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

+ **CRL.L.P. 605/2019**

STATE

..... Petitioner

Through: Ms Meenakshi Chauhan, APP for
State.

versus

SHIV SHANKAR & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **15.11.2019**

CRL.M.A. 40228/2019

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.L.P. 605/2019 and CRL.M.A. 40227/2019

3. The present appeal has been preferred by the State impugning a judgment dated 23.07.2019 (hereafter 'the impugned judgment'), whereby the respondents had been acquitted of the offence under Sections 308/34 of the IPC.

4. The said case was related to an FIR bearing no. 79/2018 under Sections 308/34 of the IPC, registered with PS Sonia Vihar. It is the prosecution's case that on 15.04.2018, the respondents had assaulted the victims – Waqar Khan (Vicky), who had deposed as PW7; his mother Haseena Bano, who had deposed as PW6; and Parvinder Nagar who had

deposed as PW5.

5. On the date of the incident, Waqar Khan along with his friends was returning home and he found that one Alto Car bearing No. DL-2CQ-2442 was standing in Gali No. 7 in the middle of the road. He had requested the occupants of the car to move the same but they started abusing him. He objected to the same and at that stage, two women came out of the house and caught hold of the victim and his friends. Subsequently, respondent no.2 came and respondent no.3 (Pawan Tiwari) came out with *danda* and a *fawda* (kassi) and attacked Waqar and Parvinder with the said instruments. The mother of the victim, Haseena Bano, was sleeping in the *gali* at the material time. She was informed of the incident by Parvinder and she also rushed to rescue Waqar. It is stated that she was also assaulted by the respondents and thereafter, they fled from the spot.

6. In the meanwhile, someone informed the police by dialling 100. The victims were taken to Jag Pravesh Chandra Hospital. However, at that stage, Waqar did not give his statement. *Rukka* was prepared and was forwarded for registration to the concerned police station and the aforementioned FIR was registered. It is stated that the accused were formally arrested and the *danda*/stick was recovered at the instance of one of the accused (respondent no.1).

7. During the trial, all material witnesses (PW5, Parvinder Nagar) who were stated to have rushed from the spot to inform Waqar's mother (PW6) declined to identify the accused. It was stated that due to darkness, PW5 could not identify the accused persons correctly. Although he had earlier

named the accused as the persons who had assaulted him and other victims; in his cross-examination, PW5 deposed that he had named the accused on the provocation of some persons from the locality (*mohalla*). He was re-examined by the Chief Public Prosecutor but even during his re-examination, he was firm that he could not identify the accused as those persons who had committed the offence.

8. Similarly, Hasina Bano, who deposed as PW6, also declined to identify the accused in her cross-examination. She also stated that she had named the accused in the initial statement on the provocation of some persons from the locality (*mohalla*). She stuck to this stand in her re-examination as well.

9. Waqar Khan deposed as PW7. He also stated that due to darkness, he could not identify the accused. He also denied having made any statement to the police regarding the accused assaulting him.

10. Ms Chauhan, learned APP for the State states that although all the three material witnesses have turned hostile and had declined to identify the respondents as the assailants, PW5 and PW6 had in their examination in chief clearly identified the accused as the persons who had attacked and injured them. She states that it is now well settled that if certain witnesses turn hostile and the same is clearly established from the record, then their examination-in-chief can be taken into consideration.

11. It is seen that the Trial Court had evaluated the evidence obtaining in the present case. Although in the examination-in-chief, PW5 and PW6 had identified the accused, however, in their cross-examination, they had

deposed that there was darkness and in the circumstances, they could not identify the assailants. They had also deposed that they had named the respondents as the assailants on provocation of persons from the *mohalla*. The Trial Court was of the view that this did raise certain doubts as to the involvement of the accused in the incident. More importantly, Waqar (PW7) was clear in his examination-in-chief that there was darkness and therefore, he could not identify the accused. He was cross-examined by the learned public prosecutor, however, he stuck to his stand. It is relevant to note that in his cross-examination, he even denied informing the police about the accused.

12. It is also important to note that the accused and the victims are neighbours and living in the same area. It is also pointed out that the injuries suffered by the victims are also simple. It is well settled that this Court would not interfere with an order of the Trial Court acquitting the accused unless it finds that there are compelling reasons to do so. (See: ***Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450***)

13. Given the aforesaid facts, this Court does not find any compelling reason to interfere with the impugned judgment.

14. The present petition seeking leave to appeal against the impugned judgment is, accordingly, rejected. The pending application is also disposed of.

NOVEMBER 15, 2019/RK

VIBHU BAKHRU, J