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

Judgement Reserved On: March 12th 2019
Judgement Pronounced On: 29th March, 2019

+ CRL. L. P. 564/2015
STATE (NCT OF DELHI) Petitioner

Through: Mr.G.M. Farooqui, APP for State with
SI Prabhakaran, PS Dabri

versus

SANJEEV HANS & ORS Respondents

Through: Ms.Astha,Adv.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL
SANGITA DHINGRA SEHGAL

1. By this petition under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter as 'Cr.P.C'), the petitioner/State seeks leave to appeal against the judgment dated 11.02.2015 passed by the learned Additional Sessions Judge-03, Dwarka Courts, Delhi whereby the respondents (1)Sanjeev Hans, (2)Sunil Jain, (3)Rohit and (4)Pankaj were acquitted of the charge under Sections 304/34, 325/34, 323/34 and 308 of the Indian Penal Code, 1860 (hereinafter as 'IPC') in Sessions Case No. 21/2012 in FIR No. 519/2006, PS Dabri.
2. Brief facts of the case are as under:-

"1. The case of the prosecution as per statement dated 24.05.2006 (Ex.PW4/A) of complainant Satyender Prasad

(PW4) is that he was residing alongwith his family at House No.RZ-111-A, Gali No. 8, Kailash Puri Extension, New Delhi, and was doing the job of waste paper. Alongwith him, son of his "sala" (brother in law) Niranjana S/o Ishwar Prasad (PW3) and "sala" (brother in law) Arun Prasad S/o Jattu Mahto (PW14) of his (complainant) brother were also residing. In the night (of 23.05.2006) at about 10.00 pm, his son Mritunjay Kumar (PW1) was settling the accounts of labourers. He (complainant) heard noise outside the house, then he alongwith his son Rajiv Kumar (deceased), Niranjana Prasad and Arun Prasad came out. Four boys namely (1) Sanjeev Hans S/o Sh.Charanjeet Hans, (2)Hardeep (Proclaimed offender) S/o Sh.Charanjeet R/o RZB-47, Gali No. 8, Kailash Puri Extn., New Delhi, (3) Sunil Jain S/o Sh.Subhash Chand R/o RZ-57-B, Gali No. 10, Kailash Puri, and (4) Rohit S/o Sh.Jagdish R/o RZ-32, Gali No. 8, Kailash Puri Extn., New Delhi, came there armed with lathies and dandas. They stated that today four boys including your (Mritunjay) brother alongwith one girl were taking liquor in the plot adjoining their house and that they (assailants) will not leave them (victims). While stating this, Sanjeev hit on the head of his son Rajiv Kumar with danda, as a result of which his son sat there only. Thereafter Sunil hit him (Rajiv) with danda and Hardeep (proclaimed offender) and Rohit had hit Arun Prasad and Niranjana Prasad with dandas. Large number of people gathered and they (assailants) absconded. Complainant further stated that he knew all the boys very well. He further stated that PCR got them admitted in the DDU Hospital and his son Rajiv Kumar was taken by his other son Mritunjay to Safdarjung Hospital.

2. As per the rukka, on receiving call vide DD No. 88B and 90B, the present case FIR No. 519/2006 was registered under Section 308/34 IPC against the accused persons. Statement of witnesses were recorded. After conclusion of evidence, charge sheet for the offence under

Sections 323/325/308/304/34 IPC was filed against all the five accused persons.”

3. Vide order dated 30.05.2006 the charge for the offences punishable under Sections 304/308/325/323/34 IPC was framed against aforesaid accused persons, to which they pleaded not guilty and claimed trial. Vide order dated 10.02.2010, accused Hardeep was declared proclaimed offender.
4. To bring home the guilt of the respondents, the prosecution has examined 18 witnesses in all. Statement of the respondents were recorded under Section 313 of Cr.P.C. wherein they denied the charges framed against them and claimed to be falsely implicated in the case. They had further claimed that, the deceased/Rajiv had died due to the own act of the appellants. Accused Pankaj while taking the plea of alibi had stated that he was not present in Delhi at the time of the incident, and that IO and the complainant have falsely implicated him in the present case. Accused persons have examined 2 defence witnesses in support of their case.
5. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the Trial Court recorded the acquittal of the accused persons for the offence punishable under Sections 304/325/323/308/34 of the IPC.
6. Assailing the impugned judgment, Mr. G.M. Farooqui, learned counsel for the State opened his submissions by contending that the impugned judgment dated 11.02.2015 is based on conjectures and surmises and the same is against the settled proposition of law; that the trial court has erred in laying a lot of emphasis on minor variations

