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

+ **CRL.L.P. 332/2017**

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Avi Singh, Additional Standing
Counsel and Ms. Megha Bahl,
Advocate along with SI Karamvir,
P.S. Narela.

versus

WASEEM & ANR

..... Respondents

Through: Mr. B.S. Chowdhary and Ms. Rekha
H.M., Advocates.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER

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16.11.2017

Crl.M.A.No.9031/2017 (delay)

1. For the reasons explained in the application, delay is condoned. The application is disposed of.

Crl.L.P.No.332/2017

2. This is a petition by the State seeking leave to appeal against the judgment dated 7th November 2016 passed by the learned Additional Sessions Judge-04 (North), Rohini Courts, Delhi ('ASJ') in Sessions Case No.58145/16 acquitting the Respondents Wasim (A-1), s/o Sherdin, and Wasim (A-2), s/o Rashid, of the offence punishable under Section 302/34 of the Indian

Penal Code ('IPC') and Section 25/27 of the Arms Act.

3. Both the Respondents were charged with the offence of committing the murder of one Riyasuddin (deceased) by using a firearm at around 10.30 pm on 27th September 2012 inside Keshav Bhawan near Kasturi Rai College, Narela, Delhi. Information of a person having been killed by the firing of a bullet was received by the police and recorded as DD No.57-A. It was entrusted to SI Deepak Sangwan (PW-4) for action. PW-4 reached the spot with Constable Sandeep (PW-8) where a beat Constable Yogesh (PW-18) was already present. On inquiry it was revealed that the deceased had been removed to SRHC Hospital by a CATS ambulance. PW-4 along with PW-8 rushed to SRHC hospital and collected the MLC of Riyasuddin who had been declared brought dead there. Thereafter, they returned to the spot.

4. There, according to the prosecution, PWs 4 and 8 met Sanjay (PW-1) a security guard, who is supposed to have disclosed that he noticed both the accused and the deceased come to Keshav Bhawan. He claimed to have seen them arguing. After some time, he heard a bullet being fired and then saw that Riyasuddin was lying on the ground. PW-1 is further supposed to have stated that when he went near the deceased, both the accused threatened him to not disclose it to anyone failing which they would also kill him. They then fled the spot. PW-1 stated that he then raised an alarm, which brought public persons one among whom called the PCR.

5. PW-1, who was put forth as the prosecution's star witness, turned hostile during his examination in the trial Court. He now stated that he was actually

on the roof of the four-storied Keshav Bhawan checking a water tank at the relevant time and that when he thereafter came down to the ground floor he noticed the dead body of Riyasuddin in a pool of blood. In his cross-examination by the Additional Public Prosecutor (APP) PW-1 stated that he had been kept in custody by the police for about three days and compelled to sign papers in order to name the accused.

6. Mr. Avi Singh, learned Additional Standing Counsel (ASC), urged that the FIR in this case was registered in the early hours of 28th September 2012, at around 1.40 am, i.e., within about 4 hours of the incident and that this was entirely based on the statement given by PW-1 to the police. The learned ASC contended that the said FIR could not therefore could not have been a fabricated one. This still begs the question whether the statement attributed to PW-1 was in fact made by him? It was not as if PW-1 gave a statement in writing. It was written by a policeman and his signatures were obtained thereon. In his cross-examination while PW-1 does not dispute his signature he maintains that the statement was not read over to him before his signature was obtained. As far as the FIR is concerned, even the learned ASC could not dispute that the date and time on the FIR is typed and not computer generated. The concerned police officer ASI Naresh Kumar (PW-3) states that he dictated the contents of the FIR to a woman Constable who then typed it.

7. The fact, therefore, remains that PW-1 did not support the case of the prosecution when he deposed in Court. In his cross-examination he is categorical that he did not name either of the accused and did not tell the

police that he saw them at the spot.

8. That left the prosecution depending heavily on the evidence of 'last seen' of the deceased. For this purpose, reliance was placed on the evidence of Shehnaz (PW-11), wife of the deceased and Shahid (PW-7) his son who was about 26 years at the time of the incident.

