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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22nd October, 2019

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CRL.LP. 577/2019

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State with
SI Inder Veer Singh, PS Laxmi Nagar.

versus

AMJAD KHAN & ANR.

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

SANGITA DHINGRA SEHGAL, J (ORAL)

CRL.M.A.No.38876/2019

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed off.

CRL.LP. 577/2019

1. By the present Leave Petition filed under Section 378 (1) of the Code of Criminal Procedure, (hereinafter referred as 'Cr.P.C.'), the State seeks leave to appeal against the judgment dated 02.08.2019 passed by the learned Trial Court in Sessions Case No. 508/17, whereby all the respondents (accused before the Trial Court) were acquitted of the

offence punishable under Section 307/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and were convicted for the offence punishable under Section 323/34 IPC and were sentenced to the period already undergone by them, with a fine of Rs. 1,000/ each and in default of payment of fine, simple imprisonment for seven days.

2. The brief facts of the case, as distinguished by the learned Trial Court are reproduced as under:

“That on receipt of DD no. 6-B dated 25.04.2015 when police party reached GTB Hospital, one Shamshad Alam S/o Rahees Ahmed got lodged his report inter alia alleging therein that on 24.04.2015 at about 10.30 p.m. while he was present along with Arshad, his friend, hot talks were going on between said Arshad and Amjad and meanwhile Arshad handed over his mobile phone to him (Shamshad) stating that he (Shamshad/complainant) was being abused by Amjad and he (Shamshad) should make him understand. He further alleged that while he was trying to talk with Amjad, Amjad started abusing him also and directed him that if he wants to talk, he (Shamshad) should come to Gali No. 8, Krishan Kunj to which at about 11 p.m. he alone went there and soon thereafter when he started talk with said Amjad, his three associates including accused Mst. Praveen Khan came there on a motorcycle and they all attacked him with knife and even also physically beaten him and then fled away from the spot. However, he went to nearby hospital. His friends also came there and police was informed about the incident.”

3. In order to bring home the guilt of the accused persons, the prosecution examined 6 witnesses in all. The incriminating evidence and circumstances were put to the accused persons under Section 313 of Code of Criminal Procedure wherein they pleaded to have been falsely

implicated in the present case and accused Huma Praveen examined herself under section 315 Cr.P.C.

4. The Trial Court in the impugned judgment while acquitting the accused persons under Section 307/34 IPC and convicting them for the offence punishable under Section 323/34 IPC gave its reasoning, which is reproduced herein below: -

*“17. Accused Amjad Khan and Huma Parveen are facing trial for the charge under Sec. 307/34 IPC wherein it is alleged that on 24.04.2015 at about 11 a.m. in Gali No. 8, Kishan Kunj, Laxmi Nagar, **both accused persons along with two more associates had caused injuries in the abdomen with knife and other parts of body to PW1 Shamshad Alam** with such intention or knowledge and by their said act, they may cause death of said injured.*

*18. It is undisputed fact that the star and key witness to prove the offence in question is PW1 Shamshad Alam. **This witness in clear and unequivocal terms identified both accused persons present in the court as assailants and further stated that the lady accused came on a motorcycle along with two other associates and all of a sudden, all the three with accused Amjad gave beatings to him with leg and fist blows and one of the male associate took out a knife and gave its blow in his abdomen and said person who attacked upon him with knife was not present in the court.** Thereafter, all accused persons left the spot. **In the hospital, he was provided first aid and referred to Dr. Hedgewar Hospital and then to GTB hospital. Since the witness has not been given all facts as per his previous statement, Id. Addl. P.P. put some leading questions and PW1 Shamshad Alam in his statement further stated that one of the male assailant caught hold him and second one caused knife blows in his abdomen and accused Huma Parveen started beating him along with their associates.***

20. Apart from the statement of complainant/PW1 Shamshad Alam, he himself has categorically stated that the person who attacked with knife on him was not present in the court and he lodged complaint Ex.PW1/A whereas stated that some unknown person has caused knife blow injuries to him. There was no public person examined by the IO like Arshad from whose mobile phone, he has talked. Other prosecution witnesses are the police officials who have been narrated in their deposition regarding the investigation carried by IO as well as arrest of the accused persons.....

