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

+ **CRL.L.P. 313/2018**

THE STATE (GNCT OF DELHI) Petitioner
Through: Mr. Amit Chadha, APP for State

versus

PRASANJEET @ CHINTU Respondent
Through:

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

ORDER

% **09.05.2018**

CrI.M.A.No.8776/2018 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This is a petition by the State seeking leave to appeal against the judgment dated 16th February 2018 passed by the learned Additional Sessions Judge-04, Patiala House Courts, New Delhi in Sessions Case No.52/2017, arising out of FIR No.406/2016 registered at Police Station ('PS') Sagarpur acquitting the Respondent for the offence under Section 302 IPC.

3. The case of the prosecution was that a *Jagran* was taking place at Veer Nagar in the intervening night of 22nd /23rd October, 2016. Suresh (later deceased) informed Sub Inspector ('SI') Mukesh Kumar, the Investigating

Officer ('IO'), that he was attending the *Jagran* which had over 800 persons in attendance. At around 4 am he requested three boys standing in front of him to sit down. According to him the three boys started abusing him and following an exchange of words the three boys started beating him with fists and legs. Two of him caught hold of him and the third one took out a knife and stabbed him in the stomach. The deceased then raised an alarm and the three boys started to run away. However, Budhram (PW-2), the paternal uncle of Suresh, with the help of public persons caught hold of the boy who inflicted the knife blow and whose name the later revealed as the Respondent herein. The PCR van arrived and he was arrested at the spot itself.

4. As far as the deceased is concerned he remained admitted in the hospital from 23rd October 2016 to 1st February 2017 when he ultimately expired. The case of the prosecution essentially rested on the testimony of PW-2 and Rakesh (PW-5) the brother of the deceased who was also distributing tea and food items in the *Jagran*.

5. The case of the Respondent, on the other hand, in his statement under Section 313 Cr.P.C was that he too was attending the *Jagran* and sitting at some distance from the stage. He suddenly saw some commotion and when he stood up at his place to see what had happened three boys came to him and started beating him saying 'ye hi hai, ye hi hai'. Thereafter more boys came there and started beating him. After 10-15 minutes a PCR van came there and took him to the PS. Later the SHO beat him and asked him where the knife was.

6. The factors that made the trial Court grant benefit of doubt to the Respondent were that when he was apprehended by the public the Respondent did not have any knife with him. PWs 2 and 5 also stated that they did not see any knife at the spot or in the vicinity. HC Inderlal (PW-12), who was part of the police team which reached there also stated that no knife was found at the spot.

7. What is strange is that the seizure memo was prepared showing that after his arrest the accused had taken the police to a place, at some distance from the spot, and got recovered the knife from beneath the soil. As rightly pointed out by the trial Court if the story of the prosecution that the accused was apprehended at the spot by the public was to be believed, there was no question of the accused being able to bury the knife under the soil particularly when it was a *Jagran* with nearly 800 people attending. The Court concurs with the trial Court that in the circumstances in which he was apprehended immediately after the incident, the Respondent could at best have thrown the knife and would hardly have found time to bury it under the soil in front of such a large crowd of persons. This makes the entire case of the prosecution doubtful particularly since PWs 2 and 5 have stated that they did not notice any knife.

8. This is apart from the fact that the sketch of the knife prepared by the IO was different from the sketch of the knife prepared in the Department of Forensic Medicine by Dr.B.N.Mishra (PW-4). When the trial Court compared the two sketches it found them to be of two different knives.

9. The story of the prosecution was that three boys had attacked the deceased; two of them held the deceased while the Respondent stabbed him. No attempt whatsoever was made to even arrest the two other boys.

10. Even PWs 2 and 5 have in their cross examination admitted that they did not actually see the Respondent give any stab blow to the deceased. According to PW-2 he was unable to see clearly the boys with whom the deceased was talking. PW-5 too stated that he did not actually see the deceased being stabbed with the knife. He did not notice who else did. In the circumstances the defence of the Respondent seemed more probable. Therefore the trial Court rightly gave him the benefit of doubt.

11. No ground is made out for grant leave to appeal against the impugned judgment of the trial Court. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 09, 2018

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