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

Date of Decision: 13th May, 2019

+ CRL.L.P. 325/2019

STATE

..... Petitioner

Through: Mr.Rajat Katyal, APP for State

versus

IRFAN & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

CRL.M.A. 10231/2019 (Exemption)

Exemption is allowed, subject to all just exceptions.

Application stands disposed of.

CRL.L.P. 325/2019

1. The present leave petition has been filed under Section 378(3) of the Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr.P.C') challenging the judgment dated 15.02.2019 passed by the learned Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi, acquitting the respondents-accused in FIR No. 614/2015 registered with Police Station Kotwali under Sections 307/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 25/27/54 of Arms Act.

2. Brief facts of the case, as noticed by the learned Trial Court, are as under:-

“That the accused persons namely Irfan, Salman and Abdul, on 25.07.2015 in between 12.45 AM to 1:00 AM outside the shop No. 4986, Kucha Rehman, Balli Maran, Delhi within the jurisdiction of PS Kotwali, they all, in furtherance of their common intention along with one JCL namely Rizwan attempted to cause murder of one Faraz S/o Sh. Iqbal by inflicting stab injuries upon his person with knife and with such intention and knowledge and under such circumstance that if they all, by that act had cause death of said Faraz, they would have been guilty of murder and thereby they all committed an offence punishable under Sections 307/34 IPC.

Further on 25.07.2015, between 12.45 AM to 1:00 AM outside the shop No. 4986, Kucha Rehman, Balli Maran, Delhi within the jurisdiction of PS Kotwali, accused Salman used a knife while inflicting injuries on the person of the injured namely, Faraz S/o Sh. Iqbal while attempting to commit his murder and thereby committed an offence punishable under Section 27 Arms Act.”

3. During the course of investigation, the accused were arrested and the charge sheet was filed and charges for the offence punishable under Section 307/34 of the IPC were framed against the accused Irfan, Salman and Abdul and accused Salman was also charged for the offence punishable under Section 27 of the Arms Act to which they pleaded not guilty and claimed trial. In order to bring home the guilt of the accused, the prosecution has examined 3 witnesses in all.

4. Learned counsel for the State has contended that the impugned judgment is based on conjectures and surmises and the same is liable to be set aside; that the trial court failed to appreciate the correct position of law and failed to discuss the reasons cited by the prosecution; that the trial court failed to give opportunity to other eye witness namely, Wasim; that the trial court failed to appreciate the statements of PW1 and PW2 under Section 161 Cr.P.C; that the trial court failed to appreciate that the testimonies of the witnesses are consistent as a whole and minor contradictions should not be considered a ground for acquittal.
5. Heard learned counsel for the State and perused the material available on record. PW1 deposed as under:-

“The incident had taken place in the intervening night of 24/25th day in the year 2015, but I do not remember the month. It was either 8th or 9th month of the year. At about 12’midnight, I received a telephone call from someone whose name I do not remember as on today, may be it was of Salman. He asked me to come out from the house as he wanted to talk with me. When I went outside my house, I saw that a crowd was present in the street. Somebody from crowd caught of me from behind. Another caught hold my neck. I could not see as it was dark as to who caused injury to me and with what object but the said object was of iron. I was in semi-conscious state of mind. I became unconscious in the hospital.”

PW-2 deposed as under:-

“That I do not remember the date, month and year as I am illiterate. However, one year ago, on the day of the incident, at about 12’midnight/1.00 am,

when I came outside the gali, one Faraz was found in injured condition and he asked me to take hospital. I took Faraz to the hospital in a TSR. Faraz did not tell me as to how he had received injury.”

6. Considering the aforementioned testimonies of the PW-1 and PW-2, it is clear that the prosecution has failed to put on record any incriminating evidence against the accused persons as PW-1 and PW-2 turned hostile and failed to identify the accused persons and further failed to get the weapon of offence recovered.
7. It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast there to in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case, the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favor's the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.
8. 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 ground to interfere with the impugned judgment is made out and the leave petition is dismissed

SANGITA DHINGRA SEHGAL, J

MANMOHAN, J

MAY 13, 2019
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