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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: April 18, 2018.

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CRL.L.P. 96/2018

THE STATE GOVT OF NCT OF DELHI

..... Petitioner

Through: Ms. Aashaa Tiwari, Additional Public
Prosecutor for the State

versus

RAM PRAKASH @ PRAKASH

..... Respondent

Through: Mr. Dilip Singh, Mr. Amresh Yadav,
Advocates with respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S. TEJI, J. (Oral)

1. The present leave petition has been filed by the State under Section 378(1) of the Cr.P.C. seeking leave to appeal against the judgment dated 27.09.2017 delivered by the learned Additional Sessions Judge -02, North, Rohini Court, Delhi in Sessions Case No.58363/2016 (Old No.27/2014) titled as *State vs. Ram Prakash*, arising out of FIR No.617/2013 registered under Section 302 IPC at Police Station S.P. Badli, Delhi.

2. The case of the prosecution is that on the intervening night of 22nd / 23rd November 2013 at about 10.00 PM accused/respondent –

Ram Parkash assaulted the deceased Harender with Tyre Liver (Kundi) due to which Harender (deceased) succumbed to injuries. On 23.11.2013 at about 10 AM vide DD No.12A an information was received from Santom Hospital regarding an admission of one injured namely Harender (deceased). SI Jhabbu Ram alongwith Ct. Virender reached the Santom Hospital, where he found injured Harmender admitted in serious condition in the hospital and not fit for statement. Investigating Officer prepared rukka and the same was handed over to Ct. Virender for registration of the FIR under Section 308 IPC. During the course of treatment, the injured expired and the case was accordingly converted to Section 302 IPC and the matter was handed over to Inspector Raj Veer Singh.

3. On completion of investigation, a final report/charge-sheet under Section 173 Cr.P.C. was submitted in the court for trial against the accused Ram Prakash for the offence punishable under Section 302 IPC. The matter was committed for trial to the court of session. Charges were framed vide order dated 13.03.2014 for the offence under Section 302 IPC. All the incriminating material was put to the accused/respondent and he was examined under Section 313 of Cr.P.C., in which he denied the same as false, and pleaded that he is innocent and falsely implicated in the present case.

4. To prove the charges, the prosecution had examined 28 witnesses. They included Shri Kamal (PW-2), who was an eye-witness to the occurrence.

5. The respondent/accused examined Mr. Parsu Ram (DW-1), the driver on Omkara Roadways, Sanjay Gandhi Transport Nagar, in his defence. He had deposed before the court on 22.11.2013 that in between 7.00 – 8.00 PM, he met accused Ram Prakash and Harender, Kamal, Vijay Pal, Jaysurya & Gully who were taking the liquor and he alongwith accused Ram Prakash went to take dinner.

6. After going through the evidence on record, the trial court has acquitted the respondent/accused vide impugned judgment.

7. Based on the submission made by learned Additional Public Prosecutor for the State, we have gone through the evidence available on record as well as grounds taken in the appeal.

8. Arguments advanced by the learned APP for the State are that the learned trial court has come to the finding of acquittal on the basis of imagined doubts, which were not based on the factual matrix of the case and the learned trial court has not appreciated the evidence placed on record. It is further submitted that the learned trial court has failed to appreciate the testimony of Kamal (PW-2), who had stated that he alongwith accused and deceased Harender were in his truck and deceased asked accused for the reason of his quarrel with his father in the village about 2-3 days earlier, and then accused/respondent picked up a spanner and hit on the deceased. Thereafter he also picked up the tyre liver (Kundi) which was lying in the truck, and gave several blows on the body and head of deceased Harender. The injuries caused to the deceased were also opined by Dr. Bhim Singh (PW-17) as

having being caused by the tyre liver. He corroborated the testimony of PW-2 Kamal (eye-witness).

9. On the other hand, learned counsel appearing on behalf of the respondent has contended that the judgment passed by the learned court does not suffer from any illegality or infirmity. Rather, it appreciates the evidence of material eye-witness of the case very well, whose testimony the prosecution had heavily relied upon. The testimony of PW-2 was unworthy of credence, as he kept on changing his version time and again. He is the only alleged eye-witness of the incident. At one point he admitted the case of the prosecution, but in the other breath, he turned hostile and demolished the case of prosecution. Thus, his testimony is shaky, not trustworthy and cannot be relied upon to convict the respondent. Therefore, the impugned judgment does not call for any interference by this Court.

