arrested and the knife was recovered which was lying under heap of bricks and was kept found in a polythene. The record demonstrates that the respondent was caught near the M Block bus stand near Rajiv Gandhi Market and even the IO has admitted that there were shops situated in that area. No public witness was made witness to the arrest of the respondent and there is nothing on record that any genuine efforts were made for joining public persons at the time of such arrest and recovery. Moreover, it is evident from the record that recovery of the knife was from a park. At this time, even the police could have made efforts afresh to pursue the persons. However, the evidence on record does not suggest so. The approach of the police in this regard does not seem to be correct, in the light of the fact that the crime committed was of serious nature. The knife was recovered from an open and accessible public place and there is no corroboration from any corner about the recovery or the arrest of the respondent and the deposition from the side of prosecution does not inspire any confidence about such recovery of the knife, in the absence of any corroboration from any corner. Even otherwise, even if such recovery is admitted, it is a weak kind of evidence.

23. In the light of the above discussion, we hold that the prosecution has failed to prove its case beyond any shadow of doubt against the respondent and we are in agreement with the conclusion arrived at by the learned Trial Court, consequently the leave to appeal is held to be devoid of any merit.

24. Accordingly, we find no ground to interfere in the judgment of the Trial Court. The personal bonds and the sureties under Section 437-A Cr.P.C. are discharged.

25. The leave to appeal is dismissed.

(CHANDER SHEKHAR)
JUDGE

(G. S. SISTANI)
JUDGE

12th September, 2017/b