and discrepancies in the testimonies of the witnesses led by the prosecution, however, there are no material contradictions or improvements in the testimonies which go to the root of the case; that the learned Trial Court failed to appreciate that so far as the nature of injuries on the body of the deceased/Rajiv were concerned, same had been duly proved through the post-mortem report; that the deceased died due to shock as a result of a head injury due to blunt object and the testimonies of PW1, PW2, PW3 and PW4 are clear and consistent to the effect that the deceased died due to the injuries made by the accused persons; that the learned trial court failed to take notice of the disclosure statement of the accused persons which led to the recovery of the alleged weapon of offence; that for the above reasons, the Additional Public Prosecutor for the State strongly urged for grant of leave to appeal to challenge the impugned judgment of acquittal.

7. Per contra, Ms. Astha learned counsel for the Respondents submitted that the evidence led by the eyewitnesses PW1, PW2, PW3 and PW4 does not merit any credence as the witnesses have made a lot of improvements and there are other discrepancies also in their statements; that the prosecution has not examined the doctor who had administered the MLC and have even failed to exhibit the MLC of the deceased; that there are adequate reasons to doubt the veracity of the explanation which has been tendered by the prosecution about the sequence of events; that the prosecution also failed to establish the cause of injuries on the accused persons; that there are various gaps in the present case and no interference in the impugned judgment is called for by this court.

8. We have heard the learned counsels for the parties and considered their rival submissions.
9. The case of the prosecution rests upon the testimonies of material witnesses i.e. PW1, PW2, PW3, PW4 and PW14. Being eyewitnesses to the incident their deposition is vital to the present case. They were examined and testified as under:

Examination in chief of PW1

“On 23.05.2006 at about 10 PM I was present outside my house and was making payment to labourers while sitting on a motorcycle. Accused Sanjeev, Hardeep, Sunil Pankaj and Rohit came there and started abusing me and asked me where is my brother namely Ashutosh. All the accused persons were having cricket wicket sticks, dandas and sarias in their hands. The accused persons told me that my brother Ashutosh along with four-five boys used to take liquor in a vacant plot adjacent to the house of accused Sanjeev Hans and accused persons told “aaj tumhe maja chakhate hai” and they started quarrelling with me. When I raised alarm, on hearing the noise my father namely Sh.Satender Prasad, my cousin Niranjan and my maternal uncle Arun and my younger brother Rajeev came out from the house to rescue me. Accused Sanjeev Hans and Sunil hit iron rod on the head of my younger brother Rajeev as a result of which Rajeev fell down and he became unconscious. I took Raju to Safdarjung Hospital on my motorcycle and Gangadhar also accompanied me on the bike. My father, my Mama Arun and my cousin Niranajan also sustained injury during the quarrel. 20-30 public persons had gathered at the spot at that time and on seeing the crowd the accused persons had succeeded to run away from the spot.”

Cross examination of PW1

“... There are residential houses all around my house. Police had made enquiries from many persons from the my neighbourhood. I had stated to the police that accused had asked me about the whereabouts of my brother Ashutosh. Confronted with Ex.PW1/DA where it is not so recorded. I had stated to the police that accused persons were having cricket wicket and sticks with them. Confronted with Ex.PW1/DA where it is not so recorded. I had stated to the police that accused Sanjeev Hans and Sunil hit with iron rod as a result of which Rajeev fell down and became unconscious.

I had only stated to the police in my statement recorded under section 161 Cr.P.C that there was a commotion amongst the persons present there, but I did not state that who had given beatings to whom.

