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

% ***Date of decision: 20th March, 2024***

+ **CRL.L.P. 150/2022 & CRL.M.A. 7298/2022**

STATE

..... Petitioner

Through: **Ms. Manjeet Arya, APP for the State
with SI Ashok Kumar, PS Nangloi.**

versus

1) **VIKAS KUMAR**

2) **VED PRAKASH @ SONU @ BOXER** **..... Respondents**

Through: **Mr. Anupam S. Sharma, Advocate for
respondent No.1.
Mr. Anil Dabas, Advocate for
respondent No.2.**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The State has taken exception to order dated 06.07.2021 passed by learned Trial Court whereby both the accused (respondents herein) have been acquitted of all the charges.

2. We have given our thoughtful consideration to the rival contentions and carefully perused the Trial Court Record (TCR) in order to see whether State is entitled to leave to appeal or not.

3. Investigation took off on the basis of report lodged by Sh. Ram Narain (PW6) with the police on 06.10.2009. He mentioned therein that he had three daughters, including Anju and Anuj. Anju was married to Gopal (PW5) whereas the other daughter Anuj was married



to accused Vikas (respondent No.1 herein). Vikas was a drug addict and he used to suspect that there was some illicit relationship between his wife Anuj and Gopal. Ram Narain also revealed that Vikas used to threaten that he would eliminate Gopal. As regards the incident in question, he claimed that on 05.10.2009, he had come to the shop of his son-in-law Gopal and when he left for his home at around 10 pm, he saw Vikas and his three friends coming there on two motorcycles. After threatening Gopal, multiple shots were fired at Gopal by Vikas. Gopal was immediately taken to Sonia Hospital for treatment where his statement was also recorded.

4. Accused Vikas was arrested and the pistol, used in the aforesaid incident, was also recovered. During investigation, prosecution could lay his hands upon co-accused Ved Prakash, who, however, refused to participate in TIP.

5. Both the accused were chargesheeted in the above factual matrix.

6. They both were charged for offence under Section 307 read with Section 34 IPC. Accused Vikas was also charged for commission of offence under Section 25 of Arms Act. They pleaded not guilty and claimed trial.

7. Prosecution examined 14 witnesses in its support.

8. Both the accused pleaded innocence when they were examined under section 313 Cr.P.C. According to accused Vikas, he had been



falsely implicated after due deliberations and even the firearm was planted upon him. Accused Ved Prakash also claimed false implication.

9. Learned Trial Court after analysing the evidence, came to the conclusion that there was a strong element of falsehood and taking note of various inconsistencies and contradictions and the manner of investigation, acquitted both of them.

10. Such order is under challenge before us.

11. Since, it happens to be a petition under Section 378(1) Cr.P.C., it needs to be seen whether State is entitled to leave to appeal or not.

12. According to learned Addl. P.P. for the State, the impugned judgment lacks legal sustainability and needs to be set aside as there was no reason or occasion to have granted any kind of benefit of doubt to the respondents, particularly, in view of cogent and trustworthy evidence of not only of the injured but also of the eyewitness. It is admitted that there was a matrimonial dispute going on but that could not have been reason to falsely implicate the accused. It is argued that the learned Trial Court has given unnecessary weightage to the minor infirmities and minor contradictions and there is no investigation lapse which could be said to have gone to the root of the matter.

13. Learned counsel for the respondents, on the other hand, while refuting the aforesaid contentions, has justified the findings returned



by the learned Trial Court. It is argued that Ram Narain is a planted eyewitness and since he was already harbouring a grudge against his such son-in-law i.e. Vikas, a false story was churned out which stood exposed in view of the irreconcilable contradictions. It is further argued that the learned Trial Court was also fully justified in holding that the investigation was shoddy and lopsided and, therefore, there is no reason to interfere with the impugned judgment or to grant leave to the State.

14. The testimony of injured Gopal (PW5) and his father-in-law Ram Narain (PW6) holds the key.

15. We have carefully gone through their statements and indeed there are several contradictions in their testimony and prosecution has failed to, firmly, establish that the incident in question was witnessed by Ram Narain.

16. The incident had taken place on 05.10.2009 at 10 pm at the shop of injured Gopal. As per the case projected by the prosecution, Ram Narain had seen the shooting incident with his own eyes. Learned trial court doubted the same and we also do not find any reason to come to a different conclusion.