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26. *MLC of injured is quite clear that the nature of injuries is opined as “simple”.*

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incumbent of Sec. 307 IPC is not attributed under the facts and circumstances of the present case as well the prosecution has not brought home the guilt of accused persons for the offence punishable under Sec. 307 IPC, however, it has been proved that it was the one of the associate of accused persons who caused knife injuries to injured/PW1 Shamshad Alam and accused Amjad caught hold the injured while inflicting knife injuries to PW1 by his associate and accused persons also gave beatings to the injured.

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35. Perusal of the record is clear to the aspect that as per MLC Ex.C1 mentions – hum apne mareej ko apni marji he private hospital mein leke jaa rahin hain” means term LAMA (Left against medical advice) can be used for the patient i.e. complainant. Said MLC is also clear to the aspect that – “Private hospital has given first aid but does not make MLC & did not send the patient in ambulance. Patient is conscious, oriented.”

36. Hence, in view of the above, court came to the conclusion that the prosecution has failed to bring home the guilt against the accused persons for the offence punishable under Se. 307/34 IPC for which accused persons have been charged with. However, it is well settled law that accused persons can be held guilty for lesser offence. Offence punishable under section 323/34 IPC is a minor offence to the offence under section 307/34 IPC within the meaning of Section 222 CrPC. Accordingly, in view of section 222 Cr.PC the accused can be convicted for the offence u/s 323/34 IPC, though charge has not been framed against him. [See Bachcha V. State of UP, 2008 Crl L.J. 483].

37. Hence, with these observations, it is clear that prosecution has fully proved its case against accused persons namely Amjad Khan and Ms. Huma Praveen for the offence punishable under Sec. 323/34 IPC and as such, accused Amjad Khan S/o Late Chhuttan and Huma Parveen W/o Shanwar Ali are held guilty for the

offence under Sec. 323/34 IPC and are convicted accordingly.”

(emphasis supplied)

5. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned Trial Court held that the prosecution had miserably failed to prove the charges under Section 307/34 IPC against the accused persons and thereby acquitted them of the same but found the accused persons guilty for the offence punishable under Section 323/34 IPC.
6. Aggrieved by the impugned judgment, Ms. Aashaa Tiwari, learned APP for the state argued that the impugned judgment passed by the Trial Court was perfunctory in nature, full of conjectures and surmises and therefore is liable to be set aside. She further contended that the impugned judgment was a case of legal defects resulting in the acquittal of the accused persons under Section 307/34 IPC and a grave failure of justice.
7. Learned APP for the State labored hard to contend that the learned Trial Court has failed to analyse the testimony of the complainant (Shamshad), who in clear and unequivocal terms identified both the accused persons and stated that accused persons on 24.04.2015 had given leg as well as fist blows and a single knife blow on his abdomen which stood corroborated from the medical evidence (i.e. MLC No.1313/15, dated 25.04.2015) as there was a penetrating wound over right upper abdomen, with abrasions present at the right side of forehead and behind the right ear. She further contended that the entire evidence on record supported by the medical evidence clearly brings home the

guilt of the accused persons for the offences punishable under Section 307/34 IPC. Ms. Tiwari, added that the accused persons in furtherance of their common intention inflicted sharp injury on a vital part of the body. Learned APP for State contended that the ocular evidence and the medical evidence is eloquent and self-explicit, connects the accused persons with the crime, considering the impugned order, the accused persons should also be convicted under Section 307/34 IPC.

8. Having heard the learned APP for state, this court is of the view that the case of prosecution entirely rests on the sole testimony of the complainant (Shamshad Alam); hence we deem it appropriate to examine his testimony. Shamshad Alam entered into the witness box as PW1 and deposed that:

“On 24.04.2015 at about 10 p.m I along with my friend Arshad was present in Shiva Market, Khureji Petrol pump. At that time Arshad was talking with Amjad on his mobile and during those talks hot words were exchanged. Arshad asked me to have talks with Amjad to make him understand as he was abusing him. I talked with Amjad who also started abusing me. Amjad asked me to come at Kishan Kunj Gali No. 8 if I want to talk him. I reached there alone there at about 10.15/10.30 p.m. Amjad met me there. We started talking and during that period, three more persons including one lady came there on motorcycle. That lady is present in court today-witness correctly identified the accused.

Accused Amjad is also now present in court – correctly identified.

All of sudden all the three with accused Amjad gave beatings to me with leg and fist blows and all of sudden one of them who was male took out a knife and gave its blow in my abdomen. That person who attacked me with knife is not present in court.