10. We have gone through the impugned judgment passed by the learned trial court, which shows that the prosecution relied on the ocular evidence of Shri Kamal (PW-2). The learned trial court observed that this witness was declared hostile by the State, on the pretext that he was resiling from his previous version given to the police. When he was allowed to be cross-examined by the State with permission of the court, this witness denied his alleged statement marked as PW-2/A. He not only denied recording of any such statement by the police, but also denied the same as correct. This witness also deposed that there was no recovery of wheel pana, tyre liver (kundi), i.e., the weapon of crime, and screw driver in his

presence. The learned trial court doubted the recovery of weapon of crime. In such a situation, the disclosure statement of the accused became inadmissible in the eyes of law, as the same was hit by the provisions of Section 27 of the Indian Evidence Act. The other important factor was that no blood was detected on the tyre liver with which the injury was alleged to have been caused by the respondent/accused. As per FSL report Ex. PW-13/J, ***'Blood could not be detected on exhibit '1'***. On the basis of the FSL report, the trial court has observed that through the scientific investigation of the alleged weapon of crime, it cannot be connected with the commission of crime. Kamal (PW-2) identified the clothes worn by the accused being blue colour jacket (Ex.P1) (Colly), which were stated to have been recovered from the truck of PW-2. However, the said blue colour jacket was of the deceased, as per the testimony of police witnesses as well as PW-1 Rajinder Prasad, the father of the deceased. In such a situation, the learned trial court has held that the eye-witness was not clear even about the clothes worn by the accused and by the deceased at the time of occurrence. Witness PW-2 did not remain firm on his stand regarding causing of injuries, as he deposed before the court that ***"I cannot say who had inflicted injuries on whom."***

11. Considering the fact that the only eye-witness to the incident Kamal (PW-2) had repeatedly changed his stand during his entire testimony when he was cross-examined by the State, and on re-examination by the defence counsel, on several aspects, and he was not found to have stood firm, in our view, this witness was rightly held

to be untrustworthy in the light of the judgments of the Hon'ble Supreme Court reported in *State represented by Inspector of Police, Tamil Nadu v. Sait @ Krishanakumar*, (2008) 15 SCC 440; *Sunil Kumar Sambhudayal vs. state of Maharashtra*, decided on 11.11.2010 in *Criminal Appeal No.891/2004*; and *Raj Kumar vs. State*, 1997 (2) SCC 292. Pertinently, on his cross-examination he admitted that 'he could not see as to who has inflicted injuries on whom' he even volunteered that 'he had not seen accused Ram Prakash hitting Harender with Kundi; and that 'he had fallen down and could not see'.

12. The Supreme Court in the case of *Kuna @ Sanjaya Behera vs. The State of Odisha*, 2017 SCCOnLine SC 1336 held that the testimony of a single witness would be unacceptable if it is fraught with improbabilities, doubts and oddities inconceivable with normal human conduct or behavior, and it cannot be acted upon to base the conviction. The other public witnesses were found short of the requirement of proof of charge beyond all reasonable doubts.

13. In *Harbeer Singh vs. Sheeshpal and Others*, (2016) 16 SCC 418, the Supreme Court observed that it is a cardinal principle of criminal jurisprudence, that the guilt of the accused must be proved beyond all reasonable doubts. The burden of proving its case beyond all reasonable doubt lies on the prosecution (and it never shifts). Another golden thread which runs through the web of administration of the justice in criminal cases, is that if two views are possible, one

pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

14. In the present case, PW-2 was the sole eye witness of the incident and, in our considered opinion, his testimony as discussed above, is untrustworthy and cannot be acted upon to base the conviction of the respondent/accused. He had changed his version time and time again, which makes his testimony shaky, doubtful and unworthy of credence.

15. We have also perused the evidenced produced by the respondent/accused i.e. Parshu Ram, in his defence, who in his deposition had deposed that prior to the incident he alongwith accused Ram Prakash went to take dinner and accused was not present at the time of occurrence and that other persons Harender, Kamal, Vijay Pal, Jaysurya and Gullu were taking liquor on the spot when they had gone to take dinner. This deposition has not been rebutted or cross-examined by the State and, in such a situation, the defence evidence should have been weighed at par with the prosecution evidence. In the presence of Shri Parsu Ram, accused/respondent had left with him for taking dinner prior to the incident in which the deceased was caused injuries, and the plea of alibi of accused stood proved. Coupled with the fact that Kamal (PW-2) - the only eye witness to the incident, could not prove the prosecution case that accused had caused injuries to the deceased, the learned trial court, in our view, has rightly given benefit of doubt to the accused /respondent Ram Prakash.

16. In view of the above discussion, we are of the view that the judgment passed by the trial court is based on correct appreciation of evidence, principles settled by law, and material available on record and the State has failed to make out any ground in support of the present leave petition.

17. Consequently, we do not find any infirmity or illegality in the impugned judgment passed by learned trial court. Therefore, the present leave petition is declined and dismissed.

P.S. TEJI, J

VIPIN SANGHI, J

APRIL 18, 2018

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