17. We may, at the very outset, emphasize that Ram Narain has categorically admitted that he was carrying mobile phone with him at the relevant time but it is totally inexplicable as to why after such a serious incident had taken place, he did not use his such mobile either to inform his relatives or to the police. For the reasons best known to



the prosecution, the call detail record (CDR) of his mobile was not even bothered to be collected which makes his presence at the spot little doubtful. So much so, his such mobile number has not even been apprised to the court. Such doubt about his presence at the spot gets further strengthened for the following reasons:-

- (i) If at all he was the one who had seen the accident and had taken Gopal to the hospital, the same would have certainly got reflected in the information received by PCR and also in the MLC of Sonia Hospital.
- (ii) It is normally the duty of the prosecution to place on record the relevant PCR form. Needless to emphasize, such PCR form contains vital information and gives us the first-hand information about the occurrence. There is no explanation as to why such PCR form was not collected by the Investigating agency and was not made part of the chargesheet. Fortunately, such information was collected by the defence by moving appropriate application under *Right to Information Act (RTI Act)* and the information which he got under RTI Act was placed before the Court and was also proved by calling the concerned official of RTI Cell. The testimony of DW4 Constable Jai Karan is important on this aspect. He has deposed that the relevant information was supplied to Vikas Kumar (respondent No.1 herein). As per the contents of such PCR form, the Control Room was



informed about the fact that “*Amar Colony Shiv Shakti Mandir ke pass goli chal gai hai*”. It is also mentioned in such PCR form that the injured had been admitted in Sonia Hospital, Nangloi. It also narrates that the age of Gopal as 40 years but the assailant /shooter was not known. (“*Gopal ki age 40 years kisne goli mari pata nahin hai*”)/ (“*jhagde walon ka pata nahi laga hai*”). The information seems to have been given by the subscriber of mobile no.9212216461 but no efforts seem to have been made by the Investigating agency to assess and find out as to who was such caller. This assumes importance because the caller knows about the name of the injured and his parentage and address but he does not know as to who had shot Gopal. Since according to the case of the prosecution, there is no other eye witness of the incident and the PCR form also does not contain the name of the assailant, the possibility of introducing the name of the accused as assailants cannot be ruled out, particularly in view of the previous animosity. Also, there is no reason to disbelieve the version of Incharge of concerned PCR Van who has entered into witness box as DW5. He admitted these entries mentioned in PCR form to be in his handwriting.

- (iii) As already noticed above, PW6 Sh. Ram Narain did claim that he himself had taken Gopal to Sonia Hospital. He claimed that such hospital was situated very near to



the spot. However, as per the MLC Ex.PW9/A, the injured Gopal had been brought to hospital by some 'Monu'. It nowhere records that the injured had been brought by Sh. Ram Narain which also makes the aspect related to the presence of Ram Narain at the spot highly suspicious and doubtful.

- (iv) Moreover, as per MLC, Ex.PW9/A, though the injured Gopal had been brought to the hospital with the history of bullet injury but fact remains that he was conscious and oriented. He was admitted in the hospital on 05.10.2009 at 10:20 pm but there is no contemporaneous endorsement with time and date showing that he was unfit for statement at that time.
- (v) PW14 (SI Pratap Singh) is the Investigating Officer of the case. He had reached Sonia Hospital on receiving the information about the incident in question and claimed that Gopal was found admitted in said hospital. He goes on to depose that Sh. Ram Narain was also present in the hospital and he recorded the statement of Ram Narain at the hospital itself but as already noticed above, the name of Ram Narain is conspicuously absent from the MLC. Surprisingly, when the defence had asked question about 'Monu' to the Investigating Officer, he came up with unexpected responses. Though, he did admit that as per MLC, Gopal was conscious and oriented and his vitals were normal, he failed to explain as to why he did not ask



the injured about the name of the assailant/culprit. So much so when Gopal was declared fit to make statement on 09.10.2009 at 8 pm, he refused to make any statement that day and his statement was eventually recorded on 10.10.2009. In such type of matters, the statement of any such injured should be recorded immediately, provided, of course, his being medically fit. Here, he was conscious and oriented but despite that he did not reveal the name of his assailant either to the attending doctor or to the Investigating Officer. Even when he was declared fit to make statement on 09.10.2009, he refused to make any statement and in such a peculiar situation, the statement which he made on the next date does not seem to be inspiring enough as there is a possibility of it being a manipulated one.

- (vi) Though, according to the Investigating Officer, despite the fact that Gopal was fit to make statement, he did not make any statement till 10.10.2009, such fact has been outrightly denied by Gopal. Such contradiction is also mystifying.
- (vii) Interestingly, the Investigating Officer went on to claim that he did not know anything about any *Monu*. He was not a stranger as his name was mentioned in MLC. No effort was made to reach said *Monu*, who had brought the injured to the hospital. He was a vital link in the case of prosecution but there is no plausible explanation coming



from the side of the prosecution as to why he was not contacted despite the fact that MLC not only contains his residential address but also his contact number. Even he was good samaritan, who had merely taken injured to hospital on his bike, he should have been examined particularly when, MLC does not record name of Ram Narain and injured made statement belatedly.

- (vi) As per PW6 Ram Narain, he had taken Gopal to the hospital and in the process, his own clothes also got stained with the blood of Gopal but it is not explained by the prosecution as to why such clothes were not seized.

