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

+ CRL.L.P. 133/2017

Date of Hearing and Order : October 26th, 2017

STATE

..... Petitioner

Through: Ms.Nandita Rao, ASC (Crl.) for the
State with Inspector Vipin Kumar, PS
Sultan Puri.

versus

RAVI SOLANKI

..... Respondent

Through: Mr.J.K. Sharma and Mr.N.K. Talwar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

26.10.2017

P.S.TEJI, J. (ORAL)

1. The present petition has been filed under Section 378(I) of the Code of Criminal Procedure by the State against the judgment and order of acquittal dated 30.09.2016 passed by the learned Special Judge (NDPS)/Additional Sessions Judge, North West, Rohini Court, Delhi. Notice of the petition was issued to the respondent.

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2. The facts before the trial court are that one Ashok Kumar Rathi and respondent Ravi Solanki were charge sheeted under Sections 307/34 IPC, in FIR No.870/2006, Police Station Sultan Puri. It was alleged against the accused persons that on 04.06.2006 at about 09.30 p.m. at the empty plot of Kaptan Singh, accused Ravi Solanki was armed with country made pistol and caused injuries on the person of Amit Rana by firing a bullet. It was alleged that by firing at Amit Rana, accused made an attempt to commit his murder. It was alleged that co-accused Ashok Kumar Rathi was having common intention in causing injuries on the person of Amit Rana.

3. A charge under Section 307/34 IPC was framed against both the accused persons. A charge for the offence under Sections 27(2) and 25 of the Arms Act was also framed against accused Ravi Solanki. Accused persons pleaded not guilty to the charges framed, and claimed trial.

4. To prove its case, the prosecution examined 16 witnesses i.e. PW1 Dr.Pradeep Dua, PW2 Amit Rana, PW3 Padeep @ Bhola, PW4 Complainant.Hari Kumar, PW5 SI Nar Singh, PW6 Mr.V. Shankarnarayanan, PW7 SI K.S. Dogra, PW8 Dr.B.P. Singh, PW9 HC Kali Charan, PW10 ASI Devender Joshi, PW11 Ct.Ravi Kumar, PW12 HC Ganga Saran, PW13 SI Satpal Singh, PW14 Mr.Dharmender Kumar, PW15 Dr.M.L. Bansal and PW16 SI Rajiv Ranjan.

5. The trial court vide impugned judgment dated 30.09.2016 acquitted both the accused persons of the charges framed. Aggrieved by the judgment passed by the trial court, the present petition for the grant of leave has been filed by the State on the ground that the impugned judgment has resulted in grave miscarriage of justice. Ld. ASC Ms.Nandita Rao has submitted that PW2 Amit Rana has supported the case of the prosecution and his statement has not been correctly appreciated by the trial court. Further ground taken is that a pistol, one empty cartridge case, and two live cartridges were recovered at the instance of respondent Ravi Solanki.

6. Arguments advanced by the learned Additional Standing Counsel for the State as well as learned counsel for the respondent have been heard.

7. Perusal of evidence led by the State shows that the incident had taken place on 04.06.2006, and despite the injured being available, his statement was not recorded on that day, or soon thereafter, and his statement was recorded only on 06.06.2006. The injured witness Amit Rana (PW2) did not support the case of prosecution and has categorically stated that the accused Ravi Solanki had not fired at him, with intention while sharing such common intention with Ashok Rathi, to kill him due to business rivalry. He also stated that accused Ravi Solanki fired from the pistol towards his front side i.e. towards the DJ. During examination of this witness in the Court, he turned hostile from his statement recorded under Section 161 Cr.P.C. in so

far as the intention and motive attributed to the accused is concerned, and did not support the version of the prosecution.

8. Similarly, other argument advanced by the learned Additional Standing Counsel for the State is that the pistol and cartridges were recovered at the instance of the accused in the presence of PW5-SI Nar Singh. From a careful reading of the testimony of PW5 SI Nar Singh, it emerges that the prosecution has failed to establish, beyond reasonable doubt, the alleged recovery of pistol and cartridges. PW5 SI Nar Singh has stated that he did not identify the writing on the documents which were allegedly prepared at the time of recovery. Moreover, as per the medical report Ex.PW1/A of the injured Amit Rana, there was one entry wound but there was no exit wound of the alleged fired bullet. This aspect remained unexamined and the pistol and cartridges allegedly recovered at the instance of the accused were not connected with the alleged fired bullet. The trial court did not find any confidence in the statement of injured witness, as well as in the recovery of fire arm and ammunition and the same have been disbelieved by the trial court, on account of glaring discrepancies and contradictions in the statements of various witnesses. Pertinently, the incident took place in a marriage party, with scores of people present, but no eye witness was examined. We are also of the considered opinion that the testimony of witnesses, particularly eye witnesses PW2-Amit Rana, PW3-Pradeep @ Bholu and Investigating Officer PW16-SI Rajiv Ranjan does not inspire confidence in this Court and the recovery allegedly of arms and ammunition made at the instance

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of accused are full of doubts and the same have not been convincingly established on record. Evidence available on the file cannot culminate into conviction of the accused.

9. In view of the above discussion, we do not find any ground for the grant of leave to file the appeal for the reasons that there is no illegality or infirmity in the impugned judgment of acquittal passed by the trial court. The present petition is accordingly dismissed.


P.S. TEJI, J

VIPIN SANGHI, J

OCTOBER 26, 2017
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