I was settling the accounts of 2-3 labourers namely Sanjay, Anjani and Pankaj, before the incident, but before the incident took place they had left and as such, they were not present when the quarrel took place. They went to their godown. Again said, they left the spot when the accused started altercation with me. Ashutosh was present in the godown at that time to look after his business since a truck was to be loaded with the goods.

When the accused persons had arrived at the spot, they were on 2 motorcycles.”

Examination in chief of PW2

“On 23.05.2006, I along with Mritunjay Kumar were present inside my house and I was making settle the accounts of labourers with him. At about 10 p.m accused Rohit, Pankaj, Sunil, Sanjeev and Hardeep came to our house and they started abusing to Rajiv, bother of Mritunjay who was standing outside of the house. On hearing the alarm we came out our house. The accused Rohit asked about Ashutosh from Mritunjay.”

Cross examination of PW3

“....I had not seen any injury on the person of Sanjeev Hans, Hardeep and Sunil on the day of the incident. I do not know if after the incident, the father of Sanjeev Hans had removed Hardeep to the hospital. I cannot admit or deny if the father of Sanjeev Hans had removed Hardeep the hospital since I had not seen him removing Hardeep to the hospital.

..... Rajiv was not removed to the hospital by the PCR officials. At the time I was removed to the hospital by the PCR officials, Rajiv was at the spot.”

PW4 and PW14 have deposed on similar lines as the other eyewitnesses.

10. From the perusal of the aforesaid testimonies, it is evident that there are various contradictions and variations in the testimonies of the star witnesses of the prosecution. PW1 during his examination in chief deposed that ‘the accused Sanjeev Hans and Sunil hit iron rod on the head of the deceased Rajiv’ to the contrary, during cross examination he deposed that ‘I had only stated to the police in my statement

recorded u/s 161 Cr.P.C that there was a commotion amongst the persons present there, but I did not state that who had given beatings to whom’. PW1 during his cross examination deposed that ‘I was present outside my house and was making payment to labourers while sitting on a motorcycle’ to the contrary PW2 stated that he was inside the house along with PW1 and deposed that ‘I along with Mritunjay Kumar were present inside my house and I was making settle the accounts of labourers with him’. At another instance PW2 contradicted the statement of PW1 by stating that the respondents had come to their house and had started abusing the deceased Rajiv, who was standing outside the house but PW1 nowhere had stated that the deceased, Rajiv, was standing outside.

11. Moreover, PW2 had claimed that Gangadhar was present at the spot before he reached, but the case of the prosecution is that Gangadhar was not at the spot of the incident and had not witnessed the alleged incident. Now considering the statement of PW3, it becomes evident that he too has not been consistent. He had deposed that ‘Rajiv was not removed to the hospital by the PCR officials. At the time I was removed to the hospital by the PCR officials, Rajiv was at the spot.’ Whereas the prosecution has throughout maintained that the deceased, Rajiv, was taken to the hospital before the PCR officials reached at the spot of the incident. Except PW3, none has identified Pankaj as one of the assailants.
12. PW4 also failed to ascribe the role of the respondents who allegedly gave them beating. Further, he negated the recovery of the alleged

weapons used by the respondents by denying that it was done in his presence. PW14 has not been consistent either, his statement does not corroborate with the MLCs on record. In light of the above discussion we observe that the eyewitnesses have not been consistent in their testimonies regarding the main facts of the case.

13. Returning to the evidence adduced during trial, it has been pointed out by the learned counsel that the prosecution has failed to produce the MLC of the respondents on record. This creates a doubt in mind regarding the version of the prosecution regarding the injuries sustained by the respondents. Moreover, the nature of injuries sustained by the deceased/Rajiv could not be ascertained through the post mortem report and the MLC has not been placed on record.
14. Considering the numerous contradictions and inconsistencies in the testimonies of the eyewitnesses and with no precise explanation regarding the role or the injuries sustained by the alleged assailants, combined with no concrete medical record of the deceased/Rajiv, I find no compelling reason to interfere with the impugned judgment passed by the learned Trial Court.
15. 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

MARCH 29, 2019
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