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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered on : 16.09.2019

CRL.A. 566/2018

THE STATE GOVT. OF NCT OF DELHI Appellant

versus

SONPAL @ SONU Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ravi Nayak, APP with SI Mahender Pal Singh, Original IO
and ASI Suresh Kumar, PS-New Usman Pur

For the Respondent : Mr. Joginder Tuli, Advocate (Amicus Curiae) with Ms. Joshini
Tuli, Ms. Divya Jangid, Advocates and respondent-in-person

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE I.S. MEHTA

J U D G M E N T

SIDDHARTH MRIDUL, J (OPEN COURT).

1. The present appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') assails the impugned judgment and order dated 08.05.2017, rendered by the learned Trial Court in Sessions Case No.45016/2015, arising out of FIR No.237/2015, under Sections 307/34 of the Indian Penal Code, 1860 (for short 'IPC') Police Station- New Usman Pur, whereby Sonpal @ Sonu, the respondent-accused was acquitted of the charge framed against him

under Section 307 read with Section 34 IPC.

2. Briefly encapsulated, the case of the prosecution was that, on 22.02.2015, complainant Lalit Vajpayee was taken to Jag Pravesh Chandra Hospital by SI James PW-8 at 06:00 p.m. The medical examination of Lalit Vajpayee revealed that, he had one 10cm x 6 cm lacerated wound over left side of his neck. Lalit Vajpayee, whose statement was recorded by ASI Mahinder Pal (PW-13) stated that, he was a TSR driver and had a quarrel, a year and half prior to the date of the incident with the respondent and had slapped him on that occasion. Lalit Vajpayee further stated that, on that day i.e. 22.02.2015 at about 05:00 p.m. when he was repairing the clutch wire of his TSR, opposite the shop of one Babloo (DW-1), the respondent came there along with two boys, one of whom was mentioned as Gunda and the other has remained unnamed; and after asking him as to why he had slapped the respondent earlier, stabbed him with “an iron sword type object”, on his neck while his associates caught hold of him.

3. It is further the case of the prosecution that Lalit Vajpayee's brother, Amit Vajpayee (PW-10) reached the spot within 10-15 minutes of the incident and called the Police Control Room at No.100. It is further the case of the prosecution, as reflected in DD No.35A

that at 06:40 p.m. the Police Control Room received a call from Amit Vajpayee (PW-10), brother of Lalit Vajpayee to the effect that 'भाई के गले में चाकू मार दिया है'.

4. Upon these allegations, subsequent upon investigation a charge sheet was filed and thereafter charges under Section 307 read with Section 34 IPC were framed against the respondent. The accused pleaded not guilty to the charge and claimed trial.

5. In order to establish its case against the respondent, the prosecution examined as many as 13 witnesses. Pursuant to the recording of statement of the respondent under Section 313 Cr.P.C. and the examination of (DW-1) Shiv Kumar, in support of his defence, the trial court returned the finding, as aforestated, aggrieved whereby the State has assailed the impugned judgment and order dated 08.05.2017.

6. In order to appreciate the submissions made on behalf of the State in the present appeal, it is considered appropriate and necessary to elaborate the findings arrived at by the trial court, and the same are reproduced in extenso as follows:-

“38. From the submission of the Ld. Counsels, the following points for determination arise in the present case:

- a) Whether any incident of stabbing or cutting took place in front of shop of Babloo i.e. Shop near Nala, 4½ Pusta, South Gamri, Delhi?
- b) Whether it was accused who caused injury to the complainant?

39. MLC Ex.PW5/A does show that injured Lalit had received injury. One lacerated wound was noticed on left side of neck. Although the size of injury is mentioned differently at two places on the same MLC. AT one place, it is mentioned as 15cm x 3 cm and at another place, it is mentioned as 10cm x 6cm. Variance in the size does create some doubt. However, the common fact is that there was injury. The injury has been opined as 'grievous'.

40. The important question, however, is as to how Lalit received this injury and who caused this injury. This question has already been noted above.

41. The MLC shows that Lalit was drunk at the time of his examination. The noting of 'Alcohol +ve' is there in the MLC. This is very relevant observation. Time of examination is 06:00 p.m. In the column of Brought by, the name of SI James is mentioned. According to SI James (PW-8), he had received PCR call at 06:30 p.m. and thereafter he went to the spot and from there he took injured Lalit to hospital. If PW-8 received information at 06:30 p.m., how come the MLC was prepared at 06:00 p.m.

42. PW-1 says his brother had reached at the spot and made call at 100 number. PW-10 i.e. brother of PW-1 says he had received information at about 5 – 5.15 p.m. about quarrel of accused with his brother and he reached there. He must have reached within 5/10 minutes as he was not far away. If it is so, why PW-10 waited till 06:30 p.m. to make the call to PCR.”

7. A plain reading of the above extracted finding reflects that, the trial court observed that Lalit had received one lacerated wound on the left side of his neck. The trial court, however, was doubtful about the size of the injury received, as well as, the opinion that it was 'grievous'. The trial court thereafter proceeded to determine the

question as to how Lalit had received this documented injury and who had caused it.

