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

+ **CRL.L.P. 152/2019 & C.M. Nos. 3981-82/2019**

Decided on : 22.02.2019

SANNO & ORS.

..... Petitioners

Through: Ms. Shikha Sapra, Advocate.

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Amit Gupta, APP for State with
SI Rajpal, P.S. Khyala, Delhi

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

HIMA KOHLI, J. (ORAL)

1. The complainant (petitioner No.1), her sister (petitioner No.2) and her brother-in-law (petitioner No.3) have filed the present petition seeking leave to appeal against the judgment dated 07.6.2018 passed by learned ASJ, Special Judge (NDPS), West District, Tis Hazari, Delhi, in SC No. 57817/2016, arising out of FIR No. 144/2010 P.S. Khyala, Delhi whereunder the respondents No.2 to 6 have been acquitted of the offence under Sections 307/323/34 IPC.

2. We may note at the outset that earlier hereto, aggrieved by the aforesaid judgment dated 07.6.2018, the State had preferred Crl. L.P. No. 611/2018 that was dismissed by a co-ordinate Bench vide order dated

20.09.2018, a copy whereof has been enclosed with the present petition and is marked as Annexure A-3. For ready reference, the order dated 20.9.2018, is extracted herein below:-

“Crl.L.P. 611/2018

2. *The State seeks leave to appeal against the impugned judgment dated 7 th June 2018 passed by the learned Additional Sessions Judge/Special Judge (NDPS), West District, Tis Hazari Courts, Delhi acquitting the Respondents of the offences punishable under Sections 323/307/34 IPC. The impugned judgment was delivered in SC No.57817/2016 arising out of FIR No.144/2010 registered at PS Khyala.*

3. *The case of the prosecution is that the Respondents, armed with dangerous weapons like swords, dandas, knives, etc., got together and caused life threatening injuries to the three injured eye witnesses, i.e. Sanno (PW-3), Israr (PW-4), and Kallo (PW-8).*

4. *There were several difficulties that the prosecution encountered during the trial. Two of the injured witnesses, i.e. PWs 3 and 4, turned hostile. PW-3 began her examination-in-chief by supporting the case of the prosecution, but a few months later, when she was cross-examined, she totally resiled from her earlier version and stated that she was under pressure by the police to support the case of the prosecution. Although it is sought to be urged by the APP appearing for the State that to the extent PW-3 supported the case of the prosecution in her examination-in-chief, her evidence should be relied upon, this Court nevertheless views PW-3 as an unreliable witness.*

5. *Added to this difficulty of PW-3 resiling from her earlier version is the fact that the medical evidence does not support the case set up by the prosecution. Dr. Jyoti Shukla (PW-1), the Medical Officer at Guru Gobind Hospital, who examined the injured witnesses on the date of the incident, i.e. 8 th October 2010, certified the injuries to be “simple in nature”. While PW-8 had a lacerated wound on the right parietal region, PW-3 had a lacerated wound on the right finger (muscle deep) and contusion on the right parietal region over left shoulder. There is no medical evidence for the injuries to PW-4. Since the weapons*

allegedly used by the accused were not recovered, there was no occasion for the weapons to be shown to PW-1 to seek her opinion whether they could have caused the injuries she noticed. The result is that the evidence of PW-3, even to the extent of her examination-in-chief, does not stand corroborated by the medical evidence.

6. PW-4 also resiled from his previous statement made to the police. That left only PW-8. She spoke about the injuries caused to PW-3 but as would be recalled, PW-3 herself resiled from her previous statement made to the police and maintained that none of the Respondents had caused any injuries to her or to PWs 4 and 8.

7. In the above scenario, there was no reliable and truthful witness to speak to the case of the prosecution. In the circumstances, the trial Court could not be faulted for concluding that the prosecution had failed to prove the case against the Respondents beyond reasonable doubt.

8. No grounds have been made out for interference with the impugned judgment of the trial Court. The petition for leave to appeal is accordingly dismissed, but in the circumstances, with no order as to costs."

3. The petitioners are seeking to assail the impugned judgment on almost the same grounds as taken by the State in Crl. L.P. No. 611/2018, without explaining how a different view is possible when the petitioner No.1, Sanno (PW-3) and her husband, the petitioner No.3, Israr (PW-4), who were injured witnesses, had both turned hostile during the trial.

4. The records reveal that when PW-3 had appeared before the trial court on 28.4.2015, she had supported the prosecution version about the incident but her cross-examination was deferred on the said date. Later on, when PW-3 had appeared in Court on 25.1.2016, she had resiled from the earlier version given by her and instead, claimed that she had been pressurized by the I.O. to state the facts that she did on 28.4.2015.

Similarly, the husband of the petitioner No.1, Israr (PW-4) had also turned hostile and had categorically stated that none of the respondents No. 2 to 6 had caused any injuries to him on the date of incident i.e., 08.10.2010. When confronted with his earlier statement recorded under Section 161 Cr.P.C. alleging that the respondents No.2 to 6 had assaulted him and his wife (petitioner No.1) and his sister-in-law (petitioner No.2), he denied having stated so to the police.

5. This left petitioner No.2, Kallo (PW-8), who had deposed before the trial court that the respondent No.2 had inflicted injuries on her sister (petitioner No.1). The petitioner No.1 having resiled from her statement made to the police in this regard and having testified before the Court that the respondents No.2 to 6 had not caused any injury to her and instead, had deposed that her husband (petitioner No.3) and her sister (petitioner No.2) were assaulted by some unknown persons and since it was dark at that time, she could not see their faces, the testimony of petitioner No. 2 alone was not relied upon by the trial court that held that both the petitioners No.1 and 3 were unreliable witnesses.

6. Furthermore, the plea taken by the learned counsel for the petitioners that the trial court ought to have appreciated that the wounds and injuries inflicted by the complainant stood corroborated by the medical evidence and the testimony of PW-1, Dr. Jyoti Shukla, Medical Officer, Guru Gobind Singh Govt. Hospital, Delhi, is contrary to the record, was duly noticed by the co-ordinate Bench in the order dated 20.9.2018. PW-1, who had examined three injured witnesses on 08.10.2010, the date of the incident, had opined that the nature of the injuries suffered by the petitioners No.1 and 2 were simple and by the

petitioner No.3, were simple blunt. Moreover, the weapon allegedly used by the respondents No.2 to 6 to assault the petitioners was not recovered and therefore, could not be shown to PW-1 for obtaining any opinion on the injuries noticed by her.

7. The trial court has further observed that there were no other eye witnesses to support the prosecution version though many public witnesses had allegedly gathered at the spot on the date of the incident. Noting that the ocular testimony runs contrary to the medical evidence and further, none of the injuries noticed by PW-1, the doctor, were opined as 'dangerous to life', the trial court acquitted the respondents No.2 to 6.

8. Having perused the evidence placed on record and on carefully scrutinizing the impugned judgment, we see no reason to differ with the view taken by the co-ordinate Bench in its order dated 20.9.2018, reproduced above. The present petition is accordingly dismissed alongwith the pending applications, with no orders as to costs.

(HIMA KOHLI)
JUDGE

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 22, 2019
Ap/NA