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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 659/2019

THE STATE

..... Petitioner

Through: Mr. Amit Gupta, APP for the State
with Insp., PS Jafrabad.

versus

GAURAV @ MOHIT & ORS.

..... Respondents

Through: None.

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Date of Decision: 02nd December, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

CRL. M.A. 41606/2019 (condonation of delay)

Keeping in view the averments made in the application, the delay of nineteen days in filing the criminal leave petition is condoned.

Accordingly, the application stands disposed of.

Crl.M.A. 41607/2019 (exemption)

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

CRL.L.P. 659/2019

1. Present criminal leave petition has been filed on behalf of the State challenging the judgment dated 9th August, 2019 passed by Additional Sessions Judge-05 (Shahdara District), Karkardooma Courts, Delhi acquitting the accused in FIR No. 177/2017 registered with Police Station Jafrabad, Delhi under Section 307/34 IPC.

2. The relevant facts as noted by the Trial Court are as under:-

“On 12.05.17 complainant/injured Anil Kumar was standing on the road near gali no. 8, Adarsh Mohalla, Maujpur, Delhi when one Bobby R/o Vijay Park and an auto driver by profession came there with his two associates who were known to the complainant and they had a fight over the mobile phone of the complainant. Said Bobby took out a knife from his pocket and tried to assault the complainant who tried to save himself but Bobby inflicted injury with the knife on the left side of his chest and fled away. Complainant fell down and someone called the PCR which arrived at the spot and took the complainant to GTB hospital. The local police also arrived and the statement of the complainant was recorded on which the present case was registered.

2. The complainant was medically examined and his MLC was prepared wherein it was reported that he sustained an incised wound of 2cm x 1 cm near the left nipple. The injury was subsequently opined as grievous.

3. On the next day i.e. 13.05.17, supplementary statement of the complainant was recorded wherein he identified the other two persons accompanying Bobby as Gaurav @ Mohit and Tarun Sharma. On 21.05.17, Gaurav @ Mohit was arrested in FIR No. 190/17 u/s 25 Arms Act. Similarly, accused Bobby was arrested on 07.06.17 in case FIR No. 234/17 u/s 394/411/34 IPC of PS Bhajanpura. Both the said accused were thereafter formally arrested in the present case with the permission of the

court. Accused Tarun Sharma was also arrested on 03.07.17 on the pointing out of secret informer.

4. On completion of investigation, charge-sheet was filed against all three accused for the offences punishable under Section 307/34 IPC.

5. Copies were supplied to the accused as required under Section 207 Cr. PC and case was committed to the Sessions Court. After hearing arguments, a charge for the offence punishable under Section 307/34 IPC, was framed against all the three accused, vide order dt. 24.11.2017.”

3. The Trial Court by way of its impugned judgment acquitted the respondents-accused. The relevant portion of the impugned order is reproduced hereinbelow:-

“12. The witness was duly confronted with him complaint Ex PW5/A where he had not named accused Gaurav @ Mohit or Tarun Sharma nor he had stated that Mohit had caught his hands and Tarun instigated Bobby to hit him. Thus, he improved his previous version. In fact, in his complaint Ex. PW5/A, he had not named either accused Gaurav @ Mohit or accused Tarun Sharma though he claimed that the two associates of accused Bobby who came at the spot with him were previously known to him. There is no reason as to why he did not name them in the complaint/FIR if their identity was known to him.....

13. It has been admitted by PW-5 in his cross examination that he had borrowed a sum of Rs. 5,000/ from the mother of accused Gaurav @ Mohit after the incident. He also admitted that he had taken a loan of Rs. 2,000/ from the mother of accused Mohit. Thus, the fact that accused Gaurav @ Mohit was not named in the initial complaint by PW-5 and he made substantial improvement in his previous statement regarding his role in the incident as well as the fact that he had already taken loan from

the mother of the said accused, the possibility of his falsely implicating accused Gaurav @ Mohit to avoid repayment of loan, as suggested by the Ld. Counsel for the said accused, cannot be ruled out.

14. Similarly, accused Tarun Sharma was also not named in the FIR though he too was known to the complainant and there is no explanation for the said lapse..... Hence, the implication of accused Tarun Sharma subsequently and for ulterior motives cannot be ruled out.

15. As far as accused Bobby is concerned, there are specific allegations as against him that he gave a knife blow on the chest of the complainant. However, nothing came out in the cross examination of PW-5 which could discredit his testimony regarding the said allegation.

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19..... As per the MLC, the injury was an incised wound of 2 cm x 1cm near left nipple of chest, but there is no observation that it was a 'deep' incised wound. Simply because the injury was on the left side of the chest, would not be sufficient to conclude that it would have endangered the life, that too when it was a simple incised wound. At the most, it can be designated as an injury caused by a sharp edged weapon used for stabbing and cutting. Hence, I disagree with the opinion given by PW-1, designating the injury upon the complainant as grievous.