8. Having appreciated the testimony of the star witness, examined on behalf of the prosecution, the trial court observed that, although the information regarding the commission of the offence had been received by SI James (PW-8) from Amit Vajpayee (PW-10), brother of the injured victim Lalit, only at 06:40 p.m., how could he, in these circumstances, have accompanied the victim, when the latter was examined at the concerned hospital at 06:00 p.m. Further, the trial court observed that, although it was the prosecution's case that Amit Vajpayee (PW-10), brother of the injured Lalit, received information of the incident at about 5 – 5:15 p.m. and reached there within 10/15 minutes thereafter, there is no explanation forthcoming as to why he waited till after 06:30 p.m. to make the relevant call to the Police Control Room, as evidenced by DD No.35A.

9. Further, the trial court observed that, PW-10 had made the said call purportedly from the telephone of a passer-by, who has not been examined by the prosecution; and had also testified that he had made another call on the 100 number earlier as well, of which no record has either been produced or proved in evidence. In addition, the trial court

took note of the critical testimony of Babloo (DW-1), opposite whose furniture shop Lalit the victim is stated to have been assaulted in broad day light by Sonpal @ Sonu and his two associates, who have not been tried in the present case. Babloo DW-1, who was then examined on behalf of Sonpal @ Sonu in his defence, categorically testified that, no such incident/quarrel, as asseverated by Lalit, the complainant and the prosecution had occurred in front of his shop on the date asserted. In this behalf, it was also found that the respondent was not mentioned by name in DD No.35A, despite the circumstance that both the injured victim and his brother knew him well. Finally, it was noted by the learned trial court that, the MLC of Lalit, the injured victim, prepared at Jag Pravesh Chandra Hospital, Shastri Park, Delhi, where he was taken by SI James PW-8 on 22.02.2014 at 06:00 p.m., clearly recorded that he was 'alcohol +ve' at the time of his examination at the hospital.

10. The injured victim also testified that Sonpal @ Sonu attacked him with the 'sword like object' while his two associates caught hold him. This testimony of the injured victim is belied by the circumstance that, admittedly he has suffered a lacerated injury on his neck, which could not have been the outcome had he been attacked by

either a 'sword like object' or knife, as testified by his brother PW-10 and recorded in DD No.35A.

11. It was in this backdrop of the appreciation of the evidence that, the trial court arrived at the conclusion that the respondent was deserving of the benefit of doubt, since the prosecution had been unable to establish that, Lalit received the injury present on his person, at the hands of the respondent.

12. Mr. Ravi Nayak, learned APP appearing on behalf of the State, invited our attention to the testimony of the injured victim Lalit, as well as his brother Amit Vajpayee (PW-10) to urge that, the prosecution had been able to establish that the respondent along with his two associates, had caused the grievous injury present on the former as per his MLC Ex.PW.5/A; and must consequently be convicted for attempt to murder, within the meaning of the provisions of Section 307 IPC.

13. Per contra, Mr. Joginder Tuli, learned amicus curiae appearing on behalf of the respondent Sonpal @ Sonu invited our attention to the findings recorded by the trial court to urge that, the same are cogent and do not require any interference by this court, in the present appeal.

14. Having heard, learned counsel appearing on behalf of the

parties and appreciated the evidence on record, we have no hesitation in arriving at the conclusion that, in view of the following material on record, the prosecution has failed to establish beyond reasonable doubt that, the injury present on the person of Lalit was caused by the respondent:-

- A. There is no reason forthcoming, explaining the delay in lodging the complaint DD No.35A;
- B. That despite the complainant and PW10, admittedly knowing the accused herein, his name does not find mention in the complaint, DD No.35A.
- C. Although there is no reason to doubt the MLC, insofar as, it records the factum of injury present on the victim's neck, the opinion rendered in the MLC that it was 'grievous', is thrown into doubt by the circumstance that, the victim testified that he was discharged from the hospital at 04:00 a.m., the very next day.
- D. That the shopkeeper, DW-1, Babloo, in front of whose shop the alleged incident is said to have taken place, categorically testified that no such quarrel or incident took place outside his shop, on that day;

E. That the complainant was certified to have been in an inebriated 'Alcohol +ve' state, at the time of his examination at the hospital.

15. The law, so far as the scope of interference in an appeal against an order of the acquittal is well defined. Reference in this regard is made to the decision of the Supreme Court in **Ghurey Lal V. State of U.P.**, reported as **(2008) 10 SCC 450**, wherein it was held:-

"70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons "for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;
- (ii) The trial court's decision was based on an erroneous view of law;
- (iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- (v) The trial court's judgment was manifestly unjust and unreasonable;
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying

declarations/report of the ballistic expert,
etc.

(vii) This list is intended to be illustrative, not
exhaustive.

2. The appellate court must always give proper weight and
consideration to the findings of the trial court.

3. If two reasonable views can be reached--one that leads
to acquittal, the other to conviction--the High
Courts/appellate courts must rule in favour of the
accused."

16. In view of the foregoing discussion, we find ourselves unable to
conclude that the prosecution was able to prove its case beyond
reasonable doubt or that the judgment of acquittal returned by the trial
court, suffers from any perversity, so as to warrant reversal by this
Court, in the present appeal.

17. Resultantly, the present appeal fails and is accordingly
dismissed. The bail bonds furnished on behalf of the respondent
Sonpal @ Sonu stands discharged.

**SIDDHARTH MRIDUL
(JUDGE)**

**I.S. MEHTA
(JUDGE)**

SEPTEMBER 16, 2019
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