

\$~1

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

Date of Decision: 11th August, 2017

+ CRL.L.P. 410/2017

STATE

..... Petitioner

Through Ms. Radhika Kolluru, APP for the
State with SI Rakesh Rana, P. S.
Bharat Nagar

versus

MANOJ @ MISTAR & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.(ORAL)

CRI. M. A. 11680/2017

1. For the reasons stated therein delay of 12 days in filing the present leave to appeal is condoned.
2. The application stands disposed of.

Crl.L.P.410/2017

3. The present leave to appeal has been filed by the State under Section 378 of the Code of Criminal Procedure, 1973 ('Cr.PC') against the judgment dated 04.03.2017 by the Court of Additional Sessions Judge, Special Judge (NDPS), North West District, Rohini District Court, New Delhi in SC No.52408/16 titled State v. Manoj @ Mistar & Anr. under Sections 307/34, Indian Penal Code, 1860 ('IPC'), whereby both the

respondents Manoj and Rohan were acquitted of the charges framed against them.

4. The case of the prosecution, as noticed by the Trial Court, is that, on 20.08.2014, HC Virender Prasad received a call regarding quarrel at F-220, Wazir Pur, J.J. Colony vide DD No.65B. After enquiry, HC Virender Prasad came to know that a quarrel had taken place and the injured had already been removed to LNJP Hospital. He along with Ct. Arjun went to LNJP Hospital and met Pooja, wife of injured and recorded her statement in which she alleged that the respondent Manoj and Rohan, who reside in their neighbourhood started playing loud music, to which her husband, Amardeep objected. This led to a quarrel between both the respondents and Amardeep, thereafter Amardeep tried to make a call on No. 100 to call the police, which infuriated both the respondents and they started beating Amardeep along with two unknown persons. Manoj stabbed Amardeep on his chest with a knife and Rohan hit a beer bottle on the head of Amardeep. Pursuant to recording of her statement, HC Virender Prasad prepared the *rukka* and handed over the same to the Duty Officer, HC Jai Singh. On the basis of the *rukka*, HC Jai Singh registered FIR No.455/2014. Thereafter, the investigation was assigned to SI Vishal, who went to the spot and met HC Virender Prasad who handed over the MLC of injured Amardeep to him, thereafter, SI Vishal went to hospital to record the statement of the injured, but found him not fit for the statement, thereafter, he met, Pooja, wife of injured and Amarjeet, brother of injured at the hospital. Thereafter, he accompanied Amarjeet to the spot and at his instance, SI Vishal prepared the site plan of the place of occurrence of the incident, thereafter, ASI Rajbir,

incharge of crime team along with Ct. Sandeep and Ct. Anil reached the spot, where they found blood and broken pieces of glass. Photographs of the place of incident were taken and ASI Rajbir handed over the detailed report to SI Vishal. Thereafter, SI Vishal seized the broken pieces of the beer bottle in a piece of white cloth. SI Vishal along with Ct. Magan Lal went to the bus stand Route No.115, JJ Colony Wazirpur for the search of respondent Manoj @ Mistar who was apprehended on the identification of Amarjeet, bother of the injured. Respondent Manoj @ Mistar was arrested and his clothes were seized after further investigation, SI Vishal apprehended respondent Rohan and produced him before the Juvenile Justice Board.

5. On completion of the investigation, charge sheet under Section 307/34IPC was filed. On committal, vide order dated 28.10.2014 charges under Sections 307/34 IPC were framed against the respondents, to which they pleaded not guilty and claimed trial. To bring home the guilt of the respondents, the prosecution examined 19 witnesses. The statements of the respondents were recorded under Section 313Cr.PC.

6. We have heard learned APP for the State and have carefully examined the judgement of the Trial Court.

7. In this case, on consideration of evidence and material placed on record and after considering the arguments advanced we have found that the following circumstances relied upon by the Trial Court to acquit the respondents:

- (i) Injury caused to Amardeep was simple in nature as opined by Dr.Vikrant Vijay Akulwar on the MLC report.
- (ii) There are several grave contradictions between the testimony of

Amardeep and the testimonies of his wife Pooja, his brother Amarjeet and of the Investigating Officer SI Vishal.

- (iii) There is material discrepancy regarding the place of incident as there are separate details in the documents and evidence laid down.
- (iv) The presence of Amardeep's wife and brother during the incident is suspicious as they did not raise any alarm, nor intervened, nor apprehend the culprits nor called the Police, nor they accompanied Amardeep to the hospital.
- (v) The prosecution did not examine the material witnesses namely Nirmala, Rajender and Sanjay who took Amardeep to the hospital, which would have clarified many inconsistencies in the prosecution story.

8. Learned APP for the State submits that the Trial Court has based its judgment on surmises and conjectures, hence is not sustainable in law. Learned APP also submitted that there may be some minor unaffected observations but there are no material contradictions/improvements in the testimonies of wife PW-19 Pooja, brother of the injured PW-12 Amarjeet and PW-16 Amardeep in the present case. These witnesses have fully supported the case and there is nothing which would discard the testimony of the aforesaid PWs. The learned APP also stated that it hardly affects the case of the prosecution if the persons, namely, Nirmal, Rajender and Sanjay (sister, brother-in-law and nephew respectively) of the injured Amardeep, who removed him to the hospital were not examined by the IO and were not cited as witnesses. The learned APP also submitted that there are no material

discrepancies regarding the place of incident. The learned APP has also submitted that the Trial Court has failed to well appreciate that the injured sustained injuries on the vital part of his body i.e. stab wound on his chest and right shoulder and blow with a beer bottle on his head and the ocular evidence is corroborated by the MLC of the injured Amardeep; that the Trial Court has failed to appreciate that during investigation the pieces of broken bottle were seized from the spot. The clothes of injured Amardeep and clothes of respondent Manoj @ Mister were also seized and sent to FSL, Rohini, Delhi and exhibited in the statement of FSL Expert examined as PW-9 and that the Trial Court has failed to appreciate that though the investigation of this case was not commendable and the statement of the injured Amardeep was not recorded by any of the I.O. u/s 161 Cr. P.C., the injured Amardeep had testified before the Court as PW-16 and deposed in consistence with other PWs namely complainant PW-19 Pooja and eye witness PW-12 Amarjeet. He further deposed that his wife and brother were present at the spot at that time. Under these circumstances the respondents do not deserve benefit of doubt in such a heinous crime of attempt to murder with common intention.

