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

+ **CRL. A 963/2018**

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*Judgment reserved on 26th November, 2018
Judgment pronounced on 17th January, 2019*

STATE

....Appellant

Through : Ms. Radhika Kolluru, APP for state.

Versus

RAM NIWAS

....Respondent

Through: Mr. B. Badrinath, Advocate.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. This is a Criminal Appeal under Section 378 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') filed against the judgment dated 09.02.2018 passed by learned Additional Sessions Judge, Patiala House Court, New Delhi in Sessions Case No. 9001/2016 arising out of case FIR No. 129/2014 registered at Police Station - Sagar Pur whereby the accused was acquitted of the charge under Section 307 of Indian Penal Code (hereinafter referred to as 'IPC').
2. Before the rival submissions of learned counsel for the parties are considered, we deem it appropriate to reproduce the brief facts of the case as noticed by the learned Trial Court, which reads as under:

On 01.04.2014 on receipt of DD no. 14A ASI Yaad Ram along with constable Dheeraj reached at shop No. 28A

Nasirpur Sabzi Mandi, where they saw that near the counter of shop blood was lying on the floor. After inquiry, they came to know that injured had been taken to Bhagat Chandra Hospital. ASI Yaad Ram informed the crime team. Constable Jasbir was called at the spot and after leaving him at the spot, ASI Yaad Ram and constable Dheeraj reached Bhagat Chandra Hospital. There injured Purushottam was found admitted vide MLC No. 586/14. However, he was not fit for statement. In the hospital they also met with one eye witness namely Dharmender Singh, whose statement was recorded by ASI Yaad Ram. In his statement Dharmender Singh stated that injured Purushottam was his partner and that on 01.04.2014, injured Purushottam had opened their shop at about 5.00 am and he along with Narottam and servant Sonu were present and that at about 11 am accused Ram Niwas came to the shop and from one hand caught hold of neck of injured and with the other hand slit his throat with the knife and that blood started oozing out of the neck and that injured was taken to Bhagat Chandra Hospital...”

3. After completing the investigation, a charge sheet was filed and the accused was charged with offence under Section 307 of IPC to which he pleaded not guilty and claimed to be tried. The prosecution in order to bring home the guilt of the accused, examined as many as of 12 witnesses including an eye witness PW-10, Sonu (servant to Purushottam).
4. Statement of the accused was recorded under Section 313 Code of Criminal Procedure wherein he reiterated his innocence and claimed to be falsely implicated in the instant case by the injured, who owed

him Rs.60,000/-. In his examination, he stated that the injuries on PW-2 are self inflicted which accidentally became grievous (as per the MLC). The accused chose not to lead any witnesses in his defence.

5. After hearing both the sides and evaluating the prosecution witnesses and documentary evidence, the learned Trial Court recorded the acquittal of the accused for the offence punishable under Section 307 of the IPC.
6. Assailing the impugned judgment, learned counsel appearing for the State contended that the impugned judgment passed by the learned Trial Court is perfunctory in nature, full of conjectures and surmises and hence liable to be set aside. Learned counsel further contended that the impugned judgment is a glaring case of legal defects resulting in grave failure of justice. He further contended 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 of the injured (PW-2 Purushottam), Dr. M.C. Sarmah (PW-3), the IO (PW-12), Constable (PW-6). Learned APP stated that minor contradictions or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be the ground to reject the evidence in its entirety.
7. Learned counsel also submitted that the Trial Court discarded the medical evidence led by Dr. M.C. Sarmah from Bhagat Chandra Hospital, who had examined the victim vide MLC No. 586 dated 01.04.2014 and had opined the nature of the injury as grievous.

Moreover, the Trial Court has failed to appreciate the testimony of L. Babyto Devi (PW-11), Assistant Director, Biology, FSL Rohini, who had categorically stated that the DNA profile had matched with the DNA found on clothes and earth control, which clearly goes to show that the knife recovered was used as the weapon of offence upon the victim/Purushottam.

8. Before concluding her arguments, learned counsel submitted that the defective investigation should not be of any advantage to the accused and that the prosecution has been able to prove the entire chain of events, proving the guilt of the accused beyond reasonable doubt, thus urging the Honb'le Court to set aside the impugned judgment.
9. To substantiate her arguments, learned counsel for the State has placed reliance on *Pattipati Venkiah Vs. State of Andhra Pradesh* reported in (1985) 4 SCC 80, *Lallan Vs. State of U.P.* reported in 1990 CrL. L.J. 463 and *Abdul Sayeed vs. State of Madhya Pradesh* reported in 2010 (10) SCC 259
10. Per contra, learned counsel appearing for the respondent vehemently supported the impugned judgment and order of acquittal and submitted that the prosecution has failed to establish any motive due to which the accused would have committed the alleged crime; that the prosecution failed to examine the eye witnesses/public witnesses to the incident allegedly present at the time of occurrence. In this background, learned counsel urged that no interference by this Court whatsoever is warranted.

