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

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Reserved on : 27th February, 2017

Date of decision : 9th March, 2017

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CRL.L.P.No.72/2017

STATE (GOVT. OF NCT OF DELHI)Petitioner
Through : Mr. Varun Goswami, APP
for State with Insp. Satya Bir
Singh, P.S. Binda Pur.

versus

SHAMMI GUPTARespondent
Through : None.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

GITA MITTAL, J.

1. This petition has been filed by the State under Section 378(1) of the Cr.P.C. praying for leave to assail the judgment dated 26th August, 2016 passed by the Id. Additional Sessions Judge-03, Dwarka District Courts, Delhi in SC No.88/14 arising out of FIR No.750/14 P.S. Binda Pur under Sections 307/34 IPC whereby the Id. Trial Judge has acquitted the respondent of the charges leveled against him.

2. The record of the Trial Court has been received.

3. It appears that telephonic information was received at 10:45 pm on the 31st of July 2014 by P.S. Binda Pur from the police control room that near the Night Foundation School before the DDA Flats, Binda Pur Pir Baba, one man had been stabbed with a knife who was lying injured on the road. This information was logged as DD No.60A dated 31st of July 2014 (Ex.PW10/A) by Lady Constable Alka and information thereof was given to S.I. Mukesh Kumar (PW-10) for further action. On receipt of the information, S.I. Mukesh Kumar (PW-10) along with Constable Ajay reached Maruti Nandan Tent House, Vishu Vihar, Binda Pur, New Delhi where they learnt that the injured had already been shifted to the hospital by the PCR van. No eye-witness could be found at the spot.

4. In the meantime, at 11:50 pm, telephonic information was received by P.S. Binda Pur from Constable Pramod at the Deen Dayal Upadhyaya Hospital that Satender Singh s/o Ganja Singh r/o Pratap Garden aged about 27 years was injured in a fight ("*jhagra*") and has been brought to the hospital by ASI Ashok from Pratap Garden, Anand Tent House and got admitted in the DDU Hospital vide MLC No.7717/14. A request was made for sending an investigating officer to the hospital. This information was logged as DD No.84A at P.S. Binda Pur and was also conveyed to S.I. Mukesh Kumar (PW-10) for appropriate action. As a result, S.I., Mukesh Kumar (PW-10), accompanied by Constable Ajay, proceeded to the DDU Hospital wherefrom they

collected the MLC No.7717/14 (Ex.PW3/A). As per the MLC No.7717/14, the victim Satender was conscious but irritable. So far as the history given by the patient is concerned, the doctor had noted “A/H/O physical assault i.e. sharp object as told by himself”.

5. It is pertinent to note that the victim Satender Singh who has appeared in witness box as PW-2, did not disclose either the name of the assailants or the weapon with which he was attacked at the first part when conveying the history of the assault to Dr. Manjeet Kumar, Senior Doctor who recorded MLC No.7717/14 (Ex.PW3/A).

6. The MLC notes the following injury on the victim :

“CLW 2 cm x 1cm c omentum exposure on L side at sinu on umbilical line medial 2/3rd and lateral 1/3rd”.

The doctor has opined that a sharp weapon had been used to inflict injury and had endorsed the possibility of it being a stab injury.

7. The patient was referred to the surgery department for treatment. Our attention is drawn to the endorsement by Dr. Devendra Prajapati, Senior Resident in the Department of Surgery (PW-4) wherein he has given the opinion that “*danger to life from surgery side*”. Consequently, it appears that no surgery was performed on the injured.

