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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 383/2017

STATE

..... Appellant

Through: Ms. Kusum Dhalla, APP for State
along with ASI Hawa Singh, P.S. Nihal Vihar.

versus

BALBIR SINGH @ BHAGU SINGH

..... Respondent

Through: Ms. Inderjeet Sidhu, Advocate
(DHLSC)

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

ORDER

13.02.2018

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1. This is an appeal by the State against judgement dated 23rd March, 2016 passed by the learned Additional Sessions Judge, West, Tis Hazari Courts, Delhi in Sessions Case No. 65/2011 arising out of FIR No.205/2011 registered at Police Station (PS) Nihal Vihar acquitting the Respondent of the offences under Section 302, 323 read with 34 IPC.

2. At the outset, it requires to be mentioned that against the order of acquittal, the State had filed Crl.L.P. No.400/2016. By an order dated 18th April 2017, this Court granted leave to appeal confined to Respondent No.1, Balbir Singh @ Bhagu Singh (Accused No.1: A-1). The petition *qua* Respondent No.2 Bunty Singh (A-2) was dismissed as not pressed.

3. Pursuant to the above order, the Respondent No.1 furnished a bail bond in the sum of Rs.10,000/- with surety in the like amount to the satisfaction of

the Registrar.

4. The case of the prosecution was that A-1 and A-2 had, on 13th July, 2011 at around 12:30 p.m. in furtherance of their common intention, committed murder of Mangla Singh @ Suraj Singh on the roof of House No. A-36, Vikas Vihar, Chander Vihar, Delhi within the jurisdiction of PS Nihal Vihar.

5. The deceased was one among the four children of Rajni Kaur (PW-3). Her nephew was Shakti Singh (PW-2). Her house was situated in a street behind the one on which the house of PW-2 was located. On 13th July, 2011 PW-3 and her daughter Meenu Kaur had gone away for work to Tilak Nagar. PW-2 who had no work that day, was at his house. At around 12:30 pm he noticed the Respondent No.1 (A-1) pelting stones on the roof of the residence of his aunt (PW-3). The house of A-1 was situated adjacent to the house of PW-3. The roof of A-1's house was at a level higher than that of PW-3. Both houses were constructed up to the first floor. In his statement under Section 161 Cr PC (Ex.PW-1/C), PW-2 stated that while A-1 was pelting stones, he deliberately aimed one stone upon the deceased, who at that time was sitting on the roof. Upon this, the deceased felt faint and came down. A-1 also came down and started quarrelling with the deceased. PW-2 tried to separate them but A-1 started beating him as well. He again went upstairs and started pelting stones on both PW-2 and the deceased. PW-2 claimed that A-1 even gave fist and kick blows to the deceased, and even PW-2 was hurt due to the stone pelting. The deceased then became unconscious and PW-2 called the police.

6. While deposing in the Court, PW-2 introduced the co-accused Bunt (A-2) into the scene although he had not mentioned his name in his previous statement to the police. PW-2 deposed in Court that A-2 along with A-1 also came to the roof of the house of the deceased by jumping on the water tank. He maintained that both A-1 and A-2 gave beatings to the deceased. After seeing PW-2, A-1 pelted a stone at him after which both A-1 and A-2 ran away back to the roof of A-1's house. According to PW-2, when he tried to save the deceased, A-1 again came down, caught the deceased and gave beatings to him. PW-2 saved the deceased and A-1 again went to his roof. By that time, Kaptan Singh, the brother of PW-2, and other local residents came there.

7. The trial Court found PW-2 to be an untrustworthy witness. He said nothing about A-2 to the police when he first gave his statement. He admitted that he had told the police that when the deceased had sustained injuries and was coming downstairs, he slipped and fell down and sustained an injury on his head. The trial Court also noticed that there was a different account given by PW-3, the mother of the deceased who admittedly was not an eye witness to the incident. After she came back from her work, PW-3 was informed by a relative that the deceased had been beaten up by the accused. The trial Court rightly concluded that PW-3 was of no assistance to the prosecution case and that she was a hearsay witness. Further her testimony appeared to be full of improvements and afterthoughts.

8. Having examined the depositions of PW-2 and PW-3, the Court is unable to come to a different conclusion as far as their trustworthiness and

reliability is concerned. The brother of the deceased (PW-5) was completely silent as to the presence of PW-2 at the spot. He too claimed that he returned from the market and peeped from the door inside his house and noticed that A-1 had caught the neck of the deceased and one boy had caught the legs and that there was a third boy (A-2) who was beating the deceased with kicks and blows.

9. The trial Court rightly wondered if the door of the house of the deceased was bolted from the inside, how PW-2 could have entered it to save the deceased. PW-2 was in fact silent about the bolting of the door from the inside. PW-5 was also silent about other facts relied upon by the prosecution, including the vital fact that PW-5 does not mention about the presence of PW-2. Therefore, the versions of PWs-2, 3 and 5 did not corroborate each other at all. Here again, the Court is unable to come to a different conclusion after examining carefully the depositions of these two witnesses.

10. The stones seized from the spot were not shown to the above witnesses for reasons best known to the prosecution. They were also not produced before the autopsy surgeon to ascertain whether the injury No.1 could have been possibly caused by the said concrete stones. Kaptan Singh (maternal uncle of the deceased) and Hardeep Singh (PW-5) had also gone to the hospital with PW-3. Yet they were not met there or their presence spoken to by ASI Mahavir Singh (PW-18).

11. The Court finds that the analysis of the evidence and the conclusion reached by the trial Court suffers from no infirmity whatsoever. The view

taken was a plausible one.

12. Consequently, the Court finds no error having been committed by the trial Court in acquitting the Respondent of the offence with which he was charged. The appeal is accordingly dismissed. The bail bond and the surety bond furnished by the Respondent stands discharged. The trial Court record be sent back forthwith along with a certified copy of this order.

S. MURALIDHAR, J.

I.S. MEHTA, J.

FEBRUARY 13, 2018
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