Blood started oozing out from my injury. I became started faint and then I of my own rushed to Life Line Hospital in an auto.

All accused persons left the spot. At the hospital first aid was provided to me and referred to some other hospital. I rushed to Dr.Hedgwar and from there I was referred to GTB Hospital. I was medically treated there ad police met me there. Police recorded my statement Ex.PW1/A bearing my signatures at point A. Next day, I was discharged from the hospital.

Cross by ld. Addl. PP for the State

On of the male assailant caught hold of me while second one of them gave me knife blow in my abdomen and thereafter I was pulled down on the ground and then Amjad and Ms.Huma Praveen started beating me along with them. I had shown the place of occurrence to the police on the basis of which Ex.PW1/B was presented by the police.

On 25.04.2015 I along with IO went to the house of Ms.Huma Praveen which was found closed and then we went to the house of Amjad i.e., House No. 16, Gali No. 19, Jagatpuri and at my point out accused Amjad was arrested from there. Memos Ex.PW1/C and 1/D were prepared there and same bear my signatures at point A.”

9. There is no legal impediment in convicting a person on the sole testimony of a single witness. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.

10. The Apex Court in ***Veer Singh & Ors. Versus State of UP*** reported in **(2014) 2 SCC 455**, has observed that:

"17. Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided Under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. (Vide: Vadivelu Thevar and Anr. V. State of Madras : AIR 1957 SC 614; Kunju @ Balachandran v. State of Tamil Nadu : AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal : AIR 2010 SC 3638; Mahesh and Anr. v. State of Madhya Pradesh : (2011) 9 SCC 626; Prithipal Singh and Ors. v. State of Punjab and Anr. : (2012) 1 SCC 10; Kishan Chand v. State of Haryana : JT 2013 (1) SC 222 and Gulam Sarbar v. State of Bihar (Now Jharkhand) : 2013 (12) SCALE 504).

11. In view of the settled law, we shall now examine whether the evidence adduced by the prosecution, is cogent, trustworthy and can be relied upon or not. PW1 Shamshad Alam deposed that on 24.04.2015 at about 10:15/10:30 PM when he had arrived at Kishan Kunj Gali No. 8, he met with Amjad and while he was conversing with him three more persons including one lady(Huma Praveen) came there on a motorcycle and all of a sudden, they all started giving him leg and fist blows and one of the male associates gave him a knife blow on his abdomen. He further deposed that thereafter, all the accused persons left the spot and blood starting oozing out from his injury, subsequent to which, he rushed to the Hospital, where his initial statement (Ex.PW1/A) was recorded by the investigation officer.
12. However, on the contrary, in the said initial statement (Ex.PW1/A) the complainant PW1 Shamshad Alam, had stated that some unknown person had given him a knife blow. He admitted the aforesaid fact in his cross examination and deposed '*It is correct that I mentioned the fact in my compliant that an unknown person had given me the knife blow on stomach*'. Perusal of the impugned judgment also reveals that the medical evidence on record (i.e. MLC No. 1313/15 dated 25.04.2015 of injured Shamshad Alam with opinion Ex.C1) categorically states '*Private hospital has given first aid but does not make MLC & did not send the patient in ambulance. Patient is conscious, oriented*'. It is further relevant to highlight that the trial court has noted that the complainant was conscious and oriented when he had arrived at GTB Hospital and his injuries, were opined to be simple in nature.

13. In the present case, we are of the considered view that the evidence on record has been held to be unworthy of acceptance as none of the relevant witnesses like doctor, link witness(s) etc., have been examined by the prosecution and the same is found to be replete with infirmities. Further it is relevant to highlight that there are fatal infirmities in the entire prosecution case, as the police had failed to recover the alleged weapon of offence i.e. the knife and connect the same with the inflicted injuries on the complainant.
14. On Scrutinizing the material available on record, as demonstrated above, the evidence adduced by the prosecution has no ring of truth and is not of sterling quality and we regard it unsafe to act upon it alone for convicting the respondents for the offence punishable under Section 307/34 of IPC. Hence this Court is in agreement with the finding of the Trial Court.
15. The law with regard to grant of leave is well settled by a catena of judgments. Leave to appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more conceivable.
16. 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 perversity in the reasoning given in the impugned judgment and for the abovementioned reasons, this Court does not find any reason to interfere with the same.

17. Accordingly, the present leave petition, being bereft of merit, is dismissed.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

OCTOBER 22, 2019
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