8. In the meantime, S.I. Mukesh Kumar (PW-10) collected copy of the MLC No.7714/14 from the hospital.

9. It appears that in the hospital itself, S.I. Mukesh Kumar (PW-10) met Ravinder Singh (PW-1), brother of the deceased and recorded his statement (Ex.PW1/A). On this statement, S.I. Mukesh Kumar (PW-10) made his endorsement (Ex.PW10/C) and prepared the *rukka* and handed over to Constable Ajay for registration of the case. In the statement (Ex.PW10/A), Ravinder Singh @ Banti stated that on 31st of July 2004 at about 10:30 pm, he had gone to Maruti Nandan Tent House, Vivek Vihar, Binda Pur to call his brother Satender Singh @ Ganja. When he reached there, he saw that Shammi Gupta (owner of Maruti Nandan Tent House) and his brother Anshu, both of whom were previously known to Ravinder Singh, were quareling and fighting with his brother Satender Singh. When Ravinder Singh tried to intervene, Shammi stated to his brother Anshu that “*roz roz paise maang kar tang karta hai, aaj tera pura hisaab chukta kar dete hain*” and Shammi instigated his brother to kill Satender Singh. It is further stated in Ex.PW1/A that, in the meantime, taking the benefit of the darkness, Shammi caught hold of his brother and Anshu attacked his brother in his abdomen with some sharp object which was looking like a knife and thereafter, they both fled away from the spot. Ravinder Singh (PW-1) further stated in his statement (Ex.PW1/A) that Satender told him that Anshu had stabbed some knife like thing in his abdomen and asked him to immediately call their mother from home. Leaving his brother at the spot, Ravinder Singh came home and took his mother to the spot where his brother Satender Singh was lying by the wall of a vacant plot; that in the

meantime, police control room van came to the spot and he along with his mother took Satender to the DDU Hospital in this PCR van.

10. On this basis of this *tehrir*, computerized FIR No.750/14 (Ex.PW6/A) was registered by Head Constable Ombir (PW-6) through Constable Jai Kanwar. Head Constable Ombir (PW-6) obtained the necessary certificate under Section 65B of the Evidence Act for obtaining computer print out (Ex.PW6/B) of the copy of the FIR. Constable Ombir made an endorsement (Ex.PW6/C) on the *rukka* and handed over the FIR as well as *rukka* back to Constable Ajay for handing over to S.I. Mukesh Kumar.

11. It appears that message was also sent on 31st July, 2014 to the Crime Team (South-West District), and S.I. Rakesh Kumar, Incharge of Crime Team (South-West District) (PW-7) was deputed. He proceeded to the spot along with Constable Suraj Bhan (PW-9), a photographer where they met Inspector Mukesh Kumar (PW-10). On the instructions of S.I. Rakesh Kumar, Constable Suraj Bhan (PW-9) took the photographs of the spot in front of Maruti Nandan Tent House. Thereafter, they proceeded a little ahead of spot i.e. near the boundary of the wall of open plot where they found blood stains on the stones and also noticed one pair of red slippers lying there. Constable Suraj Bhan (PW-9) had taken the photographs of the spot. The crime report (Ex.PW7/A) was prepared and handed over to the investigating officer. The negatives of the photographs were proved as Ex.PW9/A while five

photographs taken by the crime team at the spot were proved as Ex.PW9/B1 to Ex.PW9/B5.

12. At the spot, Constable Ajay (PW-8) had handed over the copy of the FIR and the original *rukka* to S.I. Mukesh Kumar (PW-10). During investigation, S.I. Mukesh Kumar (PW-10) also seized the red and black colour slippers (Ex.P-1); broken pieces of the glass bottle of Bonnie Special Whiskey (Ex.P-2); some stones and pebbles (Ex.P-3) and the earth control of the spot where the injured had fallen in injured condition (Ex.P-4). These were kept in plastic jar and sealed with the seal of “MK”. The seizures were effected vide seizure memo Ex.PW1/C. The case property was deposited in the *malkhana* in the police station.

13. It is in evidence that the accused Shammi was arrested in the presence of the complainant Ravinder Singh (PW-1) from his house No.RZ-19, Vishu Vihar, Binda Pur Village, Uttam Nagar, Delhi who was medically examined at the DDU Hospital. No weapon of offence could be located.

14. After completion of the investigation, the prosecution filed the challan under Section 173 of the Cr.P.C. in court. The prosecution examined 10 witnesses in support of its case. The incriminating circumstances were put to the respondent and he was given an opportunity to explain the same under Section 313 of the Cr.P.C. The respondent denied all the circumstances and claimed that he had been falsely implicated. The respondent also examined

one witness Shri Ajay Kumar (DW-1) as a defence witness in support of his defence.

15. After considering the matter, by the judgment dated 26th of August 2016, the trial court found that the prosecution had failed to prove the case against the respondent beyond reasonable doubt and acquitted the respondent.

