

\$~14

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

+ **CRL. L.P 819/2018**

%

*Judgment reserved on 11th December, 2018
Judgment pronounced on 17th January, 2019*

STATE

....Petitioner

Through : Ms. Radhika Kolluru, APP for state.

Versus

VIJAY

....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. By this petition under Section 378 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') filed against the judgment of the Trial Court dated 22.09.2018 passed by Learned ASJ, Dwarka Court, in case FIR No. 48/2017, at Police Station Sagar Pur by which the accused was acquitted of the charge under Section 307 of Indian Penal Code (hereinafter referred to as 'IPC').
2. The factual matrix from which the present proceeding arises are being adumbrated as follows:

“Adumbrated in brief the case of prosecution is that on 26.03.2017 at about 12 noon at House no.6, Gulia Enclave, behind Anaj Mandi, Najafgarh, Delhi, the accused inflicted injuries by knife upon person of Ranjit Yadav. Accused was arrested on 26.03.2017, produced in court on 27.03.2017 and remanded to judicial custody and since then he is in judicial custody.”

3. After completing the investigation, a charge sheet was filed. 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 08 witnesses including an eye witness PW-4, Asha (wife of the accused).
4. Statement of the accused was recorded under Section 313 of Code of Criminal Procedure wherein he denied all the incriminating circumstances against him and claimed to be falsely implicated in the present case and stated that PW-3, Ranjit Yadav (victim), had illicit relationship with PW-4, Asha (wife of accused). The accused chose not to examine any witnesses in his defence.
5. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the trial Court recorded the acquittal of the accused for the offence punishable under Section 307 of the IPC.
6. Ms. Radhika Kolluru, learned counsel for the State submitted that the judgment of the Trial Court is not sustainable in law as the Trial Court has failed to properly appreciate the evidence on record and is based on non-application of judicial mind. It is submitted that the Trial Court has acquitted the respondent on the basis of fictional doubts which are against the factual matrix of the case.
7. The counsel for the State further submitted that even if there are minor variations and discrepancies in the testimonies of PW-3 (the victim) and PW-4 (wife of the accused), there is corroboration regarding the key material facts of the case. Even other official witnesses, SI Satyawar (PW-7), ASI Surender Singh (PW-6) and HC Bhagirath (PW-5) led by

the prosecution, corroborate in their testimonies regarding the consequential elements of the case.

8. Learned APP also contended that the trial court has erred in discarding the injuries suffered by the victim which were proved by PW-1 (Dr. Rajeev Kumar, Senior Medical Officer, from RTRM Hospital) and also the FSL report (Ex-PF) which proved the involvement of Respondent in the commission of the crime.
9. We have heard the learned counsel for the State and also perused the relevant material available on record.
10. At the outset we deem it appropriate to peruse the testimony of material witnesses i.e. PW-3 (the victim) and PW-4 (wife of the accused) and PW-2 (employer of PW-3). PW-3 (the victim) during his examination in chief deposed as under:

“About two years ago, accused Vijay present in court in JC, correctly identified, had taken Rs.10,000/- as loan from me but I do not remember the date and month when it was so taken. Vijay was residing in room taken on rent from my employer Moni. I was residing in the room of my employer Moni. Vijay called me at about 12 Noon and gave me his bank passbook in my hand asking me to see whether there is any money. I told him that I was not that literate. I started looking in the passbook. Accused Vijay assaulted me with knife at various places of my body including forehead, two places at stomach, chest, above my left eyebrow. I became unconscious. After two days I regained consciousness at DD hospital where I was medically treated. I remained in the hospital for about one week. Police recorded my statement in the hospital after about 2 days of the incident.”