9. Now reverting back to the documents and the evidence on record. We do not find any force in the submission of learned APP that there are no material contradictions/improvements in the testimonies of the witnesses and the prosecution has proved its case beyond reasonable doubt. PW-16 has deposed that the respondents were playing loud music and he went outside their house to request them to decrease the volume of the music system, due to which the incident occurred. However, neither the details of the music

system have been furnished nor any music system nor speakers have been seized from the house of the respondent nor produced in the Court. He has further deposed that “I was made to sit on a bike and firstly taken to PS Bharat Nagar and from there I was taken to Sundar Lal Jain Hospital by PCR. I was not admitted in Sundar Lal Jain Hospital since my condition was very serious. I was then taken by my relatives to Trauma Centre, near Kashmere Gate. I was also not admitted there due to non-availability of required equipment. I was referred to LNJP Hospital. I got unconscious on the way and I regained my consciousness at late night in KNJP Hospital during my ultrasound.” The witness has deposed that he became unconscious on way to LNJP hospital and regained consciousness late in the night during ultrasound but his MLC (Ex.PW 8/A) reveals that he was conscious and oriented when brought there and examined at 11.14 pm. It was further deposed that “Accused Manoj @ Mistar exhorted accused Rohan to attack me” and also said “Aaj Isko Maar Ke Chhodenge.” While no such depositions have been made by PW-19 Pooja and PW-12 Amarjeet who are claimed to be eye witnesses of the incident.

10. It is also stated that, although the glass of broken beer bottles were seized during investigation, however the FSL reports (Ex. PW9/A and Ex. PW9/B) demonstrate that human blood was found on them but there was no reaction on the exhibits nor the blood group was ascertained. The fingerprints were not lifted from the spot nor the fingerprints of both the accused persons were taken to ascertain whether or not the glass pieces/bottles were ever used/held by the accused persons. It is also stated that PW-19 and PW-12 were present on the spot but they did not raise any

alarm nor tried to intervene nor called the police. The investigation admittedly is faulty and the story of the prosecution seems to be unreliable and not worthy of credit. The Trial Court has also held that and we also find that the prosecution has failed to examine the material witnesses who took PW-16 to the hospital which could have helped the prosecution case against the respondent. The *mens rea* is also not established by the prosecution and there are overwhelming contradictions in the evidence which do not inspire confidence and are not worthy of credence.

11. We also agree with the observation of the Trial Court that the conduct of PW-19 and PW-12 is quite unnatural which makes the case of the prosecution doubtful. It is stated that PWs 19 and 12 were present on the spot but they did not raise any alarm or tried to intervene and/or also did not call the police. PW-19 deposed that she had not gone through her complaint and had signed on the same on the asking of the police. There is also ambiguity regarding the place of incident as PW-12 deposed that the place of incident is outside his house, whereas PW-16 and PW-19 have deposed that the place of incident is outside the house of the respondents. The clothes of PW-19 and PW-12 were blood stained when they helped PW-16 later on for going to the hospital but the blood stained clothes were never seized by the police nor sent for forensic examination nor produced before the Court. Hence, we do not find any flaw in the finding of the learned Trial Court that PW-19 and PW-12 were not present at the site when the incident had occurred. They appear to be planted witnesses, who are interested being the wife and brother respectively of the injured Amardeep. No reliance can be placed on the testimonies of PWs 19 and 12.

12. It is also evident from the record that the police failed to recover the knife, the weapon of offence and also failed to apprehend two other boys who were allegedly with the respondents – Manoj and Rohan in the commission of the offence, thereby putting into doubt the case of the prosecution. All the inconsistencies and discrepancies in the prosecution evidence have remained unexplained and the prosecution has been unable to provide any incriminating evidence as to why respondents should be held liable.

13. Let us now deal with the charge under Section 307 attempt to murder, wherein establishing the criminal intent should become the centre of the prosecution's case. Learned APP in his submission has failed to submit any grounds which would establish the fact that the respondents Manoj and Rohan had any criminal intention to murder PW-16 Amardeep. The version of prosecution has been that the respondents were playing loud music and on objection by PW-16, they committed the offence of attempting to murder him. There is no evidence to show that the respondents had a premeditated intention, motive or common intention to commit the offence.

14. There are various unexplained contradictions, inconsistencies and discrepancies in the prosecution evidence, which the prosecution has failed to explain, which factually strikes at the very root of the prosecution story and cannot be ignored. Hence, we do not find any infirmity in the judgment of the Trial Court.

15. Even otherwise, it is settled law that the appellate court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so [See *Sheo Swarup v. King-Emperor*, AIR 1934 PC 227 (2); *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 (paragraph 16 and 17); *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529 (paragraph 6); *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 (paragraph 7); *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 (paragraph 42); *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 (paragraph 73); and *Muralidhar @ Gidda v. State of Karnataka*, (2014) 5 SCC 730 (paragraph 12)].

16. 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.

17. The leave to appeal is dismissed.

CHANDER SHEKHAR, J

G.S.SISTANI, J

AUGUST 11, 2017

///b