20. In light of the above discussion, this court is of the opinion that the prosecution has failed to prove its case against the accused Gaurav @ Mohit and Tarun Sharma beyond reasonable doubt and thus, they are entitled for benefit of doubt. They are accordingly, acquitted for the offences punishable u/s 307/34 IPC and are set at liberty.

21. It is further to be noted that the complainant neither in the complaint Ex. PW5/A nor in his deposition before the court

ever made any allegation that the accused Bobby attacked him with an intention to kill him. It is clear from his deposition that the injury was caused in a sudden fight and no intention of the accused to kill the complainant can be deciphered from the testimony of PW-5 or from the alleged act of accused Bobby. Hence, charge u/s 307 IPC cannot be sustained against him. However, for having caused the said injury, an offence u/s 324 IPC has been proved against accused Bobby and he is accordingly held guilty and convicted for the said offence.”

4. Mr. Amit Gupta, learned APP for the State contends that the Trial Court has erred in concluding that no allegation was made by the complainant-victim Anil Kumar (PW-5) that the respondent-accused Bobby had attacked him with an intent to kill. He states that the complainant-victim Anil Kumar (PW-5) had clearly deposed before the Trial Court that the respondents-accused had assaulted him with an intent to kill him and as per the MLC, the injuries suffered by the complainant-victim Anil Kumar (PW-5) clearly proves that the offence falls under Section 307 of the IPC and therefore, the sentence needs to be enhanced.

5. Upon a perusal of the deposition of the complainant-victim Anil Kumar (PW-5), this Court finds that in his initial complaint Ex PW5/A, the complainant-victim Anil Kumar (PW-5) had neither named respondent-accused Gaurav @ Mohit or respondent-accused Tarun Sharma nor stated their roles in the incident in spite of knowing the respondents-accused prior to the incident. The aforesaid fact is also supported by the testimony of HC Pradhan Singh (PW-7). The relevant portion of the testimony of the complainant-victim Anil Kumar (PW-5) and HC Pradhan Singh (PW-7) is reproduced hereinbelow:-

A) **Testimony of complainant-victim Anil Kumar (PW-5)**

“....I had stated in my statement to the police that Mohit caught hold my hand and Tarun instigated the accused Bobby and accused Bobby inflicted knife blow on my chest. Confronted with the statement Ex. PW5/A where it is not so recorded....

.....It is correct that accused Tarun, Bobby and Mohit @ Gaurav were known to me prior to the incident.....

.....It is incorrect to suggest that I did not name accused Mohit in my statement recorded by the police. Confronted with the statement Ex. PW5/A where the name of the accused Mohit is not recorded.....”

B) **Testimony of HC Pradhan Singh (PW-7)**

“....It is correct that in the statement of the injured Anil Kumar Ex. PW5/A injured has not named the accused Mohit @ Gaurav.”

6. Further, the complainant-victim Anil Kumar (PW-5) has admitted in his examination-in-chief and cross-examination that he had borrowed money from the mother of the accused Gaurav @ Mohit before and after the incident. The relevant portion of the cross-examination of the complainant-victim Anil Kumar (PW-5) is reproduced hereinbelow:-

“....Vol. I had taken a loan of Rs. 2000/- from the mother of the accused Mohit on interest.....

.....Vol. I had borrowed a sum of Rs. 5000/- from the mother of the accused Mohit @ Gaurav after the incident on interest.....”

7. Consequently, this Court is in agreement with the finding of the trial court that the possibility of the complainant-victim Anil Kumar (PW-5) falsely implicating the respondents-accused Gaurav @ Mohit and Tarun Sharma to avoid repayment of the loan cannot be ruled out and the said

respondents-accused are entitled to benefit of doubt.

8. As regards the allegations qua respondent-accused Bobby, the trial court *dehors* the deposition of the complainant-victim Anil Kumar (PW-5) has concluded that “.....*In the instant case, none of the eight grounds or factors* (mentioned in Section 320 IPC) *which would designate an injury to be grievous are satisfied...*”. Moreover, keeping in view the improvements made by the complaint-victim Anil Kumar (PW-5) in his various statements to the police, this Court is of the view that it would not be safe to conclude from his deposition alone that the respondents-accused had attacked him with an intent to kill.

9. It is pertinent to mention that the trial court has convicted respondent-accused Bobby under Section 324 IPC for having caused the aforesaid injury and sentenced him to the period undergone i.e. two years, one month and eleven days.

10. Consequently, this Court is of the view that the impugned order calls for no interference. Accordingly, the present leave petition, being bereft of merit, is dismissed.

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MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 02, 2019

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