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

+ **CRL.L.P. 307/2017**

STATE (NCT OF DELHI)

..... Petitioner

Through: Ms. Kusum Dhalla, APP for State
with Insp. Pankaj Kumar, Special
Cell/NR.

versus

BALJINDER SINGH @ SATTA @ SATNAM & ANR.

..... Respondents

Through: Mr.Vaibhav Sharma, Advocate for
R-2

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

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09.02.2018

1. The State seeks leave to appeal against judgment dated 4th October 2016 passed by the learned Additional Sessions Judge-02, Fast Track Court, New Delhi District, Patiala House Courts, Delhi in Sessions Case No.55/2013, acquitting the Respondents accused of the offences under Sections 186/353/307/171/467/471/411/212 Indian Penal Code 1860 ('IPC') and under Section 25 of the Arms Act, 1959. The case arose out of FIR No.18/2013 registered at Police Station ('PS') Special Cell.

2. The story of the prosecution was that based on information received from a secret informer, the police party head by Inspector Sanjay Nagpal, at 12.10 am on 30th April 2013, intercepted a Maruti Swift bearing a Punjab registration which was being driven by Respondent No.1, Baljinder Singh @ Satta @ Satnam (A-1), and in which Respondent No.2, Kulwinderjeet Singh @ Happy @ Khalsa (A-2), was also sitting. The case of the prosecution was that when the car was stopped, A-1 got down and started running towards the bypass while carrying a pistol in his hand. He was chased by HC Ajay and HC Pawan at which time A-1 is supposed to have fired once towards HC Ajay. After chasing him for about 35-40 feet, HC Pawan is supposed to have overpowered A-1 and snatched the pistol from his hand.

3. On the search of A-1's person, from the right-sided pocket of his pant, one spare magazine with seven cartridges was supposed to have been recovered; and from the left-sided pocket of his pant, a registration card of the vehicle and an ID-card in the name of 'HC Baldev' issued from SSP Ludhiana with a photograph of A-1 in uniform was supposed to have been recovered.

4. From the possession of A-2, who had remained seated in the car, one pistol having two live cartridges in the magazine was recovered. He too was alleged to be found in possession of an ID-card in the name of 'SI Pramjeet Singh' issued from SSP Ludhiana which had his photograph in uniform. The prosecution claims that an empty shell was also recovered from the spot.

5. The investigation was entrusted to Sub Inspector ('SI') Praveen Kumar who reached the spot at around 1 am. He is supposed to have recorded the statement of SI Karan Singh and thereafter sent the papers for registration of the FIR.

6. According to the prosecution, the papers were taken all the way to Special Cell, Lodhi Road which is 25 kilometres away for registration of the FIR and by the time it was brought back to the spot it was already 9.15 am. In the meanwhile, without waiting for the FIR to be registered, both the accused were supposed to have been arrested at around 7.30 am. In other words, according to the prosecution, the two accused, who are supposed to be dreaded criminals, were retained by the raiding party in the area around the Swaroop Nagar bus stop, near the Shani Mandir on G.T. Karnal Road for about nine hours from 12.10 am till about 9.15 am. Yet no attempt was made to photograph the crime scene or the recovery of the cartridge. The Court is informed that there is a CCTV in the area and there is yet no CCTV footage was produced.

7. In a very detailed analysis of the entire evidence, the Trial Court has summarized its conclusions as under:

“34. After having considered the submissions addressed by the Ld. Counsel for the parties and perusing the evidence on record I am of the opinion that the following circumstances give rise to doubts on the version of the prosecution regarding the apprehension of the accused persons and the recoveries effected from them:-

(a) As per the case of the prosecution, Baljinder was apprehended by PW1 HO Pawan and PW14 HO Ajay Kumar. However, PW1 has stated that only he had run after accused Baljinder when he was trying to flee while PW14 has stated that he along with PW1, SI Karan Singh and HO Pradeep Katoch had chased Baljinder.

(b) PW1 HO Pawan could not recollect where their official police gypsy was stationed. He stated that it was stationed on G. T. Karnal Road before the rumble strip. He could not recall the distance between the place where their police gypsy was stationed and where the Maruti Swift vehicle of the accused was blocked. He could not remember after how much time he overpowered Baljinder after he fired from his pistol. He stated that the distance from where Baljinder fired and where he was overpowered was 35-40 steps but stated that they had chased Baljinder to 5-10 minutes. If this was so the distance could not have been 35-40 steps.

(c) There is no consistency as to where the vehicle of the accused persons was blocked by the police gypsy of SI Karan Singh. While PW10 in cross examination has stated that it was stopped ten feet ahead of the bus stop at Swaroop Nagar, PW12 has stated that it was blocked just before the bus stop.

(d) PW11 HC Kamal in cross examination has stated that he could not remember the distance between his police gypsy and the Maruti Swift car when they blocked it. He stated that no PCR van had come to the spot till the time the police team remained at the spot. PW12 SI Karan Singh has stated that he was at the spot till 4.35am of the next morning and till then no public witness, PCR or traffic official had come. PW15 had stated that no PCR was called at the spot. PW10 in his cross examination has stated that no PCR or traffic police was present at the spot. However, PW10 ASI Krishan Kumar at a subsequent part of his cross examination had stated that they were at the spot for 10 hours and police officers patrolling in the area had made inquiries from

them and they were informed that they were the officials of Special Cell.

(e) Despite the facts that arms and ammunition were seized from both the accused persons, the District Crime Team was not called to the spot. No attempt was made to lift chance finger prints from the weapons used or from the vehicle used by the accused, if Baijinder had fired from his weapon gun powder residue could have been traced from his hands but no attempt was made to take any chemical hand wash of the accused. Despite the fact that the police team was at the spot for a long time, the local jurisdictional police station was not informed either before or after the apprehension of the accused.

(f) As per the case of the prosecution, the police gypsy of SI Karan Singh had stopped at Shani Mandir, Alipur where he tried to associate two public persons with the police team. PW1 in cross examination stated that they were at Shani Mandir for 5-7 minutes, PW11 stated that they were there for about one hour while PW14 stated that they were at Shani Mandir for 50 minutes.

(g) As per case of the prosecution, SI Karan Singh tried to join Sunil and Hukum, public persons with their proceedings but there is absolutely no record or addresses of these persons. No notice had been issued by the IO to them for not joining the proceedings of the police team. No credible efforts were made to join public witnesses in the investigation. Asking passersby to join the investigation cannot be termed as credible efforts. The absence of public witnesses in the investigation has amplified the contradictions in the version of the police witnesses.”

8. With the assistance of the counsel, the Court has once again carefully examined the entire evidence and is unable to come to a conclusion different from that reached by the trial Court. It is indeed surprising that the two Head Constables, HC Pawan and HC Ajay, who were supposed to have chased

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A-1 are themselves not able to be consistent with each other and have contradicted each other on material aspects of the entire incident. The prosecution evidence does not inspire confidence about the manner in which the interception took place and raises serious doubts whether either of the accused were in fact present at the spot and whether the interception in fact took place in the manner claimed by the prosecution.

9. In the considered view of this Court, the trial Court was not in error in granting the benefit of doubt to the accused and acquitting them of all the charges.

10. No ground is made out for granting leave to appeal against the impugned judgment of the trial Court.

11. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

FEBRUARY 09, 2018

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