
State of NCT of Delhi Vs Surinder Singh

Criminal L.P. 235 of 2012

Court: Delhi High Court

Date of Decision: Oct. 24, 2013

Acts Referred:

Arms Act, 1959 â€” Section 27#Criminal Procedure Code, 1973 (CrPC) â€” Section 374(4)#Penal Code, 1860 (IPC) â€” Section 307

Hon'ble Judges: Reva Khetrapal, J; Pratibha Rani, J

Bench: Division Bench

Advocate: Rajesh Mahajan, Addl. Standing Counsel and SI Somvir Singh, P.S. Malviya Nagar in Person, for the Appellant; Vikas Kumar, for the Respondent

Judgement

Pratibha Rani, J.

By this petition filed u/s 374(4) Cr.P.C., the State seeks leave to appeal against the judgment and order dated

03.10.2011 passed by the learned Addl. Sessions Judge-02 (SE), Saket Courts, New Delhi whereby the respondent/accused was acquitted of

the offence punishable u/s 307 IPC and Section 27 of the Arms Act. Notice of the leave petition was issued to the respondent, who has entered

appearance through his counsel.

2. Mr. Rajesh Mahajan, learned Addl. Standing Counsel for the State, while praying for leave to appeal against the acquittal of the respondent/accused by the learned Trial Court, referred to the statement of the injured (PW-5) Vivek Chhabra wherein he has detailed the manner

in which the incident took place and he was shot at by the respondent who was apprehended by the police at the spot. Learned Addl. Standing

Counsel further submitted that no doubt the other three witnesses, that is, PW-2 Saurav Batra, PW-3 Sahil Batra and PW-4 Nand Kishore have

not fully supported the case of the prosecution, yet the time and place of the incident is not disputed and it is only the manner in which the incident

has taken place that PWs 2 to 4 have not supported the prosecution version. He also submitted that PW-9 Mayank Lakhani, with whom the

respondent/accused was posted as Personal Security Officer (PSO), was not cited as a witness to the incident. Learned Addl. Standing Counsel

further submitted that, while the learned Trial court did not grant the permission to the State to cross-examine PW-4 Nand Kishore who resiled

from his earlier statement, PWs 2 & 3, namely, Saurav Batra and Sahil Batra have been cross-examined by the State. The mere fact that these

witnesses have been declared hostile, the version of the hostile witnesses could not be on the identical lines to that of the injured. Thus, in the given

facts on appreciation of evidence of material prosecution witnesses, the finding of the learned Trial Court and the reasoning given in para 12 of the

impugned judgment is illegal and erroneous.

3. Mr. Vikas Kumar, learned counsel appearing for the respondent submitted that the injury being not on vital parts of the injured, even the basic

ingredients of Section 307 IPC are not satisfied. He further submitted that the material independent eye witnesses have not supported the case of

the prosecution. Hence, the impugned judgment passed by the learned Trial Court does not suffer from any illegality or perversity. Referring to the

statement of PW-9 Mayank Lakhani, he further submitted that it was a case where in the scuffle an attempt was made to snatch the pistol from the

respondent when the fight took place. Hence, the finding of the learned Trial Court acquitting the respondent/accused further proves his innocence.

4. We have considered the rival contentions of the learned Addl. Standing Counsel for the State as well as counsel for the respondent and have

gone through the testimonies of the material witnesses. We find merit in the contention of the learned Addl. Standing Counsel for the State.

5. The legal position is well settled that leave to appeal can be granted to the State where it is shown that the conclusions arrived at by the Trial

Court are perverse or there is mis-application of law or any legal principle. It is also settled law that the Appellate Court may not only overrule or

otherwise disturb the finding of the Trial Court if there are substantial and compelling reasons for doing so.

6. Having heard the learned counsel for the parties and on going through the record, we are of the view that this is a fit case where leave to appeal

ought to be granted to the State against the impugned judgment of the Trial Court. Accordingly, leave is granted.

7. CrI.L.P. 235/2012 stands disposed of.

CrI.A. ____/2013 (to be registered and numbered)

8. Registry is directed to register and number the appeal.

9. On behalf of respondent, it has been submitted that the respondent has remained on bail during trial and there is no chance of his absconding,

hence pending decision of the appeal, respondent is ready and willing to abide by any condition imposed by the Court.

10. Looking into the facts and circumstances, the respondent is directed to furnish personal bond in the sum of Rs. 20,000/- with one surety in the

like amount to the satisfaction of the Registrar General of this Court within a period of two weeks.

11. List for hearing in the category of "Regular Matters" at its own turn. Copy of the order be dasti to the respondent for compliance.