

**State Vs. Mohan Kumar and ors**

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**Court :** Delhi

**Decided On :** Aug-30-2013

**Judge :** Indermeet Kaur

**Appellant :** State

**Respondent :** Mohan Kumar and ors

**Judgement :**

\* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:30.08.2013 CRL.L.P. 378/2012 STATE Through ..... Petitioner Mr. Saleem Ahmed, Additional Standing Counsel (Crl.) along with Inspector J.P. Meena, P.S. Jahangirpur. versus MOHAN KUMAR & ORS ..... Respondents Through None. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) Crl. M.A. No. 13219/2012 (delay of 60 days) 1 In view of the averments contained in the instant application, delay of 60 days in filing the leave to appeal is condoned. 2 Application disposed of. CRL.L.P. 378/2012 3 State has filed the present leave to appeal seeking leave to appeal against the judgment of acquittal passed by the learned Additional Sessions Judge dated 28.02.2012 whereby the charge-sheet filed by the State against the three respondents under Sections 302/394/397/34 of the Indian Penal Code (IPC) had been dismissed; the impugned judgment had noted that there are several dents in the case of the prosecution and the prosecution having failed to prove its case against the

respondents, benefit of doubt had been accorded to the respondents which was followed by a consequent acquittal. 4 State is aggrieved by the aforementioned findings. 5 Before dealing with the submissions of the learned Public Prosecutor, it would be necessary to detail the facts of the present case. The version of the prosecution is that on 16.05.2007, an information was received that a boy of 27 years was admitted in the casualty in BJRM Hospital, Jahangirpuri. Investigation was set into motion and SI Vijay Singh along with Constable Ravinder reached the hospital. The victim was declared dead. His mother Anita was an eye-witness to the incident. Her version is that on the fateful day, she along with her son Mayank had gone to the State Bank of India; they had withdrawn Rs.24,000/-; she detailed the denomination of the currency which had been withdrawn; the money was kept in a raxine bag which was put on her shoulder; at about 01:00 PM when they reached near MCD school, a two wheeler scooter carrying three boys on it and of whom the pillion rider snatched the hand bag; a hue and cry was raised; her son (Mayank) chased the boys; he was fired at by that person; Mayank got injured and fell down; he later on died. The attackers were three persons all between the age of 25-30 years. 6 Another eye-witness to the incident is Laturi Singh (PW-2). He was a TSR driver. He had also allegedly witnessed the incident. He had deposed that about 01:00 PM he noted one lady along with a boy coming from the side of the MCD school; the lady was having a bag on her shoulder which one of the accused (Mohan Kumar) had tried to snatch from her; the boy tried to intervene; another of the three accused (Bhoj Ram) took out a katta and fired at the boy who fell down; the accused persons thereafter fled away. 7 The post-mortem of the victim was proved through Dr. Kulbushan Goyal examined as PW-6. Three injuries were noted upon his person. Cause of death was hemorrhagic shock and element of asphyxia consequent upon extensive liver, lung, intestinal and chest; firearm injuries were sufficient to cause death in the ordinary course of nature. 8 PW-9 was the Manager of Jahangirpuri Branch from where the alleged sum of Rs.24,000/- had been withdrawn; he had proved the attested true copy of accounts opening form of PW-2 and her bank statements as Ex.PW-9/A and Ex.PW-9/B. 9 It is in this background that the vehement submissions made by the learned Public Prosecutor have to be appreciated. Learned Public Prosecutor has argued that the testimony of PW-4, the eye-witness and the mother of the victim