18. Moreover, if we evaluate and compare the testimony of Ram Narain with that of Gopal, it is difficult to make out whether Ram Narain was present inside the shop or had left the shop. PW5 Gopal has given different versions. In one breath, he says that though his father-in-law Ram Narain had come to meet him at his shop but incident had happened after he had already seen him off. In his further examination-in-chief, he claimed that after the incident, his father-in-law also entered the shop and with his assistance, he was brought out and taken to the hospital. In his cross-examination, he created flutter by claiming that his father-in-law was sitting inside the shop. In his further cross-examination, he even claimed that his father-in-law was with him behind the counter, meaning thereby that they both were inside the shop and on same side of the counter, and not opposite and that he had not, thus, left the shop at all.



19. PW6 Ram Narain, in his examination-in-chief, claimed that after meeting Gopal, he left the shop for going to his house and then he had seen two motorcycles coming there which means that he was never inside the shop when the incident had taken place.

20. Thus, there is utter confusion about the exact position and location of Ram Narain at the time of the incident in question.

21. Moreover, if at all, Ram Narain had witnessed the incident, he would have immediately resisted and would have taken some steps to save his son-in-law Gopal and there is nothing in his testimony which may indicate any such action on his part.

22. It is also not clear as to how many assailants had come to the shop of Gopal.

23. If Ram Narain is to be believed then there were four such assailants who had come on two motorcycles. Vikas and his one co-accused had come on one motorcycle and they went to the shop and thereafter Vikas took out pistol and started firing towards Gopal. After the incident, Vikas and his said associate, i.e. accused Ved Prakash fled away on one motorcycle and the other persons fled on the other.

24. However, such fact has been outrightly disowned by the Investigating Officer as in his testimony he, categorically, claimed that there were two assailants only and that they had come on one motorcycle.



25. As per the medical of the injured, he received two bullet injuries and there are two entry points and two exit points.

26. This is also obvious from MLC Ex.PW9/A as well as from the deposition of PW9 Dr. Raj Kumar. However, when the police officials reached the spot, they found two 'cartridge cases' and they noted the particulars appearing on such 'cartridge cases' and both these 'cartridge cases' were then seized vide Memo Ex.3/A.

27. As per PW3 HC Naresh, the Investigating Officer had seized two 'empty shells' which were lying at the shop but if the Investigating Officer PW14 SI Pratap Singh and Crime Team Incharge PW2 SI Kuldeep Singh are to be believed then one such case was found 'inside the shop' and one was found from 'outside the shop'. This also creates a strong doubt with respect to the manner in which the incident had taken place. One 'cartridge case' was found from a bucket lying inside the shop and the other 'cartridge case' was recovered from outside shop at distance of three meters from the shop. This anomaly has not been clarified by the prosecution. The crime team has also not thrown any light and rather there is some interpolation in the crime scene report which has potential to suggest that at the time of crime team visit, only one cartridge had been noticed. Description of these cartridges have been specifically given in Seizure Memo Ex.PW3/A but the Investigating Officer admitted that these description and markings did not tally with the description appearing in the report made by the crime team. As noticed, the crime team report also does not inspire much confidence as it seems that



there are certain additions made therein at a subsequent point of time, which fact has been rightly observed by the learned Trial Court.

28. Nobody knows as to on what basis the site plan Ex PW14/B was prepared by the Investigating Officer because it does not depict the position of solitary eyewitness Ram Narain or for that matter the places from where these cartridge cases were recovered. There are no photographs of the spot either.

29. Both these cartridge cases as well as one pistol, which had been recovered at the instance of accused Vikas, were sent for forensic examination. Obviously, if both the cartridges had been fired by the same pistol at the same time, the forensic report would have confirmed the same but it is not explained as to why the FSL report confirms the same with respect to one cartridge case only, and not about the other.

30. Moreover, since the accused had also been charged under Section 25 Arms Act, the sanction under Section 39 of Arms Act was *sine qua non* and it is quite obvious that in the present case, no such sanction has been placed on record and even the Investigating Officer is blissfully ignorant about the aforesaid aspect.

31. The analysis of the evidence of the prosecution witness by the learned trial court is found to be in accordance with law and settled legal position and we do not find any reason to come to any different opinion. The contradictions and infirmities and the gaps in investigation, as noticed by learned trial court are not trivial in nature



and rather go to the root of the matter, creating cracks in the very foundation of the case.

32. We also need not emphasize that order of acquittal is not, generally, interfered with when view taken by the learned Trial Court is found to be reasonable and plausible one. Appellate Court cannot reverse the decision merely because a different view was also possible. Presumption of innocence, which is in favour of the accused, gets strengthened by such order of acquittal and they, thus, even otherwise, become entitled to get the benefit of doubt.

33. Nothing has been canvassed before us which may suggest that the other view i.e. conviction of the respondents was the sole possibility.

34. In view of our forgoing discussion, we do not find the present case to be a fit case where the State is entitled to leave to appeal.

35. Resultantly, the present appeal is dismissed.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

MARCH 20, 2024
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