16. We have heard Mr. Varun Goswami, Id. APP for the State at length on this leave petition. Mr. Varun Goswami, Id. APP has also carefully taken us through the record of the Trial Court as well as the impugned judgment.

17. We find that the trial court has carefully scrutinized the evidence before returning its findings. It stands noted that in the *rukka* (Ex.PW1/A), Ravinder Singh (PW-1) has claimed that he was physically present at the spot and was an eye-witness to the commission of the offence. He has given a graphic depiction of the manner in which his brother came to be stabbed. It has been claimed by Ravinder Singh (PW-1) that the respondent had caught hold of his brother Satender Singh while Anshu had stabbed him with a knife like object. Contradictorily, in his testimony as PW-1, Ravinder Singh has stated that the respondent Shammi Gupta and one Shantu had stabbed his brother on his stomach. Thus, he attributes the stabbing also to the respondent without saying as to who had caught hold of his brother.

18. Another contradiction which has rightly been treated by the Id. trial judge as a contradiction in material particulars is to the effect that in the *rukka* (Ex.PW1/A), Ravinder Singh (PW-1) has cited one Anshu as the co-accused. PW-1 has further stated that Anshu was the elder brother of the respondent Shammi Gupta. PW-1 has categorically stated that both these assailants were previously known to him. In his supplementary statement, he changes his version and states that he misheard the name pronounced by his injured brother as Anshu and so stated in his complaint but his brother had actually named, one Shantu. Thus, in the supplementary statement, Ravinder Singh (PW-1) has claimed that he learnt of the incident and the names of the assailants from his brother. This statement casts substantial doubt on the very presence of Ravinder Singh (PW-1) at the spot and suggests an effort to falsely implicate the respondent. These contradictions certainly render the allegations in the complaint as well as the oral testimony of Ravinder Singh (PW-1) as unreliable.

19. The Id. Trial Judge has also disbelieved Ravinder Singh (PW-1) in view of his conduct. It has been held as completely unnatural that a brother would leave his elder brother who had been stabbed in his presence and go home to inform the mother about the incident. The first and foremost thing which a brother would do is to provide help and assistance to the injured sibling and to remove him to the hospital. Additionally, though the police had claimed that there was blood at the spot, however, there was no

evidence of any blood on the clothes of Ravinder Singh (PW-1). If Ravinder Singh (PW-1) had been present then certainly it can be reasonably expected that he would have offered help to his injured brother and his clothes would have got blood stained.

20. In fact, Satender Singh (PW-2) has stated while under cross-examination that his brother Ravinder Singh (PW-1) came to the spot 5-10 minutes after the incident when he was sitting on the vacant plot having removed himself from the place of the incident. Therefore, certainly Ravinder Singh (PW-1) is not an eye-witness to the occurrence. In fact, these circumstances also render the testimony of Ravinder Singh (PW-1) as doubtful and certainly unreliable.

21. In his statement (Ex.PW1/A), Ravinder Singh (PW-1) has stated that at the time of the incident, he had gone to call his injured brother Satender Singh, who was working in the shop of Shammi Gupta. However, this testimony is not supported by the evidence of the injured Satender Singh who is examined as PW-2 by the prosecution.

22. It is noted in the impugned judgment that the only material witness examined by the prosecution was Satender Singh (PW-2) being the injured witness. This witness has stated in his evidence that he had consumed alcohol and he was in a drunken state. He claimed that on the 31st July, 2014 at 10:30 pm, he was enroute to his house in Binda Pur and when he reached the front of Maruti Nandan Tent House, he found Shammi Gupta (owner of Maruti

Nandan Tent House) along with Shantu. He claims that he had some conversation with Shammi Gupta. However, the injured victim Satender Singh (PW-2) was unable to narrate the nature of the conversation as he was in a completely drunken state. According to the injured Satender Singh (PW-2), while he was moving ahead of the shop of Shammi Gupta, Shantu had caught hold on him "*from the back side*". He does not explain as to how he could see Shammi Gupta stabbing him when he was so placed.