11. We have given our anxious consideration to the rival submissions of counsel for the parties and also perused the material available on record.
12. The case of the prosecution rests upon the testimonies of eye witnesses/injured. It is a settled principle of law that conviction can be based on the basis of the testimony of a sole eyewitness subject to same is reliable and inspires confidence. In ***Sadhu Ram and Anr. v. State of Rajasthan*** reported in (2003) 11 SCC, it has been held that :
 16. It is no doubt true that the conviction of an accused can be based solely on the testimony of a solitary witness. However, in such a case the court must be satisfied that implicit reliance can be placed on the testimony of such a witness and that his testimony is so free of blemish that it can be acted upon without insisting upon corroboration. The testimony of the witness must be one, which inspires confidence and leaves no doubt in the mind of the court about the truthfulness of the witness.
13. In ***State of Haryana v. Inder Singh*** (2002) 9 SCC 537, the Apex Court has held that the testimony of a sole witness must inspire confidence and should be beyond suspicion, leaving no doubt in the mind of the Court. In ***Joseph v. State of Kerala*** 2003 (2) SCC 465, it was held that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. Further in ***Patel Engineering Limited v. Union of India (UOI) and Anr.*** (2012) 11 SCC 257, it was observed by the Apex Court that the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court

and have to be corroborated by other evidence produced by the prosecution.

14. Undisputedly, the injured sustained injuries on the date and time of the alleged incident. PW-3 Dr. M.C. Sarmah, medically examined the injured and observed as under :

I examined the patient vide MLC No 586 dated 01.04.2014 and on local examination, following injuries were observed:

- (1) Cut injury neck extending from right sternocleidomastoid muscle to middle of left sternocleidomastoid (on the throat of the patient) transversely cutting Right sternocleidomastoid to middle of left sternocleidomastoid.*
- (2) Right sternocleidomastoid muscle injuries and jugular vein severed.*
- (3) Thyroid cartilage was exposed.*

I opined the nature of injuries as grievous. The cloths of the injured and blood had been seized and handed over to IO. Detailed MLC is now Ex.PW3/A bearing my signatures at points 'A'.

15. Now, we have to consider whether the respondent was responsible for causing injuries to the victim. The case rests upon the direct evidence being the injured eye-witness PW-2 Purushottam and another eye-witness PW-10 Sonu, servant of the injured.
16. The prosecution examined the victim as PW-2, who has testified as under:

"...On 01.04.2014, I was sitting on my shop with my partner Mr. Dharmender Singh. At about 11.00 a.m, the accused Ram Niwas (correctly identified

as present in the court) came to my shop, from one had caught hold of my neck and with the other hand slit my throat with a knife. I have financial transactions with the accused.

On 21.2.2006, the accused has taken Rs. 2 lacs in cash from me on the understanding that he would sell the vegetables through my shop but he did not sell the vegetables through my shop.

On 31.03.2014, the accused further asked for Rs. One lakh from me but I refused, thereafter, the accused had left my shop after threatening me that he will not leave me (main tujhe chorunga nahin.)

On 01.04.2014, at about 11.00 a.m, at my above said shop after slitting my throat with a knife, the accused tried to run away from the shop but was caught by the public persons. My partner, Dharmender Singh thereafter took me to Bhagat Chandra hospital at Mahabir Enclave in my Santro car bearing registration no. HR-10-6568. My statement was recorded by the police on 09.04.2014 at the PS as earlier while in the hospital, I was not in a position to give the statement as the doctor had medically advised me not to give statement...”

17. Another eye-witness to the incident PW-10 Sonu, servant to the victim/Purushottam was examined by the prosecution but he denied that he had witnessed any such incident. Even though he was extensively cross-examined, he did not budge from his position. When he was declared hostile, the prosecution was not able to bring forward any other substantial witness/evidence to prove the guilt of the accused, in order to corroborate the portion of PW-10/Sonu's

testimony which could have been admitted. The testimony, thus, is not worthy of being considered and so is rejected.