9. In his examination-in-chief, PW-7 stated that previous to the date of the incident, both the accused had threatened the deceased that if he did not sell to them a plot belonging to him measuring 40 sq. yds in, in village Kureni, the deceased would face 'dire consequences'. PW-7 claimed that at about 8 pm on 27th September 2012, both the accused visited their house and took the deceased away on the pretext of settling the accounts. PW-7 stated that both the accused owed his father Rs.4500/-. When his father did not return till 9.15 pm, PW-11 sent PW-7 to look for this father. PW-7 claimed to have gone to Keshav Bhawan where he noticed that both the accused were giving liquor to his father. He claimed that both the accused persons asked PW-7 to return stating that they would send his father after settling the accounts. PW-7 then claimed that when his father did not return, he along with his friends again went to Keshav Bhawan, but on the way at about 10.30 pm he received an information from someone that his father had been shot at. On reaching Keshav Bhawan, PW-7 found his father lying in a pool of blood. He claimed that PW-1 was also present there; an ambulance reached there and his father was removed first to the SRHC hospital and thereafter to the BJRM hospital.

10. The statement of PW-7 was not recorded by the police on 27th

September, 2012 itself. It was recorded only on 29th September, 2012. As noted by the trial Court, despite his father being in a pool of blood, PW-7 did not accompany his father in the ambulance to the hospital. In his cross-examination, it transpired that PW-7 himself did not see the accused come to his house to take his father away. He now stated that his mother informed him of that fact. When he was asked about his reaching Keshav Bhawan, he stated when he reached there, there were several public persons already present there. As far as the evidence of 'last seen' is concerned, PW-7 was not a reliable witness, as correctly noted by the trial Court.

11. As far as Shehnaz (PW-11) is concerned, she disclosed that Keshav Bhawan is at a walking distance of 5 minutes from her house. She stated that she had sent her son Shahid (PW-7) to look for the deceased when the latter did not return till 9 pm. PW-11 further stated that PW-7 also did not return up to 10/10.15 pm. She admitted that the deceased had another wife. She denied the suggestion that on the date of incident, her husband was not present in her house.

12. The cross-examination of PW-11 *inter alia* was about the deceased in fact not owning any plot and her not having any document to substantiate that. However, for the purposes of present petition what is more relevant is whether as regards the 'last seen evidence' PW-11 can be stated to be a reliable witness.

13. The trial court noted that on this important circumstance, the evidence of DW-1 Smt. Roshan Jahan, the second wife of the deceased was relevant. She was able to produce a certified copy of the marriage certificate which

showed that she had been married to the deceased on 8th February, 2011. She maintained that the deceased was staying with her on the date of incident. She stated that PW-11 was upset about the second marriage of the deceased; forced him and DW-1 to vacate the tenanted premises; and how at the time of the incident she and deceased were living in a premises near Shani Mandir, Punjabi Colony. According to her at around 6.30 pm on that day, the deceased had gone to purchase medicines for her as she was having an infection in her abdomen. She mentioned that PW-11 and PW-7 had extended threats to the deceased. She particularly mentioned that one of the accused, that is, Wasim son of Sherdin had introduced the deceased to the present landlord and helped them to get the premises on rent. In her cross-examination by the APP, DW-1 remained unshaken on some of the essential facts which rendered the 'last seen' evidence as spoken to by PW-11 and PW-7 extremely weak.

14. In a case based on circumstantial evidence if the prosecution is unable to firmly establish all the links in the chain of circumstances and show that they unerringly point to the guilt of the accused, the benefit thereof should enure to the accused. One other circumstance which the prosecution failed to prove beyond reasonable doubt was the recovery of the fire arm from an open place near a park on 2nd October, 2012. This was, therefore, rightly disbelieved by the trial Court.

15. Having examined the entire record of the trial court with the assistance of learned ASC, the Court is satisfied that the trial Court did not err in concluding that the prosecution was unable to bring home the guilt of the

accused. No grounds have been made for the grant of leave to appeal against the impugned judgment of the trial Court.

16. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 16, 2017
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