23. The Id. trial judge has also noted that there is there is material contradiction in so far as the reasons for the fight are concerned. In his statement Ex.PW1/A, Ravinder Singh (PW-1) has alleged that Shammi Gupta was upset with his brother Satender Singh (PW-2) as he used to demand his money every day. As against this, as per victim Satender Singh (PW-2), he did not demand any amount from the respondent on account of dues of work done. Satender Singh (PW-2) further states that the respondent and his father, both had separate shops at a distance of 20-30 meters. He states that while returning from Mohan Garden, he had first reached the shop of respondent's father where the respondent was present and started alleging that Satender Singh (PW-2) used to provide drink to respondent's father and on this issue started quarreling with him. On the intervention of the respondent's father, his brother and some other persons, they were separated. Thereafter, PW-2 had moved to his house. However, when he had reached a short distance beyond his shop, the

respondent came along with his associate Shantu who got caught hold of his neck from back side and then the respondent hit the quarter liquor bottle on his forehead. Satender Singh (PW-2) has categorically stated that he was unable to see anything and that at that time, the respondent put “*some article in his stomach*”.

24. In his statement under Section 161 of the Cr.P.C. which was recorded by the investigating officer on 5th August, 2014 Satender Singh (PW-2) had stated that on the 31st of July 2014 at about 10:30 pm, he had demanded his money from Shammi Gupta who had started abusing him. It is alleged that Shammi Gupta was also under the influence of liquor. One Shantu was also allegedly present when Shammi Gupta was abusing him for demanding the money. Satender Singh (PW-2) stated that he objected to the said behavior on which Shantu caught hold of him and Shammi Gupta started beating him. It was alleged that Shammi Gupta had exhorted that they would eliminate him today as he was demanding money every day. In the statement under Section 161 of the Cr.P.C., as per Satender Singh (PW-2), after so stating, the respondent Shammi Gupta immediately ran towards his shop and brought one sharp object and stabbed him in his abdomen.

In his cross-examination on 20th November, 2014, Satender Singh (PW-2) denied that he had demanded any amount from the respondent on account of dues of work done. The statement of the witness under Section 161 of the Cr.P.C. is in material contradiction with his oral testimony.

25. The Id. trial judge has discussed at length the three versions of the incident. The only witness in support of the prosecution case is the injured Satender Singh (PW-2). The Id. trial judge has found it unsafe to rely on his statement as it is inconsistent and self-contradictory. Nothing has been placed before us which would enable us to take a view in the contrary.

26. Additionally, Satender Singh (PW-2) has stated that he was in a completely drunken condition and is unable to even recollect what was the nature of the conversation with the respondent.

27. The police has not recovered any broken liquor bottle by which the injury could have been inflicted on Satender Singh (PW-2) at the spot, as claimed. No blood stains have been found at the place of the incident which was in the front of the shop of the respondent. The blood stains had been found only from the open place which admittedly, was at a distance from the place of incident. The Id. Trial Judge has examined these circumstances as well as the fact that the respondent in this case was arrested from his own house just after the incident and had made no attempt to flee from justice after commission of a serious offence.

28. The respondent led defence evidence of Shri Ajay Kumar (DW-1) who testified that he had witnessed Satender Singh (PW-2) and two or three other persons, other than the accused, fighting in a drunken condition with each other and in such scuffle, Satender Singh (PW-2) had fallen down on garbage. The Id. Trial Judge has noted the testimony of Dr. Devendra Prajapati, Senior Resident in

the Department of Surgery as PW-4 who had conducted the medical examination of the injured when he was taken to the hospital. It has been testified by Dr. Prajapati that the injuries sustained by Satender Singh (PW-2) were possible if he had fallen on the broken bottle on the ground.

29. There is no scientific evidence at all in the case. The recovered exhibits were not subjected to any forensic examination.

30. No effort has also been made by the prosecution to ascertain as to whether the blood stains on the articles recovered from the spot matched the blood samples of the injured victim.

31. The finding of the Id. Trial Judge that the evidence led by the prosecution was suspect and unreliable to base the judgment of conviction of the respondent Shammi Gupta is correct and cannot be assailed on any legally tenable grounds.

32. This leave petition is completely denied of any legal merit and is hereby dismissed.

GITA MITTAL, J

ANU MALHOTRA, J

MARCH 09, 2017

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