18. Interestingly, another eye-witness to the incident i.e. Dharmender Singh, partner of the injured, who witnessed the incident and removed the injured to the hospital was not examined by the prosecution. Had the assailant/respondent been present at the relevant time, place and date, the complainant must have stated the name of the assailant/respondent to the doctor examining the injured, but the complainant failed to give the name of the assailant to the doctor preparing the MLC. Non-examination of the complainant and another eye-witness stated to be present at the time of incident namely Munim Narottam, accountant of the injured, casts doubt on the story set up by the prosecution.
19. Coming to the next limb of the argument of learned counsel for the respondent that no independent witness was asked to join the investigation despite their availability. With regard to the recovery of the weapon, PW-6 Ct. Dheeraj tendered different version during his examination before the Court. At once instance, he deposed that "IO also found one knife which was lying near the counter of the above said shop and he after measuring the same prepared its sketch." When a leading question was put to this witness by learned Prosecutor, he stated that "It is wrong to suggest that the knife was recovered from the possession of the accused Ram Niwas at the time of his arrest or that the said knife was not recovered from near the counter of the above said shop." However, the cross examination of this witness was deferred after lunch time and he was again cross

examined by the learned Prosecutor wherein he admitted his signatures seizure memo of knife Ex.PW6/D and stated that the knife was recovered from the possession of the respondent and that he failed to state the same in the earlier deposition. These contradictions have been noticed by the learned Trial Court and observed in the judgment that the witness might have changed his statement under the pressure.

20. The arrest of the accused appears to be doubtful, dubious and questionable. Apparently the accused was apprehended by the public when he tried to flee from the spot after committing the crime at 11:00 a.m. but the arrest memo shows that the Police arrested him at 3:10 p.m. the prosecution was unable to answer the delay and gap in the arrest on the accused.
21. As per the case of the prosecution, the respondent was caught hold by the public after commission of the alleged offence. PW-6 Ct. Dheeraj in his cross examination categorically stated that "No public witness was associated in the arrest of the accused. I did not request any public person to join the investigation proceedings and the IO also did not make any such request in my presence." Investigation Officer PW-12 SI Yaad Ram has categorically stated that "Public persons had already apprehended the accused Ram Niwas with knife and handed over to Ct. Jasbir. Ct. Jasbir handed over the custody of accused Ram Niwas and knife to me" and admitted in his cross examination that "It is correct that so many people gathered at the spot. No public person was made a witness while making the arrest of the accused." PW-12 Yaad Ram failed to tender any plausible reason for not introducing any independent witness from the public despite their availability.

Such failure not to associate independent witnesses at the time of recovery as well as arrest of the respondent created a dent in the case of prosecution.

22. Now we advert to the motive behind commission of crime. It is settled law that motive is not a necessary element in deciding culpability but it is equally an important missing link which can be used to corroborate the evidence where conviction is based on circumstantial evidence. The Apex Court on several occasions has considered the law regarding basing of conviction by the Court on circumstantial evidence. It is useful to refer to the judgment of the apex court in ***Gambhir v. State of Maharashtra 1982 (2) SCC 351***, wherein the apex Court laid down that circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Referring to the above judgment of ***Gambhir v. State of Maharashtra (supra)***, principles were again reiterated by the Supreme Court in ***K.V. Chacko v. State of Kerala 2001 (9) SCC 277***, wherein following was laid down in paragraph 5:

5. The law regarding basing a conviction by the courts on circumstantial evidence is well settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The

circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

23. The Trial Court had aptly held that the motive for the alleged occurrence remains obscure and hazy. The prosecution was unable to prove any evidence or document in support of the money transactions which took place between the parties except that the victim/Purushottam had denied giving 1 lakh to the accused, because of the refusal the accused had threatened the victim and then on 01.04.2014 slit his throat. It is also pertinent to note that the complainant, being an eye witness also, had made no mention regarding any such money transaction in his complaint, nor had he mentioned the name of the accused. The prosecution has miserably failed to prove motive, if any, on the part of accused to inflict injury on the body of injured.
24. From the above discussion, we find that there is no cogent of evidence to connect the respondent with the commission of offence alleged to have been committed by him.
25. For the reasons which we have already given above, we regard it unsafe to act upon the testimony of injured/PW-2 alone without any corroboration and to convict the respondent for any offence. We are thus of the view that the prosecution failed to establish the guilt of the accused beyond reasonable doubt. We find no infirmity in the

decision rendered by the Trial Court, hence, the present appeal stands dismissed.

SANGITA DHINGRA SEHGAL, J.

SIDDHARTH MRIDUL, J.

JANUARY 17, 2019

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