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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on 27th November, 2018
Judgment pronounced on ____ December, 2018

+ CRL.LP. 555/2018

STATE

..... Appellant

Through: Mr. Ravi Nayak, APP for State with
Insp. Harlesh Gaba, PS Gandhi Nagar

versus

AMIL AHMED@ IMRAN & ANR

..... Respondents

Through: Mr Lokesh Kumar Mishra and Ms. Arti
Baghel, Advs. for R-1 &2.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present leave petition has been filed by the State under Section 378(3) of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C) against the impugned judgment dated 09.05.2018 and order on sentence dated 16.05.2018 passed by Learned Additional Sessions Judge-03 (East), Karkardooma Courts, Delhi in FIR no. 128/2015 at PS, Gandhi Nagar, registered under Sections 394/397/307/411/34 IPC whereby the respondents were acquitted of the offence punishable under Sections 397/34 of the Indian Penal Code, 1860 (hereinafter referred to as IPC).

However, the respondents were held guilty for the offences punishable under Section 392/34 IPC and sentenced to the period already undergone by them with fine of Rs. 20,000/- each (Rs. Twenty Thousand only) and in default to undergo Simple Imprisonment for a period of five months each, Respondent no.1 was further sentenced to Rigorous Imprisonment for six months with fine of Rs. 10,000/- (Rupees Ten Thousand only) and in default to undergo Simple Imprisonment for a period of three months for the offence punishable under Section 325 IPC, Respondent no.1 was further sentenced to Rigorous Imprisonment for six months with fine of Rs. 5,000/- (Rupees Five Thousand only) and in default to undergo Simple Imprisonment for a period of one month for the offence punishable under Section 411 of the IPC.

2. The brief facts of the case, as recorded by the Learned Trial Court are reproduced as under:-

“Police machinery set in motion on receipt of DD NO. 42-A dated 21.02.2015 on which ASI Bhopal Singh along with other police officials reached Jag Pravesh Hospital. In the hospital MLC No. 3787/2015 of one Asif was obtained and it came to know that the patient Asif has been referred to GTB Hospital. On it, said police party reached GTB hospital. Asif, injured, got recorded his statement inter alia alleging therein that on that date at about 8.30 p.m. while he along with his younger brother Arif was present near Sai Mandir,

Pushta Road, Gandhi Nagar and at that time, he was present a little ahead of his said brother, he heard the cries of his said brother, on which he noticed that his brother was caught hold by 3-4 persons on which he (Asif) reached there and identified one of them as being resident of Kailash Nagar near Mother Dairy but he did not know the name of the said person. Asif told that he had identified said person on which said person stabbed him in his abdomen and after snatching his mobile phone, all of them fled from there. Asif came to his colony and was rushed to the hospital. On the basis of the said statement, present FIR under Section 394/307/34 IPC was registered against the accused Amil Ahmed @ Imran and Anil Kumar@ Tanchi.”

It is further case of the prosecution that on the tip off, accused Amil Ahmed @ Imran was arrested. He disclosed about his involvement in the present case with his associates. Said accused got recovered robbed mobile phone. At the pointing out of the said accused, accused Anil kumar @ Tanchi was also arrested. Complainant and his brother identified accused Amil Ahmed during judicial TIP proceedings while accused Anil Kumar refused to join TIP. During investigation of the matter, section 307 IPC was added in the present matter. Efforts for search of remaining accused were made but in vain. After completion of investigation, chargesheet was filed against these two accused persons to face trial under Sec. 397/394/307/411/34 IPC before the court of Ld. MM.

After compliance of provisions of Sec. 207 CrPC by the court of Learned MM case was committed

to the court of Sessions, as the offence under Sec. 397 and 307 IPC are exclusively triable by it. Vide order dated 02.09.2015 charge under Sec. 394/34 with Sec. 397 IPC was framed against both these accused persons. Vide said order, accused Amil Ahmed was also separately charged for the offence punishable under section 307 IPC. To the said charges, the accused persons pleaded not guilty and claimed trial.”

3. In order to bring home the guilt of the respondents, the prosecution examined 10 witnesses in all. The Statements of the respondents were also recorded under Section 313 Cr.P.C. wherein they pleaded their innocence by denying all incriminating circumstance and claimed to have been falsely implicated. Both the respondents examined four defence witnesses in order to prove their innocence.
4. Mr. Ravi Nayak, learned APP appearing for State while opening his arguments in the present leave petition submitted that the accused was charged for the offences punishable under Section 394/397/307/34 IPC for allegedly stabbing the victim/Asif with a knife in his abdomen and robbed him by taking away his mobile phone. He further contended the learned Trial Court has erroneously concluded that merely because the weapon of offence had not been recovered the provision of Section 397 IPC would not be applicable. He further added that the MLC (Ex.PW7/A) pertaining to the victim goes to show that the injury suffered by

victim was grievous in nature which was inflicted on the vital part of the body, the fact that the deadly weapon has not been recovered is of no consequence. Learned counsel for the State concedes that no offence under Section 307 IPC is made out against the accused. No other point has been urged on behalf of the State.

5. Per contra, Mr. Lokesh Kumar Mishra, learned counsel argued that since the weapon of offence was not recovered, no offence under Section 397 is made out against the respondents and no interference shall be called for in the judgment of the trial court.
6. We have heard the learned counsel for the parties and perused the material on record.
7. At the outset we deem it appropriate to reproduce Section 397 of the IPC which reads as under:-

“Section 397 of the Indian Penal Code

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”

8. Perusal of aforesaid Section transpires that in order to prove the guilt of the accused under the offence punishable under Section 397 of the IPC, an offender must (a) uses any deadly weapon; or

(b) causes grievous hurt to any person; or (c) attempts to cause either death or grievous hurt to any person.. It was for the prosecution to prove that there was robbery or dacoity and the offender used deadly weapon and caused grievous hurt to a person.

9. We also deem it appropriate to reproduce the MLC of the victim, proved as Ex. PW7/A. Relevant portion is as under:-

“21.02.2015

9.10 p.m.

C/SIB SR surgery

Physical assault (stab over abdomen)

Xxxxxx

Xxxxxxx

Stab wound (is 3-4 cm) above xxxxx

No active bleeding present.

Pt. referred to higher centre opinion from GTB/Higher centre

Date

1.04.2015

On the basis of surgical records, the nature of injury is grievous

(signatures)

01.04.2015”

10. According to the testimony of the material witnesses i.e. PW-1 and PW-3, the respondent was carrying a knife and caused a stab injury on the abdomen of the PW-1. The MLC of the victim, (Ex-7/A) was prepared on the date of the incident i.e. 21.02.2015 at 09.00 pm. In the opinion of the doctor the stab wound was 2-3 cm deep and no active bleeding was present. Doctor who examined the victim on 21.02.2015 nowhere opined the nature of

the injury, but strangely enough, on 01.04.2015 after a gap of about two months, the opinion of the doctor was sought, who opined the injury to be 'grievous' in nature. The conduct of the investigating officer in obtaining the opinion of the doctor as grievous injury has raised serious doubt in the case of the prosecution, coupled with the fact that the weapon of offence i.e. knife has not been recovered during the investigation.

11. In our opinion, the essential ingredients of Section 397 of the IPC have not been answered. Having regard to the principles laid down by the Apex Court in the case of *Ghurey Lal vs. State of U.P., reported at 2008 (10) SCC 450*, we do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses. Accordingly, no grounds to interfere are made out and the leave to appeal is dismissed.

SANGITA DHINGRA SEHGAL, J

SIDDHARTH MRIDUL, J

DECEMBER____, 2018
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