During cross-examination PW-3 deposed as under:

“It is correct to suggest that for last 10 years I am working in the fields of Naveen. I used to reside at the house of Naveen which was nearby the fields. I had given the loan amount of Rs.10,000/- to accused, two years prior to

incident. Voln. I used to demand my money back almost daily from accused. It is correct to suggest that I had gone to the home of Vijay on 24.03.2017 to demand money back and he had not given it back to me. It is correct to suggest that on 26.03.2017 at about 12 noon I had gone to home of Vijay to demand money back. Voln. Vijay had called me there. It is incorrect to suggest that at that time, accused Vijay was not there and had gone out previously and his wife Asha was there. It is incorrect to suggest that Asha w/o Vijay gave me meal and after eating roti, I had lied down on cot for sometime there to take rest. It is incorrect to suggest that after sometime Vijay came there.”

Xxxxxxx
xxxxxxx

When I had given loan sum to accused Vijay, then my salary was Rs.6000/- per month. I had given the loan in cash to accused Vijay after taking it from my employer. I had given the said loan without interest. Accused Vijay had told me, he will return back within one month. Loan was given at the house of accused Vijay in presence of his wife. I did not lodge any complaint against accused Vijay for not returning the loan sum as he assured me that he will pay back the loan. I did not go to house of accused as a matter of routine. Wife and children of accused Vijay were not at home on the day of incident. **Accused Vijay had called me from fields and taken to his home on the day of incident. When I raised noise, on being assaulted by accused, no person from neighbourhood came at that time but had come later. Previous landlord of accused Vijay had come there. I do not know the name of that landlord...**”

11. PW-4, Asha (wife of the accused) during her examination in chief deposed as under:

“Accused Vijay in JC is my husband. Accused was rickshaw puller. One year ago, my husband Vijay had taken Rs.10,000/- as loan from Ranjit as there was shortage of money for purchase of land in village. Said Ranjit resides in Dhichaon Village and is a worker in the fields. My husband Vijay told Ranjit that he was giving money and called Ranjit for that. It so happened about one month back. **I was not at home but was at the road upside as some**

vendor for slippers had come and I was purchasing slippers. As accused Vijay came there, fighting with Ranjit was taking place. My husband Vijay assaulted Ranjit by knife on his chest, forehead, stomach. I had seen it. People collected there. Ranjit became unconscious. Call at 100 number was made. Naveen Shokeen, employer of Ranjit came and took Ranjit to hospital. I had only seen above-said.”

During cross examination the witness deposed as under:-

“...I was working in the fields of Naveen Shokeen, where Ranjit was working. It is correct to suggest that I as well as Ranjit were working in same fields. I was working in the fields on the day of incident. I used to work in the fields till 9 or 10am. I had heard the shout of Ranjit as “bachao”. My place of residence was 2 fields away from my aforesaid place of working in the field. I have five children. One is married. Two children were at home at the time of incident and one of them was 7 year old daughter and other was 16 year old daughter. On the day of incident, Ranjit had not come to fields to work. It is correct to suggest that when I had reached at the spot, Ranjit was lying unconscious there. Again said, I had seen the occurrence and in the course of occurrence Ranjit became unconscious. Many persons of locality were there but I do not remember their names. Police recorded my statement at my home but I do not remember the date or month. My daughter had shown knife pieces to police. Police had not recorded statements of my children who were at home at the time of incident...”

12. PW-2 (employer of the victim) who took the victim to the hospital during his examination in chief deposed as under:-

“Date and month I do not remember, 3/4 months ago I was at my home. From my fields I received a phone call on my mobile phone by unknown caller informing me that my employee Ranjit was lying there soaked in blood. I went to my fields. I saw Ranjit unconscious soaked in blood. Someone had made a call to PCR. Police came there and took Ranjit to hospital at Jaffar Pur. Ranjit was admitted there. I came back to my home from hospital. I know nothing else.”

