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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 505/2018**

STATE

..... Petitioner

Through: Mr. Kewal Singh Ahuja, APP

versus

SUSHANT

...Respondent

Through: None.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

ORDER
01.10.2018

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1. The State seeks leave to appeal against the impugned judgment dated 21st April 2018 passed by the learned Additional Sessions Judge (North East), Karkardooma Courts, Delhi in SC No.164/2016 arising out of FIR No.845/2015 registered at Police Station (PS) Seelampur acquitting the Respondent of the offences under Sections 307 IPC and Section 25/27 of Arms Act.

2. The case against the Respondent was that he had on 12th November, 2015 at around 10/10.30 pm injured Mukesh (PW3) by firing upon him with a fire arm. The case hinged on the deposition of PW3 himself i.e. the injured eye witness. According to PW3 when he left

his home on the above day to purchase crackers for his children and reached near Neem Wali Masjid at midnight, the Respondent was present near the said Masjid and asked him at which place gambling was going on. PW3 stated that he was not aware and that he was going to purchase crackers for his children. According to PW3 the Respondent then took out pistol from the dub of his pant and aimed at the forehead of PW3, fired at him and then ran towards market. PW3, however, sustained injury on the right left near knee and fell down on the road.

3. According to PW3 the Respondent was earlier known to him as he resided in the same colony. Certain others came to help him and called the police. PW-3 was taken to the GTB Hospital for treatment and remained there for 22 to 25 days.

4. The trial Court has in the impugned judgment listed out the reasons for concluding that the evidence of PW3 was unreliable. There were numerous improvements made by PW3 in his deposition which were noted by the trial Court as under:

“(i) PW3 injured Mukesh in his statement Ex.PW3/A has stated that when he was going to purchase crackers, accused Sushant asked him whether he wants to take the crackers and in the meantime, he took out pistol and aimed toward his forehead, whereas PW3 in his statement made before the Court has deposed that accused asked him as to at

which place gambling is going on and he replied that he is not aware about the gambling and immediately he took out pistol from dub of his pant and aimed towards his forehead and fired the same.

(ii) PW3 injured Mukesh in his statement Ex.PW3/A has stated that when he reached near Neemwali Masjid, accused Sushant and Bale @ Sandeep were standing, whereas the name of other person Bale @ Sandeep is missing in the statement made before the Court.

(iii) PW3 injured Mukesh in his statement made before the court has deposed that his brother Sanjay also came at the spot and he took him to GTB hospital for medical examination by TSR, whereas this fact has not been stated by injured Mukesh in his statement Ex.PW3/A made to the police.

(iv) PW3 injured Mukesh in his statement made before the Court has deposed that he had told police official that accused Sushant had fired at him with an intention to kill and legal action may be taken against accused, whereas in the statement of PW3 injured Mukesh made to the police Ex.PW3/A, there is no mention of the fact that police officials reached at the spot. PW3 in his examination in chief before the Court has deposed that accused took out 'pistol' from dub of his pant, whereas in the statement of PW3 injured Mukesh made to the police Ex.PW3/A, he has stated that he took out 'Desi Katta' (country made pistol).

(v) Thus, from the above discussed and perusal of the statement Ex.PW3/A made before the police, it appears that PW3 injured Mukesh has made improvements in the statement made before the Court and, therefore, it casts doubt upon the veracity of testimony of PW3 injured Mukesh”.

5. The trial Court also listed the numerous contradictions in the evidence of the other PWs. Incidentally, it must be mentioned while there were purportedly three independent eye witnesses to the incident, two of them turned hostile. Further the medical and forensic evidence did not corroborate the version of PW3. Pertinently, the trial Court noted that:

“Moreover, FSL report has not been able to establish as to whether the examined pistol was used in the commission of the offence because the prosecution has to establish the link between the injuries sustained by the victim PW3 and the bullets fired from the pistol.”

6. Although the prosecution claimed that from the house of the Respondent the pistol and four live cartridges were recovered and it was sought to be shown that the pistol has recently been fired, the bullet recovered from the body of PW3 was not sent to the FSL to determine whether it was fired from the pistol recovered from the Respondent.

7. Having again perused the evidence with the help of the learned APP, this court is not persuaded that the trial Court has erred in giving

the Respondent the benefit of doubt and in acquitting him of the offences with which he was charged.

8. No grounds are made out for interference with the impugned judgment of the trial Court.

9. The petition is accordingly dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 01, 2018

sandeep/shailendra”