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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 494/2015

STATE NCT OF DELHI

..... Petitioner

Through: Ms Kusum Dhalla, APP for State with
Inspector V.K. Sharma with SI Omveer Singh PS
Nandnagri

versus

SACHIN AGGARWAL @ MINTU & ORS.

..... Respondents

Through: None

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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12.12.2017

1.This is a petition by the State seeking criminal leave to appeal against the judgment dated 11th February, 2015 passed by the learned Additional Sessions Judge ('ASJ'), Shahdara District, Karkardooma Courts, Delhi in Sessions Case No.07/14 arising from an FIR No.117/10 registered under Section 302/34 IPC at Police Station ('PS') Nand Nagri. By the impugned judgment, the Respondents/Accused i.e. A-1 to A-5 have been acquitted of the aforementioned offences.

2. The case of the prosecution was that at around 11.55 pm on 13th June, 2010, information was received in P.S Nand Nagri under DD No.39-A that one motorcyclist was lying in a serious condition on the road leading to

GTB Hospital from Durga Puri. Inspector Randhir Singh reached the spot i.e. Nathu Colony, Railway Crossing, Nand Nagri. There he found that SI Mohan Partap and SI Sanjay Kumar were already present. There was a large amount of blood lying near the railway track towards the side of Nand Nagri. On inquiry, Inspector Randhir Singh was informed that the injured had been taken to GTB Hospital by some unknown public persons. A motorcycle which was purportedly being driven by the deceased was found at the spot. However, Inspector Randhir Singh did not find any eye witness there.

3. Thereafter, Inspector Randhir Singh along with SI Sanjay Kumar reached GTB Hospital. There they were informed that the deceased had in fact been brought dead. They obtained the MLC. On inspecting the dead body Inspector Randhir Singh found stab wounds below the neck and chest of the deceased. Significantly, even at the hospital, he did not find any eye witness.

4. The case of the prosecution was built up on two eye-witnesses. One was Mukesh @ Makki (PW-1), who stated that along with his friend Kavi he had taken the deceased to the GTB Hospital. This witness was discussed at length by the trial Court. It appears that PW-1 was first examined by the police on 14th June, 2010 and at that stage he had disclosed only the name of the accused Sachin. Only when he was examined again on 19th June, 2010, he named the other four accused persons. PW-1 also disclosed that including himself around 10/12 persons along with the accused Sanjeev were detained at the P.S from 14th to 19th June 2010. PW-1 also stated that he saw the accused Sanjeev on 14th and 16th June, 2010 in the P.S.

5. The trial Court found that there were inherent contradictions in the version of PW-1. He claimed to have seen Sanjeev, Pramod, Shakeel and Sekhar (A-2 to A-5) catch hold of the deceased and Sachin (A-1) take out a knife and cut the throat of the deceased and thereafter stab him in his stomach. He claimed that he raised an alarm due to which all the accused ran away from the spot. In the meanwhile his friend Kavi reached there and they both took the victim to GTB Hospital. Thereafter both of them went to the house of Pappu (deceased) to inform his wife (PW-2 - Komal) where they met the father of Pappu (PW-6), who told them that PW-2 had already gone to GTB hospital. Thereafter, both of them i.e. PW1 and Kavi (who, incidentally, was not examined) left again for the hospital. According to PW-1, police met him at the hospital and recorded his statement.

6. However, when he was cross-examined, PW-1 deposed that the wife and father of the deceased came to the hospital in his presence. This contradicted his earlier statement that he had gone to their house after talking the deceased to the hospital. Strangely, neither PW-2 nor PW-6 mentioned anything about meeting PW-1 at their house. The trial Court in its analysis rightly questioned that if indeed PW-1 had gone to inform PW-2 and PW-6 at their house, how could he have not told them the names of the assailants. As it turned out, neither PW-2 nor PW-6 was told of the names of the assailants by PW-1.

7. In the later part of his cross-examination, PW-1 stated that he did not go to the house of the deceased. The trial Court rightly concluded that while the

presence of PW-1 at the hospital at 12.05 am could not be doubted – since the MLC of the deceased showed his presence - his presence at the spot when the incident took place was doubtful. The fact that he was one of the suspects and detained in the P.S and that his statements were recorded subsequently on 14th and 19th June, 2010 and the fact that he did not straightway go to the police to inform them of the incident. also added to these doubts.

8. Turning to PW-3, he is supposed to have been working at the railway gate near the Nathu Colony Railway crossing for more than 30 years. According to him, the deceased was coming from the west side of the railway crossing and going towards the east side on a motorcycle. The five accused were coming from east side and going towards the west side. He supposedly noticed someone from the five accused persons calling for the deceased to stop. He noticed the accused persons talking to the deceased when he went inside the cabin to make an entry of a passing train. At that time, he heard someone shout '*chaaku mar diya*' and came out of the cabin. He noticed the deceased lying near the railway track. The motorcycle was also lying there. None of the accused were present. According to him, he immediately informed the Station Master who in turn informed the PCR and after about 5 minutes many public persons had gathered there.

9. PW-3 turned hostile. In his cross-examination by Addl. PP, he stated that the police did not make any inquiries from him at the time of the incident but only the next day at 2 pm at PS Nand Nagri. In his cross-examination, he further stated that the police took his signatures on the site plan after 3 days

of the incident. The trial Court noticed that PW-3 kept prevaricating as regards the inquiries made by the police from him. If indeed he had seen all the accused persons with the deceased just prior to the incident, then without waiting for a formal call from the police to join the investigation he himself would have informed the police who came to the spot of all the facts. From his own testimony, he apparently knew all the accused persons living in the same area. Therefore, his identification of the accused persons in Court was not of much significance.

10. Having heard Ms. Kusum Dhalla, learned APP for the State and having perused the impugned judgment of the trial Court and the documents on record, this Court is unable to come to a different conclusion as far as the two eye witnesses i.e. PW-1 and PW-3 are concerned. Since their evidence was the bedrock of the case of the prosecution and it turned out to be unreliable, the case had to inevitably end in the acquittal of the accused.

11. No grounds have been made out to reverse the impugned judgment of the trial Court. The petition is accordingly dismissed but, in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

DECEMBER 12, 2017

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