13. From the perusal of the above testimonies we find that there are major discrepancies and contradictions in the statement of these prosecution witnesses. As per the testimony of PW-3 (the victim), 'wife and children were not at home on the day of incident' and 'accused Vijay had called him from fields and taken to his home on the day of incident'. However, PW-4 (wife of the accused) during her cross examination deposed that her two children were present in the house at the time of incident and she came to the spot after hearing the cries of the victim by stating that 'I had heard the shout of Ranjit as 'bachao' and 'two children were at home at the time of incident and one of them was 7 year old daughter and other 16 year old daughter'. PW-4 (wife of the accused) deposed that 'my place of residence was 2 fields away from my aforesaid place of working in the filed', but PW-2 (employer of the victim) deposed that 'I went to my fields. I saw Ranjit unconscious soaked in blood'. As per PW-3 (the victim) no one was present at the time of commission of crime however, PW-4 (wife of the accused) deposed that she rushed to the spot on hearing the cries of the victim and other people collected there who with great difficulty separated the accused from PW-3 (the victim). PW-4 (wife of the accused) claimed to have seen the incident by deposing that 'My husband Vijay assaulted Ranjit by knife on his chest, forehead, stomach, I had seen it. People collected there' but on the other hand she deposed that 'I was not at home but was at the road upside as some vendor for slippers had come and I was purchasing slippers'. The testimony of PW-3 (wife of the accused) is at variance and there is likelihood of her being not present at the time of commission of crime.

The conjoint reading of the aforesaid testimonies depicts that the place of occurrence has not been conclusively established, the site plan Ex.PW7/J is inconclusive and does not confirm the exact place of commission of crime, the distance of fields and recovery of weapon i.e. knife has also not been established.

14. Perusal of the medical evidence shows the presence of injuries on the person of the victim which are grievous in nature but as discussed above there are severe infirmities and material contradictions in the testimonies of the material witnesses, even the investigation has been done in a very lackadaisical manner and it is not feasible to convict the respondent only on the basis of medical evidence.
15. As far as contention of Ms. Kolluru, learned counsel for the state with regard to FSL report is concerned, we find that the irregularities in seizure of the case property and sending the same for forensic examination has not been met by the prosecution appropriately and we concur with the observation made by the trial court in this regard which is reproduced as under:-

“22. ...Accordingly, the FSL report admitted as Ex. PF containing the result of examination that alleles from source of blood stained earth exhibit ‘2’; Shirt of accused ‘4a’; pant of accused ‘4b’; vest of accused ‘4c’; T shirt of victim ‘5a’ and shirt of victim ‘5b’ stated to be similar or from the same source are of no help to the prosecution since the prosecution has failed to establish that the case property after seizure till being sent to FSL nearly 6 months later to seizure was not tampered with during the period it

remained in the custody of MHC(M) or the carrier of case property.”

16. The Apex Court in ***Govindaraju @ Govinda Vs. State & Anr. (2012) 4 SCC 722***, court has discussed in detail the scope and power of the appellate court and reiterated that the presumption of innocence of an accused is reinforced by the order of acquittal. Relevant portion of the judgment reads as under:-

“11. Besides the rules regarding appreciation of evidence, the Court has to keep in mind certain significant principles of law under the Indian Criminal Jurisprudence, i.e. right to fair trial and presumption of innocence, which are the twin essentials of administration of criminal justice. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption which could be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of evidence. The element of perversity should be traceable in the findings recorded by the Court, either of law or of appreciation of evidence.

12. The Legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 Cr.P.C. This is an indication that appeal from acquittal is placed at a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 Cr.P.C. has been introduced as an additional stage between the order of acquittal and

consideration of the judgment by the appellate Court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-sections (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the Courts.

13. Under the scheme of the Cr.P.C., acquittal confers rights on an accused that of a free citizen. A benefit that CrL. L. P. 62/2015 Page 11 of 11 has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the Appellate Court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law.”

17. From the perusal of the evidence of the prosecution witnesses and the findings recorded by the Trial Court we feel that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The testimonies of the prosecution witnesses are not worthy of reliance and cannot form the basis of conviction and found to be not supported by the scientific evidence as well.
18. 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 analyzing the entire 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.

SIDDHARTH MRIDUL, J.

JANUARY 17, 2019
SU