has not been appreciated in the correct perspective; her testimony is credible and trust-worthy; although admittedly there are minor contradictions in her version but the witness having come into the witness box two years after the date of the incident i.e. in the year 2009 when the incident is of the year 2007 and the contradictions not being material in nature and only being due to natural lapse of a fading memory, the trial Judge by discarding her version has committed an illegality. Submission being that there was no reason as to why the mother would have falsely implicated the accused persons; further submission being that the fact that the lady had withdrawn a sum of Rs.24,000/- has also been fortified by the bank statement which had been proved in the version of PW-9. 10 Before examining the testimony of PW-4, we shall first deal with the version of PW-2. PW-2 was also an eye-witness. He was a resident of D-1301, Jahangirpuri, Delhi. The complainant was living in D-1300, Jahangirpuri; PW-2 being a neighbour deliberately and intentionally did not tell the Court about this fact; in his version on oath in Court, he referred to the complainant and her son as complainant and her son. He concealed from the Court that he was their neighbour. This has casted a shadow of doubt on his version as the Court had rightly concluded that the credibility of this witness becomes tarnished as there was no reason why he would not have disclosed this material fact; when he being their immediate neighbour knew the names of both the complainant and the victim; this could be for other reason but the probable fact that this person has been set up as an eye-witness and he had not really witnessed the incident. Further inspite of the fact that he has witnessed the boy lying in an injured condition, he did not think it fit to accompany the injured to hospital; he returned back home. Strangely he did not inform the police that he had witnessed the incident till 10:00 PM when he then decided to go to the police station. All these facts had led the Court to rightly disbelieve this version. 11 Testimony of PW-4 was also rightly discarded. PW-4 is Anita, the mother of the victim. The mother of the victim has on oath deposed that out of three accused persons, two of them namely Mohan Kumar and Bhoj Raj had refused TIP; in this scenario, adverse inference for not joining TIP could have been drawn against both Mohan Kumar and Bhoj Raj. However further version of PW-4 nullifies her earlier version; in this version on oath, she has stated that the Investigating Officer had called her where she had then identified Mohan Kumar

and Bhoj Raj. A specific query has been put by this Court to the learned Public Prosecutor as to what this evidence could mean; it appears that it could mean nothing other than the fact that the Investigating Officer had called PW-2 to the Police Station and at his asking, she had identified Mohan Kumar and Bhoj Raj. There could be no other explanation. After the TIP has been refused by the accused Mohan Kumar and Bhoj Raj, the identification could only have been an identification in Court. Thus this version of PW-4 throws a doubt on the identity of Mohan Kumar and Bhoj Raj. 12 The credibility of PW-4 had also been tarnished in view of the contradictory versions given by her in her statement before the police and her version before the Court. These contradictions have to be tested on the anvil and the submission of the learned Public Prosecutor that the witness had come into the witness box after two years of the date of the incident and these were nothing but natural lapses. 13 Keeping this in mind, it is noted that the incident had occurred on 16.05.2007 at 01:00 PM. Three boys on a motor-cycle of whom one of them had tried to snatch the bag of PW-4; when her son intervened, the said person threatened him that he would be killed and thereafter fired upon him; this role has been attributed to Mohan Kumar. This was as per the version of PW-4 in her statement before the Police Ex.PW-4/A. 14 In Court PW-4 had however given a different version. She stated that the person sitting in the middle of the motor-cycle i.e. Bhoj Raj had fired at her son and Mohan Kumar was the person who had snatched her bag. This was a material difference in her first and second version. The role attributed to Mohan Kumar and Bhoj Raj was not clear. Further discrepancy noted in the version of this witness was that she has stated that her son was bleeding profusely when she had carried him to the hospital in a rickshaw but admittedly as per the version of the Investigation Officer (PW-21), there were no blood stains on the clothes of PW-4. 15 In this scenario, the trial Judge had rightly noted that the credibility of PW-4 is also tarnished. 16 That apart it was only a fleeting glimpse that PW-4 had had of the accused persons. Mohan Kumar and Bhoj Raj had refused TIP. Deposition of PW-4 that it was at the asking of the Investigation Officer that she had identified Mohan Kumar and Bhoj Raj could be at no other place but in the Police Station. Thus as noted supra identification of Mohan Kumar and Bhoj Raj is no identification in the eye of law. 17 The accused persons had been arrested on 17.08.2007 pursuant to a

disclosure statement made by them in another FIR i.e. FIR No. 538/2007. No recovery had also been effected; neither the raxine bag nor any money. 18 A criminal trial is not based on balance of probabilities. It is for the prosecution to prove its case. In the instant case, various dents have been raised in the versions of the eye-witnesses itself i.e. the versions of PW-4 and PW-2; PW-2 was a planted witness; PW-4 was also rightly not relied upon. Identification of the accused is also in doubt. There is no other corroborative evidence either. 19 In this background, this Court does not think it a fit case to grant leave to appeal to the State. Application as also the petition seeking leave to appeal are accordingly dismissed. INDERMEET KAUR, J KAILASH GAMBHIR, J AUGUST 30 2013 a

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